

## Appendix B

# Contract Clauses

## B.1 General

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### B.1.1 Introduction

This Appendix sets forth the general clauses to be included in solicitations and contracts and clauses that (1) may be included at the discretion of the purchase team or (2) must be included due to the type of contract used, the commodity being purchased, or due to other policies, laws, or Executive Orders discussed in Chapters 1 through 9 of the Postal Service *Interim Internal Purchasing Guidelines*.

### B.1.2 Numbering of Clauses

Clauses are numbered by the chapter of the Guidelines in which their use is discussed. Thus Clause 8-6, *Rights in Technical Data*, is prescribed in Chapter 8. Some clauses are not discussed in Chapters 1 through 9 or are discussed as alternates to the term and conditions contained in Clause 4-1, *General Terms and Conditions*, but are included in this Appendix and may be used in contracts as deemed appropriate by the purchase team; these clauses are identified by a “B” prefix. In addition, clauses unique to design and construction and mail transportation highway contracts are also included, and these are also identified by the “B” prefix. In parentheses to the right of the clause title is a reference to the chapter, section, and part where the clause is discussed.

## B.2 Basic Contract Clauses

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### B.2.1 Clause 4-1, General Terms and Conditions; Modifications of Clauses

Clause 4-1, *General Terms and Conditions*, contains the basic terms and conditions of Postal Service contracts. Its terms and conditions are modeled on those used in the private sector, and are intended to minimize administrative effort, thereby reducing costs. As discussed in 4.2.7.d, and

subject to the restrictions in 1.3.1, these terms and conditions may be modified, added to, or supplemented as required. In addition, subject to 4.2.7.d, 1.3.1, and B.2.2 below, the other clauses in this Appendix may be modified, added to, or supplemented when doing so would ensure the success of the purchase. Assigned counsel must be consulted before modifying, adding to, or supplementing these clauses, unless a clause contained in these Guidelines is used to replace a paragraph in Clause 4-1 addressing a similar subject. Purchase teams should remember that less onerous terms and conditions usually result in lower overall cost.

### B.2.2 **Clause 4-2, Contract Terms and Conditions Required to Implement Policies, Statutes, or Executive Orders**

Clause 4-2, *Contract Terms and Conditions Required to Implement Policies, Statutes, or Executive Orders*, contains several clauses, some of which are incorporated by reference, enforcing certain policies, statutes or Executive Orders applicable to Postal Service contracts. Clause 4-2 also contains a series of clauses which, depending on the nature of the purchase, may apply to a given contract, and which are checked-off by the contracting officer when they do. Neither Clause 4-2 nor any of the clauses incorporated by reference in it may be modified or replaced unless (1) a deviation has been granted (see 1.3.1.b) or the discussion of the clause provides instructions for such action (see, for example, 9.3.2 regarding exceptions granted by the Secretary of Labor). In addition, no change may be made to paragraph (b) (Examination of Records) of this clause before (1) consulting with assigned counsel and the office of the Inspector General and (2) having a deviation reviewed and approved by a higher level than the contracting officer who holds deviation approval authority (see 1.3.2.b).

## B.3 Clauses

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**Clause B-1 Definitions (May 2005)** (B.1.2)

As used in this contract, the following terms have the following meanings:

- a. *Contracting officer.* The person executing this contract on behalf of the Postal Service, and any other officer or employee who is a properly designated contracting officer; the term includes, except as otherwise provided in the contract, the authorized representative of a contracting officer acting within the limits of the authority conferred upon that person.
- b. *Subcontracts.* Except as otherwise provided in the contract, the term includes purchase orders under this contract.

**Clause B-2 (Reserved)****Clause B-3 Contract Type (May 2005)** (B.1.2)

This is a contract.  
(*Insert type of contract*)

**Clause B-4 Variation in Quantity (May 2005)** (B.1.2)

- a. No variation in the quantity of any item called for by this contract will be accepted unless caused by conditions of loading, shipping, or packing, or allowances in the manufacturing process, and then only to any extent specified elsewhere in the contract.
- b. The supplier is responsible for delivering each item quantity within any allowable variations. If the supplier delivers, and the Postal Service receives, quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), these excess quantities will be treated as being delivered for the supplier's convenience.
- c. The Postal Service may retain excess quantities up to \$100 in value without compensating the supplier for them, and the supplier waives all right, title, or interests in them. Quantities in excess of \$100 will, at the option of the Postal Service, either be returned at the supplier's expense or retained and paid for at the contract unit price.
- d. If this contract calls for deliveries at different times, this clause applies to each delivery rather than to the aggregate of all deliveries under the contract.

**Clause B-5 Certificate of Conformance (May 2005)** (B.1.2)

- a. When authorized in writing by the contracting officer, the supplier may use a Certificate of Conformance for supplies or services that would otherwise require inspection. The right of inspection under the



inspection provisions of this contract is not prejudiced by this procedure.

- b. The supplier's signed certificate must be attached to the inspection or receiving report.
- c. The Postal Service has the right to reject defective supplies or services within a reasonable time after delivery, by written notification to the supplier. The supplier must promptly replace, correct, or repair the rejected supplies or services at the supplier's expense.
- d. "I certify that on *(supplier insert date)*, the *(insert supplier's name)* furnished the supplies called for by Contract No. *(supplier check which is applicable)* by shipment via *(carrier)* on *(identify the bill of lading or shipping document)* or by placing them in local inventory. I further certify that the supplies are of the quality specified and conform in all respects with the contract requirements."

Date of Execution:

Signature:

Title:

#### **Clause B-6 (Reserved)**

#### **Clause B-7 Responsibility for Supplies (May 2005)**

(B.1.2)

Except as otherwise provided in this contract:

- a. The supplier is responsible for the supplies covered by the contract until they are delivered at the designated delivery point, regardless of the point of inspection;
- b. After delivery and before Postal Service acceptance or rejection and notification, the Postal Service is responsible for loss or destruction of or damage to the supplies only if it results from the negligence of officers, agents, or employees of the Postal Service acting within the scope of their employment; and
- c. The supplier bears all risks as to rejected supplies after notice of rejection, except that the Postal Service is responsible for loss, destruction, or damage resulting from the negligence of officers, agents, or employees of the Postal Service acting within the scope of their employment.

#### **Clause B-8 (Reserved)**

#### **Clause B-9 Claims and Disputes (May 2005)**

(B.1.2)

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

- b. Except as provided in the Act, all disputes arising under or relating to this contract must 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. However, a written demand or written assertion by the supplier seeking the payment of money exceeding \$100,000 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 is not acted upon in a reasonable time.
- d.
  - (1) A claim by the supplier must be made in writing and submitted to the contracting officer for a written decision. A claim by the Postal Service against the supplier is subject to a written decision by the contracting officer.
  - (2) For supplier claims exceeding \$100,000, the supplier must submit with the claim the following certification:

"I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief, that the amount requested accurately reflects the contract adjustment for which the supplier believes the Postal Service is liable, and that I am duly authorized to certify the claim on behalf of the supplier."
  - (3) The certification may be executed by any person duly authorized to bind the supplier with respect to the claim.
- e. For supplier claims of \$100,000 or less, the contracting officer must, if requested in writing by the supplier, render a decision within 60 days of the request. For supplier-certified claims over \$100,000, the contracting officer must, within 60 days, decide the claim or notify the supplier of the date by which the decision will be made.
- f. The contracting officer's decision is final unless the supplier appeals or files a suit as provided in the Act.
- g. When a CDA claim is submitted by or against a supplier, the parties by mutual consent may agree to use an alternative dispute resolution (ADR) process to assist in resolving the claim. A certification as described in d(2) of this clause must be provided for any claim, regardless of dollar amount, before ADR is used.
- h. The Postal Service will pay interest in 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.
- i. Simple interest on claims will be paid at a rate determined in accordance with the *Interest* clause.
- j. The supplier must 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.

**Clause B-10 Pricing of Adjustments (May 2005)** (B.1.2)

When costs are a factor in determining any contract price adjustment under the *Changes* clause or any other provision of this contract, Chapter 5 of the Postal Service *Interim Internal Purchasing Guidelines* in effect on the date of this contract will serve as a guide in negotiating the adjustment.

**Clause B-11 (Reserved)**

**Clause B-12 Termination for Convenience or Default (May 2005)** (B.1.2)

- a. Performance under this contract may be terminated by the Postal Service in whole or in part whenever:
  - (1) The supplier defaults in performing this contract (including in the term “default” any refusal or failure to prosecute the work diligently enough to ensure its completion within the time specified or any extension), and fails to cure the default within 10 days (or for a longer period as the contracting officer may allow) after receipt from the contracting officer of a notice specifying the default; or
  - (2) The contracting officer determines that termination is in the best interests of the Postal Service. A termination may be effected by delivery to the supplier of a notice of termination specifying whether the termination is for default or for the convenience of the Postal Service, the extent of work terminated, and the effective date of the termination. If, after notice of termination for default under subparagraph a.1 above, it is determined that the supplier was not in default or that the delay was excusable, the notice of termination will be deemed to have been issued for the convenience of the Postal Service.
- b. Upon receipt of a notice of termination, unless otherwise directed by the contracting officer, the supplier must take the following actions:
  - (1) Stop work under the contract to the extent specified in the notice.

- (2) Place no further orders or subcontracts for materials, services, or facilities except as necessary for completion of the unterminated work.
  - (3) Terminate all orders and subcontracts to the extent that they relate to the work terminated.
  - (4) Assign to the Postal Service, as directed by the contracting officer, all right, title, and interest of the supplier under the orders and subcontracts terminated. The Postal Service has the right, in its discretion, to settle or pay claims arising out of these terminations.
  - (5) Settle all outstanding liabilities and all claims arising out of the termination of orders and subcontracts, with the approval or ratification of the contracting officer. The contracting officer's decision is final for the purposes of this clause.
  - (6) Transfer title to the Postal Service and deliver as directed by the contracting officer:
    - (a) Work in process, completed work, and other material produced as a part of or acquired for the work terminated; and
    - (b) The completed or partially plans, drawings, information, and other property that, if the contract had been completed, would have been furnished to the Postal Service.
  - (7) Use its best efforts to sell as directed by the contracting officer any property of the types referred to in subparagraph b.6 above, provided that the supplier may acquire property under the conditions prescribed and at prices approved by the contracting officer, and the proceeds of any such transfer will be applied in reduction of any payments to be made by the Postal Service to the supplier, or be credited to the price or cost of the work covered by this contract or paid in any manner directed by the contracting officer.
  - (8) Complete performance of the work not terminated.
  - (9) Take any action that may be necessary, or that the contracting officer may direct, for protecting and preserving any property related to this contract that is in the possession of this supplier and in which the Postal Service has or may acquire an interest.
- c. At any time, the supplier may submit to the contracting officer a list, certified as to quantity and quality, of termination inventory not disposed of and may request the Postal Service to remove inventory items or enter into a storage agreement covering them. Not later than 15 days after receiving this request, the Postal Service will accept title to the items and remove them or enter into a storage agreement. The list will be subject to verification by the contracting officer upon removal of the items or, if the items are stored, within 45 days after submission of the list.
  - d. After termination, the supplier must submit to the contracting officer a termination claim in the form and with the certification prescribed by the

contracting officer. The claim must be submitted promptly, but in no event more than 180 days after the effective date of termination, unless an extension in writing is granted by the contracting officer. However, if the contracting officer determines that the facts justify such action, any termination claim may be received and acted upon at any time after the 180-day period. Upon failure of the supplier to submit a termination claim within the time allowed, the contracting officer may determine, on the basis of information available, the amount, if any, due the supplier by reason of the termination and will pay that amount.

- e. Subject to the provision of paragraph d above, the supplier and the contracting officer may agree upon the whole or any part of the amount to be paid (including and allowance for the fee) to the supplier by reason of the termination.
- f. If the supplier and the contracting officer fail to agree on the amount with respect to cost or fee, the contracting officer will determine, on the basis of information available, the amount, if any, due the supplier and pay the supplier as follows:
  - (1) If the settlement includes cost and fee:
    - (a) All costs and expenses reimbursable in accordance with this contract, not previously paid to the supplier and such as may continue for a reasonable time after termination;
    - (b) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders;
    - (c) The reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims, together with reasonable storage, transportation, and other costs incurred in connection with protecting or disposing of the termination inventory (however, if the termination is for default, there must not be included any amount for the preparation of the supplier's settlement proposal); and
    - (d) A portion of the fee payable under the contract, determined as follows:
      - (i) In the event of termination for convenience, a percentage of the fee equivalent to the percentage of the completion of work contemplated by the contract, but exclusive of subcontract effort included in subcontractor's termination claims, less fee payments previously made; or
      - (ii) In the event of termination for default, that proportionate part of the fee (or, if this contract calls for articles of different types, of such part of the fee as is reasonably allocable to the type of article under consideration) as the total number of articles accepted bears to the total number of articles of a like kind called for by this contract. If the amount determined under this subparagraph (2) is less than

- the total payment already made to the supplier, the supplier must repay to the Postal Service the excess.
- (2) If the settlement includes only the fee, its amount will be determined in accordance with f.1(d) above.
- g. Costs claimed, agreed to, or determined pursuant to paragraphs c, d, and e above must be in accordance with Chapter 5 of the Postal Service *Interim Internal Purchasing Guidelines* in effect on the effective date of termination. The final settlement is limited as provided in the *Limitation of Cost* clause of this contract.
  - h. The supplier has the right of review, under the *Claims and Disputes* clause, of any determination made by the contracting officer under paragraph d or f above, except that if the supplier fails to request an extension of time, the supplier will have no right of review. In any case where the contracting officer determines the amount due under paragraph d or f above, the Postal Service must pay to the supplier the following:
    - (1) If there is no right of review under this clause or if no timely review has been taken, the amount determined by the contracting officer; or
    - (2) If a review has been taken, the amount finally determined.
  - i. There will be deducted:
    - (1) All unliquidated advance or other payments made to the supplier applicable to the terminated portion of this contract;
    - (2) Any claim the Postal Service may have against the supplier; and
    - (3) The agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the supplier or sold in accordance with this clause.
  - j. If the termination is partial, the portion of the fee payable for the continued portion of the contract must be equitably adjusted by agreement between the supplier and the contracting officer.
  - k. The Postal Service may, under the terms and conditions it may prescribe, make partial payments against costs incurred by the supplier in connection with the terminated portion of the contract whenever, in the opinion of the contracting officer, the aggregate of the partial payments is within the amount to which the supplier will be entitled. If the total of these payments exceeds the amount finally determined to be due under this clause, the excess must be repaid to the Postal Service upon demand, together with interest calculated in accordance with the *Interest* clause of this contract, for the period from the date the excess payment is received by the supplier to the date on which the excess is repaid to the Postal Service. However, no interest will be charged with respect to an excess payment attributable to a reduction in the supplier's claim by reason of retention or other disposition of termination inventory, until 10 days after the date of the retention or disposition.

**Clause B-13 (Reserved)****Clause B-14 (Reserved)****Clause B-15 Notice of Delay (May 2005)** (B.1.2)

Immediately upon becoming aware of any difficulties that might delay deliveries under this contract, the supplier will notify the contracting officer in writing of them. The notification must identify the difficulties, the reasons for them, and the estimated period of delay anticipated. Failure to give notice may preclude later consideration of any request for an extension of contract time.

**Clause B-16 Suspensions and Delays (May 2005)** (B.1.2)

- a. If the performance of all or any part of the work of this contract is suspended, delayed, or interrupted by:
  - (1) An order or act of the contracting officer in administering this contract; or
  - (2) By a failure of the contracting officer to act within the time specified in this contract — or within a reasonable time if not specified — an adjustment will be made for any increase in the cost of performance of this contract caused by the delay or interruption (including the costs incurred during any suspension or interruption). An adjustment will also be made in the delivery or performance dates and any other contractual term or condition affected by the suspension, delay, or interruption. However, no adjustment may be made under this clause for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the supplier, or for which an adjustment is provided or excluded under any other term or condition of this contract.
- b. A claim under this clause will not be allowed:
  - (1) For any costs incurred more than 20 days before the supplier has notified the contracting officer in writing of the act or failure to act involved; and
  - (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption, but not later than the day of final payment under the contract.

**Clause B-17 Disallowance of Costs (May 2005)** (B.1.2)

- a. The contracting officer may at any time issue the supplier a written notice of intent to disallow specified costs under this contract that have been determined not to be allowable under the contract terms.
- b. The supplier may, after receiving a notice of intent to disallow costs, submit a written response to the contracting officer, with justification for allowance of the costs. If the supplier does respond within 60 days, the contracting officer will, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

**Clause B-18 Subcontracts (May 2005)** (B.1.2)

- a. Subcontract, as used in this clause, includes, but is not limited to, purchase orders and changes and modifications to purchase orders. The supplier must notify the contracting officer reasonably in advance of entering into any subcontract if the supplier does not have a purchasing system approved by a federal government agency and if the subcontract:
  - (1) Is to be a cost-reimbursement, time-and-materials, or labor-hour contract estimated to exceed \$25,000 including any fee;
  - (2) Is proposed to exceed \$100,000; or
  - (3) Is one of a number of subcontracts with a single subcontractor, under this contract, for the same or related supplies or services that in the aggregate is expected to exceed \$100,000.
- b. The advance notification required by paragraph a above must include:
  - (1) A description of the supplies or services to be subcontracted;
  - (2) Identification of the type of subcontract to be used;
  - (3) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;
  - (4) The proposed subcontract price and the supplier's cost or price analysis;
  - (5) The subcontractor's current, complete, and accurate cost or pricing data if required by other contract provisions; and
  - (6) A negotiation memorandum reflecting:
    - (a) The principal elements of the subcontract price negotiations;
    - (b) The most significant consideration controlling establishment of initial or revised prices;
    - (c) The reason cost of pricing data were or were not required;
    - (d) The extent, if any, to which the supplier did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;



- (e) The extent, if any, to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the supplier and subcontractor; and the effect of any such defective data on the total price negotiated;
  - (f) The reasons for any significant differences between the supplier's price objective and the price negotiated; and
  - (g) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation must identify each critical performance element, management decisions used to quantify each incentive element, reasons for incentives, and a summary of all trade-off possibilities considered.
- c. The supplier agrees to select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.
- d. The contracting officer may disapprove any subcontract in writing for which advance notification is required under paragraph a above.
- e. Even if the supplier's purchasing system has been approved, the supplier must obtain the contracting officer's written consent before placing subcontracts that have been selected for special surveillance and so identified in the Schedule of the contract.
- f. The lack of disapproval does not constitute a determination:
  - (1) Of the acceptability of any subcontract terms or conditions;
  - (2) Of the acceptability of any subcontract price or of any amount paid under any subcontract; or
  - (3) To relieve the supplier of any responsibility for performing this contract.
- g. No subcontract under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

### **Clause B-19 Excusable Delays (May 2005)**

(B.1.2)

- a. Except with respect to defaults of subcontractors, the supplier will not be in default by reason of any failure in performing this contract in accordance with its terms (including any failure by the supplier to make progress in the prosecution of the work that endangers performance) if the failure arises out of causes beyond the control and without the fault or negligence of the supplier. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the government in its sovereign capacity or of the Postal Service in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the supplier.

- b. If failure to perform is caused by the failure of a subcontractor to perform or make progress and arises out of causes beyond the control of both the supplier and subcontractor, and without the fault or negligence of either of them, the supplier will not be deemed to be in default, unless:
  - (1) The supplies or services to be furnished by the subcontractor are obtainable from other sources;
  - (2) The contracting officer orders the supplier in writing to procure the supplies or services from other sources; and
  - (3) The supplier fails to comply reasonably with the order.
- c. Upon request of the supplier, the contracting officer shall ascertain the facts and extent of failure, and if the contracting officer determines that any failure to perform was occasioned by any of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Postal Service under any termination clause included in this contract.
- d. As used in this clause, the terms “subcontractor” and “subcontractors” mean subcontractor(s) at any tier.

**Clause B-20 Invoices (May 2005)**

(B.1.2)

- a. The supplier’s invoices must be submitted before payment can be made.
- b. The supplier agrees that submission of an invoice to the Postal Service for payment is a certification that:
  - (1) Any services being billed for have been performed in accordance with the contract requirements; and
  - (2) Any supplies for which the Postal Service is being billed have been shipped or delivered in accordance with shipping instructions issued by the contracting officer in the quantities shown on the invoice, and that the supplies are in the quantity and of the quality designated in the contract.
- c. To ensure prompt payment, an invoice must be submitted for each destination and each shipment. Each invoice must contain:
  - (1) The supplier’s name and address;
  - (2) The contract number;
  - (3) Any applicable task or delivery order number;
  - (4) A description of the supplies or services and the dates delivered or performed;
  - (5) The point of shipment or delivery;
  - (6) Any applicable unit prices and extensions;
  - (7) Shipping and payment terms; and
  - (8) Any additional information required by the contract.

**Clause B-21 Change-Order Accounting (May 2005)** (B.1.2)

The contracting officer may require change-order accounting whenever the estimated cost of a change or series of related changes exceeds \$100,000. The supplier, for each change or series of related changes, must maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) or work, both changed and not changed, allocable to the change. The supplier will maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the contracting officer or the matter is finally disposed of in accordance with the *Claims and Disputes* clause.

**Clause B-22 Interest (May 2005)** (B.1.2)

The Postal Service will pay interest on late payments and unearned prompt payment discounts in accordance with the Prompt Payment Act, 31 U.S.C. 3901 *et. seq.*, as amended by the Prompt Payment Act Amendments of 1988, P.L. 100-496.

**Clause B-23 Guaranteed Shipping Weight (May 2005)** (B.1.2)

- a. This clause applies if this contract contains a guaranteed shipping-weight provision.
- b. The supplier is responsible for the actual weight at the time of shipment. If the shipping weight exceeds the specified guaranteed shipping weight, the supplier will be liable for any resulting excess transportation costs.
- c. The supplier must determine the excess transportation costs and deduct them from the invoice, making reference on it to the applicable bill of lading numbers.
- d. When the excess transportation costs are not known and timely notification is not made to the contracting officer for possible price adjustment, 2 percent of the invoice amount covering each shipment with excess weight may be withheld until the Postal Service can calculate the excess costs. In this case, an administrative-cost fee of \$50 per shipment will be assessed in addition to any excess transportation costs incurred.

**Clause B-24 Frequency Authorization (May 2005)** (B.1.2)

- a. Authorization of radio frequencies required in support of this contract must be obtained through the contracting officer by the supplier or subcontractor in need thereof. Frequency-management procedures prescribed in the schedule of this contract must be followed in obtaining radio frequency authorization.
- b. For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the

supplier or subcontractor must provide technical operating characteristics of the proposed electromagnetic radiating device to the contracting officer during the initial planning, experimental, or developmental phases of contractual performance.

- c. This clause, including this paragraph c, must be included in all subcontracts that call for developing, producing, testing, or operating a device for which a radio-frequency authorization is required.

**Clause B-25 Advertising of Contract Awards (May 2005)** (B.1.2)

Except with the contracting officer's prior approval, the supplier agrees not to refer in its commercial advertising to the fact that it was awarded a Postal Service contract or to imply in any manner that the Postal Service endorses its products.

**Clause B-26 Protection of Postal Service Buildings, Equipment, and Vegetation (May 2005)** (B.1.2)

The supplier must use reasonable care to avoid damaging buildings, equipment, and vegetation (such as trees, shrubs, and grass) on the Postal Service installation. If the supplier fails to do so and damages any buildings, equipment, or vegetation, the supplier must replace or repair the damage at no expense to the Postal Service, as directed by the contracting officer. If the supplier fails or refuses to make repair or replacement, the supplier will be liable for the cost of repair or replacement, which may be deducted from the contract price.

**Clause B-27 Performance at Occupied Postal Premises (May 2005)** (B.1.2)

- a. In performing this contract, the supplier must:
  - (1) Comply with applicable Occupational Safety and Health Standards (29 CFR 1910) promulgated pursuant to the authority of the Occupational Safety and Health Act of 1970;
  - (2) Comply with any other applicable federal, state, or local regulations governing work-place safety to the extent they do not conflict with a.1 above; and
  - (3) Take all other proper precautions to protect the safety and health of the supplier's employees, Postal Service employees, and the public.
- b. The supplier must coordinate its use of the premises with the installation head or other representative designated by the contracting officer. Subjects of this coordination include the designation of work and storage areas; the extent, if any, of use by the supplier of Postal Service tools and equipment; the furnishing by the supplier of appropriate signs and barricades to exclude unauthorized personnel

from the work areas and to call attention to hazards and dangers; and other matters relating to the protection of Postal Service employees and property.

**Clause B-28 Safety and Health Standards (May 2005)** (B.1.2)

- a. Materials, supplies, articles, or equipment manufactured or furnished under this contract or order must conform to the Occupational Safety and Health Standards (29 CFR 1910) pursuant to authority in the Occupational Safety and Health Act of 1970 (OSHA), and to other safety and health requirements specified in this contract or order.
- b. If no OSHA standard exists, federal or other nationally recognized standards apply. Copies of current Occupational Safety and Health Standards are available from regional and/or area offices of the U.S. Department of Labor, Occupational Safety and Health Administration.
- c. If this contract or order contains a Postal Service standard and an OSHA standard covering the same general area of applicability, the Postal Service standard governs and takes precedence, unless the OSHA standard contains more rigorous or stringent safety requirements, in which case the OSHA standard governs and takes precedence.
- d. Upon delivery of the first article under the contract or order, or if none, upon delivery of the first production quantity, the supplier must execute a certification in a form acceptable to the contracting officer, attesting to the conformance of the delivered items to the requirements of this clause.

**Clause B-29 (Reserved)**

**Clause B-30 Permits and Responsibilities (May 2005)** (B.1.2)

The supplier is responsible, without additional expense to the Postal Service, for obtaining any necessary licenses and permits, and for complying with any applicable federal, state, and municipal laws, codes, and regulations in connection with the performance of the contract. The supplier is responsible for all damage to persons or property, including environmental damage, that occurs as a result of its omission(s) or negligence. The supplier must take proper safety and health precautions to protect the work, the workers, the public, the environment, and the property of others.

**Clause B-31 (Reserved)****Clause B-32 Differing Site Conditions (May 2005)** (B.1.2)

- a. The supplier must promptly, and before such conditions are disturbed, notify the contracting officer in writing of:
  - (1) Subsurface or latent physical conditions at the site differing materially from those indicated in this contract; or
  - (2) Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.
- b. The contracting officer shall promptly investigate the conditions, and if such conditions do materially so differ and will cause an increase or decrease in the supplier's cost of, or the time required for, performance of any part of the work under this contract whether or not changed as a result of such conditions, an equitable adjustment shall be made and the contract modified in writing accordingly.
- c. No claim of the supplier under this clause shall be allowed unless the supplier has given the notice required in (a) above; provided however, the time prescribed thereof may be extended by the Postal Service.
- d. No claim by the supplier for an equitable adjustment under this clause will be allowed if asserted after final payment under this contract.

**Clause B-33 Clause B-33 Inspection and Acceptance (Construction) (May 2005)** (B.1.2)

- a. Except as otherwise provided in this contract, inspection and testing by the Postal Service of materials and workmanship shall be made at reasonable times and at the site of the work, unless the contracting officer determines that it shall be made at the place of production, manufacture, or shipment of such material. The contracting officer's decision shall be conclusive as to whether the material involved conforms to the contract requirements. Such off-site inspection or test shall not relieve the supplier of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the Postal Service after acceptance of the completed work under the terms of paragraph f of this section.
- b. The supplier shall without charge, replace any material or correct any workmanship found by the Postal Service not to conform to the contract requirements, unless the Postal Service consents to accept such material or workmanship with an appropriate adjustment in contract price. The supplier shall promptly segregate and remove rejected material from the premises.

- c. If the supplier does not promptly replace rejected material or correct rejected workmanship, the Postal Service may, by contract or otherwise, replace or correct it and charge the cost to the supplier.
- d. The supplier must furnish (without charge) all facilities, labor, and materials needed to conduct inspections and tests as required by the contracting officer. The supplier will be charged any additional costs of inspection if material and workmanship are not ready at the time specified by the supplier for inspection.
- e. The Postal Service may examine completed work by removing or tearing it out. The supplier must replace or correct any work found not to conform to contract requirements. If work is torn out and found to comply with contract requirements, the contracting officer must make an equitable adjustment for the services provided for the inspection and replacement of the work.
- f. The Postal Service will inspect the work as soon as practicable after completion. Acceptance by an authorized Postal Service representative is conclusive except in the case of latent defects, fraud, gross mistakes amounting to fraud, or Postal Service rights under any warranty or guarantee.

**Clause B-34 Notice to Proceed and Commencement, Prosecution and Completion of Work (May 2005)** (B.1.2)

No work will be performed except pursuant to a Notice to Proceed issued by the Contracting Officer.

The supplier will be required to (a) commence work under this contract within 10 calendar days after the date the supplier receives the Notice to Proceed, (b) prosecute the work diligently, and (c) complete the entire work, ready for use not later than \_\_\_\_\_ calendar days from the date of receipt of the Notice to Proceed. The time stated for completion includes final cleanup of the premises.

**Clause B-35 Specifications and Drawings (May 2005)** (B.1.2)

- a. The supplier must keep at the site, copies of the drawings and specifications and must at all times give the contracting officer access to them. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, is of like effect as if shown or mentioned in both. In case of discrepancy or conflicts between drawings and specifications, the specifications will govern.
- b. In case of difference between small and large-scale drawings, the large-scale drawings will govern. Schedules on any contract drawing will take precedence over conflicting information on that or any other contract drawing. On any of the drawings in which a portion of the work is detailed or drawn out and the remainder is shown in outline, the parts detailed or drawn out will apply also to all other like portions of the work.

- c. When the word “similar” appears on the drawings, it has a general meaning and must not be interpreted as meaning identical, and all details must be worked out in relation to their location and connection with other parts of the work.
- d. In case of discrepancy either in figures, drawings, or specifications, the matter must be promptly submitted to the contracting officer, who will promptly make determination in writing. Any adjustment by the supplier without such a determination will be at the supplier’s own risk and expense. The contracting officer must furnish from time to time such detailed drawings and other information as may be necessary.
- e. The supplier must verify all dimensions shown of existing work, and all dimensions required for work that is to connect with work now in place, by actual measurement of the existing work. Any discrepancies between the contract requirements and the existing conditions must be referred to the contracting officer before the supplier performs any work affected by these discrepancies.

**Clause B-36 Postal Service Partial Occupancy (May 2005)** (B.1.2)

- a. The contracting officer reserves the right of partial occupancy or use of facilities, services, and utilities, before final acceptance, without implying completion or acceptance of any part of the project by the Postal Service. Before such occupancy or use, the contracting officer must furnish the supplier an itemized list of work remaining to be performed or corrected. Failure to list an item will not relieve the supplier of the responsibility for complying with the terms of the contract.
- b. Costs incurred as a result of such partial occupancy or use of facilities, services, and utilities are subject to equitable adjustment under the *Changes* clause.

**Clause B-37 Changes (Construction) (May 2005)** (B.1.2)

- a. The contracting officer may at any time, without notice to any sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes:
  - (1) In the specifications (including drawings and designs);
  - (2) In the method or manner of performance of the work;
  - (3) In the Postal Service-furnished facilities, equipment, materials, services, or site; or
  - (4) Directing acceleration in the performance of the work.
- b. Any other written or oral order (which, as used in this paragraph b, includes direction, instruction, interpretation, or determination) from the contracting officer that causes a change will be treated as a change order only if the supplier gives the contracting officer written notice



stating (1) the date, circumstances, and source of the order and (2) that the supplier regards the order as a change order. This notification must be delivered to the contracting officer within 30 days of receipt of the change order.

- c. If any change under this clause causes an increase or decrease in the supplier's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any order, the contracting officer will make an equitable adjustment and modify the contract in writing. However, except for claims based on defective specifications, no claim for any change under paragraph b above will be allowed for any costs incurred more than 20 days before the supplier gives written notice as required. In the case of defective specifications for which the Postal Service is responsible, the equitable adjustment will include any increased cost reasonably incurred by the supplier in attempting to comply with the defective specifications.
- d. No claim by the supplier for an equitable adjustment will be allowed if asserted after final payment under this contract.
- e. See also Clause B-10, *Pricing of Adjustments* (May 2005).

#### **Clause B-38 Accident Prevention (May 2005)**

(B.1.2)

- a. All construction work on this project must be performed in compliance with the Occupational Safety and Health Act of 1970 or with local or state occupational safety and health regulations enforced by an agency of the locality or state under a plan approved by the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA).
- b. The supplier will maintain an accurate record of exposure data and all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, material, supplies, or equipment. The supplier must report the exposure data and accidents as prescribed by the contracting officer.
- c. Job Safety programs are required as follows:
  - (1) Within 30 days after receiving a notice to proceed, the supplier must submit to the contracting officer, in quintuplicate, a proposed job safety program designed to provide a system by which hazards on the project site will be controlled to minimize or eliminate occupational injuries or illnesses during performance of the contract.
  - (2) The proposed job safety program must state that subcontractors are required to comply with the general supplier's job safety rules and requirements issued under the authority of that program.
  - (3) The proposed job safety program must identify, by name, the supplier's representative responsible for the execution of the job safety program.

**Clause B-39 Indemnification (May 2005)** (B.1.2)

The supplier must save harmless and indemnify the Postal Service and its officers, agents, representatives, and employees from all claims, losses, damage, actions, causes of action, expenses, and/or liability resulting from, brought for, or on account of any personal injury or property damage received or sustained by any person, persons or property growing out of, occurring, or attributable to any work performed under or related to this contract, resulting in whole or in part from negligent acts or omissions of the supplier, any subcontractor, or any employee, agent, or representative of the supplier or any subcontractor.

**Clause B-40 Construction Cost Breakdown (May 2005)** (B.1.2)

- a. Cost breakdown with proposal:  
If required by the contracting officer, the offeror must submit with its proposal a construction cost estimated breakdown on the attached form.
- b. Cost breakdown after award:  
If required by the contracting officer, the supplier must submit, within 30 calendar days after receiving the notice to proceed, a construction cost estimated breakdown on the sample forms, and instructions, provided in Section 01040, Division 1, *General Requirements*.

**Clause B-41 Conditions Affecting the Work (May 2005)** (B.1.2)

The supplier is responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions that can affect the work or its costs. Any failure by the supplier to have done so does not relieve the supplier from responsibility for successfully performing the work without additional expense to the Postal Service. The Postal Service assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents before execution of this contract, unless such understanding or representations by the Postal Service are expressly stated in the contract.

**Clause B-42 Performance of Work by Supplier (May 2005)** (B.1.2)

The supplier must perform on the site, with its own organization, work equivalent to at least \_\_\_\_\_ percent of the total amount of work to be performed under this contract. The percentage of work required to be performed by the supplier may be reduced with written approval of the contracting officer.

**Clause B-43 Superintendence by Supplier (May 2005)** (B.1.2)

The supplier must give personal superintendence to the work or have a competent foreman or superintendent, satisfactory to the contracting officer, on the work at all times during progress, with authority to act for the supplier.

**Clause B-44 Use of Premises (May 2005)** (B.1.2)

- a. If the premises are occupied, the supplier, any subcontractors, and their employees must comply with the regulations governing access to, operation of, and conduct while on the premises and must perform the work required under this contract so as not to unreasonably interfere with the conduct of Postal Service business or use and occupancy by Postal Service tenants.
- b. Any requests received by the supplier from occupants to change the sequence of work must be referred to the contracting officer for determination.
- c. The supplier, any subcontractors, and their employees will not have access to any building outside the scope of this contract, without permission of the contracting officer.

**Clause B-45 Other Contracts (May 2005)** (B.1.2)

The Postal Service may award other contracts for additional work, and the supplier must cooperate fully with the other suppliers and Postal Service employees and carefully fit in its own work as may be directed by the contracting officer. The supplier must not commit or permit any act that will interfere with the performance of work by any other supplier or by Postal Service employees.

**Clause B-46 Subcontracts (Construction) (May 2005)** (B.1.2)

- a. Nothing in this contract may be construed to create any contractual relationship between any subcontractors, and the Postal Service. The divisions or sections of the specifications are not intended to control the supplier in dividing the work among subcontractor or to limit the work performed by any trade.
- b. The supplier is responsible to the Postal Service for acts and omissions of its own employees and of subcontractors and their employees. The supplier is also responsible for the coordination of the work of the trades, subcontractors, and suppliers.
- c. The Postal Service will not undertake to settle any differences among the supplier, subcontractors, or suppliers.

**Clause B-47 Permits and Responsibilities (Construction) (May 2005)** (B.1.2)

The supplier is responsible, without additional expense to the Postal Service, for obtaining any necessary licenses and permits, and for complying with any applicable federal, state, and municipal laws, codes, and regulations in connection with the prosecution of the work. The supplier is responsible for all damage to persons or property that occurs as a result of its negligence. The supplier must take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The supplier is responsible also for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction that may have been accepted.

**Clause B-48 Clause B-48 Payment (Construction) (May 2005)** (B.1.2)

- a. The Postal Service will make progress payments monthly or at more frequent intervals as determined by the contracting officer. Bond costs may be included in the supplier's estimates without proration. Before the first progress payment becomes due, the supplier must prepare a breakdown of the contract price acceptable to the contracting officer. The values in the breakdown will be used for determining progress payments. The supplier's overhead and profit must be prorated through the life of the contract.
- b. If the contract price is more than \$50,000, material delivered that will be incorporated into the structure may be taken into consideration in computing progress payments. Before each payment is made, the supplier must furnish to the contracting officer proof of the quantity, value, and delivery of materials.
- c. In making progress payments, the contracting officer will ordinarily retain ten percent of the progress payments earned. However, if the contracting officer, at any time after 50 percent of the work has been completed, finds that satisfactory progress is being made, the contracting officer may authorize payment in full of all progress payment earned. Also, if the contracting officer considers the amount retained to be in excess of that adequate for the protection of the Postal Service, the contracting officer may release to the supplier all or a portion of the excess whenever the work is substantially complete. On completion and acceptance of each separate building, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made without retention.
- d. All material and work covered by progress payments will be the sole property of the Postal Service. However, this paragraph d does not (1) relieve the supplier of responsibility for all material and work for which payment has been made or for restoration of any damaged work or (2) waive the right of the Postal Service to require fulfillment of all the contract terms.

- e. Before receiving a progress payment or final payment under this contract, the supplier must certify to the contracting office that payment due subcontractors or suppliers under contractual arrangements with them has been made from the proceeds of prior payments or will be made in timely fashion from the payment then due the supplier.
- f. Upon completion and acceptance of all work, the amount due the supplier under this contract must be paid upon the presentation of a properly executed invoice, after the supplier has furnished the Postal Service with a release of all claims against the Postal Service arising by virtue of this contract, other than claims in stated amounts that must be specifically excepted by the supplier from the operation of the release. If the supplier's claim to amounts payable under the contract has been assigned as provided in the *Assignment of Claims* clause, a release may also be required of the assignee.

**Clause B-49 Building Codes, Fees, and Charges (May 2005)** (B.1.2)

- a. State and local building codes and regulations do not apply as a matter of law to work inside the property lines of Postal Service-owned properties but generally do apply to Postal Service-leased properties. In compliance with Postal Service policy, the supplier must comply with all state and local building code requirements unless otherwise specifically provided.
- b. The supplier must pay all fees and charges for connections to outside services and for use of property outside the site.

**Clause B-50 Protection of Existing Vegetation, Structures, Utilities, and Improvements (May 2005)** (B.1.2)

- a. The supplier will preserve and protect all existing vegetation (such as trees, shrubs, and grass) and structures on or adjacent to the site of work that are not to be removed and that do not unreasonably interfere with the construction work. Care will be taken in removing trees authorized by the contracting officer for removal, to avoid damage to vegetation that will remain in place. Any limbs or branches of trees broken during such operations or by the careless operation of equipment, or by workmen, will be trimmed with a clean cut and painted with an approved tree pruning compound as directed by the contracting officer.
- b. The supplier will protect from damage all existing improvements or utilities at or near the site of the work, the location of which is or should have been known, and will repair or restore any damage to these facilities resulting from failure to comply with the requirements of this contract or to exercise reasonable care in performing the work. If the supplier fails or refuses to repair any such damage promptly, the contracting officer may have the necessary work performed and charge the cost to the supplier.

**Clause B-51 Heat (May 2005)** (B.1.2)

Unless otherwise specified, or unless directed otherwise by the contracting officer, the supplier must:

- a. Provide heat as necessary to protect all work materials and equipment against injury from dampness and cold;
- b. Protect, cover, and/or heat, as may be necessary to produce and maintain a temperature of not less than 50 degrees Fahrenheit in the concrete during the placing, setting, and curing of concrete, and in the plaster during the application, setting, and curing of plaster; and
- c. Provide heat as necessary to produce in the area where the work is to be done a temperature of not less than 70 degrees Fahrenheit for the period beginning 10 days before the placing of interior finishes and finish materials and continuing until completion of beneficial occupancy of the area.

**Clause B-52 Debris and Cleanup (May 2005)** (B.1.2)

- a. The supplier must, during the progress of the work, remove and dispose of the resultant dirt and debris and keep the premises clean.
- b. The supplier will, upon completion of the work, remove all construction equipment and surplus materials (except materials or equipment that are to remain Postal Service property as provided by this contract), and leave the premises in a clean, neat, and orderly condition satisfactory to the contracting officer.

**Clause B-53 Survey Monuments and Bench Marks (May 2005)** (B.1.2)

- a. The Postal Service has established, or will establish, such general reference points as will enable the supplier to proceed with the work. The supplier will provide new monuments where shown or specified. If the supplier finds that any previously established reference points have been destroyed or displaced, or that none has been established, the supplier must promptly notify the contracting officer.
- b. The supplier must protect and preserve established bench marks and monuments and make no changes in locations without the written approval of the contracting officer. Established reference points that may be lost, covered, destroyed, or disturbed in the course of performance of the work under this contract, or that require shifting because of necessary changes in grades or locations, must (subject to prior approval of the contracting officer) be replaced and accurately located or relocated (as appropriate) at the supplier's expense, by a licensed engineer or licensed land surveyor.
- c. New monuments will be 6 inches square by 3 feet deep (unless otherwise specified), of concrete or stone, with a 3-inch copper or brass

- pin, 3/8-inch in diameter, in the center, and must be set flush with the ground or pavement in locations indicated on the site plan.
- d. Monuments will not be required where lines of buildings are coincident with property lines.
  - e. The supplier must verify the figures shown on the survey and site plan before undertaking any construction work and will be responsible for the accuracy of the finished work.
  - f. After completion of construction and before final payment, the supplier must furnish the Postal Service blueprints (in triplicate) of plans showing the exact location of construction survey monuments with reference to true property lines.

