

b. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the provisions of subparagraph a., the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of subparagraph a. in the sum of \$10.00 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by subparagraph a.

c. Withholding for Unpaid Wages and Liquidated Damages. The

Contracting Officer may withhold from the Government Prime Contractor, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of subparagraph b.

- d. Subcontracts. The Contractor shall insert subparagraphs a. through d. of this paragraph 1. in all subcontracts, and shall require their inclusion in all subcontracts of any tier.
 - e. Records. The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a).
2. Equal Opportunity. During the performance of this contract, the Contractor agrees as follows:
- a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color or national origin. Such action shall include, but not be limited to the following: 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 Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color or national origin.
- c. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- e. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit

access to his books, records and accounts by the Commission and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

- f. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be cancelled, terminated or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- g. The Contractor will include the provisions of subparagraphs a. through g. in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with

respect to any subcontract or purchase order as the Commission may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the Government to enter into such litigation to protect the interests of the Government.

3. Notice of Labor Disputes. Whenever an actual or potential labor dispute is delaying or threatens to delay the performance of the work, the Contractor shall immediately notify the Contracting Officer in writing. Such notice shall include all relevant information concerning the dispute and its background.
4. Convict Labor. In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.
5. Walsh-Healey Public Contracts Act. If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment, in an amount which exceeds or may exceed \$10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U. S. Code 35-45), there are hereby incorporated by reference all representations and

stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

6. Davis-Bacon Act. Upon request of the Commission and acceptance thereof by the Contractor, the Contractor shall procure by subcontract the construction of new facilities or the alteration or repair of Government-owned facilities at the Plant. Any subcontract entered into under this paragraph shall be subject to the written approval of the Commission and shall contain the provisions relative to labor and wages required by law to be included in contracts for the construction, alteration, and/or repair, including painting and decorating, of a public building or public work.

ARTICLE XXII - PATENTS

1. Whenever any invention or discovery is made or conceived by the Contractor or its employees or consultants in the course of or under this contract, the Contractor shall promptly furnish the Commission with complete information thereon; and the Commission shall have the sole power to determine whether or not and where a patent application

- shall be filed, and to determine the disposition of the title to and rights in and to any invention or discovery and any patent application or patent that may result; provided, however, that in the fields of light metals and chemistry relating to the Contractor's business, including equipment and instrumentation relating thereto, the Contractor in any event shall retain at least a nonexclusive, irrevocable, royalty-free license with the right to issue sub-licenses under such invention, discovery, patent application, or patent, such license and sub-licenses being limited to the manufacture, use and sale for purposes other than use in the production or utilization of special nuclear material or atomic energy. Subject to the license and sub-licensing rights retained by the Contractor as provided in this paragraph, the judgment of the Commission on these matters shall be accepted as final; and the Contractor, for itself and for its employees and consultants, agree that the inventor or inventors will execute all documents and do all things necessary or proper to carry out the judgment of the Commission.
2. No claim for pecuniary award or compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall

be asserted by the Contractor or its employees or consultants with respect to any invention or discovery made or conceived in the course of or under this contract.

3. Except as otherwise authorized in writing by the Commission, the Contractor will obtain patent agreements to effectuate the purposes of paragraphs 1. and 2. of this article from all persons who perform any part of the work under this contract, except such clerical and manual labor personnel as will not have access to technical data.
4. Except as otherwise authorized in writing by the Commission, the Contractor will insert in all subcontracts and purchase orders, including consultant agreements made hereunder, provisions making paragraphs 1. through 6. of this article (except for the license proviso set forth in the first sentence of paragraph 1) applicable to the subcontractor or vendor and their employees; provided, however, that the provisions of this article need not be inserted in subcontracts and purchase orders for ordinary commercial materials or equipment that are to be furnished "Off-the-shelf", and as to such subcontracts and purchase orders an indemnity provision, as set forth below, in favor of the Government shall be obtained:

Patent Indemnity:

The Seller (or subcontractor) agrees to indemnify the

Buyer and the Government, their officers, agents, servants, and employees against liability of any kind (including costs and expenses incurred) for the use of any invention or discovery and for the infringement of any Letters Patent (not including liability, arising pursuant to Section 183, Title 35, (1952) U. S. Code, prior to the issuance of Letters Patent) occurring in the performance of this purchase order (or subcontract) or arising by reason of the use or disposal by or for the account of the Buyer or the Government of items manufactured or supplied under this purchase order (or subcontract).

