SERVICE CONTRACT ACT OF 1965, AS AMENDED (Jan 2006)

(a) Definitions. "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.).

"Service employee," as used in this clause, means any person engaged in the performance of this Agreement other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between the Seller or subcontractor and such persons.

b) Applicability. This Agreement is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.

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

(2) (i) If a wage determination is attached to this Agreement, the Seller shall classify any class of service employee which is not listed therein and which is to be employed under the Agreement (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Seller prior to the performance of subcontract work by the unlisted class of employee. The Seller shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the Company no later than 30 days after the unlisted class of employee performs any subcontract work. The Company shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves) and all pertinent information to DOE for transmittal to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify DOE within 30 days of receipt that additional time is necessary.

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

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

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

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

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

(vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced subcontract work.

(3) Adjustment of Compensation. If the term of this Agreement is more than one year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this Agreement shall be subject to adjustment after one year and not less often than once every two years, under wage determinations issued by the Wage and Hour Division.

(d) Obligation to Furnish Fringe Benefits. The Seller or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) Minimum Wage. In the absence of a minimum wage attachment for this Agreement, neither the Seller nor any subcontractor under this Agreement shall pay any person performing work under this Agreement (regardless of whether the person is a service employee) less than the minimum wage specified by Section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Seller or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) Successor Subcontracts. If this Agreement succeeds a subcontract subject to the 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 the minimum wage attachment for this Agreement setting forth such collectively bargained wage rates and fringe benefits, neither the Seller nor any subcontractor under this Agreement shall pay any service employee performing any of the subcontract work (regardless of whether or not such employee was employed under the predecessor subcontract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor subcontract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. Neither the Seller nor any subcontractor under this Agreement may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor subcontract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor subcontract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the Agreement, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) Notification to Employees. The Seller and any subcontractor under this Agreement shall notify each service employee commencing work on this Agreement of the minimum monetary wage and any fringe benefits required to be paid pursuant to this Agreement, or shall post the wage determination attached to this Agreement. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of Section 2(a)(4) of the Act and of this Agreement. Publication 1313 is available at: http://www.dol.gov/esa/regs/compliance/posters/sca.htm or will be mailed on request.

(h) Safe and Sanitary Working Conditions. The Seller or subcontractor shall not permit any part of the services called for by this Agreement to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Seller or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Seller or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) Records. (1) The Seller and each subcontractor performing work subject to the Act shall make and maintain for three years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Act:

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

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

(ii) For those classes of service employees not included in any wage determination attached to this Agreement, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor subcontractor's employees which had been furnished to the Seller as prescribed by paragraph (n) of this clause.

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

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

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

(j) Pay Periods. The Seller shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall 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 this Act may not be of any duration longer than semimonthly.

(k) Withholding of Payments and Termination of Agreement. The Company shall withhold or cause to be withheld from this or any other Agreement with the Seller such sums as DOE or an appropriate official of the Department of Labor requests or such sums as the Company decides may be necessary to pay underpaid employees employed by the Seller or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Company may, after authorization or by direction of DOE or the Department of Labor and written notification to the Seller, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the subcontract work. In such event, the Company may enter into other subcontracts or arrangements for completion of the work, charging the Seller in default with any additional cost.

(l) Subcontracts. The Seller agrees to insert this clause in all subcontracts subject to the Act.

(m) Collective Bargaining Agreements Applicable to Service Employees. If wages to be paid or fringe benefits to be furnished any service employees employed by the Seller or any subcontractor under this Agreement are provided for in a collective bargaining agreement which is or will be effective during any period in which this Agreement is being performed, the Seller shall report such fact to the Company, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the Agreement, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the Agreement, in case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of subcontract performance such agreements shall be reported promptly after negotiation thereof.

(n) Seniority List. Not less than ten days prior to completion of any Agreement being performed at a Federal facility where service employees may be retained in the performance of the succeeding subcontract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with the Seller (predecessor) or successor (29 CFR 4.173), the Seller shall furnish the Company a certified list of the names, of all service employees on the Seller's or subcontractor's payroll during the last month of subcontract performance. Such list shall also contain anniversary dates of employment on the Agreement either with the current or predecessor subcontractors of each such service employee. The Company shall turn over such list to the successor at the commencement of the succeeding subcontract.

(o) Rulings and Interpretations. Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.

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

(2) No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract under 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.

(q Variations, Tolerances, and Exemptions Involving Employment. Notwithstanding any of the provisions in paragraphs (b) through (o) 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 prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business.

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by Section 2(a)(1) or 2(b)(1) of the 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 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 29 CFR Parts 525 and 528.

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

(s) Tips. An employee engaged in an occupation in which the employee customarily and regularly receives more than $30 a month in tips may have the amount of these 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 credit shall not exceed $1.34 per hour beginning January 1, 1981. To use this provision:

(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; and

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

(t) Disputes Concerning Labor Standards. The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause, if any, of this Agreement. Disputes within the meaning of this clause include disputes between the Seller (or any of its subcontractors) and the Company, DOE, the U.S. Department of Labor, or the employees or their representatives.