#### **Clause B-54 (Reserved)**

#### **Clause B-55 Standard References (May 2005)**

(B.1.2)

- a. All publications and other documents (such as manuals, handbooks, codes, standards, and specifications) cited in this contract for the purpose of establishing requirements applicable to equipment, materials, or workmanship are hereby incorporated by reference in the contract as fully as if printed and bound with the specifications of this contract, in accordance with the following:
  - (1) Wherever reference is made to standard Specifications of the Public Buildings Service, Interim Federal Specifications, Interim Amendments to Federal Specifications, Interim Federal Standards, or Interim Amendments to Federal Standards, the supplier must comply with the requirements set forth in the issue or edition identified in this contract except as modified or as otherwise provided in the specifications.
  - (2) Wherever reference is made to any document other than those specified in subparagraph a.1 above, the supplier must comply with the requirements set forth in the edition specified in this contract or, if not specified, the latest edition or revision, as well as the latest amendment or supplement in effect on the date of the solicitation except as modified by the specifications of this contract.
- b. Federal Specifications, Federal Standards, and Standard Specifications of the Public Buildings Service can be obtained from the Business Service Center at any GSA Regional Office. Inquiries regarding "Commercial Standards," "Product Standards," and "Simplified Practice Recommendations" should be addressed to:  
Office Of Product Standards  
National Bureau Of Standards  
Washington DC 23234-0001

Publications of associations referred to in the specifications can be obtained directly from the associations.

- c. Upon request, the supplier must make available at the job site, within a reasonable time, a copy of any trade manual or standard incorporated by reference in this contract that governs quality and workmanship.

**Clause B-56 Shop Drawings, Coordination Drawings,  
and Schedules (May 2005)**

(B.1.2)

- a. The supplier will submit shop drawings, coordination drawings, and schedules for approval as required by the specifications or requested by the contracting officer, as follows:
  - (1) Shop drawings will include fabrication, erection, and setting drawings, schedule drawings, manufacturer's scale drawings, wiring and control diagrams, cuts or entire catalogs, pamphlets, descriptive literature, and performance and test data.
  - (2) Drawings and schedules, other than catalogs, pamphlets, and similar printed material, must be submitted in reproducible form with two prints made by a process approved by the contracting officer. Upon approval, the reproducible form will be returned to the supplier which must furnish the number of additional prints, not to exceed ten required by the Special Conditions of the specifications. The supplier must submit shop drawings in catalog, pamphlet, and similar printed form in a minimum of four copies plus as many additional copies as the supplier may desire or need or for use by subcontractors.
- b. Before submitting shop drawings on the mechanical and electrical work, the supplier must obtain the contracting officer's approval of lists of mechanical and electrical equipment and materials as required by the specifications.
- c. The supplier will check the drawings and schedules and coordinate them (by means of coordination drawings whenever required) with the work of all trades involved before submission, indicating approval on them. Drawings and schedules submitted without evidence of the supplier's approval may be returned for resubmission.
- d. Each shop drawing or coordination drawing must have a blank area of 5 by 5 inches, located adjacent to the title block. The title block must display:
  - (1) Number and title of drawing;
  - (2) Date of drawing or revision;
  - (3) Name of project building or facility;
  - (4) Name of supplier and (if appropriate) of subcontractor submitting drawing;
  - (5) Clear identity of contents and location on the work; and
  - (6) Project title and contract number.



- e. Unless otherwise provided in this contract, or otherwise directed by the contracting officer, shop drawings, coordination drawings, and schedules must be submitted to the contracting officer, with a letter in triplicate, sufficiently in advance of construction requirements to permit at least 10 working days for checking and appropriate action.
- f. Except as otherwise provided in paragraph g below, approval of drawings and schedules will be general and may not be construed as:
  - (1) Permitting any departure from the contract requirements;
  - (2) Relieving the supplier of responsibility for any errors, including details, dimensions, and materials; or
  - (3) Approving departures from full-size details furnished by the contracting officer.
- g. If drawings or schedules show variations from the contract requirements because of standard shop practice or for other reasons, the supplier must describe the variations in the letter of transmittal. If acceptable, the contracting officer may approve any or all variations and issue an appropriate change order. If the supplier fails to describe these variations, it will not be relieved of the responsibility for executing the work in accordance with the contract, even though the drawings or schedules have been approved.

**Clause B-57 “As Built” Drawings (May 2005)**

(B.1.2)

- a. The supplier must, during the progress of the work, keep a master set of prints on the job site, on which is kept a careful and neat record of all deviations from the contract drawings prepared by the architect-engineer made during the course of the work.
- b. Upon completion of the project, these “as built” prints must be certified as to their correctness by the signature of the supplier and turned over to the architect-engineer for use in preparing a permanent set of “as built” drawings.

**Clause B-58 Spare-Parts Data (May 2005)**

(B.1.2)

- a. The supplier must furnish spare-parts data for each different item of equipment furnished. The data must include a complete list of parts and supplies, with current unit prices and sources of supply; a list of parts and supplies that are either normally furnished at no extra cost with the purchase of the equipment, or specified to be furnished as part of the contract; and a list of additional items recommended by the manufacturer to ensure efficient operation for a period of 180 days at the particular installation.
- b. The foregoing does not relieve the supplier of any responsibilities under the guarantees specified.

**Clause B-59 Construction Progress Chart (May 2005)** (B.1.2)

- a. Within 30 days after receiving notice to proceed, the supplier must prepare and submit to the contracting officer for approval six copies of a practical progress chart. The chart must show the principal categories of work, corresponding with those used in the breakdown on which progress payments are based, the order in which the supplier proposes to carry on the work, the date on which it will start each category of work, and the contemplated dates for completion. The chart must be in suitable scale to indicate graphically the total percentage of work scheduled to be in place at any time. At the end of each progress payment period, or at such intervals as directed by the contracting officer, the supplier must:
  - (1) Adjust the chart to reflect any changes in the contract work, completion time, or both, as approved by the contracting officer;
  - (2) Enter on the chart the total percentage of work actually in place; and
  - (3) Submit three copies of the adjusted chart to the contracting officer.
- b. If in the opinion of the contracting officer the work actually in place falls behind that scheduled, the supplier must take such action as necessary to improve progress. The contracting officer may require the supplier to submit a revised chart demonstrating its program and proposed plan to make up lag in scheduled progress and to ensure completion of work within the contract time. If the contracting officer finds the proposed plan unacceptable, the supplier may be required to submit a new plan. If a satisfactory plan is not agreed upon, the contracting officer may require the supplier to increase the work force, the construction plan and equipment, or the number of work shifts, without additional cost to the Postal Service.
- c. Failure of the supplier to comply with these requirements will be considered grounds for determination by the contracting officer that the supplier is failing to prosecute the work with such diligence as will ensure its completion within the time specified.

**Clause B-60 (Reserved)****Clause B-61 Warranty (Construction) (May 2005)** (B.1.2)

- a. Unless otherwise provided in the specifications, the supplier warrants that all work is in accordance with contract requirements and free from defective or inferior materials, equipment, and workmanship for one year after the date of final acceptance under this contract.
- b. If, within the warranty period, the contracting officer finds that warranted work needs to be repaired or changed because the materials, equipment, or workmanship were inferior, defective, or not in

accordance with the contract terms, the supplier must promptly and without additional expense to the Postal Service:

- (1) Place in a satisfactory condition all of the warranted work;
  - (2) Satisfactorily correct all damage to equipment, the site, the building, or its contents that is the result of such unsatisfactory work; and
  - (3) Satisfactorily correct any work, materials, or equipment disturbed in fulfilling the warranty.
- c. Should the supplier fail to proceed promptly in accordance with the warranty, the Postal Service may have the work performed at the supplier's expense.
- d. The supplier must obtain each transferable guarantee or warranty of equipment, materials, or installation furnished by any manufacturer, supplier, or installer in the ordinary course of the business or trade. The supplier must obtain and furnish to the Postal Service all information required to make any such guarantee or warranty legally binding and effective, and must submit both the information and the guarantee or warranty to the Postal Service in sufficient time to permit the Postal Service to meet any time limit requirements specified in the guarantee or warranty or, if no time limit is specified, before completion and acceptance of all work under this contract.

#### **Clause B-62 Samples (May 2005)**

(B.1.2)

- a. After contract award, the supplier must furnish samples required by the specifications or by the contracting officer, for the contracting officer's approval. They must be delivered to the contracting officer or to the architect as specified or as directed. The supplier must prepay all shipping charges on samples. Materials or equipment for which samples are required may not be used in the work until the contracting officer approves in writing.
- b. Each sample must be labeled to show:
- (1) Name of project building or facility, project title, and contract number;
  - (2) Name of supplier and (if appropriate) subcontractor;
  - (3) Identification of material or equipment, with specification requirement;
  - (4) Place of origin; and
  - (5) Name of producer and brand (if any).
- c. Samples of finish materials must have additional markings that will identify them under the finish schedules.
- d. The supplier must mail under separate cover a letter in triplicate submitting each shipment of samples and containing the information required in paragraphs b and c above. The supplier must also enclose a copy of that letter with the shipment and send a copy to the Postal

- Service representative on the project. Approval of a sample is only for the characteristics or use named in the approval and may not be construed to change or modify any contract requirement. Substitutions are not permitted unless approved in writing by the contracting officer.
- e. Approved samples not destroyed in testing will be sent to the Postal Service representative at the project. Approved samples of hardware in good condition will be marked for identification and may be used in the work. Materials and equipment incorporated in the work must match the approved samples. Samples not destroyed in testing and not approved will be returned at the supplier's expense if the supplier so requests at the time of submission.
  - f. Failure of any material to pass the specified tests will be sufficient cause for refusal to consider, under this contract, any further samples of the same brand or make of that material. The Postal Service reserves the right to disapprove any material or equipment that has previously proved unsatisfactory in service.
  - g. Samples of materials or equipment delivered on the site or in place may be taken by the Postal Service representative for testing. Failure of a sample to meet contract requirements will automatically void previous approvals of the item tested. The supplier must replace materials or equipment found not to have met contract requirements, or there will be a proper adjustment of the contract price as determined by the contracting officer.
  - h. Except as otherwise specified, if tests are called for in the specifications, the supplier must pay all costs of these tests. When tests are not specifically called for in the specifications but are required by the Postal Service, the Postal Service will pay all costs of the tests and related engineering services unless the tests indicate that the workmanship or materials used by the supplier are not in conformance with drawings, specifications, approved shop drawings, or the approved materials. In this event, the supplier must pay for the tests, remove all work and material failing to conform, and replace with work and materials in full conformity. All tests pertaining to physical or chemical properties of materials must be made in a laboratory approved by the contracting officer.

### **Clause B-63 Materials and Workmanship (May 2005)**

(B.1.2)

- a. Unless otherwise specifically provided, all equipment and materials incorporated in the work must be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided, reference to any equipment, material, or patented process by brand name, make, or catalog number establishes a standard of quality only. The supplier may substitute any equipment, material, or process that the contracting officer finds to be equal to that named. To obtain approval to use a different equipment, material, or process, the supplier must furnish the contracting officer the manufacturer's name, the model number, and other identifying data and information regarding the nature

and performance of the proposed substitute. If requested by the contracting officer, samples must be submitted for approval at the supplier's expense, shipping charges prepaid. Materials or processes substituted without approval may be rejected.

- b. In the event of substitution in accordance with paragraph a above, the supplier must furnish to the contracting officer for approval the manufacturer's name, the model number, and any other relevant information on the performance, capacity, nature, and rating of equipment or materials proposed for substitution.
- c. The supplier must obtain the contracting officer's approval of the machinery and mechanical equipment incorporated into the work. The supplier must submit samples of all materials and equipment as directed by the contracting officer or as required by the specifications.
- d. All work must be performed in a skillful and workmanlike manner. The contracting officer may, in writing, require the supplier to remove from the work any employee the contracting officer deems incompetent, careless, or otherwise objectionable.

**Clause B-64 Accountability of the Supplier (Highway)  
(May 2005)**

(B.1.2)

- a. The supplier shall supervise its operations and the operations of its subcontractors which provide services under this contract personally or through representatives. The supplier or its supervising representatives must be easily accessible in the event of emergencies or interruptions in service.
- b. In all cases, the supplier shall be strictly liable to the Postal Service for the Postal Service's actual damages if mail is subject to loss, rifling, damage, wrong delivery, depredation, and other mistreatment while in the custody and control of the supplier or its subcontractors.

The supplier shall also be accountable and answerable in damages for the faithful performance of all other obligations assumed under this contract, whether or not it has entrusted part or all of its performance to another, except

- (1) The supplier is not liable for its failure to perform if the failure arises out of circumstances beyond its control, and without its fault or negligence, and
- (2) The supplier is not liable for a failure of its subcontractors to perform if the subcontractor's failure arises out of circumstances beyond the supplier or the subcontractor's control, and without the fault or negligence of either.
- c. The supplier shall faithfully account for and deliver to the Postal Service all
  - (1) Mail,
  - (2) Moneys, and

- (3) Other property of any kind belonging to or entrusted to the care of the Postal Service, that come into its possession during the term of this contract.
- d. The supplier shall, promptly upon discovery, refund (i) any overpayment made by the Postal Service for service performed, or (ii) any payment for service not rendered.

**Clause B-65 Adjustments to Compensation (May 2005)** (B.1.2)

Contract compensation may be adjusted, from time to time, by mutual agreement of the supplier and the contracting officer.

- a. Any such adjustments shall be made in accordance with the provisions of this clause and any U.S. Postal Service Management Instruction governing adjustments in effect on the date of adjustment.
- b. In connection with an adjustment, the contracting officer may examine such records and books of account maintained by the supplier as the contracting officer may deem necessary.
- c. Adjustments in compensation pursuant to this clause shall be memorialized by formal amendment to the contract.
- d. Should the Postal Service introduce procedures which affect the supplier's obligations with respect to the costs of fuel or taxes, the contract price will be adjusted with respect to those costs, pro rata, without entitlement to other compensation for those adjustments, subject to the resolution of any dispute about the adjustments under the *Claims and Disputes* clause.

**Clause B-66 (Reserved)**

**Clause B-67 Changes (Transportation) (May 2005)** (B.1.2)

- a. *Service Changes*
  - (1) *Minor Service Changes.* The contracting officer may, at any time, without consulting the supplier, issue orders directing an extension, curtailment, change in line of travel, revisions of route, or increase or decrease in frequency of service or number of trips and fixing an adjustment in the supplier's compensation which increases or decreases the supplier's rate of pay by no more than \$2,500. If the supplier believes the increased cost of providing the service required by the order exceeds the increase made in compensation, it may request an adjustment of compensation for the service change.
  - (2) *Other Service Changes.* Service changes other than minor service changes, including increases or decreases in compensation, may be made by mutual agreement of the

contracting officer and the supplier. Such changes shall be shall be memorialized by formal amendment to the contract.

b. *Extra Trips*

- (1) An extra trip is an additional trip of service operated on an infrequent time basis over the same route or part as normally provided under the terms of the contract. Extra trips shall be negotiated in advance of the performance when the contracting officer deems it appropriate. However, the contracting officer may order the supplier to perform such extra service at pro rata pay. If no rate of pay for extra trips has been negotiated in advance, the supplier shall nonetheless perform such extra trips as are ordered by the contracting officer and may, on an after-the-fact basis, obtain a lump sum reimbursement for the difference between costs incurred as a direct result of performing such extra trips and pro rata payment for such trips, provided that such claims costs are adequately supported by documentary evidence furnished to the contracting officer. Claims for compensation above pro rata pay for extra trips must be filed in writing with the contracting officer, accompanied by full supporting documentation of costs, no later than 90 days after the performance of such extra trips. When the contracting officer has ordered several extra trips under a single order, the 90-day period begins on the date of performance of the last trip performed under such order. Failure to agree to such compensation above pro rata pay shall be resolved under the *Claims and Disputes* clause.

c. *Detours*

When the regular line of travel of a contract route is impassable and the supplier performs full service over another and longer line of travel, the supplier's compensation shall be equitably increased for such service; provided, however, that such increase;

- (1) Comprises at least \$1.00 (one dollar) in a Postal Accounting Period, and
- (2) Does not exceed an amount determined by multiplying the additional miles actually traveled by the rate per mile that applies to the trip on which the detour was made, determined by dividing the regular compensation for the trip by the regular number of miles.

**Note:** No payments will be made with respect to any detour not reported to the contracting officer or the contracting officer's designee within 90 days after the detoured service is performed.

- d. The supplier shall proceed diligently in accordance with service changes and extra trips ordered unilaterally by the contracting officer. Disputes concerning such orders shall be resolved pursuant to the *Claims and Disputes* clause.

e. *Liquidated Damages*

- (1) If this is a Highway Transportation Contract and it is terminated for convenience due to the implementation of Delivery Point

Sequence, Reclassification, Priority Mail Processing Centers, or Integrated Mail Handling Systems, without fault on the part of the supplier, liquidated damages for the termination will be established as one-twelfth of the annual rate.

In the event of a partial termination for convenience or other service curtailment for these causes, liquidated damages shall be established in the same proportion as the dollar amount of the contract rate reduction bears to the amount established above.

- (2) In all other cases, if this is a Highway Transportation Contract or a Domestic Water Transportation Contract and is terminated for convenience without fault on the part of the supplier, liquidated damages for the termination will be established as:
- (i) One third of the annual rate (if during the first two years), or
  - (ii) One-sixth of the annual rate (if during the third year), or
  - (iii) One-twelfth of the annual rate (if during the fourth year).

In the event of a partial termination for convenience or other service curtailment liquidated damages shall be established in the same proportion as the dollar amount of the contract rate reduction bears to (i), (ii), or (ii) above (as applicable).

#### **Clause B-68 Changes in Corporate Ownership or Officers (May 2005)**

(B.1.2)

- a. This clause applies only if the supplier is a corporation and it holds no other regular highway transportation contracts or the aggregate annual rate dollar value of any regular highway transportation contracts it holds is less than \$150,000.
- b. A principal owner is any individual, partnership, corporation, or other entity which holds 25 percent or more of the supplier's stock. Corporate officers are the President, Vice President, and Secretary.
- c. The supplier shall furnish the contracting officer, in writing, the names of its principal owners and its corporate officers before contract award, renewal or novation.
- d. Except in the case of death or incapacity of one or more of the principal owners or corporate officers, the supplier must notify the contracting officer in writing not less than 30 days prior to any planned change in the principal owners or corporate officers.
- e. In the event of death or incapacity of one or more of the principal owners or corporate officers, the supplier must notify the contracting officer in writing within 30 days.



**Clause B-69 Events of Default (May 2005)**

(B.1.2)

The supplier's right to perform this contract is subject to termination under the clause entitled Termination for Default. The following constitute events of default, and this contract may be terminated pursuant to that Clause.

- a. The supplier's failure to perform service according to the terms of the contract;
- b. If the supplier has been administratively determined to have violated Postal laws and regulations and other laws related to the performance of the service;
- c. Failure to follow the instructions of the contracting officer;
- d. If the supplier transfers or assigns his contract, except as authorized herein, or sublets the whole or a portion of this contract contrary to the applicable provisions of the U.S. Postal Service *Interim Internal Purchasing Guidelines* or without any required approval of the contracting officer;
- e. If the supplier combines to prevent others from proposing for the performance of Postal Service contracts;
- f. The supplier's failure properly to account, deliver and pay over moneys, mail and other property pursuant to this contract;
- g. If the supplier or a partner, if the supplier is a partnership, or a principal owner or corporate officer, if the supplier is a corporation, (a) has been or is, during the term of the contract, convicted of a crime of moral turpitude affecting his or her reliability or trustworthiness as a mail transportation supplier, such as any form of theft, fraud, embezzlement or assault, or (b) associates with known criminals, or (c) otherwise is not reliable, trustworthy or of good character.
- h. Any breach by the supplier or subcontractor of any warranty contained in PS Form 7465, *Transportation Services Subcontract*;
- i. If the supplier allows any employed individual to operate a vehicle in connection with this contract who has a record indicating that it would be hazardous for that individual to do so;
- j. If the supplier's transportation equipment is insufficient, inadequate, or otherwise inappropriate for the service;
- k. If the supplier employs any individual in connection with the contract contrary to the instructions of the contracting officer;
- l. If at any time the supplier, its principal owners, corporate officers or personnel are disqualified by law or regulation from performing services under this contract, and upon notice thereof, the supplier fails to remove any such disqualification;
- m. If the supplier fails to establish and maintain continuously in effect insurance as required by this contract, or fails to provide proof of insurance prior to commencement of service and thereafter as required by the contracting officer;
- n. If the supplier fails to provide any notification of a change in principal owners or corporate officers which this contract may require; or

- o. If the supplier materially breaches any other requirement or clause of this contract.

**Clause B-70 Release of Supplier (May 2005)** (B.1.2)

- a. The contracting officer may release an individual sole-proprietor supplier from the contract for reasons of physical disability which prohibit the supplier from adequately operating the route, or which endanger the supplier's life if operation of the route continues, if:
  - (1) The supplier applies to the contracting officer for a release;
  - (2) The contracting officer determines that a release will be in the interest of the Postal Service; and,
  - (3) The Postal Service secures a new contract.
- b. A release under this clause is not a termination for convenience, and the supplier expressly waives any claim for liquidated damages for such release.

**Clause B-71 Termination for Convenience (Transportation) (May 2005)** (B.1.2)

The contracting officer, on 30 days written notice, may terminate this contract or the right to perform under it, in whole or in part, when such action is in the best interest of the Postal Service. When a termination is effected under this clause, in the case of a highway transportation or domestic water transportation contract, the supplier shall be paid as liquidated damages the sum provided for in the *Changes (Transportation)* clause. For any other type of surface transportation contract, the Postal Service shall not be liable for any damages for a termination effected under this clause. The liquidated damages permitted by this contract, if any, constitute the supplier's full remedy for a whole or partial termination under this clause.

**Clause B-72 Termination for Convenience — Emergency Contracts (May 2005)** (B.1.2)

This contract may be terminated by the Postal Service upon notice of not less than 24 hours, or by the supplier upon notice of not less than 15 days; without the allowance of any damages or extra pay in lieu of damages.

**Clause B-73 Trailer Damage (May 2005)** (B.1.2)

- a. *General*
  - (1) The supplier is liable for any damage to a trailer owned or leased by the Postal Service or a third party caused by a negligent act or omission of the supplier or its subcontractors.

- (2) The Postal Service shall be liable for any damage to a trailer owned or leased by the supplier caused by a negligent act or omission of the Postal Service.
- b. *Minor Repairs to Trailers*
  - (1) The supplier shall perform minor repairs to all trailers used under this contract, including trailers furnished by the Postal Service, when such repairs are necessary for the safe completion of a trip of service. Minor repairs include repair or replacement of trailer tires. Tire carcasses shall be returned to the Postal Service.
  - (2) The Postal Service shall reimburse the supplier for the costs of performing any repairs required under paragraph b which are reasonable, customary and fully documented.
- c. *Major Repairs to Trailers.* The supplier is responsible for all major repairs to its trailers. If a trailer furnished by the Postal Service incurs major damage en route, and requires towing for repair, the supplier shall promptly notify the Administrative Official of these facts. Upon direction of the Administrative Official, the supplier shall tow the trailer, either to the nearest Postal Service Bulk Mail Center or to a repair facility. The Postal Service shall reimburse the supplier its costs incurred for towing service, so long as such costs are reasonable, customary and documented.

#### **Clause B-74 Payment (Highway) (May 2005)**

(B.1.2)

General. This is a fixed price contract for highway transportation service, to be provided according to the Statement of Work and Specifications. The basis for payment established for this contract is stated in the solicitation cover sheet. No adjustments will be made in contract price except as provided below or under other clauses of this contract.

Payment for services rendered under this contract will be made as follows:

- a. The St. Louis Accounting Service Center (ASC) will pay the supplier automatically at the conclusion of each Postal Accounting Period for which payment is due.
  - (1) If the fixed price is expressed as an annual rate, payment will be computed by dividing the annual rate stated in this contract by 365 (or 366 in any portion of the contract term beginning on July 1 of the calendar year preceding a leap year and ending on June 30 of the leap year), and multiplying that result by the number of days in that Postal Accounting Period. If this contract ends before the end of a Postal Accounting Period, payment will be based on the number of days within that period during which the contract was in force.
  - (2) If the fixed price is expressed as a unit rate (per trip, round trip, etc.), payment will be computed based on the number of units certified by the Administrative Official at the close of each Postal Accounting Period.

- b. From time to time the contracting officer may authorize (i) adjustments in compensation pursuant to the *Adjustment to Compensation* clause, or (ii) changes in service requirements or extra trips pursuant to the *Changes* clause. The Postal Service will file the appropriate documentation with the St. Louis ADC for such adjustments or changes and the supplier need not separately invoice for them.
- c. The supplier must invoice for all payments not covered by paragraph a or b above.
  - (1) Claims for damage to trailers must be filed and documented in accordance with Management Instruction PO-530-89-1, *Processing Trailer Damage Claims*, as amended, revised, or reissued from time to time.
  - (2) Requests for payment for detours must be filed as provided under the detours provision of the *Changes* clause.
  - (3) All other requests for payment must be submitted in accordance with the *Payment — Fixed Price* clause.
- d. Deductions may be made from payments otherwise due the supplier under this contract or any other contracts held by the supplier, for any amounts for which the supplier is liable as damages or otherwise.

**Clause B-75 Accountability of the Supplier (Non-Highway)  
(May 2005)**

(B.1.2)

- a. The supplier shall supervise its operations and the operations of its subcontractors which provide services under this contract personally or through representatives. The supplier or its supervising representatives must be easily accessible in the event of emergencies or interruptions in service.
- b. In all cases, the supplier shall be strictly liable to the Postal Service for the Postal Service's actual damages if mail is subject to loss, rifling, damage, wrong delivery, depredation, and other mistreatment while in the custody and control of the supplier or its subcontractors.

The supplier shall also be accountable and answerable in damages for the faithful performance of all other obligations assumed under this contract, whether or not it has entrusted part or all of its performance to another, except for any failure to perform that is excused by the *Excusable Delays* clause of this contract.

- c. The supplier shall faithfully account for and deliver to the Postal Service all
  - (1) Mail,
  - (2) Moneys, and
  - (3) Other property of any kind belonging to or entrusted to the care of the Postal Service, that come into the possession of the supplier during the term of this contract.

- d. The supplier shall, promptly upon discovery, refund (i) any overpayment made by the Postal Service for service performed, or (ii) any payment made by the Postal Service for service not rendered.

**Clause B-76 Excusable Delays (Mail Transportation Non-Highway) (May 2005)** (B.1.2)

- a. Except with respect to defaults of subcontractors, the supplier will not be in default by reason of any failure in performing this contract in accordance with its terms (including any failure to make progress in the prosecution of the work that endangers performance) if the failure arises out of causes beyond the control and without the fault or negligence of the supplier. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the government in its sovereign capacity or of the Postal Service in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the supplier.
- b. If failure to perform is caused by the failure of a subcontractor to perform or make progress and arises out of causes beyond the control of both the supplier and subcontractor, and without the fault or negligence of either, the supplier will not be deemed to be in default, unless the supplier failed to take immediate, reasonable and prudent action to (i) replace its subcontractor or to (ii) otherwise mitigate the effects of its subcontractor's problems.
- c. Upon request of the supplier, the contracting officer shall ascertain the facts and extent of failure, and if the contracting officer determines that any failure to perform was occasioned by any of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Postal Service under any termination clause included in this contract.
- d. As used in this clause, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.

**Clause B-77 Protection of the Mail (May 2005)** (B.1.2)

The supplier must protect and safeguard the mail from loss, theft, or damage while it is in the supplier's custody or control and prevent unauthorized persons from having access to the mail.

**Clause B-78 Renewal (May 2005)** (B.1.2)

This contract may be renewed by mutual agreement of the parties.

**Clause B-79 Forfeiture of Compensation (May 2005)** (B.1.2)

If the supplier fails to perform a trip for any reason, the supplier shall forfeit the compensation otherwise due for that trip. If the supplier fails to perform a trip, and such failure is due to the fault or negligence of the supplier or of its subcontractors, the supplier shall be liable for all damages actually suffered by the Postal Service by reason of such failure.

**Clause B-80 Laws and Regulations Applicable (May 2005)** (B.1.2)

This contract and the services performed under it are subject to all applicable federal, state and local laws and regulations. The supplier shall faithfully discharge all duties and obligations imposed by such laws and regulations, and shall obtain and pay for all permits, licenses, and other authorities required to perform this contract.

**Clause B-81 Information or Access by Third Parties (May 2005)** (B.1.2)

The Postal Service retains exclusive authority to release any or all information about mail matter in the custody of the supplier and to permit access to that mail in the custody of the supplier. All requests by non-postal individuals (including employees of the supplier) for information about mail matter in the custody of the supplier or for access to mail in the custody of the supplier must be referred to the contracting officer or his or her designee.

**Clause B-82 Access by Officials (May 2005)** (B.1.2)

The supplier shall deny access to the cargo compartment of a vehicle containing mail therein to Federal, state or local officials except at a postal facility and in the presence of a postal employee, unless to prevent damage to the vehicle or its contents.

**Clause B-83 Payment (Air Taxi) (May 2005)** (B.1.2)

The Postal Service will pay the supplier the amounts due for services performed under this contract, less deductions, if any, as provided herein, subject to the following terms:

- a. *Payment Due Date:* Postal Service Form 2756, *Certification of Air Taxi Mail Service Performed*, will be made to effect payment. A carrier's billing invoice will not be required. Payment will be made by St. Louis Accounting Service Center (ASC) within 30 days after the end of the service period. Interest will be paid for late payment commencing on the 38th day after the end of the service period.

- b. *Compensation.*
- (1) Full payment, at the rate provided in this contract, will be made for each scheduled trip which the supplier completes or serves at least one point on the route before being prevented from completing the trip due to weather or other conditions beyond the pilot's control, except for mechanical failure or an accident.
  - (2) Partial payment will be made as follows:
    - (a) For any trip canceled by the Postal Service prior to its commencement, payment will be at the rate of 50 percent of the trip rate.
    - (b) For a trip not completed because of mechanical failure or accident, compensation will be based upon point-to-point great circle trip miles completed.
  - (3) No payment will be made for a trip canceled other than by the Postal Service.

**Clause 1-1 Privacy Protection (May 2005)** (1.6.6)

In addition to other provisions of this contract, the supplier agrees to the following:

- a. *Privacy Act.* If the supplier operates a system of records on behalf of the Postal Service, the Privacy Act (5 U.S.C. 522a) and Postal Service regulations at 39 CFR Parts 266-267 apply to those records. The supplier is considered to operate a system of records if it manages records (including collecting, revising, or disseminating records) from which information is retrieved by the name of an individual or by some number, symbol, or other identifier assigned to the individual. The supplier agrees to comply with the Act and the Postal Service regulations in designing, developing, and operating the system of records, including ensuring that records are current and accurate for their intended use, and incorporating adequate safeguards to prevent misuse or improper disclosure of personal information. Violations of the Act may subject the violator to criminal penalties.
- b. *Customer Information.* If the supplier has access to Postal Service customer information, including address information, whether collected online or offline by the Postal Service or by a supplier acting on its behalf, the supplier must comply with the following:
  - (1) *General.* With regard to the Postal Service customer information to which it has access pursuant to this contract, the supplier has that access as an agent of the Postal Service and must adhere to its postal privacy policy at [www.usps.com/common/docs/privpol.htm](http://www.usps.com/common/docs/privpol.htm).
  - (2) *Use, Ownership, and Nondisclosure.* The supplier may use Postal Service customer information solely for purposes of this contract, and may not collect or use such information for non-Postal Service marketing, promotion, or any other purpose without the

prior written approval of the contracting officer. The supplier must restrict access to such information to those employees who need the information to perform work under this contract, and must ensure that each such employee (including subcontractors' employees) sign a nondisclosure agreement, in a form suitable to the contracting officer, prior to being granted access to the information. The Postal Service retains sole ownership and rights to its customer information. Upon completion of the contract, the supplier must turn over all Postal Service customer information in its possession to the Postal Service, and must certify that no Postal Service customer information has been retained unless otherwise authorized in writing by the contracting officer.

- (3) *Legal Demands for Information.* If a legal demand is made for Postal Service customer information (such as by subpoena), the supplier must immediately notify the contracting officer and the nearest office of the Postal Inspection Service. After notification, the Postal Service will determine whether and to what extent to comply with the legal demand. Should the Postal Service agree to or unsuccessfully resist a legal demand, the supplier may, with the written permission of the contracting officer, release the information specifically demanded.
- c. *Online Assistance.* If the supplier assists in the design, development, or operation of a Postal Service customer Web site, or if it designs or places an ad banner, button, or link on a Postal Service Web site or any Web site on the Postal Service's behalf, the supplier must comply with the limitations in subparagraph b (1) above relating to ad banners, buttons, or links, and the use of cookies, web beacons, or other web analysis tools. Exceptions to these limitations require the prior written approval of the contracting officer and the Postal Service's chief privacy officer.
- d. *Marketing E-Mail.* If the supplier assists the Postal Service in conducting a marketing e-mail campaign, the supplier does so as an agent of the Postal Service and must adhere to the Postal Service policies set out in Postal Service Management Instruction AS-350-2004-4, *Marketing E-mail*.
- e. *Indemnification.* The supplier will indemnify the Postal Service against all liability (including costs and fees) for damages arising out of violations of this clause.
- f. *Flow-down.* The supplier will flow this clause down to subcontractors that would be covered by any portion of this clause if they were the supplier.

## Clause 1-2 Advance Payments (May 2005)

(1.6.7)

- a. *Requirements for Payments.* Upon supplier submission of properly certified invoices or vouchers and contracting officer approval, advance payments will be made under this contract. The supplier will apply



terms similar to those of this clause to any advance payments to subcontractors.

- b. *Use of Funds.* The supplier may pay only for properly allocable, allowable, and reasonable costs incurred. Determinations of whether costs are properly allocable, allowable, and reasonable will be in accordance with generally accepted accounting principles, subject to Chapter 5, Section 2, of the Postal Service *Interim Internal Purchasing Guidelines* in effect on the date of this contract.
- c. *Repayment to the Postal Service.* At any time, the supplier may repay all or part of the funds advanced by the Postal Service. When requested in writing to do so by the administering office, the supplier must repay to the Postal Service any part of unliquidated advance payments considered by the administering office to exceed the supplier's current requirements or an amount calculated in accordance with paragraph d below.
- d. *Maximum Payment.* When the sum of all unliquidated advance payments exceeds 80 percent of the contract price, the Postal Service will withhold further payments. On contract completion or termination, the Postal Service will deduct from the amount due the supplier all interest charges payable. If previous payments to the supplier exceed the amount due, the excess amount must be paid to the Postal Service on demand. For purposes of this paragraph d, the contract price is the contract price stated at time of award, less any subsequent price reductions under the contract, plus any price increases resulting from any terms of the contract. Any payments withheld under this paragraph will be applied to reduce the unliquidated advance payments. If full liquidation has been made, payments under the contract will resume.
- e. *Interest*
  - (1) The supplier must pay interest to the Postal Service on the daily balance of unliquidated advance payments at the daily rate specified in subparagraph e.3 below. Interest will be computed at the end of each calendar month for the actual number of days involved. For the purpose of computing interest:
    - (a) Advance payments will be considered as increasing the unliquidated balance as of the date of the advance payment check;
    - (b) Repayment of the supplier's check will be considered as decreasing the unliquidated balance as of the date on which the check is received by the Postal Service authority designated by the contracting officer; and
    - (c) Liquidations by deductions from Postal Service payments to the supplier will be considered as decreasing the unliquidated balance as of the date of the check for the reduced payment.
  - (2) Interest charges resulting from the monthly computation will be deducted from payments, other than advance payments, due the supplier. If the accrued interest exceeds the payment due, any

- excess interest will be carried forward and deducted from subsequent payments. Interest carried forward will not be compounded. Interest on advance payments will cease to accrue upon satisfactory completion or termination of the contract for the convenience of the Postal Service. The Postal Service will charge interest on advance payments to subcontractors in the manner described above.
- (3) If interest is required under the contract, it will be paid at the rate determined in accordance with the *Interest* clause of this contract.
  - (4) If the full amount of interest charged under this paragraph e has not been paid by deduction or otherwise upon completion or termination of this contract, the supplier must pay the remaining interest to the Postal Service on demand.
- f. *Lien on Property under Contract*
- (1) All advance payments under this contract, together with interest charges, must be secured, when made, by a lien in favor of the Postal Service, paramount to all other liens, on the supplies or other things covered by the contract and on all material and other property acquired for or allocated to its performance, except to the extent that the Postal Service already has valid title to the supplies, materials, or other property as against the supplier's other creditors.
  - (2) The supplier will prepare any documents necessary to perfect liens on such property required in any jurisdiction in which any such property is kept. The documents must be approved by the contracting officer and, upon approval, filed with appropriate jurisdictions. The supplier must pay any fees required for filing.
  - (3) The supplier must identify, by marking or segregation, all property subject to a lien in favor of the Postal Service by virtue of this contract so as to indicate that it is subject to a lien and has been acquired for or allocated to performing the contract. If, for any reason, the property is not identified by marking or segregation, the Postal Service will have a lien to the extent of the Postal Service's interest under the contract on any mass of property with which the supplies, materials, or other property are commingled. The supplier must maintain adequate accounting control over the property on its books and records.
  - (4) If, under any termination clause in this contract, the contracting officer authorizes the supplier to sell or retain termination inventory, the approval constitutes a release of the Postal Service's lien to the extent that:
    - (a) The termination inventory is sold or retained; and
    - (b) The sale proceeds or retention credits are applied to reduce any outstanding advance payments.
  - (5) If the supplier delivers to a third party any property on which the Postal Service has a lien, the supplier must notify the third party of the lien and obtain a receipt in duplicate acknowledging the

- existence of the lien. The supplier must give the contracting officer one copy of the receipt.
- g. *Insurance.* The supplier warrants that it maintains with responsible insurance carriers:
- (1) Insurance on plant and equipment against fire and other hazards, to the extent that similar properties are usually insured by others operating plants and properties of similar character in the same general locality;
  - (2) Adequate insurance against liability on account of damage to persons or property; and
  - (3) Adequate insurance under all applicable workers' compensation laws. The supplier agrees that, until work under this contract has been completed and all advance payments made under the contract have been liquidated, it will maintain this insurance; maintain adequate insurance on all materials, parts, assemblies, subassemblies, supplies, equipment, and other property acquired for or allocable to this contract and subject to the Postal Service lien under paragraph f above; and furnish any certificate with respect to its insurance that the contracting officer may require.
- h. *Default*
- (1) By written notice to the supplier, the Postal Service may withhold further payments on this contract in the event of:
    - (a) Termination for default;
    - (b) A finding by the contracting officer that the supplier will be unable to perform or has failed to:
      - (i) Observe any conditions of the advance payment terms;
      - (ii) Comply with any material term of the contract;
      - (iii) Make progress or maintain a financial condition adequate for performance of the contract;
      - (iv) Limit inventory allocated to the contract to reasonable requirements; or
      - (v) Avoid delinquency in payment of taxes or of the costs of performing this contract in the ordinary course of business.
    - (c) The appointment of a trustee, receiver, or liquidator for any substantial part of the supplier's property, or the institution of proceedings by or against the supplier for bankruptcy, reorganization, arrangement, or liquidation.
  - (2) If any of the events described in subparagraph h.1 above continues for 30 days after the notice to the supplier, the Postal Service may take any of the following actions:
    - (a) Charge interest, in the manner prescribed in paragraph e above, on outstanding advance payments during the period of the event.

- (b) Demand immediate repayment by the supplier of the unliquidated balance of advance payments.
    - (c) Take possession of and sell any property on which the Postal Service has a lien under the contract and, after deducting any expenses incident to the sale, apply the proceeds to reduce the unliquidated balance of advance payments or other claims against the supplier.
  - (3) The actions described in this clause are in addition to any other rights of the Postal Service.
- i. *Prohibition Against Assignment.* Notwithstanding any other terms of this contract, the supplier may not assign it, any interest in it, or any claim under it to any party.
- j. *Information and Access to Records.* The supplier must furnish to the administering office (1) monthly (or at other intervals as required) signed or certified balance sheets and profit and loss statements in the form prescribed by the contracting officer; and (2) if requested, other information concerning the operation of the supplier's business. The supplier must provide authorized Postal Service representatives proper facilities for inspecting the supplier's books, records, and accounts.
- k. *Other Security.* If the contracting officer considers the security inadequate, the supplier must furnish additional security satisfactory to the contracting officer to the extent it is available.
- l. *Representations and Warranties*
  - (1) The balance sheet, the profit and loss statement, and any other supporting financial statements furnished the contracting officer fairly reflect the supplier's financial condition at the date shown or during the period covered, and there has been no subsequent materially adverse change;
  - (2) No litigation or proceedings are presently pending or threatened against the supplier, except as shown in the statements;
  - (3) The supplier has disclosed all contingent liabilities in the statements;
  - (4) None of the terms in this clause conflict with the authority under which the supplier is doing business or with the provision of any existing indenture, assignment, or agreement of the supplier;
  - (5) The supplier has the power to enter into this contract and to accept advance payments, and has taken all necessary action to authorize their acceptance under the terms of the contract;
  - (6) The supplier's assets are not subject to any lien or encumbrance except for current taxes not delinquent or as shown in the statements;
  - (7) All information furnished in connection with each request for advance payments is true and correct; and
  - (8) These representations and warranties are continuing and are considered to have been repeated by the submission of each invoice for advance payment.