5. It is recognized that during the course of the work under this contract, the Contractor or its employees or consultants may from time to time desire to publish, within the limits of security requirements, information regarding scientific or technical developments made or conceived in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of the Commission or the Contractor, patent approval for release and publication shall be secured from the Commission prior to any such release or publication.

6. With respect to any U. S. Patent Application filed by the Contractor on any contract invention or discovery made or conceived in the course of the contract, the Contractor will incorporate in the first paragraph of the U. S. Patent Application the following statement:

"The invention described herein was made in the course of, or under, a contract (if desired, may substitute contract with identifying number) with the U. S. Atomic Energy Commission."

7. The Contractor hereby grants to the Government a perpetual royalty-free nonexclusive, nontransferable license to directly, or through contractors, practice in the Plant, and for the same purposes in or at other facilities operated by or for the Commission, but not elsewhere, all patented inventions, secret processes, technical information and know-how of the Contractor which are incorporated in the construction or operation of the Plant by the Contractor; provided, however, the Contractor shall at the time of incorporation of any such patented inventions, secret processes, technical information or know-how specifically identify the same, and the Commission's right to practice, directly or through contractors, shall be limited as above set forth, unless the secret processes,

technical information or know-how are generally available to the public or have been made available to the Commission from other sources.

ARTICLE XXIII - BUY AMERICAN ACT

1. In acquiring end products, the Buy American Act (41 U.S. Code 10a-d) provides that the Government give preference to domestic source end products. For the purpose of this article:
 - a. "Components: means those articles, materials, and supplies which are directly incorporated in the end products;
 - b. "End products" means those articles, materials, and supplies which are to be acquired under this contract for public use; and
 - c. A "domestic source end product" means (i) an unmanufactured end product which has been mined or produced in the United States, and (ii) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50% of the cost of all its components.
For the purposes of this 1. c. (ii), components of foreign

origin of the same type or kind as the products referred to in 2. b. or c. of this article shall be treated as components mined, produced, or manufactured in the United States.

2. The Contractor agrees that there will be used under this contract (by the Contractor, subcontractor, materialmen, and suppliers) only domestic source end products, except end products:
 - a. Which are for use outside the United States;
 - b. Which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;
 - c. As to which the Commission determines the domestic preference to be inconsistent with the public interest; or
 - d. As to which the Commission determines the cost to the Government to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954.)

ARTICLE XXIV - SECURITY

1. Contractor's Duty to Safeguard Restricted Data and Other Classified Information. In the performance of the work under

this contract, the Contractor shall, in accordance with the Commission's security regulations and requirements, be responsible for safeguarding restricted data and other classified matter and protecting against sabotage, espionage, loss, and theft, the classified documents, materials, equipment, processes, etc., as well as such other material of high intrinsic or strategic value as may be in the Contractor's possession in connection with performance of work under this contract. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to the Commission any classified matter in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract.

2. Regulations. The Contractor agrees to conform to all security regulations and requirements of the Commission.
3. Definition of Restricted Data. The term "restricted Data", as used in this article, means all data concerning (i) design, manufacture, or utilization of atomic weapons; (ii) the production of special nuclear material; or (iii) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted

Data category pursuant to Section 142 of the Atomic Energy Act of 1954.

4. Security Clearance of Personnel. The Contractor shall not permit any individual to have access to Restricted Data, or other classified information, except in accordance with the Atomic Energy Act of 1954, as amended, and the Commission's regulations or requirements.
5. Criminal Liability. It is understood that disclosure of information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any Restricted Data or any Top Secret, Secret, or Confidential matter that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, his agents, employees, and subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, 68 Stat. 919). (See also Executive Order 10104 of February 1, 1950, 15 F. R. 597.).
6. Subcontracts and Purchase Orders. Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

ARTICLE XXV - COVENANT AGAINST CONTINGENT FEES

1. Warranty - Termination or Deduction for Breach. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
2. Subcontracts and Purchase Orders. Unless otherwise authorized by the Contracting Officer in writing the Contractor shall cause provisions similar to the foregoing to be inserted in all subcontracts and purchase orders entered into under this contract.

ARTICLE XXVI - OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be

construed to extend to this contract if made with a corporation for its general benefit.

