

"(e) The Contractor shall (i) maintain an adequate inspection system and perform such inspections as will assure that the work performed under the contract conforms to contract requirements, and (ii) maintain and make available to the Government adequate records of such inspections."

The above replaces paragraph (e) of Tab B of the 23 Sep 60 Editing Subcommittee report. It was noted that in the introductory language to the clause in proposed 7-601 the figure "\$2,000" should read "\$10,000."

With respect to the 15 percent rate in paragraph (c) of the DOD 23 Sep 60 draft and paragraph (f) of the 18 Nov 60 GSA draft, the Committee agreed to its inclusion, with the understanding that the clause would be coordinated with GAO prior to issuance.

(18 Nov 60)

Case 60-66 - Inspection and Acceptance - Construction Contracts.

Case 59-192 - Construction Contracts, Standard Forms, Clauses, and Terms for IFBs - Federal Procurement Regulations.

Copies of a memorandum from the Committee's representative designated to discuss the subject problems with GSA, dated 22 Nov 60, presenting a draft of the Inspection clause to be used in Standard Form 23A which had been agreed to by the Committee's representatives and the representatives of GSA, were distributed for information. The members noted that this action CLOSES BOTH THE SUBJECT CASES.

(23 Nov 60)

Page 6. (18 Nov 60). Item 6. Case 60-66 - Inspection and Acceptance - Construction Contracts.

Case 59-192 - Construction Contracts, Standard Forms, Clauses, and Terms for IFBs - Federal Procurement Regulations.

In the first paragraph, (iii) was revised to read:

"GSA Form 23A has for years provided for cost plus 15% reimbursement to the contractor for minor Government required alterations made for inspection purposes."

(30 Nov 60)

6. Case 60-66 - Inspection and Acceptance - Construction Contracts.
Case 59-192 - Construction Contracts, Standard Forms, Clauses,
and Terms for IFBs - Federal Procurement
Regulations.

Lt. Col. Donald T. Ruby, JAGC, reported that the principal differences between the proposed DOD Inspection clause and the GSA revised Inspection clause to be included in the Standard Form 23A were:

- (i) DOD required contractor to have an "inspection system" and to make records available to Government of inspections performed under its system, whereas the GSA had none;
- (ii) the GSA version retain such language as "final acceptance" which DOD had eliminated in its inspection clause because of inability to clearly define that expression; and
- (iii) GSA Form 23A has for years provided for cost plus 15% reimbursement to the contractor for minor Government required alterations made for inspection purposes and the DOD had not so provided.

Other differences between the GSA proposed revision of Standard Form 23A and the DOD proposed Inspection clause for Section VII of ASPR, were of an editorial nature.

The Assistant Commissioner for Procurement Policy, GSA, distributed copies of a draft of the proposed Inspection clause, dated 18 Nov 60, and stated that in addition to the above differences the sequence within the clause had been somewhat changed. There was a lengthy discussion of final inspection and acceptance, the DOD position being that acceptance cannot be made at the place of manufacture since there is only one acceptance and that is final. It was agreed there could be an inspection at the place of manufacture which would be determinative of the materials involved in conformity with contract requirements, except insofar as the contracting officer indicates such inspection does not apply. The GSA representatives agreed with the general concept of the DOD position, and the following language was developed at the meeting and proposed as a possible alternative to paragraph (d) of the GSA 18 Nov 60 draft:

"(d) Government inspection of materials and workmanship required by this contract shall be at the site of the work unless the Contracting Officer determines that Government inspection of materials which are to be incorporated in the work shall be made at the place of production, manufacture or shipment any such inspection shall, to the extent specified by the Government, be determinative of the materials involved being in conformity with the contract requirements. Further Government inspection and test of any material does not relieve the Contractor from any responsibility regarding latent defects, fraud or such gross mistakes as may amount to fraud or to restrict the Government's right under any warranty or guarantee."

The suggestion was made that the term "Government" be used in lieu of "Contracting Officer" in the clause so as to conform to the Inspection clause previously adopted for Standard Form 32.