- m. *Notice.* The supplier must notify the contracting officer in writing within 30 days of any material change in anything represented or warranted in paragraph 1 above.
- n. *Covenants.* While any advance payments made under this contract remain outstanding, the supplier, without the prior written consent of the contracting officer, may not:
  - (1) Mortgage, pledge, or otherwise encumber or allow to be encumbered any of the supplier's assets now owned or subsequently acquired, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets allocated to performing this contract with respect to which the Postal Service has a lien under the contract;
  - (2) Sell, assign, transfer, or otherwise dispose of accounts receivable, notes, or claims for amounts due or to become due;
  - (3) Sell, convey, or lease any substantial part of its assets;
  - (4) Make any advance or loan or incur any liability as guarantor, surety, or accommodation endorser for any party;
  - (5) Permit a writ of attachment or any similar process to be issued against its property without getting a release or bonding the property within 30 days after the entry of the writ of attachment or other process;
  - (6) Pay any remuneration to its directors, officers, or key employees at rates higher than provided in existing agreements;
  - (7) Change substantially its management, ownership, or control;
  - (8) Merge or consolidate with any other firm or corporation, change the type business, or engage in any transaction outside the ordinary course of the supplier's business as presently conducted;
  - (9) Deposit any of its funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation;
  - (10) Create or incur indebtedness for advances (other than those to be made under the terms of this contract) or borrowings; or
  - (11) Permit its net current assets, computed in accordance with generally accepted accounting principles, to become less than 80 percent of the assets shown in the last quarterly financial statement issued before contract award.

### **Clause 1-3 Progress Payments (May 2005)**

(1.6.7)

Progress payments will be made to the supplier when requested as work progresses, but not more often than monthly, in amounts approved by the contracting officer, upon the following terms and conditions:

- a. *Computation of Amounts*
  - (1) No progress payments may exceed 80 percent of the amount of the supplier's total costs, plus the amount of progress payments

- that have been paid to supplier's subcontractors and other divisions.
- (2) The supplier's total costs must be reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices. These costs may not include:
    - (a) Any incurred by subcontractors or suppliers;
    - (b) Any payments or amounts payable to subcontractors or suppliers, except for completed work (including partial deliveries) to which the supplier has acquired title and except for amounts paid under cost-reimbursement or time-and-materials subcontracts for work to which the supplier has acquired title; or
    - (c) Costs ordinarily capitalized and subject to depreciation or amortization, except for the properly depreciated or amortized portion of such costs.
  - (3) The aggregate amount of progress payments made must not exceed 80 percent of the total contract price.
  - (4) If at any time a progress payment or the unliquidated progress payments exceed the amount permitted by this paragraph a, the supplier must pay the excess to the Postal Service upon demand.
- b. *Liquidation.* Except as provided in the *Termination for Convenience* clause, all progress payments must be liquidated by deducting from any payment under this contract, other than advance or progress, the amount of unliquidated progress payments, or 80 percent of the gross amount invoiced, whichever is less. Repayment to the Postal Service required by a retroactive price reduction will be made after calculating liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly.
- c. *Reduction or Suspension.* The contracting officer may reduce or suspend progress payments, or liquidate them at a rate higher than the percentage stated in paragraph b above, or both, whenever the contracting officer finds, upon substantial evidence, that the supplier:
- (1) Has failed to comply with any material requirement of this contract;
  - (2) Has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract;
  - (3) Has allocated inventory to this contract substantially exceeding reasonable requirements;
  - (4) Is delinquent in payment of the costs of performance of this contract in the ordinary course of business; or
  - (5) Has so failed to make progress that the unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract.
- d. *Title*
- (1) Immediately upon the date of this contract, title to all parts; materials; inventories; work in process; special tooling;

- nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids; and drawings and technical data (to the extent that their delivery is required by other provisions of this contract), previously acquired or produced by the supplier and allocated or properly chargeable to this contract under sound and generally accepted accounting principles and practices, will be vested in the Postal Service. Title to all similar property afterwards acquired or produced by the supplier and allocated or properly chargeable to this contract as aforesaid will be vested in the Postal Service upon said acquisition, production, or allocation.
- (2) Notwithstanding that title to property is in the Postal Service through the operation of this clause, the handling and disposition of such property will be determined by the applicable provisions of this contract (e.g., paragraph h of this *Progress Payments* clause, and any termination clause included in the contract). Current production scrap may be sold by the supplier without approval of the contracting officer; in this case, the proceeds must be credited against the costs of contract performance. With the consent of the contracting officer, and on terms approved by the supplier, the supplier may acquire or dispose of property to which title is vested in the Postal Service under this clause, and, in that event, the costs allocable to the property so transferred from this contract must be eliminated from the costs of contract performance and the supplier must repay to the Postal Service (by cash or credit memorandum) an amount equal to the unliquidated progress payments allocable to the property so transferred.
- (3) Upon completion of performance of all the obligations of the supplier under this contract, including liquidation of all progress payments under this clause, title to all property (or the proceeds thereof) not delivered to, and accepted by, the Postal Service under this contract, or not incorporated in supplies delivered and accepted and to which title has been vested in the Postal Service under this clause, will be vested in the supplier. The provisions of this contract referring to or defining liability for Postal Service-furnished property do not apply to property to which the Postal Service acquires title solely by virtue of this clause.
- e. *Risk of Loss.* Except to the extent that the Postal Service otherwise expressly assumes the risk of loss of property, title to which is vested in the Postal Service by this clause, in the event of the loss, theft, or destruction of or damage to any such property before its delivery to, and acceptance by, the Postal Service, the supplier must bear the risk of loss and must repay the Postal Service an amount equal to the unliquidated progress payments on the basis of costs allocable to such lost, stolen, destroyed, or damaged property.
- f. *Control of Costs and Property.* The supplier must maintain an accounting system and controls adequate for the proper administration of this clause.

- g. *Reports — Access to Records.* The supplier must:
- (1) Furnish promptly such relevant reports, certificates, financial statements, and other information as may be reasonably requested by the contracting officer; and
  - (2) Give the Postal Service reasonable opportunity to examine and verify the supplier's books, records, and accounts.
- h. *Special Provisions Regarding Default.* If this contract is terminated for default:
- (1) The supplier must, upon demand, pay the Postal Service the amount of unliquidated progress payments; and
  - (2) With respect to all property for which the Postal Service elects not to require delivery, title will be vested in the supplier upon full liquidation of progress payments, and the Postal Service will not be liable for payment.
- i. *Reservation of Rights.* The rights and remedies of the Postal Service provided in this clause are not exclusive and are in addition to any other rights and remedies provided by law or under this contract. No payment, or vesting of title under this clause, will excuse the supplier from obligations under this contract or constitute a waiver of any of the rights and remedies of the parties under this contract. No delay or failure of the Postal Service in exercising any right, power, or privilege under this clause will affect any such right, power, or privilege; nor will any single or partial exercise thereof preclude or impair any further exercise thereof or the exercise of any other right, power, or privilege of the Postal Service.
- j. *Progress Payments to Subcontractors*
- (1) Progress payments may include reimbursements for unliquidated progress payments paid by the supplier to subcontractors or other divisions under provisions which conform to subparagraph j.2 following.
  - (2) Provisions regarding progress payments must:
    - (a) Be substantially similar to and as favorable to the Postal Service as is this *Progress Payments* clause, no more favorable to the subcontractor or the other division than this clause is to the supplier, and on a basis of not more than 80 percent of total costs; and
    - (b) Make all rights of the subcontractor with respect to all property to which the Postal Service has title under the subcontract subordinate to the rights of the Postal Service to require delivery of such property to it in the event of default by the supplier under this contract or in the event of the bankruptcy or insolvency of the subcontractor.
  - (3) The Postal Service agrees that any proceeds received by it from property to which it has acquired title by virtue of such provisions in any subcontract must be applied to reduce the amount of unliquidated progress payments made by the Postal Service to the supplier under this contract. In the event that the supplier fully



liquidates such progress payments made by the Postal Service to the supplier hereunder and there are unliquidated progress payments to any subcontractors, the supplier must be subrogated to all the Postal Service rights by virtue of such provisions in the subcontract or subcontracts involved as if all such rights had been thereupon assigned and transferred to the supplier.

- k. *Requests.* Supplier's requests for progress payments under this clause must be submitted on Form 7305, *Supplier's Request for Progress Payment*.

#### **Clause 1-4 (Reserved)**

#### **Clause 1-5 Gratuities or Gifts (May 2005)** (1.6.10)

- a. The Postal Service may terminate this contract for default if, after notice and a hearing, the Postal Service Board of Contract Appeals determines that the supplier or the supplier's agent or other representative:
  - (1) Offered or gave a gratuity or gift (as defined in 5 CFR 2635) to an officer or employee of the Postal Service; and
  - (2) Intended by the gratuity or gift to obtain a contract or favorable treatment under a contract.
- b. The rights and remedies of the Postal Service provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

#### **Clause 1-6 Contingent Fees (May 2005)** (1.8.2)

- a. The supplier warrants that no person or selling agency has been employed or retained to solicit or obtain this contract for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide, established commercial or selling agencies employed by the supplier for the purpose of obtaining business.
- b. For breach or violation of this warranty, the Postal Service has the right to annul this contract without liability or to deduct from the contract price or otherwise recover the full amount of the commission, percentage, brokerage fee, or contingent fee.

#### **Clause 1-7 Organizational Conflicts of Interest (May 2005)** (1.6.8)

- a. *Warranty Against Existing Conflicts of Interest.* The supplier warrants and represents that, to the best of its knowledge and belief, it does not presently have organizational conflicts of interest that would diminish its capacity to provide impartial, technically sound, objective research assistance or advice, or would result in a biased work product, or might

- result in an unfair competitive advantage, except for advantages flowing from the normal benefits of performing this agreement.
- b. *Restrictions on Contracting.* The supplier agrees that during the term of this agreement, any extensions thereto, and for a period of 2 years thereafter, neither the supplier nor its affiliates will perform any of the following:
- (1) Compete for any Postal Service contract for production of any product for which the supplier prepared any work statement or specifications or conducted any studies or performed any task under this agreement.
  - (2) Contract (as the provider of a component or the provider of research or consulting services) with any offeror competing for any Postal Service contract for production of any product for which the supplier prepared any work statements or specifications or conducted any studies or performed any task under this agreement.
  - (3) Contract (as the provider of a component or the provider of research or consulting services) with the offeror which wins award of a Postal Service contract for production of any product for which the supplier prepared any work statement or specifications or conducted any studies or performed any task under this agreement.
- c. *Possible Future Conflicts of Interest.* The supplier agrees that, if after award of this agreement, it discovers any organizational conflict of interest that would diminish its capacity to provide impartial, technically sound, objective research assistance or advice, or would result in a biased work product, or might result in an unfair competitive advantage, except advantages flowing from the normal benefits of performing this agreement, the supplier will make an immediate and full disclosure in writing to the contracting officer, including a description of the action the supplier has taken or proposes to take to avoid, eliminate, or neutralize this conflict of interest.
- d. *Nondisclosure of Confidential Material*
- (1) The supplier recognizes that, in performing this agreement, it may receive confidential information. To the extent that and for as long as the information is confidential, the supplier agrees to take the steps necessary to prevent its disclosure to any third party without the prior written consent of the contracting officer.
  - (2) The supplier agrees to indoctrinate its personnel who will have access to confidential information as to the confidential nature of the information, and the relationship under which the supplier has possession of this information.
  - (3) The supplier agrees to limit access to the confidential information obtained, generated, or derived, and to limit participation in the performance of orders under this agreement to those employees whose services are necessary for performing them.

- e. *Postal Service Remedy.* If the supplier breaches or violates any of the warranties, covenants, restrictions, disclosures or nondisclosures set forth under this clause, the Postal Service may terminate this agreement, in addition to any other remedy it may have for damages or injunctive relief.

## Clause 1-8 (Reserved)

## Clause 1-9 Preference for Domestic Supplies (May 2005) (1.6.13)

- a. A 6 percent proposal evaluation preference will be given to domestic-source end products in accordance with Chapter 1, section 7 of the Postal Service *Interim Internal Purchasing Guidelines*. For the purposes of this clause:
  - (1) *End products.* Articles, materials, and supplies to be acquired under this contract for Postal Service use;
  - (2) *Components.* Articles, materials, and supplies directly incorporated in the end products; and
  - (3) *Domestic-source end product.* This is (a) an unmanufactured end product mined or produced in the United States, or (b) an end product manufactured in the United States the cost of whose components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For procurements in excess of \$25,000, Canadian end products are treated as domestic. Components of foreign origin of the kind referred to in subparagraphs b.(2) or b.(3) below will be treated as components mined, produced, or manufactured in the United States.
- b. The contractor agrees that there will be delivered under this contract only domestic-source end products, except end products:
  - (1) That the Postal Service determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;
  - (2) For which the Vice President, Supply Management determines that domestic preference is inconsistent with the interest of the Postal Service; or
  - (3) For which the Vice President, Supply Management determines the cost to the Postal Service to be unreasonable.

**Clause 1-10 Preference for Domestic Construction Materials (May 2005)** (1.6.13)

- a. Preference will be given to domestic construction materials in accordance with chapter 1, section 6 of the Postal Service *Interim Internal Purchasing Guidelines*. For the purposes of this clause:
- (1) *Components*. Those articles, materials, and supplies incorporated directly into construction materials;
  - (2) *Construction materials*. Articles, materials, and supplies brought to the construction site for incorporation into the building or work; and
  - (3) *Domestic construction material*. This is (a) an unmanufactured construction material mined or produced in the United States, or (b) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those determined to be unavailable under chapter 1, section 7 of the Postal Service *Interim Internal Purchasing Guidelines* will be treated as domestic.
  - (4) *Foreign construction material*. A construction material other than a domestic construction material.
- b. The contractor agrees that only domestic construction material will be used by the contractor, subcontractors, materialmen, and suppliers in the performance of this contract, except for foreign construction materials, if any, listed in this contract.

**Clause 1-11 Prohibition Against Contracting with Former Officers or PCES Executives (May 2005)** (1.6.14)

During the performance of this contract, former Postal officers or Postal Career Executive Service (PCES) executives are prohibited from employment by the contractor as key personnel, experts or consultants, if such individuals, within 5 years after their retirement from the Postal Service, would be performing substantially the same duties as they performed during their career with the Postal Service.

**Clause 1-12 Clause 1-12 Use of Former Postal Service Employees (May 2005)** (1.6.14)

During the term of this contract, the supplier must identify any former Postal Service employees it proposes to be engaged, directly or indirectly, in contract performance. Such individuals may not commence performance without the contracting officer's prior approval. If the contracting officer does not provide such approval, the supplier must replace the proposed individual former employee with another individual equally qualified to provide the services called for in the contract.

**Clause 2-1 Inspection and Acceptance (May 2005)** (2.2.1)

- a. The supplier must be able to demonstrate that the supplies and services being provided conform to contract requirements. The Postal Service may require correction of defects and nonconformance at no cost to the Postal Service. If the supplier fails or refuses to correct the defects or nonconformance the Postal Service may, in addition to any other remedies provided by this contract:
  - (1) Acquire replacement supplies or services from other sources at the supplier's expense; or
  - (2) Accept the supplies or services at a reduced price.
- b. The Postal Service may revoke acceptance if nonconforming performance is accepted:
  - (1) because it has not been discovered before acceptance, as a result of the difficulty of discovery or because of the supplier' assurances, or
  - (2) on the basis of a reasonable assumption that it would be cured.
- c. The Postal Service has the same rights and duties upon revocation as upon rejection. Revocation of acceptance must occur within a reasonable time after the contracting officer discovers the deficiency.
- d. The Postal Service, at its option, may at any stage in the performance of this contract, monitor the supplier's activities and efforts in performing the contract, to assure itself that contract requirements are being met. Such Postal Service oversight in no way relieves the supplier from its responsibility to perform in accordance with contract requirements.

**Clause 2-2 Quality Management System (May 2005)** (2.2.1)

- a. The supplier must use a documented quality management system to monitor and measure its performance against contract requirements. As a minimum, that quality assurance system must include all of the following:
  - (1) A process management system that includes documented work processes (including support processes), mechanisms to monitor and measure processes, systematic approaches for addressing nonconformance complaints with an emphasis on root cause analysis and corrective and preventative action, analysis of performance measurement, and regularly scheduled and documented quality management system reviews;
  - (2) A means of assessing customer satisfaction that includes scheduled customer satisfaction reviews or surveys, customer focus groups, or other means of securing ongoing customer feedback;
  - (3) Supplier management that includes supplier selection criteria and monitoring and assessing supplier performance; and

- (4) A determination of the necessary competencies for personnel performing work during contract performance. Suppliers must:
  - (a) As necessary, provide training and take other actions to meet this requirement; and
  - (b) Maintain current records of education, training, skills, and experience.
- b. The Postal Service has the right to evaluate the acceptability and effectiveness of the supplier's quality management system prior to award, and to verify that it is in use and effective during contract performance.
- c. The supplier must maintain records and metrics pertaining to this quality management system in accordance with the record retention requirements of the contract.
- d. The supplier must be able to demonstrate that the supplies and services being purchased conform to contract requirements. The Postal Service may require correction of defects and nonconformance at no cost to the Postal Service. If the supplier fails or refuses to correct the defects or nonconformance the Postal Service may, in addition to any other remedies provided by this contract:
  - (1) Acquire replacement supplies or services from other sources at the supplier's expense; or
  - (a) Accept the supplies or services at a reduced price.

### **Clause 2-3 (Reserved)**

### **Clause 2-4 First Article Approval — Supplier Testing (May 2005) (2.2.2)**

- a. The supplier must test the number of units specified in the Schedule of this contract. The supplier must give the notice specified in the Schedule to the contracting officer, in writing, of the time and location of the testing so that the Postal Service may witness the tests.
- b. By the date specified in the Schedule, the supplier must submit to the contracting officer the first article test report marked "First Article Test Report" and identifying the contract number and lot/item number. After the Postal Service receives the test report, the contracting officer will notify the supplier within the time period set forth in the Schedule, in writing, of the conditional approval, approval, or disapproval of the first article. The notice of approval or conditional approval does not relieve the supplier from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval will state any further action required of the supplier. A notice of disapproval will cite reasons for the disapproval.
- c. If the first article is disapproved, the supplier, upon request of the Postal Service, must repeat any or all first article tests. After each request for additional tests, the supplier must make any necessary changes,

modifications, or repairs to the first article or select another first article for testing. All costs related to these tests are to be borne by the supplier, including any and all costs for additional tests following a disapproval. The supplier must then conduct the tests and deliver another report to the Postal Service under the terms and conditions and within the time specified by the Postal Service. The Postal Service must take action on this report within the same time limit referred to in paragraph b above. The Postal Service reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule, or for any additional costs to the Postal Service related to these tests.

- d. If the supplier fails to deliver any first article report on time, or the contracting officer disapproves any first article, the supplier will be deemed to have failed to make delivery within the meaning of the *Default* clause.
- e. Unless otherwise provided in the contract, and if the approved first article is not consumed or destroyed in testing, the supplier may deliver the approved first article as part of the contract quantity if it meets all contract requirements for acceptance.
- f. If the Postal Service does not act within the time limit referred to in paragraphs b and c above, the contracting officer will, upon timely written request from the supplier, equitably adjust under the *Changes* clause the delivery or performance dates and/or the contract price, and any other contractual term affected by the delay.
- g. Before first article approval, acquisition of materials or components for the balance of the contract quantity or commencement of production is at the supplier's sole risk.
- h. Costs incurred under paragraph g above are not allocable to this contract for progress payments before first article approval or for a termination settlement in the event of termination for convenience before first article approval.

#### **Clause 2-5 First Article Approval — Postal Service Testing (May 2005)**

(2.2.2)

- a. At the time specified for first article testing, the supplier must deliver the units specified in the Schedule to the Postal Service at the testing facility set forth in the Schedule. The shipping documentation accompanying the first article must contain the number of this contract and the lot/item identification. The performance or other characteristics that the first article must meet, and the tests to which it will be subjected, are contained or referenced in this contract.
- b. The contracting officer must, by written notice to the supplier within the time specified in the Schedule, approve, conditionally approve, or disapprove the first article. The notice of approval or conditional approval does not relieve the supplier from complying with all requirements of the specifications and all other terms and conditions of

this contract. A notice of conditional approval will state any further action required of the supplier. A notice of disapproval will cite reasons for the disapproval.

- c. If the first article is disapproved, the supplier may be required, at the option of the Postal Service, to submit an additional first article for first article approval test. After each notification by the Postal Service to submit an additional first article, the supplier must at no additional cost to the Postal Service make any necessary changes, modifications, or repairs to the first article, or select another first article for testing. The additional first article must be furnished to the Postal Service under the terms and conditions and within the time specified in the notification. The Postal Service must take action on this additional first article within the same time limit referred to in paragraph b above. The costs of additional first article approval tests and all costs related to such tests must be borne by the supplier. The Postal Service reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule necessitated by additional first article approval tests.
- d. If the supplier fails to deliver a first article on time, or if the contracting officer disapproves a first article, the contract may be terminated for default. Waiver of the right to terminate this contract for default does not relieve the supplier of responsibility to meet the delivery schedule for production quantities.
- e. When the first article is not consumed or destroyed in testing, and unless otherwise provided in this contract, the supplier:
  - (1) May deliver an approved first article as a part of the contract quantity if it meets all terms and conditions of this contract for acceptance; and
  - (2) Is responsible for removal and disposition of any first article from the Postal Service test site at the supplier's expense.
- f. The supplier is responsible for spare-parts support and repair of the first article during any first article approval test.
- g. Before first article approval, acquisition of materials or components for the balance of the contract quantity or commencement of production is at the supplier's sole risk.
- h. Costs incurred under paragraph g above are not allocable to this contract for progress payments before first article approval or for a termination settlement in the event of termination for convenience before first article approval.

#### **Clause 2-6 Delayed Acceptance (May 2005)**

(2.2.3)

- a. Acceptance under this contract will not occur until the supplier has successfully completed the preacceptance tests set forth in the Schedule.



- b. The supplier will remove any equipment and material not accepted under this contract and restore the Postal Service facility to its original condition, at no cost to the Postal Service.
- c. The supplier will pay the costs of testing for all equipment and materials rejected for failure to meet the preacceptance test requirements.

**Clause 2-7 Incorporation of Warranty (May 2005)** (2.2.4)

The supplier's standard commercial warranty, as disclosed in the offeror's proposal, is incorporated as a part of this contract. However, any dispute concerning it will be resolved under the *Claims and Disputes* clause of this contract, notwithstanding any disputes procedure that may be specified in the warranty.

**Clause 2-8 Warranty (May 2005)** (2.2.4)

- a. The supplier warrants, for the period specified in the Schedule, that all supplies furnished under this contract, including packaging and markings, will be free from defects in material or workmanship and will conform with the specifications and all other requirements of this contract.
- b. Within the time specified in the Schedule, the contracting officer must give written notice to the supplier of any breach of warranty and either:
  - (1) Require the prompt correction or replacement of any defective or nonconforming supplies; or
  - (2) Retain them, reducing the contract price by an amount equitable under the circumstances.
- c. When return for correction or replacement is required, the supplier is responsible for all costs of transportation and for risk of loss in transit.
- d. If the supplier fails or refuses to correct or replace the defective or nonconforming supplies, the contracting officer may correct or replace them with similar supplies and charge to the supplier any cost to the Postal Service. In addition, the contracting officer may dispose of the nonconforming supplies, with reimbursement from the supplier or from the proceeds for excess costs.
- e. Any supplies corrected or furnished in replacement are subject to this clause.
- f. Supplies, as used in this clause, includes related services.
- g. The rights and remedies of the Postal Service provided in this clause are in addition to, and do not limit, any rights afforded to the Postal Service by any other clause of the contract.

**Clause 2-9 Definition of Delivery Terms and Supplier's Responsibilities (December 2003)** (2.2.5)

- a. If the contract specifies "f.o.b. destination," the following apply:
- (1) "F.o.b. destination" means delivery to the specified delivery point. Transportation costs are included in the contract price.
  - (2) "F.o.b. destination, within the consignee's premises" means delivered free of expense to the Postal Service, within the doors of the specified building, including delivery to specific rooms when specified.
  - (3) The supplier must:
    - (a) Pack and mark shipments to comply with contract specifications or, in their absence, prepare shipments in accordance with carrier requirements;
    - (b) Prepare and distribute commercial bills of lading;
    - (c) Be responsible for loss or damage occurring before receipt at the specified point of delivery;
    - (d) Furnish a delivery schedule and designate mode of delivery;
    - (e) Bear all delivery costs to the specified point of delivery; and
    - (f) Deliver goods, that meet the prescribed physical limitations of the current U.S. Postal Service *Domestic Mail Manual*, either by its own personnel/equipment or by use of the United States Postal Service, unless the contracting officer grants a waiver of this requirement.
- b. If the contract specifies "delivered Postal Service facility, door, platform, or private siding," the following apply:
- (1) "Delivered postal facility, door, platform, or private siding" means delivery free of expense to the Postal Service:
    - (a) To the door of Postal Service facilities having no platforms or private siding;
    - (b) On the platform at Postal Service facilities having platforms but no private siding; or
    - (c) On the private siding at Postal Service facilities having private siding.
  - (2) In addition to fulfilling the requirements of the *Responsibility for Supplies* clause, the supplier must:
    - (a) Pack and mark shipments to protect the goods from normal transportation hazards, promote prompt delivery, and comply with packing and marking specifications of the contract;
    - (b) Unload material at the door or on the platform in the case of b.1(a) and (b) above, free of expense to the Postal Service;
    - (c) Properly prepare and distribute commercial bills of lading; and

- (d) Be responsible for loss or damage occurring before delivery to the specified delivery point.
- c. If the contract specifies “f.o.b. origin,” the following apply:
  - (1) “F.o.b. origin” means delivery on board the indicated type of conveyance of the carrier (or of the Postal Service), at the specified point from which the shipment will be made and from which line haul transportation service (as distinguished from switching, local drayage, or other terminal service) begins. Transportation costs are borne by the Postal Service.
  - (2) The supplier must:
    - (a) Pack and mark shipments to comply with contract specifications or, in their absence, prepare the shipment in accordance with carrier requirements and good commercial practices and secure the lowest applicable transportation charge.
    - (b) Order specified carrier equipment when requested by the Postal Service. Otherwise, order appropriate carrier equipment not in excess of capacity to accommodate the shipment.
    - (c) When loaded by the supplier, load, stow, trim, block, and/or brace shipments as required by the carrier’s rules and regulations.
    - (d) Be responsible for loss or damage occurring before delivery to the carrier; and for loss or damage due to improper packing/marking and, when loaded by the supplier, from improper loading, stowing, trimming, blocking, and/or bracing of the shipment.
    - (e) Complete the government bill of lading supplied by the Postal Service or, when none is supplied, prepare a commercial bill of lading or other transportation receipt, to show:
      - (i) A description of the shipment in terms of the governing freight classification or tariff under which the lowest freight rates are applicable;
      - (ii) The seals affixed to the conveyance, including the serial number on them, or other identification;
      - (iii) The length and capacity of cars or trucks ordered and furnished;
      - (iv) Other pertinent information required to effect prompt delivery to the consignee, including the routing and the name, delivery, and postal address of the consignee;
      - (v) Special instructions or annotations requested by the Postal Service for commercial bills of lading (for example, “To be converted to a government bill of lading”); and

- (vi) The signature of carrier's agent and the date the shipment is received.
- (f) Distribute the bill of lading, or other transportation receipt, as directed by the Postal Service.
- (g) (Supply with each invoice a memorandum copy of the government bill of lading, clearly indicating the signature of the carrier's agent, date of pickup, and the weight accepted by the carrier. If the weight is determined by the carrier after pickup, it must be annotated on the memorandum copy of the government bill of lading along with the following:
 

"I certify that the weight information is that obtained from the carrier.

Signed: "
- (3) Where delivery is to be made to points not included above, either of the following apply:
  - (a) If the Postal Service has not specified otherwise, the supplier must ship on government bills of lading.
  - (b) If the Postal Service specifies that shipment is to be made on endorsed commercial bills of lading the supplier will be required to prepay all transportation charges, as follows:
    - (i) Delivery to the door of the specified destination by freight or express common carriers on articles for which store-to-door delivery is provided free, or subject to a charge pursuant to published tariffs or schedules filed with the federal and/or state regulatory bodies governing such carriers.
    - (ii) Delivery to siding at destination if not covered under (1) above.
    - (iii) Delivery to the freight station nearest destination if not covered under (1) or (2) above.
    - (iv) The supplier must annotate the commercial bill of lading as follows: "Property of the United States Postal Service."
    - (v) The actual transportation costs will be added to the supplier's invoice as a separate item. The costs must be based on the lowest published rate on file with the Interstate Commerce Commission or any state regulatory body. They must be supported by freight or express receipts marked "prepaid." If the receipts are not obtainable, annotate the invoice as follows:
 

"I certify that the items identified on this invoice were shipped prepaid, and freight or express receipts in support thereof are not obtainable:

Name:

Destination:

Names of Carriers:

Weight of shipment:

Transportation charges claimed:"

- (4) The Postal Service reserves the right to specify the mode of transportation and routing to be employed.

**Clause 2-10 Liquidated Damages (May 2005)** (2.2.6)

- a. If the supplier fails to complete the work, deliver the supplies, or perform the services within the time specified in this contract, or any extension, the supplier must, in place of actual damages, pay to the Postal Service (*contracting officer insert amount*) for liquidated damages as agreed for each calendar day of delay.
- b. Alternatively, if completion, delivery, or performance is delayed beyond the contract dates, the Postal Service may terminate this contract in whole or in part under the *Termination for Default* clause, and the supplier will be liable for the agreed liquidated damages accruing until the time the Postal Service may reasonably obtain delivery or performance of similar facilities, supplies, or services. The liquidated damages will be in addition to excess costs of reprocurement.
- c. The supplier will not be charged with liquidated damages when the delay in completion, delivery, or performance arises out of causes beyond the control and without the fault or negligence of the supplier.

**Clause 2-11 Postal Service Property — Fixed-Price (May 2005)** (2.2.7)

- a. *Postal Service-Furnished Property*
  - (1) The Postal Service will deliver to the supplier, for use in connection with and under the terms of this contract, the property described as Postal Service-furnished property in the Schedule or specifications, together with any related information the supplier may request that may reasonably be required for the intended use of the property (hereinafter referred to as "Postal Service-furnished property").
  - (2) The contract delivery or performance dates are based on the expectation that Postal Service-furnished property suitable for use (except for property furnished "as is") will be delivered at the times stated in the Schedule or, if not so stated, in sufficient time to enable the supplier to meet these delivery or performance dates. If Postal Service-furnished property is not delivered by these times, the contracting officer will, upon timely written

- request from the supplier, make a determination of any delay occasioned the supplier and will equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by the delay, in accordance with the *Changes* clause.
- (3) Except for Postal Service-furnished property furnished "as is," if the Postal Service-furnished property is received in a condition not suitable for its intended use, the supplier must notify the contracting officer and (as directed by the contracting officer) either (a) return it at the expense of the Postal Service or otherwise dispose of it, or (b) effect repairs or modifications. Upon the completion of (a) or (b), the contracting officer (upon written request from the supplier) will equitably adjust the delivery or performance dates or the contract price, or both, and any other affected contractual provision, in accordance with the *Changes* clause.
  - (4) The provisions for adjustment in this paragraph are exclusive, and the Postal Service is not liable to suit for breach of contract by reason of any delay in delivery of Postal Service-furnished property or its delivery in a condition not suitable for its intended use.
- b. *Changes in Postal Service-Furnished Property*
- (1) By written notice, the contracting officer may (a) decrease the property provided or to be provided by the Postal Service under this contract, or (b) substitute other Postal Service-owned property for the property to be provided by the Postal Service, or to be acquired by the supplier for the Postal Service under this contract. The supplier must promptly take any action the contracting officer may direct regarding the removal and shipping of the property covered by this notice.
  - (2) In the event of any decrease in or substitution of property pursuant to subparagraph b.1 above, or any withdrawal of authority to use property provided under any other contract or lease, which property the Postal Service had agreed in the Schedule to make available for the performance of this contract, the contracting officer, upon the supplier's written request (or — if substitution causes a decrease in the cost of performance — on the contracting officer's own initiative), will equitably adjust any contractual provisions affected by the decrease, substitution, or withdrawal, in accordance with the *Changes* clause.
- c. *Title.* Title to all Postal Service-furnished property remains in the Postal Service. To define the obligations of the parties under this clause, title to each item of facilities, special test equipment, or special tooling (other than that subject to a special-tooling clause) acquired by the supplier for the Postal Service under this contract will pass to and vest in the Postal Service when its use in the performance of this contract begins, or upon payment for it by the Postal Service, whichever is earlier, whether or not title was previously vested. All Postal

- Service-furnished property, together with all property acquired by the supplier, title to which vests in the Postal Service under this paragraph c, is subject to the provisions of this clause and is hereinafter collectively referred to as "Postal Service property." Title to Postal Service property is not affected by its incorporation into or attachment to any property not owned by the Postal Service, nor does Postal Service property become a fixture or lose its identity as personal property by being attached to any real property.
- d. *Use of Postal Service Property.* The Postal Service property, unless otherwise provided in this contract or approved by the contracting officer, must be used only for performing this contract.
  - e. *Utilization, Maintenance, and Repair of Postal Service Property.* The supplier must maintain and administer, in accordance with sound industrial practice, a program or system for the utilization, maintenance, repair, protection, and preservation of Postal Service property until it is disposed of in accordance with this clause. If any damage occurs to Postal Service property, the risk of which has been assumed by the Postal Service under this contract, the Postal Service will replace the items or the supplier must make such repairs as the Postal Service directs; provided, however, that if the supplier cannot effect these repairs within the time required, the supplier will dispose of the property in the manner directed by the contracting officer. The contract price includes no compensation to the supplier for performing any repair or replacement for which the Postal Service is responsible, and an equitable adjustment will be made in any contractual provisions affected by such repair or replacement made at the direction of the Postal Service, in accordance with the *Changes* clause. Any repair or replacement for which the supplier is responsible under the provisions of this contract must be accomplished by the supplier at the supplier's own expense.
  - f. *Risk of Loss.* Unless otherwise provided in this contract, the supplier assumes the risk of, and becomes responsible for, any loss or damage to Postal Service property provided under this contract upon its delivery to the supplier or upon passage of title to the Postal Service as provided in paragraph c above, except for reasonable wear and tear and except to the extent that it is consumed in performing this contract.
  - g. *Access.* The Postal Service, and any persons designated by it, must at reasonable times have access to premises where any Postal Service property is located, for the purpose of inspecting it.
  - h. *Final Accounting for and Disposition of Postal Service Property.* Upon completion, or at such earlier dates as may be fixed by the contracting officer, the supplier must submit, in a form acceptable to the contracting officer, inventory schedules covering all items of Postal Service property not consumed in performing this contract (including any resulting scrap) or not previously delivered to the Postal Service, and will prepare for shipment, deliver f.o.b. origin, or dispose of this property, as the contracting officer may direct or authorize. The net

proceeds of disposal will be credited to the contract price or will be paid in such other manner as the contracting officer may direct.

- i. *Restoration of Supplier's Premises and Abandonment.* Unless otherwise provided in this contract, the Postal Service:
  - (1) May abandon any Postal Service property in place, whereupon all obligations of the Postal Service regarding it will cease; and
  - (2) Has no obligation with regard to restoration or rehabilitation of the supplier's premises, either in case of abandonment, disposition on completion of need or of the contract, or otherwise, except for restoration or rehabilitation costs properly included in an equitable adjustment under paragraph b or e above.

*Alternate Paragraph c (see 2.2.7.d.1(a))*

- c. *Title*
  - (1) Title to all Postal Service-furnished property remains in the Postal Service. To define the obligations of the parties under this clause, title to each item of facilities, special test equipment, or special tooling (other than that subject to a special-tooling clause) acquired by the supplier for the Postal Service under this contract will pass to and vest in the Postal Service when its use in the performance of this contract begins, or upon payment for it by the Postal Service, whichever is earlier, whether or not title was previously vested.
  - (3) Title to all material purchased by the supplier for whose cost the supplier is entitled to be reimbursed as a direct item of cost under this contract will pass to and vest in the Postal Service upon delivery of the material to the supplier by the vendor.
  - (4) Title to other material whose cost is reimbursable to the supplier under this contract will pass to and vest in the Postal Service upon:
    - (a) Its issuance for use in the performance of this contract; or
    - (b) Reimbursement of its cost by the Postal Service, whichever occurs first.
  - (5) All Postal Service-furnished property, together with all property acquired by the supplier, title to which vests in the Postal Service under this paragraph c, is subject to the provisions of this clause and is hereinafter collectively referred to as "Postal Service property." Title to Postal Service property is not affected by its incorporation into or attachment to any property not owned by the Postal Service, nor does Postal Service property become a fixture or lose its identity as personal property by being attached to any real property.

**Clause 2-12 Postal Service Property — Short Form (May 2005)** (2.2.7)

- a. The Postal Service will deliver to the supplier, at the time and locations stated in this contract, the Postal Service property described in the



Schedule or specifications. If that property, suitable for its intended use, is not delivered timely to the supplier, the contracting officer must equitably adjust affected provisions of this contract in accordance with the *Changes* clause when:

- (1) The supplier submits a timely written request for an equitable adjustment; and
  - (2) The facts warrant an equitable adjustment.
- b. Title to Postal Service property remains in the Postal Service. The supplier may use the Postal Service property only in connection with this contract. The supplier must maintain adequate property control records in accordance with sound industrial practice and must make them available for Postal Service inspection at all reasonable times.
  - c. Upon delivery of Postal Service property to the supplier, the supplier assumes the risk and responsibility for its loss or damage, except:
    - (1) For reasonable wear and tear;
    - (2) To the extent property is consumed in performing the contract; or
    - (3) As otherwise provided in the contract.
  - d. Upon completing this contract, the supplier must follow the contracting officer's instructions regarding the disposition of all Postal Service property not consumed in performing this contract or previously delivered to the Postal Service. The supplier must prepare for shipment, deliver f.o.b. origin, or dispose of the Postal Service property, as directed or authorized by the contracting officer. The net proceeds of any such disposal will be credited to the contract price or will be paid to the Postal Service as directed by the contracting officer.

### **Clause 2-13 Postal Service Property — Non-Fixed-Price (May 2005)**

(2.2.7)

- a. *Postal Service-Furnished Property*
  - (1) Supplier's managerial personnel, as used in paragraph g of this clause, means any of the supplier's directors and officers and any of the supplier's managers, superintendents, or equivalent representatives who have supervision or direction of:
    - (a) All or substantially all of the supplier's business;
    - (b) All or substantially all of the supplier's operation at any one plant or separate location at which the contract is being performed; or
    - (c) A separate and complete major industrial operation connected with performing this contract.
  - (2) The Postal Service will deliver to the supplier, for use in connection with and under the terms of this contract, the property described as Postal Service-furnished property in the Schedule or specifications, together with any related data and information the supplier may request that may be reasonably required for the

- intended use of the property (hereinafter referred to as "Postal Service-furnished property").
- (3) The contract delivery or performance dates are based on the expectation that Postal Service-furnished property suitable for use will be delivered at the times stated in the Schedule, or, if not so stated, in sufficient time to enable the supplier to meet these delivery or performance dates.
  - (4) If Postal Service-furnished property is received in a condition not suitable for its intended use, the supplier will, upon receipt, notify the contracting officer, detailing the facts, and, as directed by the contracting officer and at Postal Service expense, either effect repairs or modifications or return or otherwise dispose of the property. After the directed action is completed and upon written request from the supplier, the contracting officer will make an equitable adjustment as provided in paragraph h of this clause.
  - (5) If Postal Service-furnished property is not delivered by the required time or times, the contracting officer will, upon the supplier's timely written request, make a determination of any delay caused the supplier and will make an equitable adjustment in accordance with paragraph h of this clause.
- b. *Changes in Postal Service-Furnished Property*
- (1) The contracting officer may, by written notice, (a) decrease the property provided or to be provided under this contract or (b) substitute other Postal Service-owned property for the property to be provided by the Postal Service or to be acquired by the supplier for the Postal Service under this contract. The supplier must promptly take any action the contracting officer may direct regarding the removal, shipment, or disposal of the property covered by this notice.
  - (2) Upon the supplier's written request, the contracting officer will make an equitable adjustment to the contract in accordance with paragraph h of this clause, if the Postal Service has agreed in the Schedule to make property available for performing this contract and there is any:
    - (a) Decrease or substitution in this property pursuant to subparagraph b.1 above; or
    - (b) Withdrawal of authority to use property, if provided under any other contract or lease.
- c. *Title*
- (1) The Postal Service retains title to all Postal Service-furnished property.
  - (2) Title to all property purchased by the supplier for which the supplier is entitled to be reimbursed as a direct item of cost under this contract will pass to and vest in the Postal Service upon the vendor's delivery of such property to the supplier.

- (3) Title to all other property whose cost is reimbursable to the supplier will pass to and vest in the Postal Service upon:
    - (a) Issuance of the property for use in contract performance;
    - (b) Commencement of processing of the property or its use in contract performance; or
    - (c) Reimbursement of the cost of the property by the Postal Service, whichever occurs first.
  - (4) All Postal Service-furnished property and all property acquired by the supplier, title to which vests in the Postal Service under this paragraph c (collectively referred to as "Postal Service property"), is subject to the provisions of this clause. Title to Postal Service property is not affected by its incorporation into or attachment to any property not owned by the Postal Service, nor does Postal Service property become a fixture or lose its identity as personal property by being attached to any real property.
- d. *Use of Postal Service Property.* The Postal Service property must be used only for performing this contract, unless otherwise provided in this contract or approved by the contracting officer.
  - e. *Property Administration*
    - (1) The supplier is responsible and accountable for all Postal Service property provided under the contract and must establish and maintain a program or system for the control, use, maintenance, repair, protection, and preservation of Postal Service property in accordance with sound business practice.
    - (2) If any damage occurs to Postal Service property the risk of which has been assumed by the Postal Service under this contract, the Postal Service will replace the items or the supplier must make such repairs as the Postal Service directs. However, if the supplier cannot affect these repairs within the time required, the supplier will dispose of the property as directed by the contracting officer. When any property for which the Postal Service is responsible is replaced or repaired, the contracting officer will make an equitable adjustment in accordance with paragraph h of this clause.
  - f. *Access.* The Postal Service and its designees must have access at all reasonable times to the premises where any Postal Service property is located, for the purpose of inspecting it.
  - g. *Limited Risk of Loss*
    - (1) The supplier is not liable for loss or destruction of, or damage to, the Postal Service property provided under this contract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs 2 and 3 below.