ARTICLE XXVII - TERMINATION

1. The performance of work under this contract may be terminated by the Commission in whole, or from time to time in part,
 - (i) whenever the Contractor shall default in performance, and shall fail to cure the fault or failure within such period as the Commission may allow after receipt from the Commission of a notice specifying the fault or failure, or
 - (ii) whenever for any reason the Commission shall determine any such termination is for the best interest of the Government. Termination of the work hereunder shall be effected by delivery of a notice of termination specifying whether termination is for default of the Contractor or at the option of the Commission, the extent to which performance of work under the contract shall be terminated, and the date upon which such termination shall become effective. Any such termination shall be without prejudice to any claim which either party may have against the other.If, after notice of termination of this contract under the provisions of paragraph 1. (i) above, it is determined for any reason that the Contractor was not in default pursuant to that paragraph, or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the

control and without the fault or negligence of the Contractor, the notice of termination shall be deemed to have been issued for the convenience of the Government under paragraph 1. (ii) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

2. Upon receipt of notice of termination, in accordance with paragraph 1. above, the Contractor shall, to the extent directed in writing by the Commission, discontinue the terminated work and the placing of orders for materials, facilities, and supplies in connection therewith, and shall proceed, if, and to the extent required by the Commission, to cancel promptly, and settle with the approval or ratification of the Commission, existing orders, subcontracts and commitments insofar as such orders, subcontracts and commitments are chargeable to this contract or the terminated portion thereof.
3. Upon the termination of this contract, full and complete settlement of all claims of the Contractor and of the Commission arising out of this contract shall be made as follows:
 - a. The Government shall assume sole responsibility for any and all obligations, commitments and claims that the Contractor may have theretofore in good faith

in whole for the convenience of the Government, the fixed fee of the Contractor shall be prorated to and including the effective date of such termination. In addition, the Contractor shall be paid a fixed fee in an amount to be agreed upon as compensation for its services in closing out the work under this contract after the effective date of such termination. The fixed fee is to be negotiated as soon as practicable after service of notice of termination, shall be based upon an estimate of the cost of the services under this article agreed to by the Contractor and the Commission, and shall be provided for in a supplement or amendment to this contract prior to final settlement hereunder. In the event of a partial termination for the convenience of the Government, an equitable adjustment shall be made in the fixed fee if such termination results in a material decrease in the level of the Contractor's management effort. Pending agreement as to the amount of such fee, the Contractor shall diligently proceed with the performance of the services required under this article. Any failure to agree on the right to

or the amount of such adjustment shall be deemed a dispute within the purview of the article of this contract entitled "Disputes". If the contract is terminated due to the fault of the Contractor, no additional payments on account of the fee shall thereafter accrue.

e. The obligation of the Government to make any of the payments required by this article or any other provisions of this contract shall be subject to any unsettled claims in connection with this contract which the Government may have against the Contractor.

4. Prior to final settlement, the Contractor shall furnish a release as required in the article of this contract entitled "Payments and Advances" and such accounting for Government-owned property as may be required by the Commission; provided, however, that unless the Commission requires an inventory, the maintenance and disposition of records of Government-owned property in accordance with the article of this contract entitled "Accounts, Records and Inspection: shall be accepted by the Commission as full compliance with all requirements of this contract pertaining to an accounting for such property.

ARTICLE XXVIII - CONTROL OF SS MATERIALS

As used in this article, the term "SS Materials" is a collective term which includes source material, special nuclear material and those other materials to which, by direction of the General Manager of the Commission, the provisions of Part 7400 of the AEC Manual apply. The Contractor shall, in a manner satisfactory to the Commission, establish accounting and measurement procedures, maintain current records and institute appropriate control measures for SS Materials in its possession commensurate with the national security and the economic value of the SS Materials. Transfers of SS Materials will not be made without prior written approval of the Commission. Except as otherwise authorized by the Commission, SS Materials in the Contractor's possession, custody, or control shall be used only for furtherance of the work under this contract. The Contractor shall be responsible for the control of such SS Materials in accordance with Part 7400 of the AEC Manual and shall include in each purchase order, subcontract, and other commitment involving the use of SS materials which it enters into under this contract, appropriate terms and conditions for the use of SS Materials and the responsibilities of the subcontractor or vendor regarding control of SS Materials. In the case of fixed price

purchase orders, subcontracts, or other commitments, the terms and conditions with respect to SS Materials shall also include the financial responsibilities, if any, regarding such items as losses, scrap recovery, and product recovery.