With respect to paragraph (e) of the DOD draft, dated 23 Sep 60, the GSA representatives stated that while they did not wish to adopt it for the Standard Form at this time, they would interpose no objection to DOD including the paragraph as a schedule provision or in "Additional General Provisions." GSA is interested in getting the benefit of DOD experience with this requirement, and would be willing to consider its adoption at some later date when the form is again being revised. Paragraph (e) was revised to read as follows:

NOV 18 1960

Continued
next page

5. Case 60-66 - Inspection and Acceptance - Construction Contracts. The Committee further considered the inspection and acceptance for construction contracts presented by the Editing Subcommittee report dated 23 Sep 60, with respect to the following two facets:

- a. Retention of the last sentence of paragraph (c) of the clause in 7-601, reading:

"If however, such work is found to meet the requirements of the contract, the actual direct cost of labor and material necessarily involved in the examination and replacement, plus 15 percent, shall be allowed the contractor and he shall, in addition, if completion of the work has been delayed thereby, be granted a suitable extension of the time on account of the additional work involved." and

- b. Retention of the requirement in paragraph (e) of the clause in 7-601 reading:

"The contractor shall maintain an adequate inspection system and perform such inspections"

With respect to a. above, it was the consensus of the Committee that the percentage formula approach should be retained. On the basis of this information, the Army member withdrew his reservation. The Committee agreed that Lt. Col. Donald T. Ruby, JAGC, and Mr. Herbert L. Brewer, ONM, who were designated as the Committee's representatives to undertake discussions with representatives of GSA under case 59-192, should discuss the implications of the formula approach with the GSA representatives.

With respect to b. above, the Committee's initial reaction resulted in an apparent issue which would require resolution by the ASD (S&L). The Army and Navy members, while expressing a strong belief that the requirement for an inspection system should be deleted, concluded that they did not choose to make a Secretarial issue on this point. Accordingly, the Committee's unanimous vote was for the retention of subparagraph (e) in the clause in 7-601.

(28 Oct 60)

Page 7. (28 Oct 60). Item 5. Case 60-66 - Inspection and Acceptance - Construction Contracts. The material following subparagraphs a. and b. of the first paragraph was revised to read:

"With respect to a. above, it was the consensus of the Committee that the percentage formula approach should be retained. The Army member reserved the final Army position on this point and recommended that the formula approach be discussed with GSA. The Committee agreed that Lt. Col. Donald T. Ruby, JAGC, and Mr. Herbert L. Brewer, ONM, who were designated as the Committee's representatives to undertake discussions with representatives of GSA under case 59-192, should discuss the implications of the formula approach with the GSA representatives. On the basis of this information, the Army member withdrew his reservation."

(9 Nov 60)

Page 4. Paragraph 14-108. The Committee --
"or services" after the word "supplies" in the second
and fifth lines, and invited the Editing Subcom-
mittee's attention to the fact that this change
applies throughout the coverage.

Page 5. Paragraph 14-201. No comment.

TAB B - Page 1. Subparagraphs (a) and (b). No comment.

Page 2. Subparagraph (c). The Committee noted that the
requirement of this subparagraph for the payment
of direct costs "plus 15 percent" raises legal
questions in view of the fact that the GAO has
ruled that predetermined overhead rates may not
be used. The members agreed to check further
into the background of this provision. In the
meantime, the Editing Subcommittee was requested
to develop alternate language, in addition to
the present language, to provide for an equitable
adjustment whenever the words "plus 15 percent"
appear.

Page 3. Subparagraph (d). No comment.

With the foregoing observations the report was referred to the Editing
Subcommittee for editing on an expedited basis.

(21 Sep 60)

8. Case 60-66 - Inspection and Acceptance - Construction Contracts. The
members considered a report from the Editing Subcommittee, dated 23 Sep 60,
presenting edited language for inclusion in Section VII, Part 6, and Section
XIV with respect to Inspection and Acceptance - Construction Contracts. Members
of the Subcommittee were present for discussion of this item. The report was
considered on a paragraph by paragraph basis, and the following minor changes
were made:

Tab A. Paragraph 14-104, Contractor Responsibility. The fourth
sentence was revised to read: "In this regard the Contracting
Officer"

Tab B. Inspection Clause under 7-601.

Par. (a). The words "Contracting Officer" in the first sentence
were revised to read "Government."

Par. (b). The second sentence was revised to read:

"All inspection and tests by the Government
shall be performed in such manner as not
unnecessarily to delay the work."

Par. (e). The first sentence was revised to read:

"The Contractor shall (i) maintain an adequate
inspection system and perform such inspections"

The choice of language provided by the Editing Subcommittee in paragraph (c) of
the clause in 7-601 was discussed at length. The majority of the Committee felt
that the following language should be used in the last sentence of paragraph (c):
"If however, such work is found to meet requirements of the contract, the actual
direct cost of labor and material necessarily involved in the examination and
replacement, plus 15 percent, shall be allowed the Contractor and he shall, in
addition, if completion of the work has been delayed thereby, be granted a
suitable extension of the time on account of the additional work involved."
The Army member felt that the formula approach should be eliminated in favor of
an "equitable adjustment" approach. The Army position on this item is reserved.
The members were requested to obtain further information within their Departments
by 20 Oct 60 as to our experience under the "15 percent" approach. It was noted
that both concepts should be called to the attention of GSA when the final language
is submitted to them.