- (2) The supplier is responsible for any loss or destruction of, or damage to, the Postal Service property provided under this contract (including expenses incidental to such loss, destruction, or damage):
  - (a) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;
  - (b) That results from a risk that is in fact covered by insurance or for which the supplier is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
  - (c) For which the supplier is otherwise responsible under the express terms of this contract;
  - (d) That results from willful misconduct or lack of good faith on the part of the supplier's managerial personnel; or
  - (e) That results from a failure on the part of the supplier, due to willful misconduct or lack of good faith on the part of the supplier's managerial personnel, to establish and administer a program or system of the control, use, protection, preservation, maintenance, and repair of Postal Service property as required by paragraph e of this clause.
- (3)
  - (a) If the supplier fails to act, as described in g.2(e) above, after being notified (by certified mail addressed to one of the supplier's managerial personnel) of the Postal Service's disapproval, withdrawal of approval, or nonacceptance of the system or program, it will be conclusively presumed that this failure was due to willful misconduct or lack of good faith on the part of the supplier's managerial personnel.
  - (b) In this event, any loss or destruction of, or damage to, the Postal Service property will be presumed to have resulted from such failure unless the supplier can establish by clear and convincing evidence that the loss, destruction, or damage:
    - (i) Did not result from the supplier's failure to maintain an approved program or system; or
    - (ii) Occurred while an approved program or system was maintained by the supplier.
- (4) If the supplier transfers Postal Service property to the possession and control of a subcontractor, the transfer does not affect the liability of the supplier for loss or destruction of, or damage to, the property. However, the supplier must require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the contracting officer, relieves the

- subcontractor from liability. In the absence of approval, the subcontract must contain appropriate provisions requiring the return of all Postal Service property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.
- (5) Upon loss or destruction of, or damage to, Postal Service property provided under this contract, the supplier must so notify the contracting officer and communicate with any loss and salvage organization designated by the contracting officer. With the assistance of any such organization, the supplier must take all reasonable action to protect the Postal Service property from further damage, separate the damaged and undamaged Postal Service property, put all the affected Postal Service property in the best possible order, and furnish to the contracting officer a statement of:
    - (a) The lost, destroyed, and damaged Postal Service property;
    - (b) The time and origin of the loss, destruction, or damage;
    - (c) All known interests in commingled property of which the Postal Service property is a part; and
    - (d) Any insurance covering any part of or interest in the commingled property.
  - (6) The supplier must repair, renovate, and take any other action with respect to damaged Postal Service property that the contracting officer directs. If the Postal Service property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the supplier's) that separation is impractical, the supplier may, with the approval of and subject to any conditions imposed by the contracting officer, sell the property for the account of the Postal Service. Such sales may be made in order to minimize the loss to the Postal Service, to permit the resumption of business, or to accomplish a similar purpose. The supplier is entitled to an equitable adjustment in the contract price for expenditures made in performing its obligations under subparagraph g.5 above and this subparagraph g.6 in accordance with paragraph h of this clause. However, the Postal Service may directly reimburse the loss and salvage organization for any of its charges. The contracting officer will give due regard to the supplier's liability under this paragraph g when making any such equitable adjustment.
  - (7) The contract will not be reimbursed for, and may not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Postal Service property, except to the extent that the Postal Service may have expressly required the supplier to carry such insurance under another provision of this contract.
  - (8) In the event the supplier is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Postal Service

- property, the supplier must use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Postal Service property or must otherwise credit the proceeds to, or equitably reimburse, the Postal Service, as directed by the contracting officer.
- (9) The supplier must do nothing to prejudice the Postal Service's rights to recover against third parties for any loss or destruction of, or damage to, Postal Service property. Upon the request of the contracting officer, the supplier will, at the Postal Service's expense, furnish to the Postal Service all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Postal Service) in obtaining recovery. In addition, when a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Postal Service property, the supplier must enforce this liability of the subcontractor for the benefit of the Postal Service.
- h. *Equitable Adjustment.* When this clause specifies an equitable adjustment, it will be made to any affected contract provision in accordance with the procedures of the *Changes* clause. When appropriate, the contracting officer may initiate an equitable adjustment in favor of the Postal Service. The right to an equitable adjustment shall be the supplier's exclusive remedy. The Postal Service is not liable to suit for breach of contract for:
- (1) Any delay in delivery of Postal Service-furnished property;
  - (2) Delivery of Postal Service-furnished property in a condition not suitable for its intended use;
  - (3) A decrease in or substitution of Postal Service-furnished property; or
  - (4) Failure to repair or replace Postal Service property for which the Postal Service is responsible.
- i. *Final Accounting for and Disposition of Postal Service Property.* Upon completing this contract, or at such earlier dates as may be fixed by the contracting officer, the supplier must submit, in a form acceptable to the contracting officer, inventory schedules covering all items of Postal Service property not consumed in performing this contract or delivered to the Postal Service. The supplier will prepare for shipment, deliver f.o.b. origin, or dispose of the Postal Service property as the contracting officer may authorize or direct. The net proceeds of any disposal will be credited to the cost of the work covered by this contract or paid to the Postal Service as directed by the contracting officer. The foregoing provisions apply to scrap from Postal Service property; provided, however, that the contracting officer may authorize or direct the supplier to omit from the inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of this scrap in accordance with the supplier's normal practice and account for it as a part of general overhead or

other reimbursable costs in accordance with the supplier's established accounting procedures.

- j. *Abandonment and Restoration of Supplier's Premises.* Unless otherwise provided in this contract, the Postal Service:
- (1) May abandon any Postal Service property in place, whereupon all obligations of the Postal Service regarding it will cease; and
  - (2) Has no obligation to restore or rehabilitate the supplier's premises under any circumstances (for instance, abandonment, disposition upon completion of need, or contract completion). However, if the Postal Service-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Postal Service property is substituted, then the equitable adjustment under paragraph h of this clause may properly include restoration or rehabilitation costs.
- k. *Communications.* All communications under this clause must be in writing.

*Alternate Paragraph c (see 2.2.7.d.1(c))*

c. *Title*

- (1) The Postal Service retains title to all Postal Service-furnished property.
- (2) All Postal Service-furnished property and all property acquired by the supplier, title to which vests in the Postal Service under this paragraph (collectively referred to as "Postal Service property"), is subject to the provisions of this clause. Title to Postal Service property is not affected by its incorporation into or attachment to any property not owned by the Postal Service, nor does Postal Service property become a fixture or lose its identity as personal property by being attached to any real property.
- (3) Title to all property purchased by the supplier for which the supplier is entitled to be reimbursed as a direct item of cost under this contract and that, under the provisions of the contract, is to vest in the Postal Service, will pass to and vest in the Postal Service upon the vendor's delivery of such property to the supplier. Title to all other property whose cost is to be reimbursed to the supplier under this contract and that under the contract provisions is to vest in the Postal Service, will pass to and vest in the Postal Service upon:
  - (a) Issuance of the property for use in contract performance;
  - (b) Commencement of processing of the property or its use in contract performance; or
  - (c) Reimbursement of the cost of the property by the Postal Service, whichever occurs first.
- (4) Title to equipment (and other tangible personal property) purchased with funds available for research and having an acquisition cost of less than \$5,000 will vest in the supplier upon acquisition or as soon thereafter as feasible; provided, that the

supplier has obtained the contracting officer's approval before each acquisition. Title to equipment purchased with funds available for research and having an acquisition cost of \$5,000 or more will vest as set forth in the contract. If title to equipment vests in the supplier under this subparagraph c.4, the supplier agrees that no charge will be made to the Postal Service for any depreciation, amortization, or use under any existing or future Postal Service contract or subcontract thereunder. The supplier will furnish the contracting officer a list of all equipment to which title is vested in the supplier under this subparagraph c.4 within 10 days following the end of the calendar quarter during which it was received.

- (5) Vesting title under subparagraph c.4 above is subject to civil rights legislation, 42 U.S.C. 2000d. Before title is vested and by signing this contract the supplier accepts and agrees that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the contemplated financial assistance (title to equipment).

**Clause 2-14 Postal Service Property Furnished "As Is"**  
**(May 2005)**

(2.2.7)

- a. The Postal Service makes no warranty whatsoever with respect to Postal Service property furnished "as is" except that the property is in the same condition when placed at the f.o.b. point specified in the solicitation as when inspected by the supplier pursuant to the solicitation or (if not inspected by the supplier) as when last available for inspection under the solicitation.
- b. The supplier may repair any property made available to the supplier "as is." Repair will be at the supplier's expense except as otherwise provided in this clause. Such property may be modified at the supplier's expense, but only with the written permission of the contracting officer. Any repair or modification of property furnished "as is" does not affect the title of the Postal Service.
- c. If there is any change (between the time inspected or last available for inspection under the solicitation to the time placed on board at the location specified in the solicitation) in the condition of Postal Service property furnished "as is" that will adversely affect the supplier, the supplier must, upon receipt of the property, notify the contracting officer of that fact, and (as directed by the contracting officer) either (1) return the property at the expense of the Postal Service or otherwise dispose of it, or (2) effect repairs to return it to the condition it was in when inspected under the solicitation, or (if not inspected) as it was when last available for inspection under the solicitation. Upon completion of (1) and (2) above, the contracting officer, upon written request from the supplier, will equitably adjust any contractual provisions affected by the return, disposition, or repair, in accordance with the *Changes* clause.



The foregoing provisions for adjustment are exclusive, and the Postal Service is not liable for any delivery of Postal Service property furnished "as is" in a condition other than that in which it was originally offered.

- d. Except as otherwise provided in this clause, Postal Service property furnished "as is" is governed by the *Postal Service Property* clause of this contract.

## Clause 2-15 Special Tooling (May 2005)

(2.2.7)

### a. *Definition*

(1) Special tooling means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and replacements so specialized that, without substantial modification or alteration, their use is limited to developing or producing particular supplies or performing particular services. The term includes all components of such items, but does not include:

- (a) Consumable property;
- (b) Special test equipment; or
- (c) Buildings, nonseverable structures (except foundations and similar improvements necessary for the installation of special tooling), general or special machine tools, or similar capital items.

(2) For the purposes of this clause, special tooling does not include:

- (a) Items acquired by the supplier before the effective date of this contract, or replacements of such items, whether or not altered or adapted for use in the performance of this contract; or
- (b) Items specifically excluded by the Schedule.

b. *Use of Special Tooling.* The supplier agrees not to use any items of special tooling purchased or manufactured by the supplier for the performance of this contract except in performing it, or as approved by the contracting officer.

c. *List of Special Tooling.* Within 60 days after delivery of the first production end items under this contract, or such later date as the contracting officer may prescribe, the supplier must (if the contracting officer so requests) furnish the contracting officer a list of all special tooling acquired or manufactured by the supplier for use in the performance of this contract. The list shall specify the nomenclature, tool number, and related product part number or service, and unit or group cost of the special tooling. Upon completion or termination of all or a substantial part of the work under this contract, the supplier must furnish a final list in the same form covering all items not previously reported under this paragraph c; provided, however, that the contracting officer may, by written notice, waive this requirement or extend it until the completion of this contract and other contracts and

subcontracts for which approval has been obtained under paragraph b above. Special tooling that has become obsolete as a result of changes in design or specification need not be reported, except as provided for in paragraph d below.

- d. *Changes in Design.* If any changes in design or specifications affect interchangeability of parts, the supplier will, unless otherwise agreed to by the contracting officer, give the contracting officer notice of any part that is not interchangeable with the new or superseding part; and the usable special tooling for each part covered in this notice will be retained by the supplier, subject to the provisions of paragraph i below, pending disposition under paragraph f below.
- e. *Supplier's Offer to Retain Special Tooling.* When the supplier furnishes a list or notice under paragraph c or d above, the supplier may designate the items of special tooling (either specifically or by listing the particular products, parts, or services for which they were used or designed) the supplier desires to retain, together with a written offer to retain them:
  - (1) Free and clear of any Postal Service interest, for an amount designated in the offer that should ordinarily not be less than the fair value of the items, which fair value takes into account, among other things, their value to the supplier for use in further work; or
  - (2) For a period of time and under terms and conditions agreed to by the parties, subject to ultimate retention or disposition of these items in accordance with paragraph f below.
- f. *Disposition of Special Tooling*
  - (1) Within 90 days after receipt of any list or notice under paragraph c or d above, or such further period as may be agreed upon by the parties, the contracting officer will furnish to the supplier:
    - (a) A list specifying the particular products, parts, or services for which the Postal Service may require special tooling, together with a request that the supplier transfer title (to the extent not previously transferred under any other clause of this contract) and deliver to the Postal Service all usable items of special tooling used or designed for the manufacture or performance of any designated portion of those products, parts, or services and on hand when production of the products or parts, or performance of the services, ceased;
    - (b) An acceptance or rejection of any offer made by the supplier under paragraph e above, or a request for further negotiation with respect to it;
    - (c) A direction to the supplier to sell, or to dispose of as scrap, for the account of the Postal Service, any or all of the special tooling covered by the list;
    - (d) A statement with respect to any or all of the special tooling covered by the list specifying that the Postal Service has no further interest in it and waives its rights in it; or

- (e) Any combination of the foregoing, as the circumstances warrant.
  - (2) The supplier will promptly comply with any request by the contracting officer under subparagraph f.1 preceding to transfer title to any items of special tooling, and will:
    - (a) Immediately prepare them for shipment by proper packaging, packing, and marking, in accordance with any instruction issued by the contracting officer, promptly delivering them to the Postal Service as directed by the contracting officer; or
    - (b) If a storage agreement has been entered into, prepare them for storage in accordance with that agreement, as directed by the contracting officer.
  - (3) To the extent that compliance with direction to ship or store under subparagraph f.2 preceding may occasion cost to the supplier for which the supplier will not otherwise be compensated, the contract price will be equitably adjusted in accordance with the *Changes* clause. Any items of special tooling delivered or stored must be accompanied by any operation sheets or other appropriate data necessary to show the manufacturing operations or processes for which the items were used or designed.
  - (4) If the contracting officer has requested further negotiations under f.1(b) above, the supplier agrees to enter into them in good faith with the contracting officer. Any items of special tooling not disposed of by transfer of title and delivery to the Postal Service, or by acceptance of an offer of the supplier made under paragraph e above, or of such offer as modified in the course of negotiations, must be disposed of in the manner set forth in f.1(c) or (d) above. Any failure of the contracting officer to give the required direction within the specified period will be construed as a direction pursuant to f.1(c) above.
- g. *Proceeds of Retention or Disposition of Special Tooling.* If the contracting officer accepts an offer of the supplier to retain any items of special tooling, or if any such items are sold to third parties or disposed of as scrap, the net proceeds will be:
- (1) Deducted from the amounts due to the supplier under this contract and the contract amended accordingly; or
  - (2) Otherwise paid as the contracting officer may direct.
- h. *Property Control.* The supplier agrees to follow normal industrial practice in maintaining property-control records on special tooling and to make them available for inspection by the Postal Service at all reasonable times. The supplier further agrees that, to the extent practicable, the supplier will identify by appropriate stamp, tag, or other mark all special tooling subject to this clause.
- i. *Maintenance Pending Disposition.* The supplier agrees that, between the date any usable items of special tooling are no longer needed by the supplier, within the meaning of this clause, and the date of their final

disposition under this clause, the supplier will take all reasonable steps necessary to maintain their identity and existing condition, unless the contracting officer has directed that they be disposed of as scrap or has given notice under f.1(d) above. The supplier shall not be required to keep any such items in place.

- j. *Special Tooling Provisions for Subcontracts.* The supplier agrees, in placing any subcontracts or purchase orders under this contract that involve the use of special tooling whose full cost is charged to the subcontract or purchase order, to include therein appropriate provisions to obtain rights comparable to those granted to the Postal Service by this clause, unless the contracting officer determines, upon the supplier's request, that with respect to any subcontract, purchase order, or class thereof, such rights are not of substantial interest to the Postal Service. The supplier further agrees to exercise any rights for the benefit of the Postal Service as the contracting officer may direct.

### **Clause 2-16 Special Test Equipment (May 2005)**

(2.2.7)

- a. *Definition.* Special test equipment means electrical, electronic, hydraulic, pneumatic, mechanical, or other items or assemblies of equipment so specialized that, without substantial modification or alteration, their use (if they are to be used separately) is limited to testing in the development or production of particular supplies or in the performance of particular services. The term includes all components of any assemblies of such equipment, but does not include:
- (1) Consumable property;
  - (2) Special tooling; or
  - (3) Buildings, nonseverable structures (except foundations and similar improvements necessary for the installation of special test equipment), general or special machine tools, or similar capital items.
- b. *Supplier Notice of Intent to Acquire Special Equipment.* This contract provides that the supplier will acquire special test equipment for the Postal Service but does not specify its exact nature. Before acquiring any special test equipment or components having an item acquisition cost of \$1,000 or more, the supplier must give the contracting officer 30 days' notice of intention to do so, including a full description of all such items and a list of alternative items that could be used. The Postal Service may elect within the 30-day period to furnish the special test equipment or any components. If the supplier has not received written notice within the period prescribed, the supplier may proceed to acquire the equipment or components, subject to any other applicable provisions of this contract.
- c. *Postal Service-Furnished Special Test Equipment.* If the Postal Service elects to furnish special test equipment or any components pursuant to paragraph b preceding, these items will be furnished subject to the *Postal Service Property* clause of this contract; provided, however, that

the Postal Service is not obligated to deliver them any sooner than the supplier could have procured them after expiration of the 30-day notice period prescribed in paragraph b.

- d. *Equitable Adjustment.* If the Postal Service furnishes any special test equipment or components under paragraph c preceding, any affected provision of this contract will be equitably adjusted in accordance with the *Changes* clause.
- e. *Subcontracts.* If special test equipment or components having an item acquisition cost of \$1,000 or more are to be acquired for the Postal Service by a subcontractor under this contract, the Postal Service's rights to receive 30 days' advance notice from the supplier, and to furnish the items to the supplier and obtain an equitable adjustment of the prime contract therefore, in accordance with paragraphs b, c, and d above, will be preserved.

**Clause 2-17 Option for Increased Quantity (May 2005)** (2.2.8)

The Postal Service may increase the quantity of supplies called for in this contract by the amounts stated in the Schedule and at the unit prices specified in the Schedule. The contracting officer may exercise this option, at any time within the period specified in the Schedule, by giving written notice to the supplier. Delivery of the items added by the exercise of this option will continue immediately after, and at the same rate as, delivery of like items called for under this contract, unless the parties otherwise agree.

**Clause 2-18 Option Item (May 2005)** (2.2.8)

The Postal Service may increase the quantity of supplies called for in this contract by requiring the delivery of the numbered line item identified in the Schedule as an option item, in the quantity and at the price set forth in the Schedule. The contracting officer may exercise this option, at any time within the period specified in the Schedule, by giving written notice to the supplier. Delivery of the items added by the exercise of this option will continue immediately after, and at the same rate as, delivery of like items called for under this contract, unless the parties otherwise agree.

**Clause 2-19 Option to Extend (Services Contract) (May 2005)** (2.2.8)

The Postal Service may require the supplier to continue to perform any or all items of services under this contract within the limits stated in the Schedule. The contracting officer may exercise this option, at any time within the period specified in the Schedule, by giving written notice to the supplier. The rates set forth in the Schedule will apply to any extension made under this option clause.

**Clause 2-20 Option to Renew (with Preliminary Notice) (May 2005)** (2.2.8)

This contract is renewable, at the option of the Postal Service, by the contracting officer giving written notice of renewal to the supplier within the period specified in the Schedule; provided that, the contracting officer will have given preliminary notice of the Postal Service's intent to renew at least 60 days before this contract is to expire (such a preliminary notice will not be deemed to commit the Postal Service to renewals). If the Postal Service exercises this option for renewal, the contract as renewed includes this option clause. The duration of this contract, including renewals, may not exceed the time limit set forth in the Schedule.

**Clause 2-21 Component Parts (May 2005)** (2.3.3)

The description of any component parts in the specification by use of brand or manufacturer's names indicates that there are no other acceptable sources for those components known to the Postal Service. Such descriptions are not meant to be restrictive, however, and the supplier may ask the contracting officer to recognize a supplier-proposed component not included in the specifications as equal to one of the specified components and permit its substitution; provided that the supplier submits any request for substitution in a timely manner and with sufficient information to enable the contracting officer to ascertain readily whether the proposed component is in fact equal to the component described in the specifications. The contracting officer's approval or disapproval of the request for substitution is final and not subject to the *Claims and Disputes* clause.

**Clause 2-22 Value Engineering Incentive (May 2005)** (2.2.10)

- a. *General.* The supplier is encouraged to develop and submit Value Engineering Change Proposals (VECPs) voluntarily. The supplier will share in savings realized from an accepted VECP as provided in paragraph (h) below.
- b. *Definitions*
  - (1) *Value Engineering Change Proposal (VECP).* A proposal that:
    - (a) Requires a change to the instant contract;
    - (b) Results in savings to the instant contract; and
    - (c) Does not involve a change in:
      - (i) Deliverable end items only;
      - (ii) Test quantities due solely to results of previous testing under the instant contract; or
      - (iii) Contract type only.
  - (2) *Instant Contract.* The contract under which a VECP is submitted. It does not include additional contract quantities.

- (3) *Additional Contract Quantity.* An increase in quantity after acceptance of a VECP due to contract modification, exercise of an option, or additional orders (except orders under indefinite-delivery contracts within the original maximum quantity limitations).
  - (4) *Postal Service Costs.* Costs to the Postal Service resulting from developing and implementing a VECP, such as net increases in the cost of testing, operations, maintenance, logistics support, or property furnished. Normal administrative costs of processing the VECP are excluded.
  - (5) *Instant Contract Savings.* The estimated cost of performing the instant contract without implementing a VECP minus the sum of (a) the estimated cost of performance after implementing the VECP and (b) Postal Service costs.
  - (6) *Additional Contract Savings.* The estimated cost of performance or delivering additional quantities without the implementation of a VECP minus the sum of (a) the estimated cost of performance after the VECP is implemented and (b) Postal Service cost.
  - (7) *Supplier's Development and Implementation Costs.* Supplier's cost in developing, testing, preparing, and submitting a VECP. Also included are the supplier's cost to make the contractual changes resulting from the Postal Service acceptance of the VECP.
- c. *Content.* A VECP must include the following:
- (1) A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, the effect of the change on the end item's performance, and any pertinent objective test data.
  - (2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.
  - (3) A separate, detailed cost estimate for (a) the affected portions of the existing contract requirement and (b) the VECP. The cost reduction associated with the VECP must take into account the supplier's allowable development and implementation costs.
  - (4) A description and estimate of costs the Postal Service may incur in implementing the VECP, such as test and evaluation and operating and support costs.
  - (5) A prediction of any effects the proposed change would have on Postal Service costs.
  - (6) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

- (7) Identification of any previous submissions of the VECP to the Postal Service, including the dates submitted, purchasing offices, contract numbers, and actions taken.
- d. *Submission.* The supplier must submit VECPs to the contracting officer.
- e. *Postal Service Action*
- (1) The contracting officer will give the supplier written notification of action taken on a VECP within 60 days after receipt. If additional time is needed, the contracting officer will notify the supplier, within the 60-day period, of the expected date of a decision. The Postal Service will process VECPs expeditiously but will not be liable for any delay in acting upon a VECP.
- (2) If a VECP is not accepted, the contracting officer will so notify the supplier, explaining the reasons for rejection.
- f. *Withdrawal.* The supplier may withdraw a VECP, in whole or in part, at any time before its acceptance.
- g. *Acceptance*
- (1) Acceptance of a VECP, in whole or in part, will be by execution of a supplemental agreement modifying this contract and citing this clause. If agreement on price (see paragraph h below) is reserved for a later supplemental agreement, and if such agreement cannot be reached, the disagreement is subject to the *Claims and Disputes* clause of this contract.
- (2) Until a VECP is accepted by contract modification, the supplier must perform in accordance with the existing contract.
- (3) The contracting officer's decision to accept or reject all or any part of a VECP is final and not subject to the *Claims and Disputes* clause or otherwise subject to litigation under the Contract Disputes Act of 1978 (41 U.S.C. 601-613).
- h. *Sharing.* If a VECP is accepted, the supplier's share is \_\_\_ percent of the contract savings. If options are included in the contract, the supplier's share for the additional quantity is \_\_\_ percent of the contract savings. The contract savings are calculated by subtracting the estimated cost of the performing the contract with the VECP, Postal Service costs, and the allowable development and implementation costs from the estimated cost of performing the contract with out the VECP. Profit is excluded when calculating contract savings. (Contracting officer inserts the negotiated percentage of shared savings. See 2.2.10.c. in the Postal Service *Interim Internal Purchasing Guidelines*.)
- i. *Data*
- (1) The supplier may restrict the Postal Service's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:
- "These data, furnished under the Value Engineering Incentive clause of contract, may not be disclosed outside the Postal Service or duplicated, used, or disclosed, in whole or in part, for



any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Postal Service's right to use information contained in these data if it has been obtained or is otherwise available from the supplier or from another source without limitation."

- (2) If a VECP is accepted, the supplier hereby grants the Postal Service unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Postal Service will have the rights specified in the contract modification implementing the VECP and will appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Chapter 9 of the Postal Service *Interim Internal Purchasing Guidelines*.)

*Additional Paragraph j (see 2.2.10.h of the Guidelines)*

- j. *Subcontracts.* The supplier must include an appropriate value engineering incentive clause in any firm-fixed-price subcontract of \$100,000 or more. In calculating any price adjustment for savings under this contract, the supplier's allowable VECP development and implementation costs include any subcontractor's allowable development and implementation costs. Subcontract savings are subject to the sharing arrangements in paragraph h of this clause, and will be taken into account in determining the savings under this contract.

### **Clause 2-23 Reimbursement — Postal Service Testing (May 2005)** (2.2.1)

- a. The supplier will be charged at the rate of \$60 per work-hour for:
- (1) The total time, including round-trip travel time, lost by Postal Service representatives when the supplier is not ready for inspection at the time inspection and testing is requested by the supplier; and
  - (2) The total time, including round-trip travel time, required by Postal Service representatives for reinspection and retesting resulting from rejection.
- a. Other out-of-pocket expenses incurred by the Postal Service as a consequence of the activities described in this clause will be billed to the supplier.

### **Clause 2-24 (Reserved)**

### **Clause 2-25 Unpriced Options (May 2005)** (2.2.8)

The Postal Service may elect to exercise the unpriced option described in the schedule. The contracting officer may exercise this option at any time within

the period specified in the Schedule by giving written notice to the supplier. The price for this option will be negotiated at the time the option is exercised.

**Clause 2-26 Payment — Fixed Price (May 2005)** (2.4.3)

The Postal Service will pay the supplier, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for work or supplies delivered and accepted or services rendered and accepted, less any deductions provided for by the contract. Unless the contract otherwise specifies, payment will be made on partial deliveries accepted by the Postal Service if:

- a. The amount due on the deliveries warrants it; or
- b. The supplier requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price, whichever is less.

**Clause 2-27 Incentive Price Revision (May 2005)** (2.4.3)

- a. *General.* The supplies or services identified in the Schedule as items (*Contracting officer insert Schedule line numbers*) are subject to price revision in accordance with the provisions of this clause. In no event may the total final price of such items exceed \$ (*Contracting officer insert ceiling price*).
- b. *Definition.* Costs means allowable costs in accordance with Chapter 5 of the Postal Service *Interim Internal Purchasing Guidelines* in effect on the date of this contract.
- c. *Submission of Data*
  - (1) Within days (*Contracting officer insert number of days*) after the end of the month in which the supplier has delivered the last unit of supplies and completed the services called for by those items referred to in paragraph a above, the supplier must submit, in such form as the contracting officer may require:
    - (a) A detailed statement of all costs incurred up to the end of that month in performing all work under those items;
    - (b) An estimate of costs of such further performance, if any, as may be necessary to complete performance of all work with respect to them; and
    - (c) Any other relevant data the contracting officer may reasonably require.
  - (2) If the supplier fails to submit the data required within the time specified and it is later determined that the Postal Service has overpaid the supplier, the supplier must repay the excess to the Postal Service immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess will bear interest, computed from the date the data were due to the

- date of repayment, at the rate established in accordance with the *Interest* clause of this contract.
- d. *Price Revision.* Upon receipt by the contracting officer of the data required by paragraph c above, the parties will establish the total final price in accordance with the following:
- (1) On the basis of the information required by paragraph c above, together with any other pertinent information, the parties will negotiate the total final cost incurred or to be incurred for the supplies delivered (or services performed) and accepted by the Postal Service that are subject to price revision under this clause.
  - (2) The total final price will be established by applying to the total final negotiated cost an adjustment for profit or loss, as follows:
    - (a) If the total final negotiated cost is equal to the total target cost, the adjustment is the total target profit.
    - (b) If the total final negotiated cost is greater than the total target cost, the adjustment is the total target profit less \_\_\_\_\_ percent (*Contracting officer insert percent*) of the amount by which the total final negotiated cost exceeds the total target cost.
    - (c) If the final negotiated cost is less than the total target cost, the adjustment is the total target profit plus percent (*Contracting officer insert percent*) of the amount by which the total final negotiated cost is less than the total target cost.
  - (3) The total final price of the items specified in a above must be evidenced by a modification to this contract, signed by the supplier and the contracting officer. This price is not subject to revision, regardless of any changes in the cost of performing the contract, except to the extent that:
    - (a) The parties agree in writing, before the determination of total final price, to exclude specific elements of cost from this price and to a procedure for subsequent disposition of those elements; and
    - (b) Adjustments or credits are explicitly permitted or required by this or any other clause in this contract.
- e. *Adjusted Billing Price*
- (1) Pending execution of the contract modification described in subparagraph d.3 above, the supplier must submit invoices or vouchers in accordance with the billing price as provided in this paragraph e. The billing price will be the target price shown in this contract.
  - (2) If at any time it appears that the then current billing price will be substantially greater than the estimated final price, the parties must negotiate a reduction in the billing price. Similarly, the parties may negotiate an increase in the billing price by any or all of the difference between the target price and the ceiling price, upon the supplier's submission of factual data showing that final

- cost under this contract will be substantially greater than the target cost.
- (3) Any billing price adjustment must be reflected in a contract modification and will not affect the determination of the total final price under paragraph d above. After the contract modification establishing the total final price is executed, the total amount paid or to be paid on all invoices or vouchers must be adjusted to reflect the total final price, and any resulting additional payments, refunds, or credits must be made promptly.
- f. *Limitations on Payments.* This paragraph f applies until final price revision under this contract has been completed.
- (1) Within 45 days after the end of each quarter of the supplier's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Postal Service under this contract, and for each quarter thereafter, the supplier must submit to the contracting officer a statement, cumulative from the beginning of the contract, showing:
    - (a) The total contract price of all supplies delivered (or services performed) and accepted by the Postal Service and for which final prices have been established;
    - (b) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Postal Service and for which final prices have not been established;
    - (c) The portion of the total target profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph f) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Postal Service for which final prices have not been established — increased or decreased in accordance with subparagraph d.2 above, when the amount stated under f.1(b) above differs from the aggregate target cost of the supplies or services; and
    - (d) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Postal Service (including amounts applied or to be applied to liquidate progress payments).
  - (2) Regardless of any provision of this contract authorizing greater payments, if on any quarterly statement the amount under f.1(d) above exceeds the sum due the supplier, as computed in accordance with f.1(a), (b) and (c) above, the supplier must immediately refund or credit to the Postal Service the amount of the excess. The supplier may, when appropriate, reduce this refund or credit by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated

- progress payment account consistent with the *Progress Payments* clause. The supplier must provide complete details to support any claimed reductions in refunds.
- (3) If the supplier fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Postal Service has overpaid the supplier, the supplier must repay the excess to the Postal Service immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess will bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the *Interest* clause.
- g. *Subcontracts*. No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis. The supplier must:
- (1) Insert in each subcontract other than a firm-fixed-price subcontract the substance of paragraph f above, and of this paragraph g, modified to omit mention of the Postal Service and to reflect the position of the supplier as purchaser and of the subcontractor as vendor; and
- (2) Include in each cost-reimbursement subcontract a requirement that each subcontract other than a firm-fixed-price subcontract contain the substance of paragraph f above and of this paragraph g modified as required by subparagraph g.1 above.
- h. *Disagreements*. If the supplier and the contracting officer fail to agree upon the total final price within 60 days (or within such other period as the contracting officer may specify) after the date on which the data required by paragraph c above are to be submitted, the contracting officer must promptly issue a decision in accordance with the *Claims and Disputes* clause.
- i. *Termination*. If this contract is terminated before the total final price is established, prices of supplies or services subject to price revision must be established in accordance with this clause for completed supplies and services accepted by the Postal Service and those supplies and services not terminated under a partial termination. All other elements of the termination must be resolved in accordance with other applicable clauses of this contract.
- j. *Equitable Adjustment Under Other Clauses*. If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment must be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit, or both. If the adjustment is made after the total final price is established, only the total final price may be adjusted.
- k. *Exclusion from Target Price and Total Final Price*. If any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, then neither any target price nor the total final price may include any amount for that purpose.

- l. *Separate Reimbursement.* If any clause of this contract expressly provides that the cost of performance of an obligation will be at Postal Service expense, that expense may not be included in any target price or in the total final price, but must be reimbursed separately.
- m. *Taxes.* As used in the *Federal, State, and Local Taxes* clause of this contract or in any other clause that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term contract price includes the total target price or, if it has been established, the total final price. When any of these clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the supplier to pay or bear the burden of certain taxes or duties, the increase or decrease will be made in the total target price or, if it has been established, in the total final price, so that it will not affect the supplier's profit or loss on this contract.
- n. *Provisioning and Options.* Parts, other supplies, or services that are to be furnished under this contract on the basis of a provisioning document or Postal Service option are subject to price revision in accordance with this clause. Any prices established for these parts, other supplies, or services under a provisioning document or Postal Service option will be treated as target prices. Target cost and profit covering these parts, other supplies, or services may be established separately, in the aggregate, or in any combination, as the parties may agree.

**Clause 2-28 Economic Price Adjustment — Labor and Materials  
(May 2005)**

(2.4.3)

- a. If at any time during the performance of this contract the rates of pay for labor or unit prices for materials set forth in the Schedule increase or decrease, the supplier must notify the contracting officer within 60 days or within such further period as may be approved in writing by the contracting officer, but in any event not later than final payment under the contract. The notice must include the supplier's proposal for an equitable adjustment in the contract unit prices to be negotiated in accordance with paragraph b below and must be accompanied by data, in such form as the contracting officer may require, explaining:
  - (1) The causes;
  - (2) The effective date; and
  - (3) The amount of the increase or decrease and of the supplier's proposal for an equitable adjustment.
- b. Promptly upon receipt of any notice and data described in paragraph a above, the supplier and the contracting officer will negotiate an equitable adjustment (and its effective date) in the contract unit prices to reflect any change in the cost of performance of this contract due to changes in rates of pay for labor or unit prices for materials set forth in the Schedule; provided, however, that negotiations may be postponed by the contracting officer until an accumulation of changes results in an

adjustment allowable under subparagraph c.5 below. The equitable adjustment, and its effective date, will be set forth in an amendment to this contract that also revises the rates of pay for labor or unit prices for materials set forth in the Schedule to reflect the increases or decreases. Pending agreement on, or determination of, any such adjustment and its effective date, the supplier shall continue performance.

- c. Notwithstanding any other provision of this clause, any price adjustments under this clause are subject to the following limitations:
- (1) There will be no adjustment for supplies whose production cost is not affected by a change in the rates of pay for labor or unit prices for materials set forth in the Schedule.
  - (2) There will be no adjustment other than for changes in the rates of pay for labor or unit prices of materials set forth in the Schedule.
  - (3) There will be no adjustment for any change in the quantities of labor or materials set forth in the Schedule for each item to be delivered.
  - (4) No upward adjustment will apply to supplies required by the delivery schedule to be delivered before the effective date of the adjustment but actually delivered later, unless the supplier's failure to deliver in accordance with the delivery schedule results from causes beyond the control and without the fault or negligence of the supplier within the meaning of the *Default* clause, in which case the contract will be amended to make an equitable extension of the delivery schedule.
  - (5) Except as provided in paragraph d below, there will be no adjustment for any change in rates of pay for labor or unit prices for materials that would not result in a net change of at least 3 percent of the then-current total contract price.
  - (6) The aggregate of the increases in any contract unit price made under this clause may not exceed percent (*Contracting officer insert percentage no higher than ten percent*) of the original contract unit price.
- d. If, after delivery of the last unit called for by this contract, either party requests negotiation pursuant to paragraph b above, the limitations of subparagraph c.5 above do not apply.
- e. The final invoice submitted under this contract must include a certification that the supplier has not experienced a decrease in rates of pay for labor or unit prices for materials set forth in the Schedule or that the supplier has given notice of all such decreases in compliance with paragraph a above.
- f. The contracting officer may examine the supplier's books, records, and other supporting data relevant to the cost of labor and materials during all reasonable times until the expiration of 3 years from the date of final payment under the contract.
- g. No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

**Clause 2-29 Economic Price Adjustment (Index Method) (May 2005)** (2.4.3)

Regardless of actual changes in the cost of labor and material during the performance period of this contract, price adjustments necessitated by such changes shall be made only as provided in this clause. The contracting officer shall place in the contract Schedule an adjustment formula that describes the elements that will be used to determine the adjusted contract price. The adjustment formula may identify some or all of the following as appropriate:

- (1) Contract line items, cycles, production runs or such other portion of the contract that will be subject to adjustment according to this clause;
- (2) Base unit price to be adjusted;
- (3) Portion of the base unit price subject to adjustment;
- (4) Index that will be used for the adjustment, paying particular attention to describe the index to avoid confusion over which release (i.e., preliminary, seasonally adjusted, subsequently revised, or final), issue, or date will be applicable;
- (5) Percent of the price governed by the chosen index;
- (6) Adjustment period;
- (7) Base period; and
- (8) Degree of specificity of the result (i.e., number of decimal places to be used).
- (9) Should the selected index be discontinued or substantially altered, both parties shall agree upon an appropriate replacement.

**Clause 2-30 Allowable Cost and Payment (May 2005)** (2.4.4)

- a. *Invoicing.* The Postal Service will make payments to the supplier when requested as work progresses, but not more than monthly, in amounts determined to be allowable by the contracting officer in accordance with Chapter 5 of the Postal Service *Interim Internal Purchasing Guidelines* in effect on the date of this contract, and the terms of this contract. The supplier must submit an invoice or voucher to the address specified in the Schedule, supported by a statement of claimed allowable costs of performing this contract, in such form and detail as the contracting officer may require.
- b. *Reimbursement*
  - (1) For the purpose of reimbursing allowable costs, the term costs includes only:
    - (a) Those recorded costs that, at the time of the request for reimbursement, the supplier has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;



- (b) When the supplier is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for:
    - (i) Materials issued from the supplier's inventory and placed in the production process for use on the contract;
    - (ii) Direct labor;
    - (iii) Direct travel;
    - (iv) Other direct in-house costs; and
    - (v) Properly allocable and allowable indirect costs, as shown in the records maintained by the supplier for purposes of obtaining reimbursement under Postal Service contracts.
  - (c) The amount of progress payments that have been paid to the supplier's subcontractors under similar cost standards.
- (2) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph e below, allowable indirect costs under this contract will be obtained by applying indirect cost rates established in accordance with paragraph c below.
  - (3) Any statements in specifications or other documents incorporated by reference in this contract that designate performance of services or furnishing of materials at the supplier's expense or at no cost to the Postal Service will be disregarded for purposes of cost reimbursement under this clause.
- c. *Final Indirect Cost Rates*
- (1) Final annual indirect cost rates and the appropriate bases will be established in accordance with Chapter 5 of the Postal Service *Interim Internal Purchasing Guidelines* in effect for the period covered by the indirect cost rate proposal.
  - (2) The supplier must, within 90 days after the end of each of its fiscal years, or by a later date approved by the contracting officer, submit to the contracting officer or contracting officer's representative proposed final indirect cost rates for that period and supporting cost data specifying the contract and/or subcontract to which the rates apply. The proposed rates must be based on the supplier's actual cost experience for that period. The contracting officer or contracting officer's representative and the supplier must establish the final indirect cost rates as promptly as practical after receipt of the supplier's proposal.
  - (3) Agreement on final indirect cost rates must be set forth in a written understanding. The understanding may not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution. The understanding must specify:
    - (a) The agreed upon final annual indirect cost rates;

- (b) The bases to which the rates apply;
  - (c) The periods for which the rates apply;
  - (d) Any specific indirect cost items treated as direct costs in the settlement; and
  - (e) The affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates.
- (4) Failure by the parties to agree on a final annual indirect cost rate will be a dispute within the meaning of the *Claims and Disputes* clause of this contract.
- d. *Billing Rates*. Until final annual indirect cost rates are established for any period, the Postal Service will reimburse the supplier at billing rates established by the contracting officer or the contracting officer's representative, subject to adjustment when the final rates are established. These billing rates:
  - (1) Must be the anticipated final rates; and
  - (2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.
- e. *Audit*. At any time or times before final payment, the contracting officer may have the supplier's invoices or vouchers and statements of cost audited. Any payment may be:
  - (1) Reduced by amounts found by the contracting officer not to constitute allowable costs; or
  - (2) Adjusted for prior overpayments or underpayments.
- f. *Final Payment*
  - (1) The supplier must submit a completion invoice or voucher, designated as such, promptly upon completion of the work, but not later than one year (or longer, as the contracting officer may approve in writing) from the completion date. Upon approval of that invoice or voucher, and upon the supplier's compliance with all terms of this contract, the Postal Service will promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
  - (2) The supplier must pay to the Postal Service any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the supplier or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the supplier has been reimbursed by the Postal Service. Reasonable expenses incurred by the supplier for securing refunds, rebates, credits, or other amounts are allowable costs if approved by the contracting officer. Before final payment under this contract, the supplier and each assignee whose assignment is in effect at the time of final payment must execute and deliver:
    - (a) An assignment to the Postal Service, in form and substance satisfactory to the contracting officer, of refunds, rebates,

- credits, or other amounts (including any interest) properly allocable to costs for which the supplier has been reimbursed by the Postal Service under this contract; and
- (b) A release discharging the Postal Service and its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except:
- (i) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;
  - (ii) Claims (including reasonable incidental expenses) based upon liabilities of the supplier to third parties arising out of the performance of this contract, but only if the claims are not known to the supplier on the date of the execution of the release, and only if the supplier gives notice of the claims in writing to the contracting officer within 6 years following the release date or notice of final payment date, whichever is earlier; and
  - (iii) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the supplier under the patent clauses of this contract, excluding, however, any expenses arising from the supplier's indemnification of the Postal Service against patent liability.