ARTICLE XXIX - RENEGOTIATION

If this contract is subject to the Renegotiation Act of 1951, as amended, the following provisions shall apply:

1. This contract is subject to the Renegotiation Act of 1951 (50 U. S. C. App. 1211, et seq.), as amended, and to any subsequent act of Congress providing for the renegotiation of contracts. Nothing contained in this article shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of Congress heretofore or hereafter enacted. Subject to the foregoing, this contract shall be deemed to contain all the provisions required by Section 104 of the Renegotiation Act of 1951, and by any such other act, without subsequent contract amendment specifically incorporating such provisions.
2. The Contractor agrees to insert the provisions of this article, including this paragraph 2., in all subcontracts, as that term is defined in Section 103g of the Renegotiation Act of 1951, as amended.

ARTICLE XXX - CLASSIFICATION

In the performance of the work under this contract, the Contractor shall assign classifications to all documents, material, and equipment originated or generated by the Contractor in accordance with classification guidance furnished to the Contractor by the Commission.

Every subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material or equipment, shall include a provision to the effect that in the performance of such subcontract or purchase order the subcontractor or supplier shall assign classifications to all such documents, material, and equipment in accordance with classification guidance furnished to such subcontractor or supplier by the Contractor.

ARTICLE XXXI - UTILIZATION OF SMALL BUSINESS CONCERNS

1. It is the policy of the Government as declared by the Congress that a fair proportion of the purchases and contracts for supplies and services for the Government be placed with small business concerns.
2. The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

ARTICLE XXXII - SMALL BUSINESS SUBCONTRACTING PROGRAM

1. The Contractor agrees to establish and conduct a small business

subcontracting program which will enable small business concerns to be considered fairly as subcontractors and suppliers under this contract. In this connection, the Contractor shall:

- a. Designate a liaison officer who will (i) maintain liaison with the Government on small business matters, (ii) supervise compliance with the "Utilization of Small Business Concern" article, and (iii) administer the Contractor's "Small Business Subcontracting Program".
- b. Provide adequate and timely consideration of the potentialities of small business concerns in all "make-or-buy" decisions.
- c. Assure that small business concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications and delivery schedules so as to facilitate the participation of small business concerns. Where the Contractor's lists of potential small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
- d. Maintain records showing (i) whether each prospective subcontractor is a small business concern, (ii) procedures

which have been adopted to comply with the policies set forth in this article, and (iii) with respect to the letting of any subcontract (including purchase orders) exceeding \$10,000, information substantially as follows:

- (1) Whether the award went to large or small business.
- (2) Whether less than three or more than two small business concerns were solicited.
- (3) The reason for nonsolicitation of small business if such was the case.
- (4) The reason for small business failure to receive the award if such was the case when small business was solicited.

The records maintained in accordance with (iii) above may be in such form as the Contractor may determine, and the information shall be summarized quarterly and submitted by the purchasing department of each individual plant or division to the Contractor's cognizant small business liaison officer. Such quarterly summaries will be considered to be management records only and need not be submitted routinely to the Government; however, records maintained pursuant to this article will be kept available for review.

- e. Notify the Contracting Officer before soliciting bids or quotations on any subcontract (including purchase orders) in excess of \$10,000 if (i) no small business concern is to be solicited, and (ii) the Contracting Officer's consent to the subcontract (or ratification) is required by the "Subcontracts and Purchase Orders" article in this contract. Such notice will state the Contractor's reasons for nonsolicitation of small business concerns, and will be given as early in the procurement cycle as possible so that the Contracting Officer may give the SBA timely notice to permit the SBA a reasonable period to suggest potentially qualified small business concerns through the Contracting Officer. In no case will the procurement action be held up when to do so would, in the Contractor's judgment, delay performance under the contract.
- f. Include the "Utilization of Small Business Concerns" article in subcontracts which offer substantial small business subcontracting opportunities.
- g. Cooperate with the Contracting Officer in any studies and surveys of the Contractor's subcontracting procedures and practices that the Contracting Officer may from time to time conduct.

- h. Submit such information on subcontracting to small business concerns as is called for by the Contracting Officer.
2. A "small business concern" is a concern that meets the pertinent criteria established by the Small Business Administration and set forth in Section 1-1.701 of the Federal Procurement Regulations.
3. The Contractor agrees that, in the event he fails to comply with his contractual obligations concerning the small business subcontracting program, this contract may be terminated, in whole or in part, for default.
4. The Contractor further agrees to insert, in any subcontract hereunder which may exceed \$500,000 and which contains the "Utilization of Small Business Concerns" article, provisions which shall conform substantially to the language of this article, including this paragraph 4., and to notify the Contracting Officer of the names of such subcontractors.