(14 Oct 60)

Case 60-66 - Inspection and Acceptance - Construction Contracts. Subsequent to the 20 Apr 60 meeting, the Air Force member to the Subcommittee on this item was revised to read Major H. Simon, AFMPP, in lieu of Major Ted Simon, AFOAC.

(11 May 60)

Case 60-66 - Inspection and Acceptance - Construction Contracts. The Army member requested that the Subcommittee considering the subject case be granted an extension for submission of a report until 11 Jul 60. He further advised that an interim report would be submitted during the week of 27 Jun 60. The Committee approved the extension to 11 Jul 60.

(22 Jun 60)

60-66 Inspection and Acceptance - Special Report by 29 Aug 60
 Construction Contracts

(20 Jul 60)

Case 60-66 - Inspection and Acceptance - Construction Contracts. The Army member designated Lt. Col. Wm. E. Hughes, DCS LOG, as the Army member and Chairman of the Subcommittee considering the subject case, vice Mr. Silas Williams, Jr., DCS LOG.

(27 Jul 60)

8. Case 60-66 - Inspection and Acceptance - Construction Contracts. The Committee undertook consideration of the report from the Inspection Subcommittee, dated 9 Sep 60, presenting proposed revisions to Section XIV and Section VII to provide ASPR coverage of inspection and acceptance for construction contracts. Representatives of the Subcommittee attended the meeting for consideration of this item.

The members first considered the divergent views of the Subcommittee with respect to whether the Inspection clause for construction contracts should contain a contractual requirement that the contractor provide and maintain an inspection system during the performance of the work, as well as the retention of records of such inspection. After a lengthy discussion on this problem, the Committee agreed there should be a requirement in the clause to provide that the contractor should have an inspection system and maintain records of the inspections performed. Suggested language for accomplishing this conclusion, developed by the Air Force and Army members, was referred to the Editing Subcommittee, with the request that contractual language be developed. In taking this action, the Committee recognized that the suggested language constituted a departure from the language contained in Standard Form 32 with respect to contractors' inspection system and records thereof.

The Committee then undertook consideration of the Tabs to the Subcommittee report, with the following action:

TAB A - Page 1. Paragraph 14-102. No comment.

Page 2. Paragraph 14-103(11). The Editing Subcommittee was requested to consider the need of pinpointing "United States" Government agencies.

Page 3. Paragraph 14-104. The first sentence was changed to two sentences, reading:

"The standard inspection clauses in Section VII require the contractor to maintain an inspection system acceptable to the Government, as well as records of all inspection work performed by the contractor. The contractor's inspection system should be such as to provide reasonable assurance that the supplies subject to inspection will conform to contract requirements, and should include any quality control procedures necessary to this end."

In connection with the first sentence, it was noted that the suggested language referred to the Editing Subcommittee for inclusion in the Inspection clause for construction contracts would necessitate changing the words "acceptable to the Government" in this sentence. Continued next page

4. Case 59-1 - Inspection and Acceptance, Revision of Section XIV, ASPR. The Committee considered a report from the Editing Subcommittee, dated 6 Apr 60, presenting an edited version of Section XIV covering Inspection and Acceptance, and posing the problem of whether the revised Section should exclude construction contracts. The Committee determined that a Scope paragraph should be added to the Section, excluding construction contracts. In taking this action the Committee agreed that a Special Ad Hoc Subcommittee should be established to develop ASPR coverage of Inspection and Acceptance for construction contracts. This new assignment, under case 60-66, is set forth elsewhere in these minutes.

The question was then raised as to whether research and development contracts should also be excluded from the revised coverage on inspection and acceptance. The Committee concluded that research and development contracts should not be excepted, subject to a confirmation by the Army member.

The Committee then reviewed the attachments of the Editing Subcommittee report on a page by page basis and made a number of changes therein. The principal changes involved:

- a. In Tab A, the establishment of a separate paragraph 14-109 to cover the subject of "Inspection for Foreign Governments."
- b. In Tab A, a revision of paragraph 14-104 to provide additional guidance to contracting officers of the type of quality control system required of the contractor for complex supplies, and to further provide for the retention of records relating to inspection, and
- c. In Tab B, a revision of the regulatory language with respect to the use of the Quality Control System clause, to identify the elements of quality control which will be required of contractors when military specification MIL-Q-9858 is not used.