#### **Clause 2-31 Limitation of Cost (May 2005)**

(2.4.4)

- a. The parties estimate that the cost to the Postal Service for performing this contract, exclusive of any fee, will not exceed the estimated cost set forth in the Schedule, and the supplier agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within this estimated cost.
- b. Whenever the supplier has reason to believe that the costs it expects to incur in performing this contract in the next succeeding 60 days, when added to all costs previously incurred, will exceed the estimated cost then set forth in the Schedule, the supplier must notify the contracting officer in writing to that effect, giving its revised estimate of the total cost for performing the contract.
- c. Except as required by other provisions of this contract specifically citing and stated to be an exception to this clause, the Postal Service is not obligated to reimburse the supplier for costs incurred in excess of the estimated cost set forth in the Schedule, and the supplier is not obligated to continue performance (including actions under the *Termination* clause) or otherwise to incur costs in excess of that estimated cost, unless the contracting officer notifies the supplier in writing that the estimated cost has been increased. No notice, communication, or representation in any other form or from any person

other than the contracting officer may affect the estimated cost. In the absence of the specified notice, the Postal Service is not obligated to reimburse the supplier for any costs in excess of the estimated cost set forth in the Schedule, whether incurred during the course of the contract or as a result of termination. To the extent that the estimated cost set forth in the Schedule is increased, any costs incurred in excess of the estimated cost before the increase will be allowable to the same extent as if incurred afterwards, unless the contracting officer issues a termination or other notice directing that the increase is solely for the purpose of covering termination or other specified expenses.

- d. Change orders issued under the *Changes* clauses are not an authorization to exceed the estimated cost set forth in the Schedule, in the absence of a statement in the change order or other contractual modification increasing the estimated cost.
- e. If this contract is terminated or the estimated cost not increased, the Postal Service and the supplier must negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

#### **Clause 2-32 Limitation of Funds (May 2005)**

(2.4.4)

- a. The parties estimate that the cost to the Postal Service for performing this contract will not exceed the estimated cost set forth in the Schedule, and the supplier agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within this estimated cost.
- b. The amount presently available for payment and allotted to this contract, the items covered by this amount, and the period of performance it is estimated the allotted amount will cover are specified in the Schedule. It is contemplated that from time to time additional funds will be allotted to this contract up to the full estimated cost set forth in the Schedule, exclusive of any fee. The supplier agrees to perform or have performed work on this contract up to the point at which the total amount paid and payable by the Postal Service under this contract approximates but does not exceed the total actually allotted to the contract.
- c. Whenever the supplier has reason to believe that the costs it expects to incur in performing this contract in the next succeeding 60 days (see note 1), when added to all costs previously incurred, will exceed 75 percent (see note 2) of the total amount then allotted to the contract, the supplier must notify the contracting officer in writing to that effect. The notice must state the estimated amount of additional funds required to continue performance for the period set forth in the Schedule. No later than 60 days (see note 1) before the end of the period specified in the Schedule, the supplier must advise the contracting officer in writing as to the estimated amount of additional funds, if any, that will be required for the timely performance of the work under the contract or for such further period as may be specified in the

Schedule or otherwise agreed to by the parties, If, after this notification, additional funds are not allotted by the end of the period set forth in the Schedule or an agreed date substituted therefore, the contracting officer will, upon written request by the supplier, terminate this contract on that date, under the *Termination* clause. If the supplier, exercising reasonable judgment, estimates that the funds available will allow it to continue to discharge its obligations for a period extending beyond that date, the supplier must specify the later date in the request, and the contracting officer, in the contracting officer's discretion, may terminate the contract on that later date.

- d. Except as required by other provisions of this contract specifically citing and stated to be an exception to this clause, the Postal Service is not obligated to reimburse the supplier for costs incurred in excess of the total amount from time to time allotted to the contract, and the supplier is not obligated to continue performance (including actions under the contract's *Termination* clause) or otherwise to incur costs in excess of that amount, unless the contracting officer notifies the supplier in writing that the amount has been increased, specifying an increased amount constituting the total amount then allotted to the contract. To the extent that the amount allotted exceeds the estimated cost set forth in the Schedule, the estimated cost must be correspondingly increased. No notice, communication, or representation in any other form or from any person other than the contracting officer may affect the amount allotted. In the absence of the specified notice, the Postal Service is not obligated to reimburse the supplier for any costs in excess of the total amount then allotted, whether incurred during the course of the contract or as a result of termination. To the extent that the amount allotted is increased, any costs incurred in excess of the amount previously allotted will be allowable to the same extent as if incurred afterwards, unless the contracting officer issues a termination or other notice directing that the increase is solely for the purpose of covering termination or other specified expenses.
- e. Change orders issued under the *Changes* clause are not an authorization to exceed the amount allotted in the Schedule, in the absence of a statement in the change order or other contractual modification increasing the amount allotted.
- f. Nothing in this clause affects the right of the Postal Service to terminate this contract. If the contract is terminated, the Postal Service and the supplier must negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.
- g. If sufficient funds are not allotted to this contract to allow completion of the work contemplated, the supplier will be entitled to a percentage of the fee set forth in the Schedule equivalent to the percentage of completion of the work contemplated by this contract.

**Note:**

1. May be varied by contracting officer from 30 to 90 days.
2. May be varied by contracting officer from 75 to 85 percent.

**Clause 2-33 Cost Contract — No Fee (May 2005)** (2.4.4)

- a. The Postal Service will not pay the supplier a fee for performing this contract.
- b. After paying 80 percent of the total estimated cost shown in the Schedule, the contracting officer may withhold further payment of allowable costs until a reserve is set aside in an amount that the contracting officer considers necessary to protect the Postal Service's interest. This reserve may not exceed one percent of the total estimated cost shown in the Schedule or \$100,000 (see note), whichever is less.

**Note:** May be changed by the contracting officer to \$10,000 in contracts with nonprofit organizations.

**Clause 2-34 Cost-Sharing Contract — No Fee (May 2005)** (2.4.4)

- a. The Postal Service will not pay the supplier a fee for performing this contract.
- b. After paying 80 percent of the Postal Service share of the total estimated cost of performance shown in the Schedule, the contracting officer may withhold further payment of allowable costs until a reserve is set aside in an amount that the contracting officer considers necessary to protect the Postal Service's interest. This reserve may not exceed one percent of the Postal Service's share of total estimated cost shown in the Schedule or \$100,000, whichever is less.

**Clause 2-35 Incentive Fee (May 2005)** (2.4.4)

- a. *General.* The Postal Service will pay the supplier for performing this contract a fee determined as provided in the contract.
- b. *Target Cost and Target Fee.* The target cost and target fee specified in the Schedule are subject to adjustment if the contract is modified in accordance with paragraph d below.
  - (1) Target cost means the estimated cost of this contract as initially negotiated, adjusted in accordance with paragraph d below.
  - (2) Target fee means the fee initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph d below.
- c. *Withholding Payment.* Normally, the Postal Service will pay the fee to the supplier as specified in the Schedule. However, when the contracting officer considers that performance or cost indicates that the supplier will not achieve target, the Postal Service will pay on the basis of an appropriate lesser fee. When the supplier demonstrates that performance or cost clearly indicates that the supplier will earn a fee significantly above the target fee, the Postal Service may, at the discretion of the contracting officer, pay on the basis of an appropriate

higher fee. After payment of 85 percent of the applicable fee, the contracting officer may withhold further payment of fee until a reserve is set aside in an amount that the contracting officer considers necessary to protect the Postal Service's interest. The reserve may not exceed 15 percent of the applicable fee or \$100,000, whichever is less.

- d. *Equitable Adjustments.* When the work under this contract is increased or decreased by a contract modification or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, must be stated in a supplemental agreement to this contract.
- e. *Fee Payable*
  - (1) The fee payable under this contract will be the target fee increased by cents (*contracting officer insert supplier's participation*) for every dollar that the total allowable cost is less than the target cost or decreased by cents (*contracting officer insert supplier's participation*) for every dollar that the total allowable cost exceeds the target cost. In no event will the fee be greater than percent or less than percent (*contracting officer insert percentages*) of the target cost.
  - (2) The fee will be subject to adjustment, to the extent provided in paragraph d above, and within the minimum and maximum fee limitations in subparagraph e.1 above, when the total allowable cost is increased or decreased as a consequence of:
    - (a) Payments made under assignments; or
    - (b) Claims excepted from the release required by subparagraph f.2 of the *Allowable Cost and Payment* clause.
  - (3) If this contract is terminated in its entirety, the portion of the target fee payable will not be subject to an increase or decrease as provided in this paragraph e. The termination will be accomplished in accordance with other applicable clauses of this contract.
  - (4) For the purpose of fee adjustment, total allowable cost does not include cost arising out of:
    - (a) Any of the causes covered by the *Excusable Delays* clause, to the extent that they are beyond the control and without the fault or negligence of the supplier or any subcontractor;
    - (b) The taking effect, after the target cost is negotiated, of a statute, court decision, written ruling, or regulation that results in the supplier's being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;
    - (c) Any direct cost attributed to the supplier's involvement in litigation as required by the contracting officer under a clause of this contract, including furnishing evidence and information requested under the *Notice and Assistance Regarding Patent and Copyright Infringement* clause;

- (d) The purchase and maintenance of additional insurance not in the target cost and required by the contracting officer, or claims for reimbursement for liabilities to third persons under the *Insurance* clause; or
  - (e) Any claim, loss, or damage resulting from a risk for which the supplier has been relieved of liability by the *Postal Service Property* clause.
- (5) All other allowable costs are included in total allowable cost for fee adjustment in accordance with this paragraph e, unless this contract specifically provides otherwise.
- f. *Contract Modification.* The total allowable cost and the adjusted fee determined as provided in this clause will be evidenced by a modification to this contract signed by the supplier and the contracting officer.
  - g. *Inconsistencies.* In the event of any inconsistencies between this clause and provisioning documents or Postal Service options under this contract, compensation for spare parts or other supplies and services ordered under those documents or options will be determined in accordance with this clause.

**Clause 2-36 Fixed Fee (May 2005)** (2.4.4)

- a. The Postal Service will pay the supplier for performing this contract the fixed fee specified in the Schedule.
- b. Payment of the fixed fee will be made as specified in the Schedule. After payment of 85 percent of the fixed fee, the contracting officer may withhold further payment of fee until a reserve is set aside in an amount that the contracting officer considers necessary to protect the Postal Service's interest. This reserve may not exceed 15 percent of the total fixed fee or \$100,000, whichever is less.

**Clause 2-37 Award Fee (May 2005)** (2.4.4)

The estimated cost for this contract is \$\_\_\_\_\_.

The base fee is \$\_\_\_\_\_.

The award fee is \$\_\_\_\_\_.

The total estimated cost plus base and award fees is \$\_\_\_\_\_.

This contract will be modified to reflect the award fee as award fee determinations are made.

The amount of award fee the supplier earns, if any, is based on a subjective evaluation by the Postal Service of the quality of the supplier's performance in accordance with the award fee plan. The Postal Service will determine the amount of award fee at the intervals stated in the award fee plan that is applicable to this contract. The Fee Determination Official (FDO), who is



identified in the award fee plan, will unilaterally determine the amount of award fee. The FDO's determination will be in writing to the supplier and is not subject to the *Disputes* clause. The Postal Service may unilaterally change the award fee plan at any time, and will provide such changes in writing to the supplier prior to the beginning of the applicable evaluation period. The supplier must submit a voucher or invoice for the earned award fee. Available award fee not earned during one period does not carry over to subsequent periods.

**Clause 2-38 Payment (Time-and-Materials and Labor-Hour Contracts) (May 2005)** (2.4.5)

The Postal Service will pay the supplier as follows upon submission of invoices or vouchers approved by the contracting officer:

a. *Hourly Rate*

- (1) The amounts will be computed by multiplying the appropriate hourly rates prescribed in the Schedule by the number or direct labor hours performed. The rates will include wages, indirect costs, general and administrative expenses, and profit. Fractional parts of an hour will be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals if approved by the contracting officer). The supplier will substantiate vouchers by evidence of actual payment and by individual daily job timecards, or other substantiation approved by the contracting officer. Promptly after receipt of each substantiated voucher, the Postal Service will, except as otherwise provided in this contract, and subject to the terms of paragraph e below, pay the voucher as approved by the contracting officer.
- (2) Unless otherwise prescribed in the Schedule, the contracting officer will withhold five percent of the amounts due under this paragraph a, but the total amount withheld may not exceed \$50,000. The amounts withheld will be retained until the execution and delivery of any required release by the supplier.
- (3) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule must not be varied by virtue of the supplier having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the contracting officer, overtime rates may be negotiated. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the contracting officer.

b. *Materials and Subcontracts*

- (1) Allowable costs of direct materials will be determined by the contracting officer in accordance with Chapter 5 of the Postal Service *Interim Internal Purchasing Guidelines* in effect on the date of this contract. Reasonable and allocable material handling

- costs may be included in the charge for material to the extent they are clearly excluded from the hourly rate.
- (2) The actual costs of subcontracts that are authorized under the *Subcontracts* clause of this contract are reimbursable; provided, they are consistent with subparagraph 3 following.
  - (3) To the extent possible, the supplier must:
    - (a) Obtain materials at the most advantageous prices available, with due regard to securing prompt delivery of satisfactory materials; and
    - (b) Take all available cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the supplier will promptly notify the contracting officer and give the reasons. Credit will be given to the Postal Service for cash and trade discounts, rebates, allowances, credits, salvage, the value of any appreciable scrap, commissions, and other amounts that have accrued to the benefit of the supplier, or would have accrued except for the fault or neglect of the supplier. The benefits lost without fault or neglect on the part of the supplier, or lost through no fault of the contracting officer, will not be deducted from gross costs.
- c. *Total Cost.* It is estimated that the total cost for performing this contract will not exceed the ceiling price set forth in the Schedule, and the supplier agrees to use its best efforts to perform the work within this ceiling price. Whenever the supplier has reason to believe that the hourly rate payments and material costs that will accrue in performing the contract in the next 60 days, if added to all other payments and costs previously accrued, will exceed the ceiling price, the supplier must notify the contracting officer, giving any revised estimate of the total price for performing this contract, with supporting reasons and documentation. Whenever the supplier has reason to believe that the total price for this contract will be greater than or substantially less than the then stated ceiling price, the supplier must notify the contracting officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. Whenever the Postal Service has reason to believe that the work required will be greater than or substantially less than the then stated ceiling price, the contracting officer will advise the supplier, giving a revised estimate of the total amount of effort to be required under the contract.
- d. *Ceiling Price.* The Postal Service is not obligated to pay the supplier any amount in excess of the ceiling price in the Schedule, and the supplier is not obligated to continue performance if to do so would exceed the ceiling price, until the contracting officer notifies the supplier in writing that the ceiling price has been increased, specifying a revised ceiling price for performance under the contract. When the ceiling price is increased, any hours expended or material costs incurred in excess

of the ceiling price before the increase will be allowable to the same extent as if expended or incurred afterwards.

- e. *Audit.* At any time or times before final payment, the contracting officer may request audit of the invoices or vouchers and substantiating material. Each payment previously made will be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by the contracting officer not to have been properly payable and will also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the supplier as the completion voucher or completion invoice and substantiating material, and upon compliance by the supplier with any required release and all other terms of this contract, the Postal Service will promptly pay any balance due. The completion invoice or voucher, and substantiating material, must be submitted by the supplier as promptly as practicable following completion of the work under this contract, but in no event later than one year (or such longer period as the contracting officer may approve in writing) from the date of completion.

**Clause 2-39 Ordering (May 2005)** (2.4.6)

- a. Supplies or services to be furnished under this contract will be ordered by authorized Postal Service credit card, or issuance of delivery orders, during the period and by the activities specified in the Schedule.
- b. Orders may be issued in writing, by written telecommunication, electronic data interchange (EDI), or orally. Oral orders, other than authorized Postal Service credit card orders, must be confirmed in writing. Orders sent by mail are considered issued when placed in the mail.
- c. The supplier must report to the contracting officer in the format and intervals specified in the Schedule all orders charged to an authorized Postal Service credit card.
- d. All orders are subject to the terms and conditions of this contract. If there is any conflict between an order and this contract, the contract is controlling.

**Clause 2-40 Delivery-Order Limitations (May 2005)** (2.4.6)

- a. When the Postal Service requires supplies or services covered by this contract in an amount less than \_\_\_\_\_ (*Contracting officer insert minimum dollar amount or quantity*), the Postal Service is not obligated to purchase, and the supplier is not obligated to furnish, those supplies or services under this contract.
- b. The supplier is not obligated to honor:
  - (1) Any order for a single item in excess of \_\_\_\_\_ (*Contracting officer insert maximum dollar amount or quantity*);

- (2) Any order for a combination of items in excess of \_\_\_\_\_  
(*Contracting officer insert maximum dollar amount or quantity*); or
  - (3) A series of orders from the same ordering office in the course of \_\_\_\_\_days (*Contracting officer specify*) that together call for quantities exceeding the limitations stated in subparagraph b.1 or b.2 above.
- c. If this is a requirements contract, the Postal Service is not required to order a part of any one requirement from the supplier if that requirement exceeds the limitations stated in paragraph b above.
  - d. If it is the supplier's intent not to honor an order received that exceeds the limitations stated in paragraph b above, the supplier must return the order to the ordering office within \_\_\_\_\_days (*Contracting officer specify*) after issuance, with a written notice rejecting the order and giving the reasons; the Postal Service may then obtain the supplies or services from another source. If the supplier does not return the order with a notice of rejection as required, the supplier must honor the order as issued.

**Clause 2-41 Definite Quantity (May 2005)** (2.4.6)

- a. This is a definite-quantity contract. The Postal Service will order the quantity of supplies or services specified in the Schedule, and the supplier must furnish those supplies or services when ordered. Delivery or performance must be made at locations designated in orders issued in accordance with the *Ordering* clause and the contract Schedule. There is no limit on the number of orders that may be issued, unless specified in the *Delivery-Order Limitations* clause or in the contract Schedule. Orders may require delivery to multiple destinations or performance at multiple locations.
- b. Any order issued during the effective period of this contract and not completed within that period must be completed by the supplier within the time specified in the order, and the rights and obligations of the supplier and the Postal Service with respect to the order will be the same as if the order were completed during the effective period of the contract.

**Clause 2-42 Indefinite Quantity (May 2005)** (2.4.6)

- a. This is an indefinite-quantity contract; the quantities of supplies or services specified in the Schedule are not purchased until ordered. If this contract resulted from multiple awards under a single solicitation for the same or similar supplies or services to two or more sources, some or all of the orders issued will be subject to the competitive procedures described in this contract.
- b. Delivery or performance must be as directed in orders issued in accordance with the *Ordering* clause and the contract Schedule. The supplier must furnish to the Postal Service, when ordered, the supplies

or services specified in the Schedule up to and including the quantity designated in the Schedule as the maximum. The Postal Service must order at least the quantity of supplies or services designated in the Schedule as the minimum. There is no limit on the number of orders that may be issued, unless specified in the *Delivery-Order Limitations* clause or in the contract Schedule. Orders may require delivery to multiple destinations or performance at multiple locations.

- c. Any order issued during the effective period of this contract and not completed within that period must be completed by the supplier within the time specified in the order, and the rights and obligations of the supplier and the Postal Service with respect to the order will be the same as if the order were completed during the effective period of the contract.

### **Clause 2-43 Requirements (May 2005)**

(2.4.6)

- a. This is a requirements contract for supplies or services described in the Schedule for the period specified. The supplies or services are not purchased until ordered. If the Postal Service's requirements do not result in orders in the quantities described as estimated or maximum in the Schedule, that fact may not be the basis for an equitable price adjustment unless specifically provided elsewhere in this contract.
- b. Delivery or performance must be as directed in orders issued in accordance with the *Ordering* clause and the contract Schedule. The supplier must furnish to the Postal Service, when ordered, the supplies or services specified in the Schedule, subject to any limitations in the *Delivery-Order Limitations* clause or in the contract Schedule. Orders may require delivery to multiple destinations or performance at multiple locations.
- c. Except as otherwise provided in this contract, the Postal Service must order from the supplier all the supplies or services specified in the Schedule that are required to be purchased by the activity or activities identified in the *Ordering* clause or the Schedule.
- d. The Postal Service is not required to purchase from the supplier requirements in excess of any limit on total orders under this contract.
- e. If the Postal Service urgently requires delivery or performance before the earliest date specified under this contract, and if the supplier will not accept an order providing for the accelerated delivery or performance, the Postal Service may purchase the urgently required supplies or services from another source.
- f. Any order issued during the effective period of this contract and not completed within that period must be completed by the supplier within the time specified in the order, and the rights and obligations of the supplier and the Postal Service with respect to the order will be the same as if the order were completed during the effective period of the contract.

*Alternate Paragraph c. (see 2.4.6)*

*c. The estimated quantities are not the total requirements of the activities specified in the Ordering clause or the Schedule, but are estimates of either specified portions of requirements or of requirements in excess of the quantities that the activities can themselves furnish within their own capabilities. Except as this contract otherwise provides, the Postal Service must order from the supplier either the portion of a designated activity's requirements for supplies and services specified in the Schedule or the requirements that exceed the quantities the activity can itself furnish within its own capabilities.*

**Clause 2-44 Contract Definitization (May 2005)**

(2.4.9)

- a. A \_\_\_\_\_ (*Contracting officer insert type of contract contemplated*) definitive contract is contemplated. The supplier agrees to submit a fixed-price or cost-reimbursement proposal as appropriate, and to negotiate with the contracting officer the terms of a definite contract that will include:
- (1) All clauses required by the Postal Service *Interim Internal Purchasing Guidelines* on the date of execution of this letter contract;
  - (2) All clauses required by law on the date of the execution of the definitive contract; and
  - (3) Other mutually agreeable clauses, terms, and conditions.
- b. The schedule for definitizing this contract is as follows:
- (1) Proposal submission date:\_\_\_\_\_.
  - (2) Beginning of negotiations:\_\_\_\_\_.
  - (3) Definitization target date:\_\_\_\_\_.
- c. If agreement on a definitive contract to supersede this letter contract is not reached by the target date in paragraph b above or any extension of that date by the contracting officer, the contracting officer may determine a reasonable price or fee in accordance with Chapter 5 of the Postal Service *Interim Internal Purchasing Guidelines* subject to appeal by the supplier as provided in the *Claims and Disputes* clause. In any event, the supplier must proceed with a completion of the contract, subject only to the *Limitation of Postal Service Liability* clause. After the date of the contracting officer's determination of price or fee, the contract will be governed by:
- (1) All clauses required by the Postal Service *Interim Internal Purchasing Guidelines* on the date of execution of this letter contract for either fixed-price or cost-reimbursement contracts as determined by the contracting officer under this paragraph c;
  - (2) All clauses required by law as of the date of the contracting officer's determination;
  - (3) Other clauses, terms, and conditions mutually agreed upon; and

- (4) To the extent consistent with c.1, 2, and 3 above, all other clauses, terms, and conditions included in this letter contract, except those that by their nature are applicable only to a letter contract.
- d. The price of the definitive contract resulting from this letter contract will in no event exceed \$\_\_\_\_\_. (See 2.4.9.d.2.(c) in the Guidelines for applicability of this paragraph d.)

**Clause 2-45 Execution and Commencement of Work (May 2005)** (2.4.9)

The supplier must indicate acceptance of this letter contract by signing three copies of the contract and returning them to the contracting officer not later than \_\_\_\_\_ (*Contracting officer insert date*). Upon acceptance by both parties, the supplier must proceed with performance of the work, including purchase of necessary materials.

**Clause 2-46 Limitation of Postal Service Liability (May 2005)** (2.4.9)

- a. The supplier is not authorized to make expenditures or to incur obligations in performing this contract exceeding \$ \_\_\_\_\_ (*Contracting officer insert limit*).
- b. The maximum amount for which the Postal Service will be liable if this contract is terminated is \$ \_\_\_\_\_ (*Contracting officer insert maximum liability*).

**Clause 2-47 Payment of Allowable Costs Before Definitization (May 2005)** (2.4.9)

- a. Pending the definitization of this letter contract, the Postal Service will promptly reimburse the supplier for all allowable costs under the contract at the following rates:
  - (1) 100 percent of approved costs representing progress payments to subcontractors under fixed-price subcontracts, but not exceeding 80 percent of the allowable costs of those subcontractors.
  - (2) 100 percent of approved costs representing cost reimbursement subcontracts, but not exceeding 85 percent of the allowable costs of those subcontractors.
  - (3) 85 percent of all other approved costs.
- b. To determine amounts payable to the supplier under this letter contract, allowable costs will be determined by the contracting officer in accordance with Chapter 5 of the Postal Service *Interim Internal Purchasing Guidelines* in effect on the date of this contract. The total reimbursement made under this clause may not exceed 85 percent of the maximum amount of the Postal Service liability stated in the *Limitation of Postal Service Liability* clause.

- c. Once each month (or more often if approved by the contracting officer), the supplier may submit to the contracting officer or an authorized representative, in such form and reasonable detail as may be required, an invoice or voucher supported by a statement of claimed allowable costs incurred by the supplier in performance of this contract.
- d. For the purpose of determining allowable costs, the term costs includes only:
  - (1) Those recorded costs that, at the time of the request for reimbursement, the supplier has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;
  - (2) When the supplier is not delinquent in payment of costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for:
    - (a) Materials issued from the supplier's inventory and placed in the production process for use on the contract;
    - (b) Direct labor;
    - (c) Direct travel;
    - (d) Other direct in-house costs; and
    - (e) Properly allocable and allowable indirect costs, as shown in the records maintained by the supplier for purposes of obtaining reimbursement under Postal Service contracts; and
  - (3) The amount of progress payments that have been paid to the supplier's subcontractors under similar cost standards.
- e. At any time or times before final payment, the contracting officer may have the supplier's invoices or vouchers and statements of cost audited. Any payment may be:
  - (1) Reduced by any amounts found by the contracting officer not to constitute allowable costs; or
  - (2) Adjusted for prior overpayments or underpayments.

**Clause 2-48 Most Favored Customer Pricing (May 2005)** (2.2.11)

During the term of this contract, prices for the goods and services required under this contract must be the equal to or lower than those offered the most favorable customer for similar quantities under comparable terms and conditions. When requested by the contracting officer, the supplier must show that the prices offered the Postal Service match or are less than those offered the supplier's most favored customers for those quantities under those terms and conditions, and such pricing data must be available for review by the Postal Service throughout the term of the contract. Any price reductions offered to other customers must be offered to the Postal Service if similar item quantities are involved.



**Clause 2-49 Cost/Price Reduction (May 2005)** (2.2.11)

During the term of this contract, the Postal Service reserves the right to negotiate price reductions for any good or service being purchased. During the term of this contract, the Postal Service expects the supplier to continually seek to improve production and performance processes and method, and to report on these efforts to the Postal Service. Additionally, price reductions may be sought by the Postal Service as a result of changes in market conditions, industry trends and indexes, or in cost/price indexes, and their impact on the supplier's cost elements or overall cost. The Postal Service may terminate this contract for convenience if it feels price reductions are warranted, but the parties cannot reach an agreement on such price reductions.

**Clause 3-1 Small, Minority, and Woman-owned Business Subcontracting Requirements (May 2005)** (3.2.3)

- a. All suppliers except small businesses must submit a subcontracting plan that is specific to this contract, and that separately addresses subcontracting with small, minority, and woman-owned businesses. A plan approved by the Postal Service must be included in and made a part of the contract. Lack of an approved plan may make the supplier ineligible for award. A subcontract is defined as any agreement (other than one involving an employer-employee relationship) entered into by a Postal Service supplier or subcontractor calling for supplies or services required for performance of the contract or subcontract.
- b. The supplier's subcontracting plan must include the following:
  - (1) Goals, in terms of percentages of the total amount of this contract that the supplier will endeavor to subcontract to small, minority, and woman-owned businesses. The supplier must include all subcontracts that contribute to contract performance, and may include a proportionate share of supplies and services that are normally allocated as indirect costs.
  - (2) A statement of the:
    - (a) Total dollars planned to be subcontracted under this contract; and
    - (b) Total of that amount planned to be subcontracted to small, minority, and woman-owned businesses.
  - (3) A description of the principal types of supplies and services to be subcontracted under this contract, identifying the types planned for subcontracting to small, minority, and woman-owned businesses.
  - (4) A description of the method used to develop the subcontracting goals for this contract.
  - (5) A description of the method used to identify potential sources for solicitation purposes and a description of efforts the supplier will make to ensure that small, minority, and woman-owned

businesses have an equitable opportunity to compete for subcontracts.

- (6) A statement as to whether the offer included indirect costs in establishing subcontracting goals for this contract and a description of the method used to determine the proportionate share of indirect costs to be incurred with small, minority, and woman-owned businesses.
  - (7) The name of the individual employed by the supplier who will administer the subcontracting program and a description of the individual's duties.
  - (8) Assurances that the supplier will require all subcontractors receiving subcontracts in excess of \$1,000,000 to adopt a plan similar to the plan agreed to by the supplier.
  - (9) A description of the types of records the supplier will maintain to demonstrate compliance with the requirements and goals in the plan for this contract. The records must include at least the following:
    - (a) Source lists, guides, and other data identifying small, minority, and woman-owned businesses;
    - (b) Organizations contacted in an attempt to locate sources that are small, minority, and woman-owned businesses;
    - (c) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating whether small, minority, or woman-owned businesses were solicited and if not, why not; and
    - (d) Records to support subcontract award data, including the name, address, and business size of each subcontractor.
- c. *Reports.* The supplier must provide reports on subcontracting activity under this contract on a calendar-quarter basis. The report must be one of the types described in Clause 3-2, *Participation of Small, Minority, and Woman-owned Businesses*.

### **Clause 3-2 Participation of Small, Minority, and Woman-owned Businesses (February 2005)**

(3.2.3)

- a. The policy of the Postal Service is to encourage the participation of small, minority, and woman-owned business in its purchases of supplies and services to the maximum extent practicable consistent with efficient contract performance. The supplier agrees to follow the same policy in performing this contract.
- b. Subject to the agreement of the supplier and the Postal Service, the supplier will report subcontracting activity on one of the following bases:
  - (1) Showing the amount of money paid to subcontractors during the reporting period;
  - (2) Showing subcontracting activity that is allocable to this contract using generally accepted accounting practices; or

- (3) A combination of the methods listed above.
- c. The supplier will submit a report to the contracting officer within 15 calendar days after the end of each calendar-year quarter, describing all subcontract awards to small, minority, or woman-owned businesses. The contracting officer may require more frequent reports.

**Clause 4-1 General Terms and Conditions (May 2005)** (4.2.7)

- a. *Inspection and Acceptance.* The supplier will only tender for acceptance those items that conform to the requirements of this contract. The Postal Service reserves the right to inspect or test supplies or services that have been tendered for acceptance. The Postal Service may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Postal Service must exercise its post acceptance rights (1) within a reasonable period of time after the defect was discovered or should have been discovered and (2) before any substantial change occurs in the condition of the items, unless the change is due to the defect in the item.
- b. *Assignment.* If this contract provides for payments aggregating \$10,000 or more, claims for monies due or to become due from the Postal Service under it may be assigned to a bank, trust company, or other financing institution, including any federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any assignment or reassignment must cover all amounts payable and must not be made to more than one party, except that assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in financing this contract. No assignment or reassignment will be recognized as valid and binding upon the Postal Service unless a written notice of the assignment or reassignment, together with a true copy of the instrument of assignment, is filed with:
  - (1) The contracting officer;
  - (2) The surety or sureties upon any bond; and
  - (3) The office, if any, designated to make payment, and the contracting officer has acknowledged the assignment in writing.
  - (4) Assignment of this contract or any interest in this contract other than in accordance with the provisions of this clause will be grounds for termination of the contract for default at the option of the Postal Service.
- c. *Changes*
  - (1) The contracting officer may, in writing, without notice to any sureties, order changes within the general scope of this contract in the following:
    - (a) Drawings, designs, or specifications when supplies to be furnished are to be specially manufactured for the Postal Service in accordance with them;

- (b) Statement of work or description of services;
  - (c) Method of shipment or packing;
  - (d) Places of delivery of supplies or performance of services;
  - (e) Delivery or performance schedule;
  - (f) Postal Service furnished property or facilities.
- (2) Any other written or oral order (including direction, instruction, interpretation, or determination) from the contracting officer that causes a change will be treated as a change order under this paragraph, provided that the supplier gives the contracting officer written notice stating (a) the date, circumstances, and source of the order and (b) that the supplier regards the order as a change order.
  - (3) If any such change affects the cost of performance or the delivery schedule, the contract will be modified to effect an equitable adjustment.
  - (4) The supplier's claim for equitable adjustment must be asserted within 30 days of receiving a written change order. A later claim may be acted upon — but not after final payment under this contract — if the contracting officer decides that the facts justify such action.
  - (5) Failure to agree to any adjustment is a dispute under Clause B-9, *Claims and Disputes*, which is incorporated into this contract by reference (see paragraph s). Nothing in that clause excuses the supplier from proceeding with the contract as changed.
- d. *Reserved*
  - e. *Reserved*
  - f. *Reserved*
  - g. *Invoices*
    - (1) The supplier's invoices must be submitted before payment can be made. The supplier agrees that submission of an invoice to the Postal Service for payment is a certification that:
      - (a) Any services being billed for have been performed in accordance with the contract requirements; and
      - (b) Any supplies for which the Postal Service is being billed have been shipped or delivered in accordance with the instructions issued by the contracting officer and that the supplies are in the quantity and of the quality designated in the contract.
    - (2) To ensure prompt payment, an original invoice (or electronic invoice, if authorized) must be submitted to the address designated in the contract to receive invoices for each destination and shipment. An invoice must contain:
      - (a) The supplier's name, remit to address (including ZIP+4®) and phone number;
      - (b) Unique invoice number and invoice date;

- (c) Any applicable task or delivery order number;
  - (d) A description of the supplies or services and the dates delivered or performed;
  - (e) The point of shipment or delivery;
  - (f) Quantity, unit of measure, unit price(s) and extension(s) of the items delivered;
  - (g) Shipping and payment terms, including GBL number if applicable; and
  - (h) Any additional information required by the contract.
- h. *Patent Indemnity.* The supplier will indemnify the Postal Service and its officers, employees and agents against liability, including costs for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, or copyright, arising out of the performance of this contract, provided the supplier is reasonably notified of such claims and proceedings.
- i. *Payment*
- (1) Payment will be made for items accepted by the Postal Service that have been delivered to the delivery destinations set forth in this contract. The Postal Service will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and 5 CFR 1315. Payments under this contract may be made by the Postal Service either by electronic funds transfer (EFT), check, or government credit card at the option of the Postal Service. When the EFT payment method is selected, the Postal Service will provide the supplier with Form 3881, Supplier's Electronic Funds Transfer Enrollment Form, at contract award. The supplier must complete the form and submit it to the designated Postal Service Accounting Service Center to ensure the proper routing of payments..
  - (2) In conjunction with any discount offered for early payment, time will be computed from the date of the invoice. For purposes of computing the discount earned, payment will be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.
- j. *Risk of Loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract will remain with the supplier until, and will pass to the Postal Service upon:
- (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin, or;
  - (2) Delivery of the supplies to the Postal Service at the destination specified in the contract, if transportation is f.o.b. destination.
- k. *Taxes.* The contract price includes all applicable federal, state, and local taxes and duties.
- l. *Termination for the Postal Service's Convenience.* The Postal Service reserves the right to terminate this contract, or any part hereof, for its

sole convenience. In the event of such termination, the supplier must immediately stop all work and must immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the supplier will be paid a percentage of the work performed prior to the notice of termination, plus reasonable charges the supplier can demonstrate to the satisfaction of the Postal Service using its standard record keeping system, have resulted from the termination. The supplier will not be required to comply with the cost accounting standards and principles for this purpose. This paragraph does not give the Postal Service any right to audit the supplier's records. The supplier will not be paid for any work performed or costs incurred which reasonable could have been avoided.

- m. *Termination for Default.* The Postal Service may terminate this contract, or any part hereof, for default by the supplier, or if the supplier fails to provide the Postal Service, upon request, with adequate assurances of future performance. In the event of termination for default, the Postal Service will not be liable to the supplier for any amount for supplies or services not accepted, and the supplier will be liable to the Postal Service for any and all rights and remedies provided by law. The debarment, suspension, or ineligibility of the supplier, its partners, officers, or principal owners under the Postal Service's procedures (see 39 CFR Part 601) may constitute an act of default under this contract, and such act will not be subject to notice and cure pursuant to any termination of default provision of this contract. If it is determined that the Postal Service improperly terminated this contract for default, such termination will be deemed a termination for convenience.
- n. *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract will pass to the Postal Service upon acceptance, regardless of when or where the Postal Service takes physical possession.
- o. *Warranty.* The supplier warrants and implies that the items delivered under this contract are merchantable and fit for the use for the particular purpose described in this contract.
- p. *Limitation of Liability.* Except as otherwise provided by an express or implied warranty, the supplier will not be liable to the Postal Service for consequential damages resulting from any defect or deficiencies in accepted items.
- q. *Other Compliance Requirements.* The supplier will comply with all applicable Federal, State, and local laws, executive orders, rules and regulations applicable to its performance under this contract.
- r. *Order of Precedence.* Any inconsistencies in this solicitation or contract will be resolved by giving precedence in the following order; (1) the schedule of supplies and services; (2) the Assignment, Disputes, Payments, Invoice, Other Compliances and Compliance with Laws Unique to the Postal Service Contracts paragraphs of this clause; (3) the clause at 4-2 *Contract Terms and Conditions Required to Implement Policies, Statutes or Executive Orders*; (4) addenda to this solicitation or contract, including any license agreements for computer

software; (5) solicitation provisions if this is a solicitation; (6) other paragraphs of this clause; (7) Form 8203; (8) other documents, exhibits, and attachments, and (9) the specifications.

- s. *Incorporation by Reference.* Wherever in this solicitation or contract a standard provision or clause is incorporated by reference, the incorporated term is identified by its title, the provision or clause number assigned to it in the Postal Service *Interim Internal Purchasing Guidelines*, and its date. The text of incorporated terms may be found in Appendix A (for provisions), or Appendix B (for clauses) of the Guidelines, accessible at [www.usps.com/business](http://www.usps.com/business). The following clauses are incorporated in this contract by reference:
- (1) B-1, *Definitions* (May 2005)
  - (2) B-9, *Claims and Disputes* (May 2005)
  - (3) B-15, *Notice of Delay* (May 2005)
  - (4) B-16, *Suspensions and Delays* (May 2005)
  - (5) B-19, *Excusable Delays* (May 2005)
  - (6) B-30, *Permits and Responsibilities* (May 2005)
- t. *Shipping.* The supplier must deliver goods that meet the prescribed physical limitations of the current U.S. Postal Service *Domestic Mail Manual* either by its own personnel/equipment or by use of the United States Postal Service, unless the contracting officer grants a waiver of this requirement. The supplier is responsible for ensuring that the packing and packaging are sufficient to protect the goods and ensure usability upon receipt.

#### **Clause 4-2 Contract Terms and Conditions Required to Implement Policies, Statutes or Executive Orders (May 2005)**

(4.2.7)

- a. *Incorporation by Reference*
- (1) Wherever in this solicitation or contract a standard provision or clause is incorporated by reference, the incorporated term is identified by its title, the provision or clause number assigned to it in the Postal Service *Interim Internal Purchasing Guidelines*, and its date. The text of incorporated terms may be found in Appendix A (for provisions), or Appendix B (for clauses) of the Guidelines, accessible at [www.usps.com/business](http://www.usps.com/business). The following clauses are incorporated in this contract by reference:
    - (1) Clause 1-5, *Gratuities or Gifts* (May 2005)
    - (2) Clause B-9, *Claims and Disputes* (May 2005)
    - (3) Clause B-25, *Advertising of Contract Awards* (May 2005)
    - (4) Clause 9-1, *Convict Labor* (May 2005)
    - (5) Clause 9-5, *Contract Work Hours and Safety Standards Act — Safety Standards* (May 2005)
  - (2) If checked, the following additional clauses are also incorporated in this contract by reference:

(Contracting officer will check as appropriate.)