ARTICLE XXXIII - UTILIZATION OF CONCERNS IN LABOR
SURPLUS AREAS

It is the policy of the Government to place contracts with concerns which will perform such contracts substantially in areas of persistent or substantial labor surplus, where this can be done

consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use his best efforts to place his subcontracts in accordance with this policy. In complying with the foregoing and with paragraph 2. of the article of this contract entitled "Utilization of Small Business Concerns", the Contractor in placing his subcontracts shall observe the following order of preference: (1) persistent labor surplus area concerns which are also small business concerns; (2) other persistent labor surplus area concerns; (3) substantial labor surplus area concerns which are also small business concerns; (4) other substantial labor surplus area concerns; and (5) small business concerns which are not labor surplus area concerns.

ARTICLE XXXIV - LABOR SURPLUS AREA SUBCONTRACTING PROGRAM

1. The Contractor agrees to establish and conduct a program which will encourage labor surplus area concerns to compete for subcontracts within their capabilities. In this connection, the Contractor shall:
 - a. Designate a liaison officer who will (i) maintain liaison with duly authorized representatives of the Government on labor surplus area matters, (ii) supervise compliance

with the "Utilization of Concerns in Labor Surplus Areas" article, and (iii) administer the Contractor's "Labor Surplus Area Subcontracting Program";

- b. Provide adequate and timely consideration of the potentialities of labor surplus area concerns in all "make-or-buy" decisions;
 - c. Assure that labor surplus area concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of labor surplus area concerns;
 - d. Maintain records showing procedures which have been adopted to comply with the policies set forth in this article; and
 - e. Include the "Utilization of Concerns in Labor Surplus Areas" article in subcontracts which offer substantial labor surplus area subcontracting opportunities.
2. A "labor surplus area concern" is a concern which will perform, or cause to be performed, a substantial proportion of any contract awarded to it in "Areas of Substantial Labor Surplus" (also called "Areas of Substantial Unemployment"), as designated by

the Department of Labor. A concern shall be deemed to perform a substantial proportion of a contract in a labor surplus area if the costs that the concern will incur on account of manufacturing or production performed in persistent or substantial labor surplus areas (by itself or its first-tier subcontractors) amount to more than 50% of the price of such contract.

3. The Contractor further agrees to insert, in any subcontract hereunder which may exceed \$500,000 and which contains the "Utilization of Concerns in Labor Surplus Areas" article, provisions which shall conform substantially to the language of this article, including this paragraph 3., and to notify the Contracting Officer of the names of such subcontractors.

ARTICLE XXXV - PRIORITIES, ALLOCATIONS AND ALLOTMENTS

The Contractor shall follow the provisions of DMS Regulation 1. and all other applicable regulations and orders of the Business and Defense Service Administration in obtaining controlled materials and other products and materials needed to fill this contract.

ARTICLE XXXVI - AVAILABILITY OF APPROPRIATED FUNDS

The duties and obligations of the Government hereunder calling for the expenditure of appropriated funds shall be subject to the availability of funds appropriated by the Congress which the Commission may legally spend for such purposes.

ARTICLE XXXVII - NUCLEAR HAZARDS INDEMNITY

1. This article is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act).
 - a. The definitions set out in the Act shall apply to this article.
 - b. The term "contract location" means any Commission facility, installation or site at which contractual activity under this contract is being carried on, and any Contractor-owned or controlled facility, installation, or site at which the Contractor is engaged in the performance of contractual activity under this contract.
2. Except as hereafter permitted or required in writing by the Commission, the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability. The Commission may at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as the Commission shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, provided

that the costs of such financial protection will be reimbursed to the Contractor by the Commission.

3. a. To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by the Commission, the Commission will indemnify the Contractor, and other persons indemnified, against (i) claims for public liability as described in subparagraph b. of this paragraph 3.; and (ii) the reasonable costs of investigating and settling claims, and defending suits for damage for such public liability, provided that the Commission's liability, including such reasonable costs, under all indemnity agreements entered into by the Commission under Section 170 of the Act, including this contract, shall not exceed \$500,000,000 in the aggregate for each nuclear incident occurring within the United States or \$100,000,000 in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.
- b. The public liability referred to in subparagraph a. of

this paragraph is public liability which (i) arises out of or in connection with the contractual activity; and (ii) arises out of or results from:

- (1) A nuclear incident which takes place at a contract location; or
- (2) A nuclear incident which takes place at any other location and arises out of or in the course of the performance of contractual activity under this contract by the Contractor's employees, individual consultants, borrowed personnel, or other persons for the consequences of whose acts or omissions the Contractor is liable, provided that such incident is not covered by any other indemnity agreement entered into by the Commission pursuant to Section 170 of the Act; or
- (3) A nuclear incident which arises out of or in the course of transportation of source, special nuclear, or by-product materials to or from a contract location; provided such incident is not covered by any indemnity agreement entered into by the Commission with the transporting carrier, or with a carrier's organization acting for the benefit of the

transporting carrier, or with a licensee of the Commission, pursuant to Section 170 of the Act; or

(4) A nuclear incident which involves items (such as equipment, material, facilities, or design or other data) produced or delivered under this contract, provided such incident is not covered by any other indemnity agreement entered into by the Commission pursuant to Section 170 of the Act.

4. a. When the Commission shall determine that the Government will probably be required to make indemnity payments under the provisions of paragraph 3. above, the Commission shall have the right to, and shall, collaborate with the Contractor and any other person indemnified in the settlement or defense of any claim and shall have the right (i) to require the prior approval of the Commission for the payment of any claim that the Commission may be required to indemnify hereunder, and (ii) to appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that the Commission may be required to indemnify hereunder, take charge of such action, and settle or defend

any such action. If the settlement or defense of any such action or claim is undertaken by the Commission, the Contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

- b. The Contractor or other persons indemnified shall immediately give the Commission (i) written notice of any claim or action against the Contractor or other person indemnified as to which the indemnification obligations of the Commission under this article may apply, and (ii) copies of all pertinent papers received by the Contractor or other person indemnified relating to such claim or action. If the settlement or defense of any such action or claim is undertaken by the Commission, the Contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where any such action is not covered by a policy of insurance, the Contractor or other person indemnified shall proceed with the defense of such action in good faith if notified in writing by the Commission that the Commission does not elect to defend such action.

5. The indemnity provided by this article shall not apply to public

liability arising out of or in connection with any activity that is performed at a licensed facility, and that is covered by a Commission indemnity agreement authorized by Section 170 of the Act.

6. The obligations of the Commission under this article shall not be affected, by any failure on the part of the Contractor to fulfill its obligation under this contract, and shall be unaffected by the death, disability, or termination of existence of the Contractor or by the completion, termination, or expiration of this contract.
7. The parties to this contract enter into this article upon the condition that this article may be amended at any time by the mutual written agreement of the Commission and the Contractor and that such amendment may, by its express terms, provide that it will apply to any nuclear incidents which occur thereafter.
8. The provisions of this article shall not be limited in any way by, and shall be interpreted without reference to, any other article of this contract, (including the article "Disputes"); provided, however, that the following provisions of this contract: the articles entitled "Covenant Against Contingent Fees", "Officials Not To Benefit," Assignment," and "Examination of Records," and any provisions later added to this contract which,

under applicable Federal Law, including statutes, executive orders and regulations, are required to be included in agreements of the type contained in this article, shall apply to this article.

ARTICLE XXXVIII - NUCLEAR REACTOR SAFETY

1. The activities under this contract include the operation of a nuclear reactor and the contractor recognizes that such operation involves the risk of a nuclear incident which, while the chances are remote, could adversely affect the public health and safety. In the operation of the nuclear reactor, the Contractor will exercise a degree of care commensurate with risk involved.
2. The Contractor shall comply with all applicable regulations of the Commission concerning nuclear reactor safety and with those requirements (including reporting requirements and instructions) of the Commission concerning nuclear reactor safety of which it is notified in writing by the Contracting Officer.
3. Prior to the initial start-up of any nuclear reactor under this contract and prior to any subsequent start-up following a change which represents a significant deviation from the procedures, equipment, or analyses described in the Safety Analysis Report for that reactor, the Contractor shall:
 - a. Prepare a Safety Analysis Report and detailed plans and

procedures designed to assure the safe operation and maintenance of the reactor. These will generally cover, but not be limited to: prestart-up check lists; normal operation of the reactor and supporting auxiliaries; maintenance operation; emergency situations; and technical standards for equipment and systems.