- (1) Clause 1-1, *Privacy Protection* (May 2005) \_\_\_\_
- (2) Clause 1-6, *Contingent Fees* (May 2005) \_\_\_\_
- (3) Clause 1-9, *Preference for Domestic Supplies* (May 2005) \_\_\_\_
- (4) Clause 1-10, *Preference for Domestic Construction Materials* (May 2005) \_\_\_\_
- (5) Clause 3-1, *Small, Minority, and Woman-owned Business Subcontracting Requirements* (May 2005) \_\_\_\_
- (6) Clause 3-2, *Participation of Small, Minority, and Woman-owned Businesses* (May 2005) \_\_\_\_
- (7) Clause 9-2, *Contract Work Hours and Safety Standards Act — Overtime Compensation* (May 2005) \_\_\_\_
- (8) Clause 9-3, *Davis-Bacon Act* (May 2005) \_\_\_\_
- (9) Clause 9-6, *Walsh-Healey Public Contracts Act* (May 2005) \_\_\_\_
- (10) Clause 9-7, *Equal Opportunity* (May 2005) \_\_\_\_
- (11) Clause 9-10, *Service Contract Act* (May 2005) \_\_\_\_
- (12) Clause 9-11, *Service Contract Act — Short Form* (May 2005) \_\_\_\_
- (13) Clause 9-12, *Fair Labor Standards Acts and Services Contract Act — Price Adjustments* (May 2005) \_\_\_\_
- (14) Clause 9-13, *Affirmative Action for Handicapped Workers* (May 2005) \_\_\_\_
- (15) Clause 9-14, *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era* (May 2005) \_\_\_\_

b. *Examination of Records.*

- (1) *Records.* “Records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (2) *Examination of Costs.* If this is a cost-type contract, the supplier must maintain, and the Postal Service will have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination includes inspection at all reasonable times of the supplier’s plants, or parts of them, engaged in the performance of this contract.
- (3) *Cost or Pricing Data.* If the supplier is required to submit cost or pricing data in connection with any pricing action relating to this contract, the Postal Service, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, will have the right to examine and audit all of the supplier’s records, including computations and projections, related to:
  - (a) The proposal for the contract, subcontract, or modification;
  - (b) The discussions conducted on the proposal(s), including those related to negotiating;



- (c) Pricing of the contract, subcontract, or modification; or
  - (d) Performance of the contract, subcontract or modification.
- (4) *Reports.* If the supplier is required to furnish cost, funding or performance reports, the contracting officer or any authorized representative of the Postal Service will have the right to examine and audit the supporting records and materials, for the purposes of evaluating:
- (a) The effectiveness of the supplier's policies and procedures to produce data compatible with the objectives of these reports; and
  - (b) The data reported.
- (5) *Availability.* The supplier must maintain and make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a) through (d) of this clause, for examination, audit, or reproduction, until three years after final payment under this contract or any longer period required by statute or other clauses in this contract. In addition:
- (a) If this contract is completely or partially terminated, the supplier must make available the records related to the work terminated until three years after any resulting final termination settlement; and
  - (b) The supplier must make available records relating to appeals under the claims and disputes clause or to litigation or the settlement of claims arising under or related to this contract. Such records must be made available until such appeals, litigation or claims are finally resolved.

**Note:** (Note to contracting officers: Any contemplated changes to this paragraph (b.) may not be made before (1) consulting with assigned counsel and the Office of the Inspector General and (2) a deviation has been reviewed and approved by a higher level than the contracting officer who holds deviation approval authority. See 1.3.2.b in the Postal Service Interim Internal Purchasing Guidelines.)

### Clause 4-3 (Reserved)

### Clause 4-4 Nondisclosure (Professional Services) (May 2005) (4.5.3)

The supplier acknowledges that confidential information might be generated or made available during the course of performance of this agreement. In addition to the restrictions on disclosure established under the supplier's code of ethics, the supplier specifically agrees not to disclose any information received or generated under this contract, unless its release is approved in writing by the contracting officer. The supplier further agrees to assert any

privilege allowed by law and to defend vigorously Postal Service rights to confidentiality.

**Clause 4-5 Inspection of Professional Services (May 2005)** (4.5.3)

- a. The contracting officer may, at any time or place, inspect the services performed and the products, including documents and reports. No matter what type of contract is employed, and in addition to any specific standards of quality set out in this agreement, the contracting officer may reject any services or products that do not meet the highest standards of professionalism. No payment will be due for any services or products rejected under this clause.
- b. Acceptance of any product or service does not relieve the supplier of the duties imposed by supplier's code of professional ethics, and the supplier remains liable for the period allowed under federal law for claims by the United States, for any errors or omissions occurring during performance.

**Clause 4-6 Invoices (Professional Services) (May 2005)** (4.5.3)

- a. In addition to the information required elsewhere in this agreement, all invoices for services under this agreement must indicate in detail the following:
  - (1) Person performing service each day by hour and part of an hour.
  - (2) Services performed each day by hour and part of an hour.
  - (3) Rates and charges for each service so detailed.
  - (4) Individual expenses charged, if allowed under this agreement.
- b. Minimum charges for portions of an hour may be allowed, if such a charging practice has been disclosed before award of this agreement.

**Clause 4-7 Records Ownership (May 2005)** (4.5.3)

Notwithstanding any state law providing for retention of rights in the records, the supplier agrees that the Postal Service may, at its option, demand and take without additional compensation all records relating to the services provided under this agreement. The supplier must turn over all such records upon request but may retain copies of documents produced by the supplier.

**Clause 4-8 Key Personnel (May 2005)** (4.5.3)

- a. To the extent that the statement of work provides for services to be performed by key personnel, those services must be performed by the personnel identified in the supplier's proposal to perform them unless substitutes have been approved in writing by the contracting officer. Use of junior personnel, even under key personnel supervision (for

example, associates or student workers), is not authorized unless they are identified in the supplier's proposal by name or position, with a description of their duties.

- b. This agreement may be terminated if the key personnel named in the supplier's proposal become unavailable for any reason. If the unavailability of key personnel is not the fault of the supplier, the contracting officer may terminate by giving notice of termination. The supplier will be paid for service performed up to the date of termination. If the contracting officer finds that the supplier is at fault for the unavailability of key personnel, the agreement may be terminated for default.

#### **Clause 4-9 Inspection and Acceptance – Systems (May 2005)** (4.5.5)

- a. *System Acceptance Performance Criteria — Postal Service Testing.* The proposed system will be considered acceptable to the Postal Service when the Postal Service's personnel have verified that the system has been installed and made ready for use and the performance test has been conducted in accordance with the acceptance performance criteria specified. No system will be certified as ready for use until all equipment and software for that site, as specified on the delivery order, are ready for use.
- b. *Standard of Performance and Acceptance of System.* A standard of performance must be met before any system (equipment, software, or other material) is accepted by the Postal Service. These procedures also apply to replacement of substituted equipment, and software, or other material added or field modified after a successful performance trial has been completed on the system.
  - (1) The performance period begins when the supplier has certified that the system and software are ready for use and ends when the system has met the standard of performance period of 30 consecutive calendar days by operating at an effectiveness level of 95 percent or more.
  - (2) In the event the system does not meet the standard of performance during the initial 30 days, the test must continue on a day-by-day basis until the standard of performance is met for a total of 30 consecutive calendar days.
  - (3) If the system hardware or software fails to meet the standard of performance after 90 calendar days from the installation date, the Postal Service may, at its option, request a replacement or terminate the contract.
  - (4) The effectiveness level for a system (as a percentage) is computed by dividing the operational use time by the sum of that time plus system failure downtime and multiplying by 100.
  - (5) The effectiveness level for an added, field-modified, substituted, or replacement machine is a percentage figure. This figure is determined by dividing the operational use time of the machine by

- the sum of that time plus downtime resulting from equipment or software failure of the machine being tested and multiplying by 100.
- (6) Operational use time for performance testing of a system is defined as the accumulated time during which the system is in actual operation in accordance with the acceptance test plan.
  - (7) Operational use time for performance testing of a machine added, field-modified, substituted, or replaced is defined as the accumulated time during which the machine is in actual use in accordance with the acceptance test plan.
  - (8) System failure downtime is that period of time when any machine in the system is inoperable because of equipment or software failure.
  - (9) During a period of system downtime, the Postal Service may use operable equipment when such action does not interfere with maintenance of the inoperable equipment. The entire system will be considered down during such periods.
  - (10) Downtime for each incident begins at the time the Postal Service makes a bona fide attempt to contact the supplier's designated representative, at the prearranged contact point, and ends when the system or machine is again operating. Downtime excludes actual travel time required by the supplier's maintenance personnel in excess of two hours on the day the service was requested.
  - (11) As a basis for computing the effectiveness level, a minimum of 100 hours of operation use time for a system with productive or Postal Service-provided simulated work will be required during the performance period. However, in computing the effectiveness level, the actual number of operational hours must be used when in excess of the minimum of 100 hours.
  - (12) The Postal Service maintains appropriate daily records to satisfy the performance requirements and will notify the supplier, in writing, the date of the first day of a successful performance period.
  - (13) Equipment, software, or other material will not be accepted and payment will not be made until the standard of performance is met. The date of acceptance and payment begins the first day of a successful performance period.
  - (14) Operational use time and downtime will be measured in hours and whole minutes.
- c. *Acceptance Test Plan.* The offeror's proposal must provide a preliminary version (detailed outline) of an acceptance test plan. A completed plan must be submitted 5 working days after contract award. The Postal Service will review the plan within 10 working days after submission. The Postal Service reserves the right to disapprove the plan, and the offeror must correct unacceptable areas before resubmission. The approved acceptance test plan will form the basis for

testing during the performance period. The supplier-furnished plan must include rerunning those portions of the test demonstration applicable to the configuration. The plan must provide for running actual Postal Service work as it is available during the performance period. The execution of the test plan must meet the performance criteria specified in this contract.

d. *Inspection and Acceptance of Maintenance*

- (1) All services (includes services performed, materials furnished or used in performance or service, and workmanship in the performance of services) is subject to inspection and test by the Postal Service, to the extent practicable at all times and places during the term of the contract. The Postal Service must conduct inspections in such a manner as not to delay work.
- (2) If any services performed do not conform to the requirements of this contract, the Postal Service may require the supplier to perform the services again in conformity with the contract requirements at no additional increase in total contract price. When the services to be performed are such that the defect cannot be corrected by reperformance, the Postal Service may:
  - (a) Require the supplier to immediately take all necessary steps to ensure future performance of the services in conformity with the contract requirements;
  - (b) Reduce the contract price to reflect the reduced value of the services performed; or
  - (c) Terminate this part of the contract
- (3) In the event the supplier fails to promptly perform the services again or to take the necessary steps to ensure future performance of the services in conformity with the contract requirements, the Postal Service may terminate this contract for default as provided in the Default clause.
- (4) The supplier must provide and maintain an inspection system acceptable to the Postal Service covering the services to be performed. The supplier's records of all inspection work must be kept complete and must be available to the Postal Service during the term of this contract and for such longer period as may be specified elsewhere in this contract.

**Clause 4-10 Liquidated Damages — Industrial Supply or Service Items Not Ready for Use (May 2005)** (4.5.5)

If individual supply or service items are not ready for use or not delivered but the total system is operational, the supplier will be assessed liquidated damages for each individual item of \$ \_\_\_\_\_ (*Contracting officer insert amount*) for each day's delay or \_\_\_\_\_ (*Contracting officer insert fraction*) of the total monthly charges for that item, whichever is greater.

**Clause 4-11 Use of Hardware or Software Monitors (May 2005)** (4.5.5)

- a. The supplier must permit inclusion or attachment of such devices as the Postal Service may choose to employ for the purpose of examining or measuring the activity within the computer system. These devices include hardware monitors physically connected to the computer system and software monitors that may require portions of the computer system's control software to be displaced.
- b. The supplier may not prohibit the installation of these devices unless the particular device will cause significant or permanent damage to the computer system. The supplier must assist the Postal Service in identifying and locating device connections when requested by the Postal Service if the supplier provides the services to other customers. If attachments cause equipment failure, the Postal Service is liable for any damage, and any maintenance credit provisions contained in this contract do not apply.

**Clause 4-12 Site Preparation (May 2005)** (4.5.5)

- a. The supplier must furnish in writing site preparation specifications, including communications requirements, as part of the systems proposal. These specifications must be in such detail as to ensure that the system to be installed will operate in accordance with the requirements of this contract.
- b. At the request of the Postal Service and within one week after notification, the supplier must prepare, in cooperation with the Postal Service, a detailed site plan tailored to the Postal Service's facility. The detailed site plan supplements the general specifications furnished as part of the systems proposal.
- c. The Postal Service will prepare the site as its own expense in accordance with the supplier's specifications and will maintain these site requirements throughout the contract term.
- d. If any alterations or modifications in site preparation are required involving additional expense to the Postal Service and are due to incomplete or erroneous specifications of the detailed site plan provided by the supplier, those expenses will be assessed to the supplier.
- e. Unless specified otherwise in the supplier's proposal, the Postal Service will be responsible for purchasing, installation, and maintenance of nonsupplier communication media necessary for the remote transmission of data.
- f. The supplier must inspect the site and furnish the Postal Service an inspection report 15 days before the scheduled installation.

**Clause 4-13 Software License Warranty and Indemnification (May 2005)** (4.5.5)

- a. The supplier warrants that it has full power and authority to grant the rights contained in this contract with respect to the software without the consent of any other person. Neither the performance of the services by the supplier nor the license to and use by the Postal Service of the software and documentation (including copying) will in any way constitute an infringement or other violation of any copyright, trade secret, trademark, patent, invention, proprietary information, nondisclosure, or other rights of any third party.
- b. The supplier indemnifies and holds harmless (including reasonable attorney's fees) the Postal Service and its employees or agents against all liability to third parties arising from the negligence of the supplier or its agents and the license to or use by the Postal Service of the software, including but not limited to the violation of any third party's trade secrets, proprietary information, trademark, copyright, or patent rights in connection with the licensing of the software. The Postal Service may, at this option, conduct the defense in any third-party action, and the supplier promises fully to cooperate with this defense. This indemnification is limited to the software delivered to the Postal Service or as modified by the supplier, and does not cover third-party claims arising from modifications by the Postal Service not authorized by the supplier.
- c. If a third-party claim causes the Postal Service's quiet enjoyment and use of the software to be seriously endangered or disrupted, the supplier must either:
  - (1) Replace the software, without additional charge, by a compatible, functionally equivalent, and noninfringing product;
  - (2) Modify the software to avoid the infringement;
  - (3) Obtain a license for the Postal Service to continue use of the software for the term of this contract, and pay for any additional fee required for the license; or
  - (4) If none of these alternatives is possible even after the supplier's best efforts, return a pro rata portion of the license, or ten years, whichever is less.

**Clause 4-14 Software Development Warranty (May 2005)** (4.5.5)

If at any time during the 12-month period immediately following acceptance, the supplier or the Postal Service discovers defects or errors in the software or any respect in which the software fails to conform to the provisions of any other warranty contained in this contract, the supplier must, entirely at its own expense, promptly correct the defects, errors, or nonconformity by, among other things, supplying the Postal Service with corrective codes and making additions, modification, or adjustments to the package as may be necessary to keep the software in operating order in conformity with the warranties in this contract.

**Clause 4-15 Warranty Exclusion and Limitation of Damages (May 2005)** (4.5.5)

- a. Except as specifically provided in this contract, there are no warranties express or implied. In no event will the supplier be liable to the Postal Service for consequential damages, which are defined as:
  - (1) Any loss resulting from general or particular requirements and needs known to the supplier at the time of contracting that could not reasonably be prevented by cover or otherwise; and
  - (2) Injury to person or property in proximity resulting from any breach of warranty.
- b. The provisions of this clause do not apply to the supplier's obligation to indemnify the Postal Service from third-party claims.

**Clause 4-16 Substitution of Information Technology (May 2005)** (4.5.5)

This clause acknowledges that some of the contracted for equipment may not be readily available or may permanently go out of production. Based on the authority of this clause, the supplier may request a one-time or permanent substitution of one or more contract line items. Such requests must be made in writing to the contracting officer, with a copy to the COR.

The following conditions must be met:

- a. The replacement item(s) must meet or exceed all contract specifications that were applicable to the items being replaced.
- b. The replacement item(s) must be priced equal to, or less than, the item(s) being replaced.
- c. The replacement item(s) must be reviewed, and be determined to be acceptable by the Postal Service technical representative.
- d. The replacement item(s) must be approved in writing by the contracting officer and incorporated into the contract.

The supplier's request for a replacement may not exceed the required delivery time of any items. Upon formal acceptance of a replacement, the contracting officer may grant a day-to-day extension to the delivery schedule for the time the Postal Service took to approve the replacement. No extension may be granted in the case of unaccepted proposed replacements.

**Clause 4-17 Technology Enhancement (May 2005)** (4.5.5)

- a. *Definitions*
  - (1) Enhancement, replacement, and upgrade are used interchangeably throughout this clause.
  - (2) Cost to performance ration is a form of comparative measurement and means the contracts costs of a given item or configuration per a quantifiable unit of performance or capability,



- such as (but not limited to) storage capacity (in megabytes), speed (in megahertz), energy consumption efficiency, etc.
- b. The supplier must propose technology enhancement of information technology equipment, firmware, or software configurations being provided under this contract whenever product lines of newer technology become available that may save money, improve performance, or save energy. All proposed upgrades must meet the following requirements:
- (1) All mandatory requirements of the contract must continue to be met.
  - (2) Overall contract life cycle costs may not increase as a result of the upgrade.
  - (3) The proposed upgrade or enhancement will: (1) either afford a better cost to performance ration compared to existing contract offerings/configurations; or (2) at minimum, must result in at least equal operability, maintainability, reliability, and overall system performance while providing some additional benefit or advantage to the Postal Service.
  - (4) The replacement configuration proposal must be acceptable to the COR.
- c. As a minimum, the following information must be submitted by the supplier with each proposal:
- (1) A description of the difference between the existing contract requirement and the proposed change along with the comparative advantages and disadvantages of each.
  - (2) Suggested contract requirements which should be changed if the proposed technology enhancement is adopted.
  - (3) A complete pricing proposal that evidences the commerciality of the pricing. (The price for the upgraded product, or configuration, can be no greater than the standard commercial price of the replacement product less a discount factor equal at least to the discount afforded the Postal Service in the supplier's final proposal for the original, taking into account the age of the original product in its life cycle.
  - (4) An evaluation of the proposed change's effect on collateral costs, costs of related items, and costs of maintenance and operation.
  - (5) Timing as to when the modification adopting the technology enhancement must be issued to ensure the maximum benefit to the Postal Service.
  - (6) Identify any effect on the contract completion or delivery schedule.
  - (7) Any other information that may be required by the contracting officer.
- d. Technology enhancements, as contemplated by this clause, will not be added to the contract except by written, bilateral modification to the contract.

- e. The decision by the contracting officer to accept or reject any proposal under this contract is final and not subject to the *Disputes* clause.

**Clause 4-18 Information Technology Accessibility Standards (May 2005)** (4.5.5)

- a. Information technology purchased under this contract or order must conform to the applicable provisions of the Architectural and Transportation Barriers Compliance Board's Electronic and Information Technology Accessibility Standards (36 CFR part 1194) at the time of delivery, except when the contracting officer has advised that compliance is not required.
- b. At the time of delivery, the supplier must provide documentation of the commercial availability of accessibility features incorporating the standards of the applicable provisions of 36 CFR part 1194 for the commercial off-the-shelf products ordered under this contract.

**Clause 5-1 Price Reduction for Defective Cost or Pricing Data (May 2005)** (5.1.2)

- a. If any price, including profit or fee, negotiated in connection with this contract, or modification to this contract, or any cost reimbursable under this contract, was increased by any significant amount because:
  - (1) The supplier or subcontractor furnished cost or pricing data that were not complete, accurate, and current as of the date of the final agreement on price;
  - (2) A subcontractor or prospective subcontractor furnished the supplier cost or pricing data that were not complete, accurate, and current as of the date of final agreement on price; or
  - (3) Any of these parties furnished data of any description that were not accurate — then the price or cost will be reduced accordingly and the contract will be modified to reflect the reduction.
- b. Any reduction in the contract price under paragraph a above due to defective data from a prospective subcontractor that was not awarded the subcontract will be limited to the amount, plus applicable overhead and profit markup, by which the actual subcontract, or the actual cost to the supplier if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the supplier (provided that the actual subcontract price was not itself affected by defective cost or pricing data).

**Clause 5-2 Subcontractor Cost or Pricing Data (May 2005)** (5.1.2)

- a. Before awarding any subcontract or pricing any subcontract modification, the supplier must require the subcontractor to submit cost

or pricing data whenever cost or pricing data are required by Chapter 5 of the Postal Service *Interim Internal Purchasing Guidelines*.

- b. If the subcontractor is required to submit cost or pricing data under paragraph a above, then the supplier must insert the substance of this clause, including this paragraph b, in the subcontract.

**Clause 5-3 Predetermined Indirect Cost Rates (May 2005)** (5.2.12)

- a. Notwithstanding the *Allowable Cost and Payment* clause of this contract, allowable indirect costs under this contract will be determined by applying predetermined indirect cost rates established in accordance with Chapter 5 of the Postal Service *Interim Internal Purchasing Guidelines*.
- b. Predetermined rate agreements must be incorporated into the contract Schedule and must specify:
  - (1) The predetermined indirect cost rates;
  - (2) The bases to which the rates apply;
  - (3) The fiscal year (or other period) for which the rates apply; and
  - (4) The specific terms treated as direct costs or any changes in the items previously treated as direct costs.
- c. The predetermined indirect cost rate agreement may not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract.
- d. Allowable indirect costs for the period from the beginning of performance until the end of the supplier's fiscal year must be obtained using the predetermined indirect cost rates and the bases shown in the Schedule.

**Clause 6-1 Contracting Officer's Representative (May 2005)** (6.1.1)

The contracting officer will appoint a contracting officer's representative (COR), responsible for the day-to-day administration of the contract, who will serve as the Postal Service's point of contact with the supplier on all routine matters. A copy of the notice of appointment defining the COR's authority will be furnished to the supplier upon award of the contract.

**Clause 7-1 Patent Infringement Bond Requirements (May 2005)** (7.1.4)

The supplier may be required to submit a patent infringement bond in a penal amount set by the contracting officer and in a form acceptable to the Postal Service. Failure to submit an acceptable bond may be cause for termination of the contract for default.

**Clause 7-2 Additional Bond Security (May 2005)** (7.1.9)

If any surety furnishing a bond in connection with this contract becomes unacceptable to the Postal Service or fails to furnish reports on its financial condition as requested by the contracting officer, or if the contract price increases to the point where the security furnished becomes inadequate in the contracting officer’s opinion, the supplier must promptly furnish additional security as required to protect the interests of the Postal Service and of persons supplying labor or materials in performance of this contract.

**Clause 7-3 Deposit of Assets Instead of Surety Bonds (May 2005)** (7.1.9)

- a. If the supplier has deposited assets instead of furnishing sureties for any bond required under this contract and the assets are in the form of checks, currency, or drafts, the contracting officer will hold the assets in an account for the supplier’s benefit.
- b. Upon contract completion, the supplier’s funds will be returned as soon as possible, unless the contracting officer determines that part or all of the account is required to compensate the Postal Service for costs it incurs as a result of the supplier’s delay, default, or failure to perform. In such a case, the entire account will be available to compensate the Postal Service.

**Clause 7-4 Insurance (May 2005)** (7.2.2)

- a. During the term of this contract and any extension, the supplier must maintain at its own expense the insurance required by this clause. Insurance companies must be acceptable to the Postal Service. Policies must include all terms and provisions required by the Postal Service.
- b. The supplier must maintain and furnish evidence of workers’ compensation, employers’ liability insurance, and the following general public liability and automobile liability insurance:

	<b>Bodily Injury</b>	<b>Property Damage</b>
<b>General Liability</b>	\$100,000 per person*	Per occurrence (as set forth in the Schedule)
	\$500,000 per accident*	Aggregate (as set forth in the Schedule)
<b>Automobile Liability</b>	\$100,000 per person*	\$100,000 per occurrence
	\$500,000 per accident*	\$100,000 aggregate*

\*Unless modified in the Schedule

- c. Each policy must include substantially the following provision: “It is a condition of this policy that the company furnish written notice to the U.S. Postal Service 30 days in advance of the effective date of any reduction in or cancellation of this policy.”

- d. The supplier must furnish a certificate of insurance or, if required by the contracting officer, true copies of liability policies and manually countersigned endorsements of any changes. Insurance must be effective, and evidence of acceptable insurance furnished, before beginning performance under this contract. Evidence of renewal must be furnished not later than 5 days before a policy expires.
- e. The maintenance of insurance coverage as required by this clause is a continuing obligation, and the lapse or termination of insurance coverage without replacement coverage being obtained will be ground for termination for default.

**Clause 7-5 Errors and Omissions (May 2005)** (7.2.4)

- a. The supplier warrants that it is insured for \$200,000 (unless a greater amount is set forth in the Schedule) for errors and omissions per claim in the performance of this contract.
- b. Unless the supplier's policy is prepaid, noncancelable, and issued for a period at least equal to the term of this contract on an occurrence basis, the supplier must have the policy amended to include substantially the following provision:  
"It is a condition of this policy that the company furnish written notice to the U.S. Postal Service 30 days in advance of the effective date of any reduction in or cancellation of this policy."
- c. The supplier must furnish a certificate of insurance or, if required by the contracting officer, true copies of liability policies and manually countersigned endorsements of any changes. Insurance must be effective, and evidence of acceptable insurance furnished, before beginning performance under this contract. Evidence of renewal must be furnished not later than 5 days before a policy expires.

**Clause 7-6 Federal, State, and Local Taxes (May 2005)** (7.3.4)

- a. *Definitions*
  - (1) *Contract Date.* The effective date of this contract or modification.
  - (2) *All Applicable Federal, State, and Local Taxes and Duties.* 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.
  - (3) *After-imposed Federal Tax.* Any new or increased federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption is revoked or reduced during the contract period, on the transactions or property covered by this contract that the supplier 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.

- (4) *After-relieved Federal Tax.* 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 supplier is not required to pay or bear, or for which the supplier obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.
  - (5) *Local Taxes.* Includes taxes imposed by a possession of the United States or by Puerto Rico.
- b. The contract price includes all applicable federal, state, and local taxes and duties.
  - c. The contract price will be increased by the amount of any after-imposed federal tax, provided the supplier warrants in writing that no amount for a newly imposed federal excise tax or duty or rate increase was included in the contract price as contingency reserve or otherwise.
  - d. The contract price will be decreased by the amount of any after-relieved federal tax.
  - e. The contract price will be decreased by the amount of any federal excise tax or duty, except social security or other employment taxes, that the supplier is required to pay or bear, or does not obtain a refund of, through the supplier's fault, negligence, or failure to follow instructions of the contracting officer.
  - f. No adjustment will be made in the contract price under this clause unless the amount of the adjustment exceeds \$100.
  - g. The supplier must 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 must take appropriate action as the contracting officer directs.
  - h. The Postal Service will, without liability, furnish evidence appropriate to establish exemption from any federal, state, or local tax when the supplier requests such evidence and a reasonable basis exists to sustain the exemption.

**Clause 7-7 Federal, State, and Local Taxes (Short Form)  
(May 2005)**

(7.3.4)

Except as this contract may otherwise provide, the contract price includes all applicable federal, state, and local taxes and duties in effect on the contract date but does not include any taxes from which the Postal Service, the supplier, or this transaction is exempt. Upon request of the supplier, the Postal Service must furnish a tax exemption certificate or similar evidence of exemption from any tax not included in the contract price. Contract date means the date of the supplier's proposal or quotation, or, if no proposal or quotation, the date of this purchase order.

**Clause 7-8 Federal, State, and Local Taxes (Noncompetitive Contract) (May 2005)** (7.3.4)

a. *Definitions*

- (1) *Contract Date*. The effective date of this contract or modification.
  - (2) *All Applicable Federal, State, and Local Taxes and Duties*. 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.
  - (3) *After-imposed Tax*. Any new or increased federal, state or local tax or duty, or tax that was excluded on the contract date but whose exclusion was later revoked or amount of exemption reduced during the contract period, other than an excepted tax, on the transactions or property covered by this contract that the supplier is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.
  - (4) *After-relieved Tax*. Any amount of federal, state, or local tax or duty, other than excepted tax, that would otherwise have been payable on the transactions or property covered by this contract, but which the supplier is not required to pay or bear, or for which the supplier obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.
  - (5) *Excepted Tax*. Social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. Excepted tax does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this contract, or any tax assessed on the supplier's possession of, interest in, or use of property to which the Postal Service has title.
  - (6) *Local Taxes*. Includes taxes imposed by a possession of the United States or by Puerto Rico.
- b. Unless otherwise provided in this contract, the contract price includes all applicable federal, state, and local taxes and duties.
- c. The contract price will be increased by the amount of any after-imposed tax, or of any tax or duty specifically excluded from the contract price by a term or condition of this contract, that the supplier is required to pay or bear, including any interest or penalty, if the supplier states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the supplier's fault, negligence, or failure to follow instructions of the contracting officer.
- d. The contract price will be decreased by the amount of any after-relieved tax. The Postal Service will be entitled to interest received by the supplier incident to a refund of taxes, to the extent that such interest was earned after the supplier was paid by the Postal Service

for such taxes. The Postal Service will be entitled to repayment of any penalty refunded to the supplier, to the extent that the penalty was paid by the Postal Service.

- e. The contract price will be decreased by the amount of any federal, state, or local tax, other than exempted tax, that was included in the contract price and that the supplier is required to pay or bear, or does not obtain a refund of, through the supplier's fault, negligence, or failure to follow instructions of the contracting officer.
- f. No adjustment will be made in the contract price under this clause unless the amount of the adjustment exceeds \$100.
- g. The supplier must promptly notify the contracting officer of all matters relating to any federal, state, and local taxes and duties that reasonably may be expected to result in either an increase or decrease in the contract price, and the supplier must take appropriate action as the contracting officer directs. The contract price will be equitably adjusted to cover the costs of action taken by the supplier at the direction of the contracting officer, including any interest, penalty, and reasonable attorney's fees.
- h. The Postal Service will furnish evidence appropriate to establish exemption from any federal, state, or local tax when the supplier requests an exemption and states in writing that it applies to a tax excluded from the contract price, and a reasonable basis for the exemption exists.

**Clause 7-9 State and Local Taxes (Indefinite Delivery Equipment Rental) (May 2005)** (7.3.4)

Notwithstanding the terms of the *Federal, State, and Local Taxes* clause of this contract, the contract price excludes all state and local taxes levied on or measured by the supplier or rental price of leased equipment furnished under this contract. The supplier will state separately on its invoices any such taxes levied and paid, and the Postal Service agrees either to reimburse the supplier for the amounts of taxes paid or provide evidence necessary to sustain an exemption.

**Clause 8-1 Patent Rights (May 2005)** (8.2.2)

- a. *Definitions Used in This Clause*
  - (1) *Subject Invention.* Any invention or discovery, whether or not patentable, conceived or first actually reduced to practice in the course of or under this contract. The term includes, but is not limited to, any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, that is or may be patentable under the patent laws of the United States of America or any foreign country.



- (2) *Postal Service Purposes.* The right of the Postal Service to practice and have practiced (make or have made, use or have used, sell or have sold) any subject invention throughout the world by or on behalf of the U.S. Postal Service.
  - (3) *Contract.* Any contract, agreement, or other agreement or subcontract entered into, with, or for the benefit of the Postal Service.
  - (4) *Subcontract and Subcontractor.* Any subcontract or subcontractor of the supplier under this contract and any lower-tier subcontract or subcontractor under the contract.
  - (5) *To Bring the Invention to the Point of Practical Application.* To manufacture (in the case of a composition or product), practice (in the case of a process), or operate (in the case of a machine or system) under such conditions as to establish that the invention works and that its benefits are reasonably accessible to the public.
- b. *Rights Granted to the Postal Service.* The supplier agrees to grant the Postal Service title in and to each subject invention. Nothing contained in this *Patent Rights* clause grants any rights with respect to any invention other than a subject invention.
- c. *Subject Invention Disclosure and Reports*
- (1) With respect to subject inventions, the supplier must furnish the contracting officer the items described in (a) through (b) below:
    - (a) A written disclosure of each invention promptly after conception or first actual reduction to practice, whichever occurs first under this contract, sufficiently complete in technical detail to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose, operation, and (to the extent known) the physical, chemical, or electrical characteristics of the invention. When unable to submit a complete disclosure, the supplier must, within three months, submit a disclosure that includes all such technical detail then known; and unless the contracting officer authorizes a different period, submit all other technical detail necessary to complete the disclosure within three additional months.
    - (b) Before final settlement of this contract, a final report listing each invention, including all those previously listed, or certifying that there are no unreported inventions. (This final report and any interim report under (a) above must be in a form acceptable to the contracting officer.)
    - (c) Information in writing, as soon as practicable, of the date and identity of any (1) public use, sale, or publication of the invention made by or known to the supplier or (2) contemplated publication by the supplier.
    - (d) Upon request, any duly executed instruments and other papers (prepared by the Postal Service) necessary to (1)

- vest in the Postal Service the rights granted it under this clause and (2) enable the Postal Service to apply for and prosecute any patent application, in any country covering the invention, where the Postal Service has the right under this clause to file such an application.
- (e) Upon request, an irrevocable power of attorney to inspect and make copies of each United States patent application filed by, or on behalf of, the supplier covering the invention.
- (2) With respect to each subject invention in which the supplier has been granted rights, under license or otherwise, the supplier agrees to provide written reports at reasonable intervals, when requested by the Postal Service, as to:
- (a) The commercial use being or intended to be made of the invention;
  - (b) Royalties payable to the Postal Service; and
  - (c) The steps taken by the supplier to bring the invention to the point of practical application, or to make the invention available for licensing.
- d. *Subcontracts*
- (1) The supplier must, unless otherwise authorized or directed by the contracting officer, include a patent rights clause containing all the provisions of this *Patent Rights* clause except paragraph g below in any subcontract where a purpose of the subcontract is the conduct of experimental, developmental, research, or engineering work. If a subcontractor refused to accept this clause, the supplier:
    - (a) Must promptly submit a written report to the contracting officer setting forth the subcontractor's reasons for the refusal and any other pertinent information that may expedite disposition of the matter; and
    - (b) May not proceed with the subcontract without the written authorization of the contracting officer. The supplier may not, in any subcontract, or by using subcontract as consideration thereof, acquire any rights to subject inventions for its own use (as distinguished from rights required to fulfill its contract obligations to the Postal Service in the performance of this contract). Reports, instruments, and other information required to be furnished by a subcontractor to the contracting officer under a patent rights clause in a subcontract may, upon mutual consent of the supplier and the subcontractor (or by direction of the contracting officer), be furnished to the supplier for transmission to the contracting officer.
  - (2) The supplier, at the earliest practicable date, must notify the contracting officer in writing of any subcontract containing a patent rights clause, furnish to the contracting officer a copy of the subcontract, and notify the contracting officer when the

- subcontract is completed. The Postal Service is a third-party beneficiary of any subcontract granting rights to the Postal Service in subject inventions, and the supplier hereby assigns to the Postal Service all the rights that the supplier would have to enforce the subcontractor's obligations for the benefit of the Postal Service with respect to subject inventions. the supplier is not obligated to enforce the agreements of any subcontractor relating to the obligation of the subcontractor to the Postal Service regarding subject inventions.
- e. *Domestic Filing of Patent Applications by Supplier*
- (1) If, pursuant to paragraph h below, greater rights are granted in a subject invention to the extent that the supplier may claim the invention, the supplier must file in due form and within six months of the granting of these rights a United States patent application claiming the invention and furnish, as soon as practicable, the serial number and filing date of the application and the patent number of any resulting patent. As to each invention in which the supplier has been given greater rights, the supplier must notify the contracting officer at the end of six-month period if it has failed to file or cause to be filed a patent application covering the invention. If the supplier has filed or caused to be filed such an application within the six-month period, but elects not to continue prosecution of the application, it must notify the contracting officer not less than 60 days before the expiration of the response period. In either of these situations, the supplier forfeits all rights previously granted.
  - (2) The following statement must be included in the first paragraph of any patent application filed or patent issued on an invention made under a Postal Service contract or a subcontract under a Postal Service contract: "The invention herein described was made in the course of or under a contract or subcontract thereunder with the United States Postal Service."
- f. *Foreign Filing of Patent Applications*
- (1) If the supplier acquires greater rights in a subject invention and has filed a United States patent application claiming the invention, the supplier, or any party other than the Postal Service deriving rights from the supplier, has the exclusive rights, subject to the rights of the Postal Service, to file applications on the inventions in each foreign country within:
    - (a) Six months from the date a corresponding United States patent application is filed; or
    - (b) Such longer period as the contracting officer may approve.
  - (2) The supplier must notify the contracting officer of each foreign application filed and, upon written request of the contracting officer, furnish an English translation of the application and convey to the Postal Service the entire right title and interest in the invention in each foreign country in which an application has

not been filed within the time specified in subparagraph f.1. preceding.

g. *Withholding Payment*

- (1) Final payment under this contract will not be made until the supplier delivers to the contracting officer the reports required by paragraph c above and all information as to subcontracts required by paragraph d above.
- (2) If action is deemed warranted because of the supplier's performance under the *Patent Rights* clause of this contract or of other Postal Service contracts, the contracting officer may withhold from payment such sum as considered appropriate, not exceeding \$50,000, or ten percent of the amount of this contract, whichever is less, to be held as a reserve until the supplier delivers all the reports, disclosures, and information specified in paragraph c above.

h. *Supplier's Request for Greater Rights*. The supplier, at the time of first disclosing a subject invention pursuant to paragraph c.1(a) above, but not later than three months thereafter, may submit in writing to the contracting officer a request for rights by license or otherwise in any invention. The contracting officer will review the supplier's request for rights and will notify the supplier whether it is granted in whole or in part. Any rights granted the supplier will be subject to, but not necessarily limited to, the provisions of paragraph i following.

i. *Reservation of Rights to the Postal Service*

- (1) If rights in any subject invention are vested in or granted to the supplier, such rights will, as a minimum, be subject to an irrevocable, nonexclusive, and royalty-free license to practice and have practiced the invention throughout the world for Postal Service purposes, including its practice:
  - (a) In the manufacture, use, and disposition of any article or material;
  - (b) In the use of any method; or
  - (c) In the performance of any service, acquired by or for the Postal Service or with funds otherwise derived through the Postal Service.
- (2) If rights are vested in the supplier, the supplier agrees to, and grants to the Postal Service the rights to, require the granting of a license to an applicant under any such invention:
  - (a) On a nonexclusive basis, unless the supplier, a licensee, or an assignee demonstrates to the Postal Service, at its request, that (1) effective steps have been taken within 3 years after a patent issues on the invention to bring the invention to the point of practical application or (2) the invention has been made available for licensing on terms that are reasonable in the circumstances, or can show cause why the title should be retained for a further period of time; or

- (b) On terms that are reasonable in the circumstances to the extent that the invention is required for public use by Postal Service regulations or as may be necessary to fulfill health needs, or for other public purposes stipulated in the Schedule of this contract.
- j. *Right to Disclose Subject Inventions.* The Postal Service may duplicate and disclose reports and disclosures of subject inventions required to be furnished by the supplier pursuant to this *Patent Rights* clause.
- k. *Forfeiture of Rights in Unreported Subject Inventions.* The supplier forfeits to the Postal Service all rights in any subject invention that it fails to report to the contracting officer when or before it:
  - (1) Files or causes to be filed a United States or foreign application thereon; or
  - (2) Submits the final report required by c.1(b) above, whichever occurs later, provided, that the supplier will not forfeit rights in a subject invention if:
    - (a) Contending that the invention is not a subject invention, it nevertheless reports the invention and the facts pertinent to its contention to the contracting officer within the time specified in k.1 or k.2 above; or
    - (b) It establishes that failure to report was due entirely to causes beyond its control and without its fault or negligence. The supplier is deemed to hold any such forfeited subject invention, and the patent applications and patents pertaining to it, in trust for the Postal Service pending written assignment of the invention. The rights accruing to the Postal Service under this paragraph k are in addition to, and do not supersede, any other rights the Postal Service may have in relation to unreported subject inventions. Nothing contained in this clause may be construed to require the supplier to report any invention that is not in fact a subject invention.
- l. *Examination of Records Relating to Inventions.* The contracting officer, or an authorized representative, until the expiration of 3 years after final payment under this contract, has the right to examine any books, records, documents, and other supporting data of the supplier that the contracting officer or authorized representative reasonably deems directly pertinent to the discovery or identification of subject inventions or to compliance by the supplier with the requirements of this clause.

## Clause 8-2 Authorization and Consent (May 2005)

(8.2.3)

- a. *Research and Development Work.* The Postal Service authorizes and consents to all use and manufacture of any invention covered by a U.S. patent in the performance of research, development, or experimental work called for, or performed as a necessary activity, in the performance of this contract or any subcontract, at any tier.

- b. *Supplies and Construction.* The Postal Service authorizes and consents to all use and manufacture of any invention covered by a U.S. patent in performing this contract or subcontract, at any tier, that is:
  - (1) Embodied in the structure or composition of any article, the delivery of which is accepted by the Postal Service under this contract; or
  - (2) Used in machinery, tools, or methods whose use necessarily results from compliance by the supplier or subcontractor with (a) specifications or written provisions forming a part of this contract or specific written instructions given by the contracting officer directing the manner of performance.
- c. *Determination of Liability.* The liability of the Postal Service for patent infringement or for the unauthorized use of any patent will be determined by the provisions of any patent indemnity clause included in this contract or in any subcontract under this contract (at any tier) and by any indemnification or warranty (express or implied) otherwise provided by the supplier or subcontractor for similar products or services when supplied to commercial buyers.
- d. *Flowdown.* The supplier must include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts under this contract at any tier that are expected to exceed \$50,000.

**Clause 8-3 Notice and Assistance Regarding Patent and Copyright Infringement (May 2005)** (8.2.3)

- a. The supplier must report to the contracting officer, in writing, promptly and in reasonable detail, any notice, claim, or suit regarding patent or copyright infringement (or unauthorized use of a patent or copyright) based on performance of this contract.
- b. At the contracting officer's request, the supplier must furnish all evidence and information in its possession pertaining to the suit or claim. The evidence and information will be furnished at the expense of the Postal Service except when the supplier has agreed to indemnify the Postal Service.
- c. This clause must be included in all subcontracts under this contract, at any tier, over \$50,000.

**Clause 8-4 Patent Indemnity (May 2005)** (8.2.4)

- a. Except as provided in paragraph d below, the supplier indemnifies the Postal Service, its employees, and its agents against liability, including costs and fees, for patent infringement (or unauthorized use) arising from the manufacture, use, or delivery of supplies, the performance of service, the construction or alteration of real property, or the disposal of property by or for the Postal Service, if the supplies, service, or property

- (with or without relatively minor modifications) have been or are being offered for sale or use in the commercial marketplace by the supplier.
- b. The Postal Service must promptly notify the supplier of any claim or suit subject to the indemnity of paragraph a above alleging patent infringement or unauthorized use of a patent.
  - c. To the extent allowed by law, the supplier may participate in the defense of any suit to which this clause applies.
  - d. This indemnification does not apply to:
    - (1) Infringements for the unauthorized use of a private patent covered by this indemnity resulting from the contracting officer's specific written direction, compliance with which requires an infringement; or
    - (2) Infringement or unauthorized use claims that are unreasonably settled without the supplier's consent before litigation.
  - e. This clause must be included in all subcontracts under this contract, at any tier, over \$50,000.