- b. Establish nuclear safety control procedures to be used within the contractor's organization to insure appropriate review and internal approval of the detailed plans and procedures specified in a. above.
 - c. Submit to the Contracting Officer for his approval such procedures relating to nuclear safety as may be designated by him.
 - d. Carry out a training program designed to assure that all personnel who will be engaged in the operations or maintenance of a nuclear reactor understand the approved plans and procedures for nuclear safety pertinent to their assignments.
 - e. Obtain the approval of the Contracting Officer prior to such start-up of the reactor.
4. In the operation and maintenance of any nuclear reactor under this contract, the Contractor shall:

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- a. Use all reasonable efforts to assure that all operational and maintenance activities are performed by qualified and adequately trained personnel and, except as otherwise agreed in writing, are conducted under the supervision of personnel who are qualified to appraise any emergency condition and take prompt effective action with respect thereto.
- b. Operate the reactors within the operating limits which may be prescribed by the Contracting Officer. The Contracting Officer will consult with the Contractor in formulating and revising such operating limits.
- c. Follow strictly the procedures relating to nuclear safety approved by the Contracting Officer as specified in 3. c. above and submit to the Contracting Officer for his approval any proposed changes in such procedures.
- d. Establish a system of inspection approved by the Contracting Officer (including review of inspection reports by competent technical personnel) that will (i) provide frequent and periodic checks of reactor performance and of the qualifications and training of operating and maintenance personnel and (ii) provide for investigation of any unusual or unpredicted reactor conditions that might affect the safe operation of the reactor.

- e. Report promptly to the Contracting Officer any change in the physical condition of the reactor or its operating characteristics that might in the judgment of the Contractor affect the safe operation of the reactor.
- f. Shut down the reactor immediately whenever so instructed by the Contracting Officer or whenever, in the judgment of the Contractor, the risk of a nuclear incident endangering persons or property warrants such action.
- g. Prepare in cooperation with other services and facilities available at the site and with the approval of the Contracting Officer, a plan for minimizing the effects of a nuclear incident upon the health and safety of all persons on the site; cooperate with the Contracting Officer in his preparation of a plan to protect the public off the site; instruct its personnel as to their participation in such plans and any personal risk to such personnel that may be involved; and participate in such practice exercises as may be desirable to assure the effectiveness of such plans.

ARTICLE XXXIX - INTERPRETATION OF THIS MODIFICATION

Nothing contained in this Supplemental Agreement shall be deemed to have application to any matters pertaining to the performance of Contract AT(29-1)-1106 during the contract period from January 18, 1951, through

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June 30, 1967, it being understood that the rights of the parties as to such matters during that period shall be determined solely in accordance with the provisions of Contract AT(29-1)-1106 as it existed at the time the rights arose. The rights of the parties pertaining to the performance of Contract AT(29-1)-1106 during the contract period commencing July 1, 1967, shall be determined solely in accordance with the terms of the contract as it is embodied in this Supplemental Agreement, or as the contract may be hereafter amended, without reference to, and without giving interpretative weight to, any provisions of the contract covering periods prior to July 1, 1967. Any adoption by the parties in this Supplemental Agreement of a different form, or any omission of provisions contained in previous contractual documents or addition of provisions not there contained, shall not be construed so that the determination of any of the rights of the parties under this Supplemental Agreement or the prior contractual documents is affected by reason of such omissions or additions, or the adoption of the different form.

All directives, interpretations, and instructions heretofore transmitted to the Contractor by the Commission shall continue to be effective (except to the extent that the Contractor in any particular case is specifically advised to the contrary in writing) with respect to the performance of work under the contract after June 30, 1967.

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IN WITNESS WHEREOF, the parties hereto have executed this
Supplemental Agreement in several counterparts.

THE UNITED STATES OF AMERICA
BY: U. S. ATOMIC ENERGY COMMISSION

DATE: JUN 30 1967

BY: L. P. Gise

L. P. Gise, Manager
Albuquerque Operations Office
Contracting Officer

THE DOW CHEMICAL COMPANY

DATE: JUL 7 1967

BY: A. P. Beutel

TITLE: Vice President

CORPORATE CERTIFICATE

I, Calvin A. Campbell, certify that I am the Secretary
of the corporation named as Contractor herein;

that A. P. Beutel who signed this Supplemental
Agreement on behalf of said corporation was then Vice President

of said corporation; that this Supplemental Agreement was duly signed for
and in behalf of said corporation by authority of its governing body and is
within the scope of its corporate powers; and that I have set my hand and
the seal of the said corporation hereto on this 7th day of

July, 1967.