**Clause 8-5 Waiver of Indemnity (May 2005)** (8.2.4)

- a. The Postal Service authorized the making and use, solely in performing the contract, of any invention covered by the below listed patents and waives indemnification by the supplier solely with respect to these patents.
- b. The specific patents to which this waiver applies are as follows:  
(*Contracting officer list each patent.*)

**Clause 8-6 Rights in Technical Data (May 2005)** (8.3.5)

- a. *Definitions*
  - (1) *Data.* Recorded information, regardless of the form or the medium on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.
  - (2) *Form, Fit, and Function Data.* Data relating to an item or process that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements; except that for computer software, it means data identifying origin, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulas, and machine-level flow charts of the computer software.

- (3) *Limited Rights Data.* Data other than computer software developed at private expense, including minor modifications of these data.
  - (4) *Technical Data.* Data other than computer software, of a scientific or technical nature.
  - (5) *Unlimited Rights.* The rights of the Postal Service in technical data and computer software to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform and display publicly, in any manner and for any purpose, and to have or permit others to do so.
- b. *Allocation of Rights*
- (1) Except as provided in paragraph c below regarding copyright, the Postal Service has unlimited rights in:
    - (a) Technical data first produced in the performance of this contract (except to the extent that they constitute minor modifications of data that are limited rights data);
    - (b) Form, fit, and function data delivered under this contract; except that all form, fit, and function data describing limited rights data must be delivered with unlimited rights;
    - (c) Technical data delivered under this contract that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and
    - (d) All other technical data delivered under this contract, unless provided otherwise in paragraph g below.
  - (2) The allocation of rights in any computer programs, data bases, and documentation will be determined by the *Rights in Computer Software* clause, except that limited rights data formatted as computer data bases for delivery to the Postal Service are to be treated as limited rights data under this *Rights in Technical Data* clause.
- c. *Copyright*
- (1) Unless provided otherwise in paragraph d below, the supplier may establish, without prior approval of the contracting officer, claim to copyright in scientific and technical articles based on, or containing, technical data first produced in the performance of this contract and published in academic, technical, or professional journals, symposia proceedings, or similar works. The prior, express written permission of the contracting officer is required to establish claim to copyright in all other technical data first produced in the performance of this contract. When making claim to copyright, the supplier must affix the applicable copyright notice of 17 U.S.C. 401 or 402. The supplier grants to the Postal Service and others acting on its behalf a paid-up, nonexclusive, irrevocable worldwide license in such copyright data to



- reproduce, prepare derivative works, distribute copies to the public, and perform and display the data publicly.
- (2) The supplier may not, without prior written permission of the contracting officer, incorporate in technical data delivered under this contract any data not first produced in the performance of this contract containing the copyright notice of 17 U.S.C. 401 or 402, unless the supplier identifies the data and grants to the Postal Service, or acquires on its behalf at no cost to the Postal Service, a license of the same scope as set forth in subparagraph c.1 above.
  - (3) The Postal Service agrees not to remove any copyright notices placed on data pursuant to this paragraph c, and to include such notices on all reproductions of the data.
- d. *Release, Publication, and Use of Technical Data*
- (1) The supplier has the right to use, release to others, reproduce, distribute, or publish any technical data first produced by the supplier in the performance of this contract, except to the extent these data may be subject to the federal export control or national security laws or regulations, or unless otherwise provided below in this paragraph d.2 following or expressly set forth in this contract.
  - (2) The supplier agrees that if it receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the supplier will treat the data in accordance with the markings unless otherwise specifically authorized in writing by the contracting officer.
- e. *Unauthorized Marking of Data*
- (1) If any technical data delivered under this contract are marked with the notice specified in paragraph g below and the use of such a notice is not authorized by this clause, or if the data bear any other unauthorized restrictive markings, the contracting officer may at any time either return the data or cancel the markings. The contracting officer must afford the supplier at least 30 days to provide a written justification to substantiate the propriety of the markings. Failure of the supplier to timely respond, or to provide written justification, may result in the cancellation of the markings. The contracting officer must consider any written justification by the supplier and notify the supplier if the markings are determined to be authorized.
  - (2) The foregoing procedures may be modified in accordance with Postal Service regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder. In addition, the supplier is not precluded from bringing a claim in connection with any dispute that may arise as the result of a final disposition of the matter by a court of competent jurisdiction.

- f. *Omitted or Incorrect Markings*
- (1) Technical data delivered to the Postal Service without limited rights notice authorized by paragraph g below, or the copyright notice required by paragraph c above, will be deemed to have been furnished with unlimited rights, and the Postal Service assumes no liability for the disclosure outside the Postal Service, the supplier may request, within six months (or a longer time approved by the contracting officer) after delivery of the data, permission to have notices placed on qualifying technical data at the supplier's expense, and the contracting officer may agree to do so if the supplier:
    - (a) Indemnifies the technical data to which the omitted notice is to be applied;
    - (b) Demonstrates that the omission of the notice was inadvertent;
    - (c) Establishes that the use of the proposed notice is authorized; and
    - (d) Acknowledges that the Postal Service has no liability with respect to the disclosure, use, or reproduction of any such data made before the addition of the notice or resulting from the omission of the notice.
  - (2) The contracting officer may also (a) permit correction at the supplier's expense of incorrect notices if the supplier identifies the technical data on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (b) correct any incorrect notices.
- g. *Protection of Limited Rights Data.* When technical data other than data listed in b.1(a), (b), and (c) above are specified to be delivered under this contract and qualify as limited rights data, if the supplier desires to continue protection of such data, the supplier must affix the following "Limited Rights Notice" to the data, and the Postal Service will thereafter treat the data, subject to paragraphs e and f above, in accordance with the Notice:

#### LIMITED RIGHTS NOTICE

These technical data are submitted with limited rights under Postal Service Contract No. (and subcontract \_\_\_\_\_, if appropriate). These data may be reproduced and used by the Postal Service with the express limitation that they will not, without written permission of the supplier, be used for purposes of manufacture or disclosed outside the Postal Service; except that the Postal Service may disclose these data outside the Postal Service for the following purposes, provided that the Postal Service makes such disclosure subject to prohibition against further use and disclosure:

- (1) Use (except for manufacture) by support service suppliers.
- (2) Evaluation by Postal Service evaluators.

- (3) Use (except for manufacture) by other suppliers participating in the Postal Service's program of which the specific contract is a part, for information and use in connection with the work performed under each contract.
- (4) Emergency repair or overhaul work.

This Notice must be marked on any reproduction of these data, in whole or in part.

- h. *Subcontracting.* The supplier has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the supplier's obligations under the contract. If a subcontractor refuses to accept terms affording the Postal Service such rights, the supplier must promptly bring such refusal to the attention of the contracting officer and may not proceed with subcontract award without further authorization.
- i. *Relationship to Patents.* Nothing contained in this clause implies a license to the Postal Service under any patent or may be construed as affecting the scope of any license or other right otherwise granted to the Postal Service.

**Clause 8-7 Withholding Payment (Technical Data and Computer Software) (May 2005)** (8.3.5)

- a. Final payment under this contract will not be made until the supplier delivers all data (technical data and computer software) required by the contract.
- b. If the contracting officer determines at any time that the supplier is not in full compliance with contract requirements for the delivery or, and rights in, any technical data or computer software, the contracting officer may withhold from payment up to \$50,000 as security for the supplier's performance. Withholding may not be made if the failure to make timely delivery or the deficiencies relating to delivered data arise out of causes beyond the control of the supplier and without fault or negligence of the supplier.
- c. Any amount withheld under this clause not finally paid to the supplier is mitigation of damages and in no way affects the right of the Postal Service to collect actual damages for breach of this contract, including profits from exploitation of any rights in data.
- d. Nonperformance by a subcontractor does not excuse any failure to comply with this clause.

**Clause 8-8 Additional Data Requirements (May 2005)** (8.3.5)

- a. In addition to the data specified elsewhere in this contract to be delivered, the contracting officer may, at any time during contract performance or within a period of 3 years after acceptance of all items

to be delivered under this contract, order any first generated or produced in the performance of this contract.

- b. The *Rights in Technical Data* and the *Rights in Computer Software* clauses, or other equivalent data clauses if included in this contract, apply to all data ordered under this *Additional Data Requirements* clause. Nothing in this clause requires the supplier to deliver any data specifically identified in this contract as not subject to this clause.
- c. When data are to be delivered under this clause, the supplier will be compensated for converting the data into the prescribed form for reproduction and delivery.
- d. The contracting officer may release the supplier from the requirements of this clause for specifically identified data items at any time during the three-year period set forth in paragraph a above.

### **Clause 8-9 Rights in Computer Software (May 2005)**

(8.3.6)

- a. *Definitions*
  - (1) *Computer Software*. Computer programs, computer data bases, and their documentation.
  - (2) *Form, Fit, and Function Data*. Data identifying origin, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulas, and machine-level flow charts of the computer software.
  - (3) *Restricted Computer Software*. Computer software developed at private expense that is a trade secret, is commercial or financial and confidential or privileged, or is published copyrighted computer software, including minor modifications of this computer software.
  - (4) *Restricted Rights*. The rights of the Postal Service in restricted computer software, as set forth in a Restricted Rights Notice as provided in paragraph g below, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract.
  - (5) *Unlimited Rights*. The rights of the Postal Service in computer software to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform and display publicly, in any manner and for any purpose, and to have or permit others to do so.
- b. *Allocation of Rights*. Except as provided in paragraph c below regarding copyright, the Postal Service has unlimited rights in:
  - (1) Computer software first produced in the performance of this contract (except to the extent that it constitutes minor modifications of computer software that is restricted computer software);

- (2) Form, fit, and function data delivered under this contract; except that all form, fit, and function data describing limited rights data must be delivered with unlimited rights;
  - (3) All other computer software delivered under this contract, except for restricted computer software provided in accordance with paragraph g below.
- c. *Copyright*
- (1)
    - (a) The prior, express written permission of the contracting officer is required to establish claim to copyright in all computer software or other data first produced in the performance of this contract. When making claim to copyright, the supplier must affix the applicable copyright notice of 17 U.S.C. 401. The supplier grants to the Postal Service and others acting on its behalf a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform and display the computer software and other data publicly.
    - (b) If the Postal Service desires to obtain copyright in the computer software first produced in the performance of the contract and permission has not been granted pursuant to c.1(a) above, the contracting officer may direct the supplier to establish, or authorize the establishment of, claim to copyright in the computer software and to assign, or obtain the written assignment of, the copyright to the Postal Service or its designated assignee.
  - (2) The supplier may not, without prior written permission of the contracting officer, incorporate in computer software delivered under this contract any computer software not first produced in the performance of this contract containing the copyright notice of 17 U.S.C. 401, unless the supplier identifies the computer software and grants to the Postal Service, or acquires on its behalf at no cost to the Postal Service, a license of the same scope as set forth in c.1.(a) above or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract.
  - (3) The Postal Service agrees not to remove the supplier's copyright notice placed on computer software pursuant to this paragraph c, and to include such notices on all reproduction of the computer software.
- d. *Release, Publication, and Use of Computer Software*
- (1) Unless prior written permission is obtained from the contracting officer or to the extent expressly set forth in this contract, the supplier will not use, release to others, reproduce, distribute, or publish any computer software first produced by the supplier in the performance of the contract.

- (2) The supplier agrees that to the extent it receives or is given access to computer software necessary for the performance of this contract that contains restrictive markings, the supplier will treat the computer software in accordance with these markings unless otherwise specifically authorized in writing by the contracting officer.
- e. *Unauthorized Marking of Computer Software*
  - (1) If any computer software delivered under this contract is marked with the notice specified in paragraph g below and the use of such a notice is not authorized by this clause, or if the computer software bears any other unauthorized restrictive markings, the contracting officer may at any time either return the computer software or cancel the markings. The contracting officer must afford the supplier at least 30 days to provide a written justification to substantiate the propriety of the markings. Failure of the supplier to timely respond, or to provide written justification, may result in the cancellation of the markings. The contracting officer must consider any written justification by the supplier and notify the supplier if the markings are determined to be authorized.
  - (2) The foregoing procedures may be modified in accordance with Postal Service regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder. In addition, the supplier is not precluded from bringing a claim in connection with any dispute that may arise as the result of the Postal Service's action to remove any markings on computer software, unless this action occurs as a result of a final disposition of the matter by a court of competent jurisdiction.
- f. *Omitted or Incorrect Markings*
  - (1) Computer software delivered to the Postal Service without the restricted rights notice authorized by paragraph g below, or the copyright notice required by paragraph c above, will be deemed to have been furnished with unlimited rights, and the Postal Service assumes no liability for the disclose, use or reproduction of such computer software. However, the extent the computer software has not been disclosed outside the Postal Service, the supplier may request, within six months (or a longer time approved by the contracting officer) after delivery of the computer software, permission to have notices placed on qualifying computer software at the supplier's expense, and the contracting officer may agree to do so if the supplier:
    - (a) Identifies the computer software involved;
    - (b) Demonstrates that the omission of the notice was inadvertent;
    - (c) Establishes that the use of the proposed notice is authorized; and

- (d) Acknowledges that the Postal Service has no liability with respect to the disclosure, use, or reproduction of any such computer software made before the addition of the notice or relisting from the omission of the notice.
- (2) The contracting officer may also (a) permit correction, at the supplier's expense, of incorrect notices if the supplier identifies the computer software on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (b) correct any incorrect notices.
- g. *Protection of Restricted Computer Software*
  - (1) When computer software other than that listed in subparagraphs b.1 and b.2 above is specified to be delivered under this contract and qualifies as restricted computer software, if the supplier desires to continue protection of such computer software, the supplier must affix the following "Restricted Rights Notice" to the computer software, subject to paragraphs e and f above, in accordance with the Notice:

#### RESTRICTED RIGHTS NOTICE

- (a) This computer software is submitted with restricted rights under Postal Service Contract No. \_\_\_\_\_ and subcontract , if appropriate). It may not be used, reproduced, or disclosed by the Postal Service except as provided below or as otherwise stated in the contract.
- (b) This computer software may be:
  - (i) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Postal Service installation at which the computer or computers may be transferred;
  - (ii) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;
  - (iii) Reproduced for safekeeping (archives) or backup purposes;
  - (iv) Modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of any derivative software incorporating restricted computer software are made subject to the same restricted rights;
  - (v) Disclosed to and reproduced for use by support service suppliers in accordance with i through iv above, provided the Postal Service makes such disclosure or reproduction subject to these restricted rights; and
  - (vi) Used or copied for use in or transferred to a replacement computer.
- (c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to

- the Postal Service, without disclosure prohibitions, with the minimum rights set forth in the preceding paragraph.
- (d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.
  - (e) This Notice must be marked on any reproduction of this computer software, in whole or in part.
- (2) When it is impracticable to include the above Notice on restricted computer software, the following short-form Notice may be used instead, on condition that the Postal Service's rights with respect to such computer software will be as specified in the above Notice unless otherwise expressly stated in the contract.

#### RESTRICTED RIGHTS NOTICE (SHORT FORM)

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. \_\_\_\_\_ (and subcontract \_\_\_\_\_, if appropriate) with

\_\_\_\_\_ (Name of supplier and subcontractor)."

- h. *Subcontracting.* The supplier has the responsibility to obtain from its subcontractors all computer software and rights in it necessary to fulfill the supplier's obligations under this contract. If a subcontractor refuses to accept terms affording the Postal Service such rights, the supplier must promptly bring such refusal to the attention of the contracting officer and may not proceed with subcontract award without further authorization.
- i. *Standard Commercial License or Lease Agreements.* The supplier unconditionally accepts the terms and conditions of this clause unless expressly provided otherwise in this contract or in a collateral agreement incorporated in and made part of this contract. Thus the supplier agrees that, notwithstanding any provisions to the contrary contained in the supplier's standard commercial license or lease agreement pertaining to any restricted computer software delivered under this contract, and irrespective of whether any such agreement has been proposed before or after issuance of this contract of the fact that such agreement may be affixed to or accompany the restricted computer software upon delivery, the Postal Service has the rights set forth in this clause to use, duplicate, or disclose any restricted computer software delivered under this contract.

### **Clause 8-10 Rights in Data — Special Works (May 2005)** (8.3.7)

- a. *Definition.* Works means literary works, including technical reports, studies, and similar documents; musical and dramatic works; and recorded information, regardless of the form or the medium on which it may be recorded. It does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.



b. *Rights*

- (1) All works first produced in the performance of this contract are the sole property of the Postal Service. The supplier agrees not to assert or authorize others to assert any rights or establish any claim of copyright in these works.
- (2) The supplier assigns all right, title, and interest to the Postal Service in all works first produced in performance of this contract that are not otherwise “works for hire” for the Postal Service under Section 201(b) of Title 17, United States Code. The supplier, unless directed otherwise by the contracting officer, must place on all such works delivered under this contract the following notice:

“Copyright (year of delivery) United States Postal Service”

- (3) The supplier grants to the Postal Service a royalty-free, nonexclusive, irrevocable license throughout the world to publish, translate, deliver, perform, use, and dispose of in any manner any portion of a work that is not first produced in the performance of this contract but in which copyright is owned by the supplier and that is incorporated in the work finished under this contract, and to authorize others to do so for Postal Service purposes.
- (4) Unless the contracting officer’s written approval is obtained, the supplier may not include in any works prepared for or delivered to the Postal Service under this contract any works of authorship in which copyright is not owned by the supplier or the Postal Service without acquiring for the Postal Service any right necessary to perfect a license of the scope set forth in subparagraph b.3 above.
- (5) Except as otherwise specifically provided for in this contract, the supplier may not use for purposes other than the performance of this contract, or release, reproduce, distribute, or publish, any work first produced in the performance of this contract, or authorize others to do so.

- c. *Indemnity.* The supplier indemnifies the Postal Service (and its officers, agents, and employees acting for the Postal Service) against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity, arising out of the creation, delivery, or use of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in these works. These provision do not apply to material furnished by the Postal Service and incorporated in the works to which this clause applies.

### **Clause 8-11 Rights in Data — Existing Works (May 2005)** (8.3.6)

- a. Except as otherwise provided in this contract, the supplier grants to the Postal Service, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license to reproduce, prepare derivative works, and perform and display publicly all the material or subject matter called

for under this contract, or for which this clause is specifically made applicable.

- b. The supplier indemnifies the Postal Service, its employees, and its agents against any liability, including costs and fees, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. This paragraph b does not apply unless the Postal Service notifies the supplier as soon as practicable of any claim or suit, affords the supplier an opportunity under applicable laws or regulations to participate in the defense of it, and obtains the supplier's consent to its settlement (which consent may not be unreasonably withheld). These provisions do not apply to material furnished to the supplier by the Postal Service and incorporated in data to which this clause applies.

**Clause 8-12 Refund of Royalties (May 2005)** (8.3.9)

If for any reason before final payment is made on this contract, the supplier does not have to pay part or all of the royalties anticipated, or receives a refund of any royalties paid, the Postal Service must be given a credit equal to the amount not paid or refunded, if the contract price was based on a contingency that the royalties would be payable or if the Postal Service, in fact, reimbursed the supplier for royalties. The credit must be applied to the first invoice submitted to the Postal Service after the supplier learns that the royalty is not payable or is refunded.

**Clause 8-13 Intellectual Property Rights (May 2005)** (8.3.10)

All intellectual property rights evolving from studies, reports, or other data delivered under this contract are the sole property of the Postal Service. The supplier agrees to make, execute, and deliver to the Postal Service any papers or other instruments in such terms and contents as may be required for the filing of any required instrument necessary for preserving an intellectual property right and does hereby assign and transfer to the Postal Service the entire right, title, and interest in and to the intellectual property rights. Before final settlement of this contract, a final report must be submitted on Form 7398, *Report of Inventions and Subcontracts*, or other format acceptable to the contracting officer.

**Clause 8-14 Acquisition of Additional Rights in Data (May 2005)** (8.3.2)

- a. *Unlimited Rights.* The supplier grants the Postal Service unlimited rights in all data (technical data and computer software) listed in the Schedule as falling within this clause's unlimited rights provisions. The rights of the parties to these data are governed by the *Rights in Technical Data* clause of this contract with regard to technical data, and the *Rights in*

*Computer Software* clause of this contract with regard to computer software.

b. *Directed License Rights*

- (1) At the contracting officer's direction, the supplier must license other firms or organizations to use all data (technical data and computer software) listed in the Schedule as falling within this clause's directed license rights provisions, for the purpose of performing Postal Service contracts. If necessary, the supplier will provide a reasonable amount of technical assistance to these firms or organizations to enable them to use the data to perform Postal Service contracts. The contracting officer will direct that licenses and technical assistance agreements be given under this clause only to firms and organizations competent to perform the specific Postal Service contracts to which the direction applies.
- (2) Upon entering into licenses under this clause, the supplier may restrict the use of the data for all other purposes, and may include any other provisions for trade secret or copyrighted material restrictions that are normally found in commercial licenses. Subject to the contracting officer's approval, the license may provide for payment of reasonable amounts for use of the data, in the form of a lump-sum payment, royalties, or both. The contracting officer will withhold approval of the payment only if it is at variance with normal commercial practice.
- (3) Subject to the contracting officer's approval, any technical assistance agreement under this clause will provide for full compensation of the supplier's costs of providing the assistance, plus a reasonable profit. The contracting officer will withhold approval of the profit only if it is at variance with normal commercial practice.

c. *Other Rights.* Any specific rights other than the unlimited rights or directed license rights treated in paragraphs a and b above are as set forth in the Schedule.

**Clause 8-15 Patent Rights — Supplier Retention (May 2005)** (8.2.2)

a. *Definitions*

- (1) "Subject Invention" means any invention or discovery of the supplier conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the patent laws of the United States of America or any foreign country.
- (2) "Contract" means any contract, agreement, grant, or other arrangement, or subcontract entered into with or for the benefit of the Postal Service where a purpose of the contract is the conduct of experimental, developmental, or research work.

- (3) “States and Domestic Municipal Governments” means the states of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and any political subdivision and agencies thereof.
  - (4) “To Bring to the Point of Practical Application” means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine and under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.
- b. *Allocation of Principal Rights*
- (1) The supplier may retain the entire right, title, and interest throughout the world or any country thereof in and to each subject invention disclosed pursuant to paragraph e.2.(a) of this clause, subject to the rights obtained by the Postal Service in paragraph c of this clause. The supplier must include with each subject invention disclosure an election as to whether he will retain the entire right, title, and interest in the invention throughout the world or any country thereof.
  - (2) Subject to the license specified in paragraph d of this clause, the supplier agrees to convey to the Postal Service, upon request, the entire domestic right, title, and interest in any subject invention when the supplier:
    - (a) Does not elect under paragraph b.1 of this clause to retain such rights; or
    - (b) Fails to have a United States patent application filed on the invention in accordance with paragraph j of this clause, or decides not to continue prosecution of such application; or
    - (c) At any time, no longer desires to retain title.
  - (3) Subject to the license specified in paragraph d of this clause, the supplier agrees to convey to the Postal Service, upon request, the entire right, title, and interest in any subject invention in any foreign country when the supplier:
    - (a) Does not elect under paragraph b.1 of this clause to retain such rights in the country; or
    - (b) Fails to have a patent application filed in the country on the invention in accordance with paragraph k of this clause, or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the supplier must notify the contracting officer not less than 60 days before the expiration period for any action required by the foreign patent office.
  - (4) A conveyance, requested pursuant to paragraph b.2 or b.3 of this clause, must be made by delivering to the contracting officer duly executed instruments (prepared by the Postal Service) and such

- other papers as are deemed necessary to vest in the Postal Service the entire right, title and interest to enable the Postal Service to apply for and prosecute patent applications covering the invention in this or the foreign country, respectively, or otherwise establish its ownership of such invention.
- c. *Minimum Rights Acquired by the Postal Service.* With respect to each subject invention to which the supplier retains principal or exclusive rights, the supplier:
- (1) Hereby grants to the Postal Service a nonexclusive, nontransferable, paid-up license to make, use, and sell each subject invention throughout the world by or on behalf of the Postal Service;
  - (2) Agrees to grant to responsible applicants, upon request of the Postal Service, a license on terms that are reasonable under the circumstances;
    - (a) Unless the supplier, his licensee, or his assignee, demonstrates to the Postal Service that effective steps have been taken within 3 years after a patent issues on such invention to bring the invention to the point of practical application or that the invention has been made available for licensing royalty-free or on terms that are reasonable in the circumstances, or can show cause why the principal or exclusive rights should be retained for a further period of time, or
    - (b) To the extent that the invention is required for public use by governmental regulations or for other public purposes stipulated in this contract.
  - (3) Must submit written reports at reasonable intervals, upon request of the Postal Service during the term of the patent on the subject invention regarding:
    - (a) The commercial use that is being made or is intended to be made of such invention; and
    - (b) The steps taken by the supplier or his transferee to bring the invention to the point of practical application, or to make the invention available for licensing.
  - (4) Agrees to arrange, when licensing any subject inventions, to avoid royalty charges on purchases involving the Postal Service and to refund any amounts received as royalty charges on any subject invention in purchases for, or on behalf of, the Postal Service and to provide for such refund in any instrument transferring rights in such invention to any party; and
  - (5) Agrees to provide for the Postal Service's paid-up license pursuant to paragraph c.1 of this clause in any instrument transferring rights in a subject invention and to provide for the granting of licenses as required by c.2 of this clause, and for the reporting of utilization information as required by paragraph c.3 of

this clause whenever the instrument transfers principal or exclusive rights in any subject invention.

- (a) Nothing contained in this paragraph c will be deemed to grant to the Postal Service any rights with respect to any invention other than a subject invention.

d. *Minimum Rights to the Supplier*

- (1) The supplier reserves a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Postal Service acquires title. The license must extend to the supplier's domestic subsidiaries and affiliates, if any, within the corporate structure of which the supplier is a part and must include the right to grant sublicenses of the same scope to the extent the supplier was legally obligated to do so at the time the contract was awarded. The license must be transferable only with approval of the contracting officer, except when transferred to the successor of that part of the supplier's business to which the invention pertains.
- (2) The supplier's domestic nonexclusive license retained pursuant to paragraph d.1 of this clause may be revoked or modified to the extent necessary to achieve expeditious practical application of the subject invention. The license will not be revoked in that field of use and/or the geographical areas in which the supplier has brought the invention to the point of practical application and continues to make the benefits of the invention reasonably accessible to the public. The supplier's nonexclusive license in any foreign country reserved pursuant to paragraph d.1 of this clause may be revoked or modified at the discretion of the contracting officer to the extent the supplier or his domestic subsidiaries or affiliates have failed to achieve the practical application of the invention in such foreign country.
- (3) Before modification or revocation of the license, pursuant to paragraph d.2 of this clause, the supplier will be given written notice of the intent to modify or revoke the license and will be allowed 30 days or such longer period as may be authorized by the contracting officer for good cause shown in writing by the supplier after such notice to show cause why the license should not be modified or revoked. The supplier will have the right to contest any decision concerning the modification or revocation of the license in accordance with the *Claims and Disputes* clause of this contract.

e. *Invention Identification, Disclosures and Reports*

- (1) The supplier must establish and maintain active and effective procedures to assure that subject inventions are promptly identified and timely disclosed. These procedures must include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject

- inventions, and records which show that the procedures for identifying and disclosing the inventions are followed. Upon request, suppliers must furnish contracting officers a description of such procedures so that they may evaluate and determine their effectiveness.
- (2) The supplier must furnish the contracting officer:
    - (a) A complete technical disclosure for each subject invention, within six months after conception or first actual reduction to practice, whichever occurs first in the course of or under the contract, but in any event prior to any on sale, public use, or publication of such invention known to the supplier. The disclosure must identify the contract and inventor(s) and be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains, a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention;
    - (b) Interim reports, preferably on PS Form 882, at least every twelve months from the date of the contract listing subject inventions during that period and certifying that:
      - (i) The supplier's procedures for identifying and disclosing subject inventions as required by this paragraph e have been followed throughout the reporting period; and
      - (ii) All subject inventions have been disclosed or that there are no such inventions; and
    - (c) A final report, preferably on PS Form 882, within three months after completion of the contract work, listing all subject inventions or certifying that there were no such inventions.
  - (3) The supplier must obtain patent agreements to effectuate the provisions of this clause from all persons in his employ who perform any part of the work under this contract except nontechnical personnel, such as clerical and manual labor personnel.
  - (4) The supplier agrees that the Postal Service may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.
- f. *Forfeiture of Rights in Unreported Subject Inventions*
- (1) The supplier must forfeit to the Postal Service all rights in any subject invention which he fails to disclose to the contracting officer within six months after the time he:
    - (a) Files or causes to be filed a United States or foreign application thereon, or

- (b) Submits the final report required by paragraph e.2.(c) of this clause.
  - (2) However, the supplier must not forfeit rights in a subject invention if, within the time specified in 1.(a) or 1.(b) of this paragraph f, the supplier:
    - (a) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract; or
    - (b) Contending that the invention is not a subject invention, he nevertheless discloses the invention and all facts pertinent to his contention to the contracting officer; or
    - (c) Establishes that the failure to disclose did not result from his fault or negligence.
  - (3) Pending written assignment of the patent applications and patents on a subject invention determined by the contracting officer to be forfeited (such determination to be a final decision under the *Claims and Disputes* clause), the supplier will be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Postal Service. The forfeiture provision of this paragraph f will be in addition to and must not supersede other rights and remedies which the Postal Service may have with respect to subject inventions.
- g. *Examination of Records Relating to Inventions*
  - (1) The contracting officer or his authorized representative will, until the expiration of 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, documents, and other supporting data of the supplier which the contracting officer reasonably deems pertinent to the discovery or identification of subject inventions or to determine compliance with the requirements of this clause.
  - (2) The contracting officer or his authorized representative will have the right to examine all books (including laboratory notebooks), records, and documents of the supplier relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract, to determine whether any such inventions are subject inventions if the supplier refuses or fails to:
    - (a) Establish the procedures of paragraph e.1 of this clause; or
    - (b) Maintain and follow such procedures; or
    - (c) Correct or eliminate any material deficiency in the procedures within 30 days after the contracting officer notifies the supplier of such a deficiency.
- h. *Withholding of Payment (Not Applicable to Subcontracts)*
  - (1) Any time before final payment of the amount of this contract, the contracting officer may, if he deems such action warranted,



- withhold payment until a reserve not exceeding \$50,000 or five percent of the amount of this contract, whichever is less, will have been set aside if in his opinion the supplier fails to:
- (a) Establish, maintain and follow effective procedures for identifying and disclosing subject inventions pursuant to paragraph e.1 of this clause; or
  - (b) Disclose any subject invention pursuant to paragraph e.2.(a) of this clause; or
  - (c) Deliver acceptable interim reports pursuant to paragraph e.2.(b) of this clause; or
  - (d) Provide the information regarding subcontracts pursuant to paragraph i.5 of this clause.
- (2) Such reserve or balance will be withheld until the contracting officer has determined that the supplier has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.
  - (3) Final payment under this contract will not be made before the supplier delivers to the contracting officer all disclosures of subject inventions required by paragraph e.2.(a) of this clause, an acceptable final report pursuant to e.2.(c) of this clause and all past due confirmatory instruments.
  - (4) The contracting officer may, in his discretion, decrease or increase the sums withheld up to the maximum authorized above. If the supplier is a nonprofit organization, the maximum amount that may be withheld under this paragraph will not exceed \$50,000 or one percent of the amount of this contract, whichever is less. No amount will be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or subsequent payment thereof will not be construed as a waiver of any rights accruing to the government under this contract.
- i. *Subcontracts*
- (1) For the purpose of this paragraph, the term "supplier" means the party awarding a subcontract and the term "subcontractor" means the party being awarded a subcontract, regardless of tier.
  - (2) The supplier must include this patent rights clause in every subcontract hereunder having as a purpose the conduct of experimental, developmental, or research work, unless directed by the contracting officer to include another particular clause. In the event of a refusal by a subcontractor to accept such clause, the supplier:
    - (a) Must promptly submit a written notice to the contracting officer setting forth the subcontractor's reasons for such refusal and other pertinent information which may expedite disposition of the matter; and
    - (b) Must not proceed with the subcontract without the written authorization of the contracting officer.

- (3) The supplier must not, in any subcontract or by using a subcontract as consideration therefore, acquire any rights in his subcontractor's subject invention for his own use (as distinguished from such rights as may be required solely to fulfill his contract obligations to the Postal Service in the performance of this contract).
  - (4) All invention disclosures, reports, instruments, and other information required to be furnished by the subcontractor to the contracting officer under the provisions of a patent rights clause in any subcontract hereunder may, at the discretion of the contracting officer, be furnished to the supplier for transmission to the contracting officer.
  - (5) The supplier must promptly notify the contracting officer in writing upon the award of any subcontract containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the contracting officer, the supplier must furnish a copy of the subcontract. If there are no subcontracts containing patent rights clauses, a negative report must be included in the final report submitted pursuant to paragraph e.2.(c) of this clause.
  - (6) The supplier must identify all subject inventions of the subcontractor of which he acquires knowledge in the performance of this contract and must notify the contracting officer promptly upon the identification of the inventions.
  - (7) It is understood that the Postal Service is a third party beneficiary of any subcontract clause granting rights to the Postal Service subject inventions, and the supplier hereby assigns to the Postal Service all rights that he would have to enforce the subcontractor's obligations for the benefit of the Postal Service with respect to subject inventions. The supplier will not be obligated to enforce the agreements of any subcontractor hereunder relating to the obligations of the subcontractor to the Postal Service in regard to subject inventions.
- j. *Filing of Domestic Patent Applications*
- (1) With respect to each subject invention in which the supplier elects to retain domestic rights pursuant to paragraph b of this clause, the supplier must have a domestic patent application filed within six months after submission of the invention disclosure pursuant to paragraph e.2.(a) of this clause, or such longer period as may be approved in writing by the contracting officer for good cause shown in writing by the supplier. With respect to such invention, the supplier must promptly notify the contracting officer of any decision not to file an application.
  - (2) For each subject invention on which a patent application is filed by or on behalf of the supplier, the supplier must:
    - (a) Within two months after such filing, or within two months after submission of the invention disclosure if the patent

application previously has been filed, deliver to the contracting officer a copy of the application as filed, including the filing date and serial number;

- (b) Include the following statement in the second paragraph of the specification of the application and any patents issued on the subject invention:

“The U.S. Postal Service has rights in this invention pursuant to Contract No. \_\_\_\_\_”

- (c) Within six months after filing the application, or within six months after submitting the invention disclosure if the application has been filed previously, deliver to the contracting officer a duly executed and approved instrument on a form specified by the contracting officer fully confirmatory of all rights to which the Postal Service is entitled, and provide the Postal Service an irrevocable power to inspect and make copies of the patent application file;
  - (d) Provide the contracting officer with a copy of the patent within two months after a patent issues on the application; and
  - (e) Not less than 30 days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the contracting officer of any decision not to continue prosecution of the application and deliver to the contracting officer executed instruments granting the government a power of attorney.
- (3) For each subject invention in which the supplier initially elects not to retain principal domestic rights, the supplier must inform the contracting officer promptly in writing of the date and identity of any on sale, public use, or publication of such invention which may constitute a statutory bar under 35 U.S.C. 102, which was authorized by or known to the supplier, or any contemplated action of this nature.

k. *Filing of Foreign Patent Applications*

- (1) With respect to each subject invention in which the supplier elects to retain principal rights in a foreign country pursuant to paragraph b.1 of this clause, the supplier must have a patent application filed on the invention in such country, in accordance with applicable statutes and regulations, and within one of the following periods:
  - (a) Eight months from the date of a corresponding United States application filed by or on behalf of the supplier, or if such an application is not filed, six months from the date the invention is submitted in a disclosure pursuant to paragraph e.2.(a) of this clause;
  - (b) Six months from the date a license is granted by the Commissioner of Patents and Trademarks to file foreign

- applications when such filing has been prohibited by security reasons; or
- (c) Such longer period as may be approved in writing by the contracting officer.
- (2) The supplier must notify the contracting officer promptly of each foreign application filed and, upon written request, must furnish an English version of such foreign application without additional compensation.

**Clause 8-16 Postal Service Title in Technical Data and Computer Software (May 2005)** (8.2.2)

a. *Definitions*

- (1) *Data*. Data means technical data including drawings, technical reports, studies, and similar documents; computer software and computer software documentation, including but not limited to source code, object code, algorithms, formulas, and, other data that describe design, function, operation, or capabilities, and other recorded information, regardless of the form or the medium on which it may be recorded. It does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.
- (2) *Form, Fit, and Function Data*. Data relating to an item or process that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements; except that for computer software, it means data identifying origin, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulas, and machine-level flow charts of the computer software.
- (3) *Limited Rights Data*. Data other than computer software developed at private expense, including minor modifications of these data.
- (4) *Technical Data*. Data other than computer software, of a scientific or technical nature.
- (5) *Restricted Computer Software*. Computer software developed at private expense that is a trade secret, is commercial or financial and confidential or privileged, or is published copyrighted computer software, including minor modifications of this computer software.
- (6) *Restricted Rights*. The rights of the Postal Service in restricted computer software, as set forth in a Restricted Rights Notice as provided in paragraph h below, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract.

- (7) *Unlimited Rights.* The rights of the Postal Service in technical data and computer software to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform and display publicly, in any manner and for any purpose, and to have or permit others to do so.
- b. *Rights*
- (1) The Postal Service has title to all data first produced in the performance of this contract. Accordingly, the supplier assigns all rights, title, and interest to the Postal Service in all data first produced in performance of this contract. The supplier, unless directed otherwise by the contracting officer, must place on all such data delivered under this contract the following notice:
- “This data is the confidential property of the U.S. Postal Service and may not be used, released, reproduced, distributed or published without the express written permission of the U.S. Postal Service.”
- (2) The supplier grants to the Postal Service a royalty-free, nonexclusive, irrevocable license throughout the world to publish, translate, deliver, perform, use, and dispose of in any manner any portion of data that is not first produced in the performance of this contract but in which copyright is owned by the supplier and that is incorporated in the data furnished under this contract, and to authorize others to do so for Postal Service purposes.
- (3) Unless the contracting officer’s written approval is obtained, the supplier may not include in any data prepared for or delivered to the Postal Service under this contract any data which is not owned by the supplier or the Postal Service without acquiring for the Postal Service any right necessary to perfect a license of the scope set forth in subparagraph b.2.
- c. *Indemnity.* The supplier indemnifies the Postal Service (and its officers, agents, and employees acting for the Postal Service) against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity, arising out of the creation, delivery, or use of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in these works. This provision does not apply to material furnished by the Postal Service and incorporated in the works to which this clause applies.
- d. *Additional Rights in Technical Data*
- (1) Except as provided in paragraph b, the Postal Service has unlimited rights in:
- (a) Form fit, and function data, including such data developed at private expense, delivered under this contract, and
- (b) Technical data delivered under this contract that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of

items, components, or processes delivered or furnished for use under this contract.

(2) *Copyright*

- (a) The contracting officer may direct the supplier to establish, or authorize the establishment of, claim to copyright in the technical data and to assign, or obtain the written assignment of, the copyright to the Postal Service or its designated assignee.
  - (b) The supplier may not, without prior written permission of the contracting officer, incorporate in technical data delivered under this contract any data not first produced in the performance of this contract containing the copyright notice of 176 U.S.C. 401 or 402, unless the supplier identifies the data and grants to the Postal Service, or acquires on its behalf at no cost to the Postal Service, a paid-up, nonexclusive, irrevocable worldwide license in such copyright data to reproduce, prepare derivative works, distribute copies to the public, and perform and display the data publicly.
  - (c) The Postal Service agrees not to remove any copyright notices placed on data pursuant to this section d, and to include such notices on all reproductions of the data.
- e. *Release, Publication, and Use of Technical Data and Computer Software*
- (1) Unless prior written permission is obtained from the contracting officer or to the extent expressly set forth in this contract, the supplier will not use, release to others, reproduce, distribute, or publish any technical data or computer software first produced by the supplier in the performance of the contract.
  - (2) The supplier agrees that if it receives or is given access to data or software necessary for the performance of this contract that contain restrictive markings, the supplier will treat the data or software in accordance with the markings unless otherwise specifically authorized in writing by the contracting officer.
- f. *Unauthorized Marking of Data or Computer Software*
- (1) If any technical data or computer software delivered under this contract are marked with the notice specified in paragraph h and the use of such a notice is not authorized by this clause, or if the data or computer software bear any other unauthorized restrictive markings, the contracting officer may at any time either return the data or software or cancel the markings. The contracting officer must afford the supplier at least 30 days to provide a written justification to substantiate the propriety of the markings. Failure of the supplier to timely respond, or to provide written justification, may result in the cancellation of the markings. The contracting officer must consider any written justification by the supplier and

- notify the supplier if the markings are determined to be authorized.
- (2) The foregoing procedures may be modified in accordance with Postal Service regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder. In addition, the supplier is not precluded from bringing a claim in connection with any dispute that may arise as the result of the Postal Service's action to remove any markings on data or computer software, unless this action occurs as the result of a final disposition of the matter by a court of competent jurisdiction.
- g. *Omitted or Incorrect Markings*
- (1) Technical data or computer software delivered to the Postal Service without the limited rights notice or restricted notice authorized by paragraph h, or the data rights notice required by paragraph b, will be deemed to have been furnished with unlimited rights, and the Postal Service assumes no liability for the disclosure, use, or reproduction of such data or computer software. However, to the extent the data or software have not been disclosed outside the Postal Service, the supplier may request, within six months (or a longer time approved by the contracting officer) after delivery of the data or software, permission to have notices placed on qualifying technical data or computer software at the supplier's expense, and the contracting officer may agree to do so if the supplier:
- (a) Identifies the technical data or computer software to which the omitted notice is to be applied;
- (b) Demonstrates that the omission of the notice was inadvertent;
- (c) Establishes that the use of the proposed notice is authorized; and
- (d) Acknowledges that the Postal Service has no liability with respect to the disclosure, use, or reproduction of any such data or software made before the addition of the notice or resulting from the omission of the notice.
- (2) The contracting officer may also (a) permit correction of incorrect notices, at the supplier's expense, if the supplier identifies the technical data or computer software on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (b) correct any incorrect notices.
- h. *Protection of Rights*
- (1) *Protection of Limited Rights Data.* When technical data other than data listed in section d, above, are specified to be delivered under this contract and qualify as limited rights data, if the supplier desires to continue protection of such data, the supplier must affix the following "Limited Rights Notice" to the data, and the Postal

Service will thereafter treat the data, subject to paragraphs f and g above, in accordance with the Notice:

“LIMITED RIGHTS NOTICE

These technical data are submitted with limited rights under Postal Service Contract No. \_\_\_\_\_ (and subcontract \_\_\_\_\_, if appropriate). These data may be reproduced and used by the Postal Service with the express limitation that they will not, without written permission of the supplier, be used for purposes of manufacture or disclosed outside the Postal Service; except that the Postal Service may disclose these data outside the Postal Service for the following purposes, provided that the Postal Service makes such disclosure subject to prohibition against further use and disclosure:

1. Use (except for manufacture) by support service suppliers.
2. Evaluation by Postal Service evaluators.
3. Use (except for manufacture) by other suppliers participating in the Postal Service’s program of which the specific contract is a part, for information and in connection with the work performed under each contract.
4. Emergency repair or overhaul work.