Calvin A. Campbell
Calvin A. Campbell, Secretary

(SEAL)

APPENDIX A
CONTRACT AT(29-1)-1106
THE DOW CHEMICAL COMPANY
MODIFICATION NO. 104

PERSONNEL POLICIES, WAGE AND SALARY SCHEDULES
TRANSPORTATION, TRAVEL AND LIVING EXPENSES
AND RELATED POLICIES

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APPENDIX A
CONTRACT AT(29-1)-1106
THE DOW CHEMICAL COMPANY
MODIFICATION NO. 104

PERSONNEL POLICIES
WAGE & SALARY SCHEDULES
TRANSPORTATION, TRAVEL AND LIVING EXPENSES AND
RELATED POLICIES

This Appendix A sets forth the policies, programs and schedules which constitute the basis for determining the allowability of employee compensation, travel and other personnel costs incurred by the Contractor in performance of the work under Contract AT(29-1)-1106. Such costs are unallowable unless incurred in accordance with this Appendix A, as it may be amended from time to time.

Amendments of this Appendix A shall be made by Reimbursement Authorizations signed by the parties.

PART I - GENERAL PROVISIONS

A. Recruitment and Help-Wanted Advertising

Reasonable expenses incurred for the recruitment of personnel for work under this contract, including but not limited to (i) help-wanted advertisements in newspapers, trade journals and other media, and (ii) services of employment agencies at rates not in excess of standard commercial rates, shall be allowable costs.

B. Training

1. Reasonable costs of training programs are allowable, as required to increase employee skills and efficiency and to develop techniques for solution of operating problems and to prepare participating employees for increased responsibility. Training programs may include orientation, job training, supervisory training, and executive development. Special education and training courses in excess of two weeks and research assignments calling for attendance at educational institutions during the employees scheduled work period shall require the prior written approval of the Contracting Officer.

2. Employees may be refunded a portion of tuition costs for courses subject to the following conditions:

a. Courses are taken outside of working hours.

b. The courses are:

- (1) Directly related to the individual employee's current position or to a position to which he can reasonably aspire; or
- (2) Required for attainment of a high school diploma; or
- (3) Required for completion of the approved curriculum developed for the particular employee leading to a degree directly related to the employee's current position or to a position to which he can reasonably aspire. Courses not directly related to the employee's current position or to a position to which he can reasonably aspire may be authorized and qualify for the refund if they are required or are qualifying electives in the curriculum developed for the particular employee leading to a degree so directly related.

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- * (4) Refresher programs and/or qualifying examinations taken for the purpose of obtaining professional certification or licensing in a discipline that directly relates to the employee's current position or to a position to which he can reasonably aspire.
- c. Employees shall be full-time employees who have completed six months' employment with the Contractor at the Rocky Flats Plant prior to the beginning of the course.
- d. Each course shall be approved by the supervisory representative or his designee(s).
- e. Courses are taken by attendance at or correspondence with a Contractor approved school, college, university or similar institution.
- * f. Employees receiving educational assistance under any Federal educational assistance program shall be eligible for refund of a portion of those costs incurred in excess of any assistance so received.
- * g. The following costs and expenses only shall be eligible for refund: tuition, laboratory fees and other fees charged for enrollment of the employee in courses, the aggregate

credit hours of which do not exceed 21 semester hours or 32 quarter hours in any fiscal year.

- * h. The amount refunded to be payable upon the receipt of required certification as to grade received shall not exceed ninety percent of the eligible cost and expenses paid by an employee for enrollment in each course respecting which the employee submits a certification from the institution that the employee received a grade of "A", "B", "C", "Excellent", "Satisfactory", or 70% or higher if a numerical grade is given.

C. Educational Assistance Program for Degree Candidates

1. Adjustment of Work Schedules

Under certain conditions, the work schedules of employees may be adjusted in order for them to obtain course work that is not available to them after working hours. Three major considerations will generally be used to appraise individual situations:

- a. To what extent would rescheduling the employee's work hours affect operations of the department?
- b. How will the additional education help the man with his personal development?

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- c. How will it help him with respect to his work for Dow at Rocky Flats?

Work schedules should be adjusted so that employees continue working on a full-time basis if possible.

2. Educational Leave of Absence Without Pay

- a. A request for an educational leave of absence without pay shall be recommended by the employee's supervisor and the employee's department head and have the approval of the Supervising Representative or his designee(s). This recommendation will include a statement of the willingness on the part of the department head to reemploy, or the willingness of another department head to reemploy where the other department would be able to make better use of the employee's talents on reemployment.
- b. The employee shall have at least two full years of full-time employment by the Contractor at the Rocky Flats Plant prior to the inception of the leave of absence.
- c. The leave shall not exceed a maximum of two years.
- *d. The employee shall be within two years of attaining his Bachelor's, Master's or Doctor's degree at the inception of the leave of absence.
- e. For the benefit of both the employee and the Contractor, the employee will take the usual physical examination upon returning to work with the Contractor.