This Notice must be marked on any reproduction of these data, in whole or in part.”

(2) *Protection of Restricted Computer Software*

- (a) When computer software is specified to be delivered under this contract and qualifies as restricted computer software, if the supplier desires to continue protection of such computer software, the supplier must affix the following “Restricted Rights Notice” to the computer software, and the Postal Service will thereafter treat the computer software, subject to paragraphs f and g above, in accordance with the Notice:

“RESTRICTED RIGHTS NOTICE

- a. This computer software is submitted with restricted rights under Postal Service Contract No. \_\_\_\_\_ (and subcontract \_\_\_\_\_, if appropriate). It may not be used, reproduced, or disclosed by the Postal Service except as provided below or as otherwise stated in the contract.
- b. This computer software may be:
  1. Used or copied for use in or with the computer or computers for which it was acquired, including use at any Postal Service installation to which the computer or computers may be transferred;



2. Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;
  3. Reproduced for safekeeping (archives) or backup purposes;
  4. Modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of any derivative software incorporating restricted computer software are made subject to the same restricted rights;
  5. Disclosed to and reproduced for use by support service suppliers in accordance with 1 through 4 above, provided the Postal Service makes such disclosure or reproduction subject to these restricted rights; and
  6. Used or copied for use in or transferred to a replacement computer.
- c. Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Postal Service, without disclosure prohibitions, with the minimum rights set forth in the preceding paragraph.
  - d. Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.
  - e. This Notice must be marked on any reproduction of this computer software, in whole or in part.”
- (b) When it is impracticable to include the above Notice on restricted computer software, the following short-form Notice may be used instead, on condition that the Postal Service’s rights with respect to such computer software will be as specified in the above Notice unless otherwise expressly stated in the contract.

“RESTRICTED RIGHTS NOTICE (SHORT FORM)

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. \_\_\_\_\_ (and subcontract \_\_\_\_\_, if appropriate) with \_\_\_\_\_ (name of supplier and subcontractor).”

- i. *Subcontracting.* The supplier has the responsibility to obtain from its subcontractors all computer software and technical data and the rights therein necessary to fulfill the supplier’s obligations under this contract. If a subcontractor refuses to accept terms affording the Postal Service

such rights, the supplier must promptly bring such refusal to the attention of the contracting officer and may not proceed with subcontract award without further authorization.

- j. *Standard Commercial License or Lease Agreements.* The supplier unconditionally accepts the terms and conditions of this clause unless expressly provided otherwise in this contract or in a collateral agreement incorporated in and made part of this contract. Thus the supplier agrees that, notwithstanding any provisions to the contrary contained in the supplier's standard commercial license or lease agreement pertaining to any restricted computer software delivered under this contract, and irrespective of whether any such agreement has been proposed before or after issuance of this contract or of the fact that such agreement may be affixed to or accompany the restricted computer software upon delivery, the Postal Service has the rights set forth in this clause to use, duplicate, or disclose any restricted computer software delivered under this contract.
- k. *Relationship to Patents.* Nothing contained in this clause implies a license to the Postal Service under any patent or may be construed as affecting the scope of any license or other right otherwise granted to the Postal Service.

**Clause 8-17 Delivery of Limited Rights and Restricted Computer Software (May 2005)** (8.3.2)

To the extent that the supplier has, in its proposal, identified pre-existing proprietary data or restricted computer software pursuant to the "Representation of Rights in Data" of the solicitation, the contracting officer, or a duly authorized representative, until the expiration of 3 years after final payment of this contract, will have the right to examine any books, records, documents or other data supporting the supplier's claim(s) hereunder. Notwithstanding the supplier's rights and claims of, and the Postal Service's agreement to protect, pre-existing proprietary data or software, the Postal Service will have unlimited or unrestricted rights without additional supplier compensation, to any data or software identified above, that is:

- (1) Obtained independent of this contract;
- (2) In the public domain; or
- (3) Determined, subsequent to the effective date of this contract, to not have qualified as pre-existing data or software or a derivative of pre-existing data or software to which the supplier would have such proprietary rights.

**Clause 8-18 Manufacture of Repair Parts (May 2005)** (8.3.2)

In addition to the Postal Service rights specified in the "Limited Rights Notice" of the clause entitled "Rights in Technical Data" paragraph g, the Postal Service has the unilateral right to use competitive procedures to procure repair parts or assemblies for the equipment or supply items being developed

under this contract. If the repair parts or assemblies have been identified as being subject to protection under “Limited Data Rights” or “Restricted Computer Software” provisions of this contract, the Postal Service will obtain a nondisclosure agreement from interested offerors prior to releasing any drawings, specifications or other descriptive documentation suitable for manufacturing or reproducing such repair parts of assemblies.

**Clause 9-1 Convict Labor (May 2005)** (9.2.2)

In connection with the work under this contract, the supplier agrees not to employ any person undergoing sentence of imprisonment, except as provided by E.O. 11755, December 28, 1973, as amended and 18 USC 3621 and 3622.

**Clause 9-2 Contract Work Hours and Safety Standards Act — Overtime Compensation (May 2005)** (9.3.3)

- a. *Overtime Requirements.* No supplier or subcontractor contracting for any part of the contract work may require or permit any laborer or mechanic to work more than 40 hours in any workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act, unless the laborer or mechanic receives compensation at a rate not less than one-and-one-half times the laborer’s or mechanic’s basic rate of pay for all such hours worked in excess of 40 hours.
- b. *Violation, Liability for Unpaid Wages, and Liquidated Damages.* In the event of any violation of paragraph a above, the supplier and any subcontractor responsible for the violation are liable to any affected employee for unpaid wages. The supplier and subcontractor are also liable to the Postal Service for liquidated damages, which will be computed for each laborer or mechanic at \$10 for each day on which the employee was required or permitted to work in violation of paragraph a above.
- c. *Withholding for Unpaid Wages and Liquidated Damages.* The contracting officer may withhold from the supplier, from any moneys payable to the supplier or subcontractor under this or any other contract with the same supplier, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act held by the same supplier, sums as may administratively be determined necessary to satisfy any liabilities of the supplier or subcontractor for unpaid wages and liquidated damages pursuant to paragraph b above.
- d. *Records.* The supplier or subcontractor must maintain for 3 years from the completion of the contract for each laborer and mechanic (including watchmen and guards) working on the contract payroll records which contain the name, address, social security number, and classification(s) of each such employee, hourly rates of wages paid, number of daily and weekly hours worked, deductions made, and actual wages paid. The supplier or subcontractor must make these records available for

inspection, copying, or transcription by authorized representatives of the contracting officer and the Department of Labor, and must permit such representatives to interview employees during working hours on the job. (The Department of Labor information collection and record keeping requirements in this paragraph d have been approved by the Office of Management and Budget under OMB control numbers 1215-0140 and 1215-0017.)

- e. *Subcontracts.* The supplier must insert paragraphs a through d of this clause in all subcontracts, and must require their inclusion in all subcontracts at any tier.

### Clause 9-3 Davis-Bacon Act (May 2005)

(9.4.4)

a. *Minimum Wages*

- (1) All mechanics and laborers employed in the contract work (other than maintenance work of a recurring, routine nature necessary to keep the building or space in condition to be continuously used at an established capacity and efficiency for its intended purpose) must be paid unconditionally, and not less than once a week, without deduction or rebate (except for deductions permitted by the Copeland Regulations (29 CFR Part 3)), the amounts due at the time of payment computed at rates not less than the aggregate of the basic hourly rates and rates of payments, contributions, or costs for any fringe benefits contained in the wage-determination decision of the Secretary of Labor, attached hereto, regardless of any contractual relationship alleged to exist between the lessor (for construction contracts, use "supplier" instead of "lessor"), or subcontractor and these laborers and mechanics. A copy of the wage-determination decision must be kept posted by the lessor at the site of the work in a prominent place where it can easily be seen by the workers.
- (2) The lessor may discharge its obligation under this clause to workers in any classification for which the wage-determination decision contains:
  - (a) Only a basic hourly rate of pay, by making payment at not less than that rate, except as otherwise provided in the Copeland Regulations (29 CFR Part 3); or
  - (b) Both a basic hourly rate of pay and fringe-benefit payments, by paying in cash, by irrevocably contributing to a fund, plan, or program for, or by assuming an enforceable commitment to bear the cost of, bona fide fringe benefits contemplated by 40 U.S.C. 276a, or by a combination of these.
- (3) Contributions made, or costs assumed, on other than a weekly basis (but not less often than quarterly) are considered as having been constructively made for a weekly period. When a fringe benefit is expressed in a wage determination in any manner other

than as an hourly rate and the lessor pays a cash equivalent or provides an alternative fringe benefit, the lessor must furnish information with the lessor's payrolls showing how the lessor determined that the cost incurred to make the cash payment or to provide the alternative fringe benefit is equal to the cost of the wage-determination fringe benefits. When the lessor provides a fringe benefit different from that contained in the wage determination, the lessor must show how the hourly rate was arrived at. In the event of disagreement as to an equivalent of any fringe benefit, the contracting officer must submit the question, together with the contracting officer's recommendation, to the Secretary of Labor for final determination.

- (4) If the supplier does not make payments to a trustee or other third person, the supplier may consider as payment of wages the costs reasonably anticipated in providing bona fide fringe benefits, but only with the approval of the Secretary of Labor pursuant to a written request by the lessor. The Secretary of Labor may require the lessor to set aside assets in a separate account, to meet the lessor's obligations under any unfunded plan or program.
- (5) The contracting officer will require that any class of laborers or mechanics not listed in the wage-determination but to be employed under the contract will be classified in conformance with the wage determination and report the action taken to the  
ADMINISTRATOR OF THE WAGE AND HOUR DIVISION  
EMPLOYMENT STANDARDS ADMINISTRATION  
US DEPARTMENT OF LABOR  
WASHINGTON DC 20210-0001

for approval. The contracting officer will approve an additional classification and wage rate and fringe benefits therefore only if:

- (a) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (b) The classification is utilized in the area by the construction industry; and
- (c) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (6) If the lessor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate and fringe benefits therefore, the contracting officer must submit the question, together with the views of the interested parties and the contracting officer's recommendation, to the Wage and Hour Administrator for final determination. The Administrator or an authorized representative will, within 30 days of receipt, approve, modify, or disapprove every proposed additional classification action, or issue a final determination if the parties disagree, and so advise the contracting officer or advise that additional time is necessary. The finally approved wage rate (and fringe benefits if

- appropriate) must be paid to all workers performing work in the classification under the contract from the first day work is performed in the classification. The lessor must post a copy of the final determination of the conformance action with the wage determination at the site of the work. (The Department of Labor information collection and reporting requirements contained in subparagraph a.5 above and in this subparagraph a.6 have been approved by the Office of Management and Budget under OMB control number 1215-0140.)
- b. *Apprentices and Trainees*
- (1) Apprentices may be permitted to work only when
    - (a) Registered, individually, under a bona fide apprenticeship program registered with a state apprenticeship agency recognized by the Bureau of Apprenticeship and Training, 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; or
    - (b) If not individually registered in the program, certified by the Bureau of Apprenticeship and Training or state agency (as appropriate) to be eligible for probationary employment as an apprentice. Trainees may be permitted to work only if individually registered in a program approved by the Employment and Training Administration, U.S. Department of Labor.
  - (2) The ratio of apprentices to journeymen or trainees to journeymen in any craft classification must not be greater than that permitted for the lessor's entire work force under the registered apprenticeship or trainee program. Apprentices and trainees must be paid at least the applicable wage rates and fringe benefits specified in the approved apprenticeship or trainee program for the particular apprentice's or trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. If the apprenticeship or trainee program does not specify fringe benefits, apprentices or trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification unless the Administrator of the Wage and Hour Division determines that a different practice prevails. Any employee listed on a payroll at an apprentice or trainee wage rate but not registered, or performing work on the job site in excess of the ratio permitted under the registered program, must be paid the wage rate on the wage determination for the classification or work actually performed.
  - (3) If the Bureau of Apprenticeship and Training or the state agency recognized by the Bureau (as appropriate) withdraws approval of an apprenticeship program, or if the Employment and Training Administration withdraws approval of a trainee program, the supplier will no longer be permitted to utilize apprentices or

- trainees (as appropriate) at less than the applicable predetermined rate for the work performed until an acceptable program is approved. (See 29 CFR 5.16 for special provisions that apply to training plans approved or recognized by the Department of Labor prior to August 20, 1975.)
- (4) The utilization of apprentices, trainees, and journeymen must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- c. *Overtime Compensation*
- (1) The lessor may not require or permit any laborer or mechanic employed on any work under this contract to work more than 40 hours in any workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), unless the laborer or mechanic receives compensation at a rate not less than one-and-one-half times the laborer's or mechanic's basic rate of pay for all such hours worked in excess of 40 hours.
- (2) For violations for subparagraph c.1 above, the lessor is liable for liquidated damages, which will be computed for each laborer or mechanic at \$10 for each day on which the employee was required or permitted to work in violation of subparagraph c.1 above.
- (3) The contracting officer may withhold from the lessor sums as may administratively be determined necessary to satisfy any liabilities of the lessor for unpaid wages and liquidated damages pursuant to subparagraph c.2 above.
- d. *Payroll and Other Records*
- (1) For all laborers and mechanics employed in the work covered by this clause, the lessor must maintain payrolls and related basic records and preserve them for a period of 3 years after contract completion. The records must contain the name, address, and social security number of each employee, the employee's correct classification, rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits), the daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the lessor has obtained approval from the Secretary of Labor to assume a commitment to bear the cost of fringe benefits under subparagraph a.4 above, the lessor must maintain records showing the commitment and its approval, communication of the plan or program to the employees affected, and the costs anticipated or incurred under the plan or program. Lessors employing apprentices or trainees under approved programs must maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (The Department of Labor information collection and record keeping

- requirements in this subparagraph d.1 have been approved by the Office of Management and Budget under OMB control numbers 1215-0140 and 1215-0017).
- (2) The lessor must submit weekly, for each week in which any work covered by this clause is performed, a copy of all payrolls to the contracting officer. The lessor is responsible for the submission of copies of payrolls of all subcontractors. The copy must be accompanied by a statement signed by the lessor indicating that the payrolls are correct and complete, that the wage rates contained in them are not less than those determined by the Secretary of Labor, and that the classifications set forth for each laborer or mechanic conform with the work the laborer or mechanic performed. Submission of the Weekly Statement of Compliance (see 29 CFR 5.5(a)(3)(ii)) required under this agreement satisfies this requirement. As required by this clause, the lessor must submit a copy of any approval by the Secretary of Labor. (The Department of Labor information collection and reporting requirements in this subparagraph d.2 have been approved by the Office of Management and Budget under OMB control number 1215-0149.)
  - (3) The lessor's records required under this clause must be available for inspection by authorized representatives of the contracting officer and the Department of Labor, and the lessor must permit the representative to interview employees during working hours on the job.
  - (4) The lessor must comply with the Copeland Regulations of the Secretary of Labor (29 CFR Part 3), which are hereby incorporated in this contract by reference.
- e. *Withholding of Funds.* The contracting officer may withhold from the lessor under this or any other contract with the lessor so much of the accrued payments or advances as is considered necessary to pay all laborers and mechanics the full amount of wages required by this contract or any other contract subject to the Davis-Bacon prevailing wage requirements that is held by the lessor.
- f. *Subcontracts*
- (1) If the lessor or any subcontractor fails to pay any laborer or mechanic employed on the site of the work any of the wages required by the contract, the contracting officer may, after written notice to the lessor, suspend further payments or advances to the lessor until violations have ceased.
  - (2) The lessor agrees to insert this clause, including this paragraph f, in all subcontracts hereunder. The term "lessor" as used in this clause in any subcontract, is deemed to refer to the lower-tier subcontractor.
- g. *Compliance with Davis-Bacon and Related Acts Requirements.* All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.



- h. *Certification of Eligibility*
  - (1) By entering into this contract, the lessor certifies that neither it or any person or firm having an interest in the lessor is ineligible to be awarded contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
  - (2) No part of this contract will be subcontracted to any person or firm ineligible for contract award by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
  - (3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
- i. *Contract Termination and Debarment.* A breach of this Davis-Bacon Act clause may be grounds for termination of the contract and debarment as a supplier and subcontractor as provided in 29 CFR 5.12.
- j. *Disputes Concerning Labor Standards.* Disputes arising out of the labor standards provisions of this contract are not subject to the Claims and Disputes clause. They will be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5,6, and 7. Disputes within the meaning of this clause include disputes between the lessor (or any of its subcontractors) and the Postal Service, the U.S. Department of Labor, or the employees or their representatives.

**Clause 9-4 Compliance by States with Labor Standards  
(May 2005)**

(9.4.4)

- a. The supplier agrees to comply with the *Contract Work Hours and Safety Standards Act — Overtime Compensation* and *Davis-Bacon Act* clauses of this contract, to provide for similar compliance in subcontracts with states or political subdivisions thereof, and to insert the clauses in all subcontracts with private persons or firms.

**Clause 9-5 Contract Work Hours and Safety Standards Act — Safety Standards (May 2005)**

(9.4.4)

- a. To the extent that the work includes construction, alteration, repair, painting, or decorating, the lessor (for construction contracts, use “supplier” instead of “lessor”) may not require any laborer or mechanic to work in surroundings or under conditions that are unsanitary, hazardous, or dangerous to the laborer’s or mechanic’s health or safety, as provided under standards promulgated by the Secretary of Labor under the authority of 40 U.S.C. 333 (see 29 CFR 1910 and 1926).
- b. If the lessor fails to comply with this clause, the Postal Service, at its discretion, may cancel this contract, contract for the balance of the work or term, and charge to the lessor any additional costs incurred.

- c. The lessor agrees to insert this clause, including this paragraph c, in all subcontracts and to require its inclusion in all subcontracts at any tier. The term “lessor,” as used in this clause in any subcontract, is deemed to refer to the lower-tier subcontractor.

**Clause 9-6 Walsh-Healey Public Contracts Act (May 2005)** (9.5.2)

- a. All representations and stipulations required by the Act and related regulations issued by the Secretary of Labor (41 CFR Chapter 50) are hereby incorporated in this contract by reference. These representations and stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor.
- b. All employees whose work relates to this contract must be paid at least the minimum wage prescribed by the Secretary of Labor (41 CFR 50-202.2), except that learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent as permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

**Clause 9-7 Equal Opportunity (May 2005)** (9.7.10)

- a. The supplier may not discriminate against employees or applicants because of race, color, religion, sex, or national origin. The supplier will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex, or national origin. This action must include, but not be limited to, employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The supplier agrees to post in conspicuous places, available to employees and applicants, notices provided by the contracting officer setting forth the provisions of this clause.
- b. The supplier must, in all solicitations or advertisements for employees placed by it or on its behalf, state that all qualified applicants will be considered for employment without regard to race, color, religion, sex, or national origin.
- c. The supplier must send to each union or workers’ representative with which the supplier has a collective bargaining agreement or other understanding, a notice, provided by the contracting officer, advising the union or workers’ representative of the supplier’s commitments under this clause, and must post copies of the notice in conspicuous places available to employees and applicants.
- d. The supplier must comply with all provisions of Executive Order (EO) 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The supplier must furnish all information and reports required by the Executive Order, and by the rules, regulations, and orders of the

Secretary, and must permit access to the supplier's books, records, and accounts by the Postal Service and the Secretary for purposes of investigation to ascertain compliance with these rules, regulations, and orders.

- f. If the supplier fails to comply with this clause or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part; the supplier may be declared ineligible for further contracts in accordance with the Executive Order; and other sanctions may be imposed and remedies invoked under the Executive Order, or by rule, regulation, or order of the Secretary, or as otherwise provided by law.
- g. The supplier must insert this clause, including this paragraph g, in all subcontracts or purchase orders under this contract unless exempted by Secretary of Labor rules, regulations, or orders issued under the Executive Order. The supplier must take such action with respect to any such subcontract or purchase order as the Postal Service may direct as a means of enforcing the terms and conditions of this clause (including sanctions for noncompliance), provided, however, that if the supplier becomes involved in, or is threatened with, litigation as a result, the supplier may request the Postal Service to enter into the litigation to protect the interest of the Postal Service.
- h. Disputes under this clause will be governed by the procedures in 41 CFR 60-1.1.

### **Clause 9-8 Affirmative Action Compliance Requirements for Construction (May 2005)** (9.7.10)

- a. *Definitions*
  - (1) *Covered Area.* The geographical area described in the solicitation for this contract.
  - (2) *Director.* Director, Office of Federal Contract Compliance Programs (OFCCP), United States Department of Labor, or any person to whom the Director delegates authority.
  - (3) *Employer Identification Number.* The federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.
  - (4) *Minority* means:
    - (a) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification);
    - (b) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);
    - (c) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin); and

- (d) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).
- b. If the supplier, or subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 must include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this.
- c. If the supplier is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) must comply with the plan for those trades that have unions participating in the plan. Suppliers must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each supplier or subcontractor participating in an approved plan is also required to comply with its obligations under the *Equal Opportunity* clause, and to make a good-faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other suppliers or subcontractors toward a goal in an approved plan does not excuse any supplier's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.
- d. The supplier must implement the affirmative action procedures set forth in paragraph g below. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the supplier should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the supplier performs construction work in a geographical area located outside of the covered area, it must apply the goals established for the geographical area where that work is actually performed. The supplier is expected to make substantially uniform progress toward its goals in each craft.
- e. Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the supplier has a collective bargaining agreement, to refer minorities or women will excuse the supplier's obligations under this clause, Executive Order (EO) 11246, as amended, or the regulations under the Executive Order.
- f. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the supplier during the training period, and the supplier must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

- g. The supplier must take affirmative action to ensure equal employment opportunity. The evaluation of the supplier's compliance with this clause will be based upon its effort to achieve maximum results from its actions. The supplier must document these efforts fully and implement affirmative action steps at least as extensive as the following:
- (1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the supplier's employees are assigned to work. The supplier, if possible, will assign two or more women to each construction project. The supplier must ensure that foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the supplier's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.
  - (2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the supplier or its unions have employment opportunities available, and maintain a record of the organizations' responses.
  - (3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and was not referred back to the supplier by the union or, if referred back, not employed by the supplier, this fact must be documented in the file, along with whatever additional actions the supplier may have taken.
  - (4) Immediately notify the Director when the union or unions with which the supplier has a collective bargaining agreement have not referred back to the supplier a minority or woman sent by the supplier, or when the supplier has other information that the union referral process has impeded the supplier's efforts to meet its obligations.
  - (5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the supplier's employment needs, especially those programs funded or approved by the Department of Labor. The supplier must provide notice of these programs to the sources complied under subparagraph 2 above.
  - (6) Disseminate the supplier's equal employment policy by:
    - (a) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the supplier in meeting its contract obligations;
    - (b) Including the policy in any policy manual and in collective bargaining agreements;

- (c) Publicizing the policy in such publications as the company newspaper and annual report;
  - (d) Reviewing the policy with all management personnel and with all minority and female employees at least one a year; and
  - (e) (Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.
- (7) Review, at least annually, the supplier's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record must be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (8) Disseminate the supplier's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other suppliers and subcontractors which with the supplier does or anticipates doing business.
- (9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the supplier's recruitment area and employment needs. Not later than one month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- (10) Encourage present minority and female employees to recruit minority persons and women. When feasible, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the supplier's workforce.
- (11) Validate all tests and other selection requirements when required under 41 CFR 60-3.
- (12) Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training and other activities, opportunities for promotion.
- (13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and

- employment-related activities to ensure that the supplier's obligations under this contract are being carried out.
- (14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - (15) Maintain a record of solicitations for subcontracts for minority and female construction suppliers and suppliers, including circulation of solicitations to minority and female supplier associations and other business associations.
  - (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the supplier's equal employment policy and affirmative action obligations.
- h. The supplier is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in paragraph g above. The efforts of a supplier association, joint supplier-union, supplier-community, or similar group of which the supplier is a member and participant may be asserted as fulfilling one or more of its obligations under paragraph g above, provided the supplier:
- (1) Actively participates in the group;
  - (2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;
  - (3) Ensures that concrete benefits of the program are reflected in the supplier's minority and female workforce participation;
  - (4) Makes a good-faith effort to meet its individual goals and timetables; and
  - (5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the supplier. The obligation to comply is the supplier's, and failure of such a group to fulfill an obligation will not be a defense for the supplier's noncompliance.
- i. A single goal for minorities and a separate single goal for women must be established. The supplier is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the supplier may be in violation of EO 11246, if a particular group is employed in a substantially disparate manner.
- j. The supplier may not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- k. The supplier may not enter into any subcontract with any person or firm debarred from government contracts under EO 11246.
- l. The supplier must carry out such sanctions and penalties for violation of this clause and of the *Equal Opportunity* clause, including suspension, termination, and cancellation of existing subcontracts, as may be

imposed or ordered under EO 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered will be a violation of this clause and EO 11246.

- m. The supplier in fulfilling its obligations under this clause must implement affirmative action procedures at least as extensive as those prescribed in paragraph g above, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the supplier fails to comply with the requirements of EO 11246, the implementing regulations, or this clause, the contracting officer will take action as prescribed in 41 CFR 60-4.8.
- n. The supplier must designate a responsible official to:
  - (1) Monitor all employment-related activity to ensure that the supplier's equal employment policy is being carried out;
  - (2) Submit reports as may be required; and
  - (3) Keep records that at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records must be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.
- o. Nothing contained in this clause may be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (for example, those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**Clause 9-9 Equal Opportunity Preaward Compliance of Subcontracts (May 2005)** (9.7.10)

The supplier may not enter into a first-tier subcontract for an estimated or actual amount of \$10 million or more without obtaining in writing from the contracting officer a clearance that the proposed subcontractor is in compliance with equal opportunity requirements and therefore eligible for award.

**Clause 9-10 Service Contract Act (May 2005)** (9.8.3)

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



- b.
- (1) Each service employee employed in the performance of this contract by the supplier or any subcontractor must be (a) paid not less than the minimum monetary wages and (b) furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or an authorized representative, as specified in any wage determination attached to this contract.
  - (2)
    - (a) If a wage determination is attached to this contract, the contracting officer must require that any class of service employees not listed in it and to be employed under the contract (that is, the work to be performed is not performed by any classification listed in the wage determination) be classified by the supplier so as to provide a reasonable relationship (that is, appropriate level of skill comparison) between the unlisted classifications and the classifications in the wage determination. The conformed class of employees must be paid the monetary wages and furnished the fringe benefits determined under this clause. (The information collection requirements contained in this paragraph b have been approved by the Office of Management and Budget under OMB control number 1215-0150.)
    - (b) The conforming procedure must be initiated by the supplier before the performance of contract work by the unlisted class of employees. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, if there is no authorized representative, the employees themselves, must be submitted by the supplier to the contracting officer no later than 30 days after the unlisted class of employees performs any contract work. The contracting officer must review the proposed action and promptly submit a report of it, together with the agency's recommendation and all pertinent information, including the position of the supplier and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. Within 30 days of receipt, the Wage and Hour Division will approve, modify, or disapprove the action, render a final determination in the event of disagreement, or notify the contracting officer that additional time is necessary.
    - (c) The final determination of the conformance action by the Wage and Hour Division will be transmitted to the contracting officer, who must promptly notify the supplier of the action taken. The supplier must give each affected

employee a written copy of this determination, or it must be posted as a part of the wage determination.

- (d)
  - (i) The process of establishing wage and fringe benefit rates bearing a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from determination to determination, depending on the circumstances. Standard wage and salary administration practices ranking 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 various 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 conformable wage rates is the concept that a pay relationship should be maintained between job classifications on the basis of the skill required and the duties performed.
  - (ii) If a contract is modified or extended or an option is exercised, or if a contract succeeds a contract under which the classification in question was previously conformed pursuant to this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (that is, adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase change in the wages and fringe benefits specified for all classifications to be used on the contract that are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. If these conforming actions are accomplished before the performance of contract work by the unlisted class of employees, the supplier must advise the contracting officer of the action taken, but the other procedures in b.2(c) above need not be followed.
  - (iii) No employee engaged in performing work on this contract may 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.
- (e) The wage rate and fringe benefits finally determined pursuant to b.2(a) and (b) above must 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 unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date the class of employees began contract work is a violation of the Service Contract Act and this contract.
- (f) Upon discovery of failure to comply with b.2(a) through (e) above, the Wage and Hour Division will make a final determination of conformed classification, wage rate, and/or fringe benefits that will be retroactive to the date the class of employees commenced contract work.
- (3) If, as authorized pursuant to section 4(d) of the Service Contract Act, the term of this contract is more than one year, the minimum monetary wages and fringe benefits required to be paid or furnished to service employees will be subject to adjustment after one year and not less often than once every two years, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration of the Department of Labor.
- c. The supplier or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably to it 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 supplier nor any subcontractor under this contract may 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 relieves the supplier or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.
    - (2)
      - (a) If this contract succeeds a contract subject to the Service Contract Act, 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 a minimum wage attachment for this contract setting forth collectively bargained wage rates and fringe benefits, neither the supplier nor any subcontractor under this contract may pay any service employee performing any of the contract work (regardless of whether or not the employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in the

- agreement, to which the 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 the agreement.
- (b) No supplier or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of section 4.1(b) of 29 CFR Part 4 apply or unless the Secretary of Labor or an authorized representative finds, after a hearing as provided in section 4.10 of 29 CFR Part 4, that the wages and/or fringe benefits provided for in the agreement vary substantially from those prevailing for services of a similar character in the locality, or determines, as provided in section 4.11 of 29 CFR Part 4, that the agreement applicable to service employees under the predecessor contract was not entered into as a result of arm's-length negotiations.
  - (c) If it is found in accordance with the review procedures in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that wages and/or fringe benefits in a predecessor supplier's collective bargaining agreement vary substantially from those prevailing for services of a similar character in the locality, and/or that the agreement applicable to service employees 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. This determination will 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 its issuance occurs before or after award (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, it will be effective as of the date of the final administrative decision.
- e. The supplier and any subcontractor under this contract must notify each service employee starting work on the contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to the contract, or must post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) must 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 supplier or subcontractor may not permit 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 supplier or subcontractor that are unsanitary or hazardous or

dangerous to the health or safety of service employees engaged to furnish these services, and the supplier or subcontractor must comply with the safety and health standards applied under 29 CFR Part 1925.

g.

- (1) The supplier and each subcontractor performing work subject to the Act must maintain for 3 years from the completion of the work records containing the information specified in (a) through (f) following for each employee subject to the Service Contract Act and must 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 (approved by the Office of Management and Budget under OMB control numbers 1215-0017 and 1215-0150):
  - (a) Name, address, and social security number of each employee.
  - (b) The correct work classification, 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.
  - (c) The number of daily and weekly hours so worked by each employee.
  - (d) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.
  - (e) 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 whom wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative pursuant to paragraph b above. A copy of the report required by b.2(b) above is such a list.
  - (f) Any list of the predecessor supplier's employees furnished to the supplier pursuant to section 4.6(1)(2) of 29 CFR Part 4.
- (2) The supplier must 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 the records specified in this paragraph g for inspection and transcription is a violation of the regulations and this contract, and in the case of failure to produce these records, the contracting officer, upon direction of the Department of Labor and notification of the supplier, must take action to suspend any further payment or advance of funds until the violation ceases.
- (4) The supplier must permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

- h. The supplier must unconditionally pay to each employee subject to the Service Contract 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. Payments must be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under the Act may not be of any duration longer than semimonthly.
- i. The contracting officer must withhold or cause to be withheld from the Postal Service supplier under this or any other contract with the supplier such sums as an appropriate official of the Department of Labor requests or the contracting officer decides may be necessary to pay underpaid employees employed by the supplier or subcontractor. In the event of failure to pay employees subject to the Act wages or fringe benefits due under the Act, the Postal Service may, after authorization or by direction of the Department of Labor and written notification to the supplier, suspend any further payment or advance of funds until the violations cease. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In this event, the Postal Service may enter into other contracts or arrangements for completion of the work, charging the supplier in default with any additional cost.
- j. The supplier agrees to insert this clause in all subcontracts subject to the Act. The term "supplier," as used in this clause in any subcontract, is deemed to refer to the subcontractor, except in the term "supplier."
- k. 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 includes all such persons regardless of any contractual relationship that may be alleged to exist between a supplier or subcontractor and them.
- l.
  - (1) If wages to be paid or fringe benefits to be furnished service employees employed by the supplier or a subcontractor under the contract are provided for in a collective bargaining agreement that is or will be effective during any period in which the contract is being performed, the supplier must report this fact to the contracting officer, together with full information as to the application and accrual of these wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and furnish a copy of the agreement. The report must be made upon starting performance of the contract, in the case of collective bargaining agreements effective at the time. In the case of agreements or provisions or amendments thereof effective at a later time during the period of contract performance, they must be reported promptly after their

- negotiation. (Approved by the Office of Management and Budget under OMB control number 1215-0150.)
- (2) Not less than 10 days before completion of any contract being performed at a Postal facility where service employees may be retained in the performance of a succeeding contract and subject to a wage determination containing vacation or other benefit provisions based upon length of service with a supplier (predecessor) or successor (section 4.173 of Regulations, 29 CFR Part 4), the incumbent supplier must furnish to the contracting officer a certified list of the names of all service employees on the supplier's or subcontractor's payroll during the last month of contract performance. The list must also contain anniversary dates of employment on the contract, either with the current or predecessor suppliers of each such service employee. The contracting officer must turn over this list to the successor supplier 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 supplier and its officials certify that neither they nor any person or firm with a substantial interest in the supplier's firm are 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 may 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 other provisions of this clause, 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 before 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, or 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 the 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 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 not registered as an apprentice in an approved program must 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 may 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 may not be greater than the ratio permitted to the supplier for its entire workforce 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 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. However, the amount of this 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 1214-0017); and

- (4) The use of tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.
- a. Disputes arising out of the labor standards provisions of this contract are not subject to the *Claims and Disputes* clause but must 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 this clause include disputes between the supplier (or any of its subcontractors) and the Postal Service, the U.S. Department of Labor, or the employees or their representatives.

**Clause 9-11 Service Contract Act — Short Form (May 2005)** (9.8.3)

Except to the extent that an exemption, variation, or tolerance would apply if this contract were more than \$2,500, the supplier and any subcontractor must pay employees engaged in performing work on the contract at least the minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Regulations and interpretations of the Service Contract Act of 1965, as amended, are contained in 29 CFR Part 4.

**Clause 9-12 Fair Labor Standards Act and Service Contract Act — Price Adjustment (May 2005)** (9.8.3)

- a. The supplier warrants that the contract prices do not include allowance for any contingency to cover increased costs for which adjustment is provided under this clause.
- b. The minimum prevailing wage determination, including fringe benefits, issued under the Service Contract Act of 1965 by the Department of Labor, current at the beginning of each renewal period, applies to any renewal of this contract. When no such determination has been made as applied to this contract, the minimum wage established in accordance with the *Service Contract Act* clause applies to any renewal of this contract.
- c. When, as a result of the determination of minimum prevailing wages and fringe benefits applicable at the beginning of the renewal option period, or when an increased or decreased wage determination is otherwise applied to this contract, or when as a result of any amendment to the Fair Labor Standards Act enacted after award that affects minimum wage, and whenever such a determination becomes applicable to this contract under law, the supplier increases or decreases wages or fringe benefits of employees working on the contract to comply, the contract price or unit price labor rates will be adjusted accordingly. This adjustment is limited to increases or decreases in wages or fringe benefits, and the concomitant increases

- or decreases in Social Security, unemployment taxes, and workers' compensation insurance, but may not otherwise include any amount for general and administrative costs, overhead, or profit.
- d. The supplier must notify the contracting officer of any increases claimed under this clause within 30 days after the effective date of the wage change, unless the contracting officer extends this period in writing. In the case of any decrease under this clause, the supplier must promptly notify the contracting officer of the decrease, but nothing herein precludes the Postal Service from asserting a claim within the period permitted by law. The notice must state the amount claimed and give any relevant supporting data that the contracting officer may reasonably require. Upon agreement of the parties, the contract price or unit price labor rates will be modified in writing. Pending agreement on or determination of any such adjustment and its effective date, the supplier must continue performance.
  - e. The contracting officer or the contracting officer's authorized representative must, for 3 years after final payment under the contract, be given access to and the right to examine any directly pertinent books, papers, and records of the supplier.

**Clause 9-13 Affirmative Action for Handicapped Workers  
(May 2005)**

(9.9.2)

- a. The supplier may not discriminate against any employee or applicant because of physical or mental handicap, in regard to any position for which the employee or applicant is qualified. The supplier agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination in all employment practices, such as employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training (including apprenticeship).
- b. The supplier agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Rehabilitation Act of 1973, as amended.
- c. In the event of the supplier's noncompliance with this clause, action may be taken in accordance with the rules and regulations and relevant orders of the Secretary of Labor.
- d. The supplier agrees to post in conspicuous places, available to employees and applicants, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. These notices state the supplier's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants, and the rights of applicants and employees.

- e. The supplier must notify each union or worker's representative with which it has a collective bargaining agreement or other understanding that the supplier is bound by the terms of section 503 of the Act and is committed to taking affirmative action to employ, and advance in employment, handicapped individuals.
- f. The supplier must include this clause in every subcontract or purchase order over \$10,000 under this contract unless exempted by rules, regulations, or orders of the Secretary issued pursuant to section 503 of the Act, so its provisions will be binding upon each subcontractor or vendor. The supplier must take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce these provisions, including action for noncompliance.

**Clause 9-14 Affirmative Action for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (May 2005)** (9.10.2)

- a. The supplier must comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C 4211 and 4212).
- b. The supplier may not discriminate against any employee or applicant because that employee or applicant is a special disabled veteran, veteran of the Vietnam era, or other eligible veteran, in regard to any position for which the employee or applicant is qualified. The supplier agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination in all employment practices, such as employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training (including apprenticeship).
- c. The supplier agrees to list all employment openings which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the supplier other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local office of the state employment service where the opening occurs. State and local government agencies holding Postal Service contracts of \$25,000 or more will also list their openings with the appropriate office of the state employment service.
- d. Listing of employment openings with the employment service system will be made at least concurrently with the use of any recruitment source or effort and will involve the normal obligations attaching to the placing of a bona fide job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does

not require the hiring of any particular applicant or hiring from any particular group of applicants, and nothing herein is intended to relieve the supplier from any other requirements regarding nondiscrimination in employment.

- e. Whenever the supplier becomes contractually bound to the listing provisions of this clause, it must advise the employment service system in each state where it has establishments of the name and location of each hiring location in the state. The supplier may advise the state system when it is no longer bound by this clause.
- f. Paragraphs c, d, and e above do not apply to openings the supplier proposes to fill from within its own organization or under a customary and traditional employer/union hiring arrangement. But this exclusion does not apply to a particular opening once the supplier decides to consider applicants outside its own organization or employer/union arrangements for that opening.
- g. *Definitions*
  - (1) *All Employment Openings.* This includes all positions except executive and top management, those positions that will be filled from within the supplier's organization, and positions lasting 3 days or less. This also includes full-time employment, temporary employment of more than 3 days duration, and part-time employment. Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations in which the needs of the Postal Service cannot reasonably be otherwise supplied, when listing would be contrary to national security. or when listing would not be in the best interest of the Postal Service.
  - (2) *Appropriate Office of the State Employment Service.* This means the local office of the federal/state national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.
  - (3) *Positions That Will Be Filled From Within the Supplier's Own Organization.* This means employment openings for which no consideration will be given to persons outside the supplier's organization (including any affiliates, subsidiaries and parent companies) and includes any openings which the supplier proposes to fill from regularly established recall lists.
  - (4) *Openings the Supplier Proposes to Fill Under a Customary and Traditional Employer/Union Hiring Arrangement.* Employment openings the supplier proposes to fill from union halls as part of the customary and traditional hiring relationship existing between it and representatives of its employees.

(5) *Special Disabled Veterans.*

- (a) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability:
  - (i) Rated at 30 percent or more; or
  - (ii) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (i.e., a significant impairment of the veteran's ability to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests); or
- (b) A person who was discharged or released from active duty because of a service-connected disability.

(6) *Veteran of the Vietnam Era.*

- (a) A veteran who served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred:
  - (i) In the Republic Vietnam between February 28, 1961, and May 7, 1975; or
  - (ii) Between August 5, 1964, and May 7, 1975, in all other cases; or
- (b) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed:
  - (i) In the Republic Vietnam between February 28, 1961, and May 7, 1975; or
  - (ii) Between August 5, 1964, and May 7, 1975, in all other cases.

(7) *Other Eligible Veteran.*

Any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

- h. The supplier agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Vietnam Era Veterans Readjustment Assistance Act of 1972, as amended.
- i. The supplier must include this clause in every subcontract or purchase order of \$25,000 or more under this contract unless exempted by rules, regulations, or orders of the Secretary issued pursuant to the Act, so its provisions will be binding upon each subcontractor or vendor. The supplier must take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce these provisions, including action for noncompliance.

- j. The supplier agrees to post in conspicuous places, available to employees and applicants, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. These notices state the supplier's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era, and the rights of applicants and employees.
- k. The supplier must notify each union or workers' representative with which it has a collective bargaining agreement or other understanding that the supplier is bound by the terms of the Act and is committed to taking affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.