The changes developed by the Committee are incorporated in the attached Tabs A and B to these minutes. The attachments hereto were approved for printing, subject to confirmation by the Army member with respect to their application to research and development procurements. CASE CLOSED.

(20 Apr 60)

5. Case 60-66 - Inspection and Acceptance - Construction Contracts. In the development of the revision to ASPR Section XIV, Inspection and Acceptance, the Committee agreed to exclude construction contracts from Section XIV. In taking this action, the Committee further agreed to establish an Ad Hoc Subcommittee to develop proposed ASPR coverage on Inspection and Acceptance for construction contracts. Members designated to the Subcommittee were:

Army - Mr. Silis Williams, Jr., DCS LOG (Chairman)
Navy - Mr. V. W. Fendrich, ONM
AF - Maj. Ted Simon, AFOAC
OSD - Mr. Richard P. Hussey, OASD (S&L)

The Subcommittee, in undertaking this assignment, was requested to review the proposed FPR coverage of inspection, and to present a report for consideration by 20 Jun 60.

The Army Policy member was designated as the ASPR Committee liaison to the Subcommittee.

(20 Apr 60)

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

Washington 25, D. C.

Supply and Logistics

SEP 9 1960

MEMORANDUM FOR THE CHAIRMAN, ASPR COMMITTEE

SUBJECT: Case 60-66 - Inspection and Acceptance - Construction Contracts

I. PROBLEM:

To develop proposed ASPR coverage on inspection and acceptance for construction contracts and to review the proposed FPR coverage of inspection.

II. RECOMMENDATIONS:

1. That Section XIV be revised as indicated in TAB A. As revised, Section XIV will apply to construction provided Section VII is also revised as indicated in TAB B.

2. That Section VII be revised by adding a Part 6 which will:

a. Provide an inspection clause to be used in construction contracts in lieu of all other inspection clauses.

b. Provide an inspection clause for construction work which may be performed as a subordinate portion of other type contracts unless this work is already covered by one of the other standard inspection clauses of Section VII.

3. That the changes in Sections XIV and VII, noted above, be furnished to the General Services Administration as appropriate changes to the proposed rewrite of similar portions of the Federal Procurement Regulation furnished that agency earlier this year by the ASPR Committee.

III. COMMENTS CONCERNING REVISION OF SECTION VII:

a. The subcommittee was unable to resolve a difference of opinion among the members regarding the inclusion of a last subparagraph in the contract clause (TAB B) covering contractors' inspection systems. The Army and Navy members,

after thorough consideration and consultation with experts in construction contract administration, were of the opinion that adding a subparagraph, regarding contractors' inspection systems, of the same type as set forth in paragraph 5(e) of Standard Form 32 would, because of its vagueness cause an increase in the cost of construction work with no equivalent benefits being derived by the Government. The Air Force and OSD members feel that the exclusion of detail about the inspection system is in keeping with ASPR format and provides desirable flexibility and is in conformity with ten years of ASPR practice relating to all other suppliers. They also feel that considerable savings to the Government and to contractors will result from the contractors' diligent review to insure that no costly errors in construction occur. The replacement cost of faulty construction is likely to more than outweigh any anticipated added cost for inspectors and records. Details supporting the minority position of the Air Force and OSD members are in TAB C.

b. It is the opinion of the subcommittee that paragraph (c) of TAB B is not actually a proper portion of an inspection clause, particularly that part of the subparagraph dealing with reimbursement of labor and material, and payment of 15 percent above these costs. This subparagraph has been left in this clause since it appears in Standard Form 23A. The subcommittee did not feel it was an appropriate part of its mission to redraft other portions of Form 23A to incorporate this information.

3 Inclosures

TABS A, B, and C

A - Ppsd Rev Sec. XIV

B - Ppsd Clause, Constr. Contracts


C - Minority Rpt Details


WILLIAM E. HUGHES, Lt Colonel
Chairman

(STAMP)

WM. V. FENDRICH
Office of Navy Materiel
Department of the Navy


MAJOR H. SIMON, AFMPP-PD 2
Department of the Air Force


RICHARD P. HUSSEY
OASD (S&L)

ASPR COMMITTEE

CASE 60-66

PROPOSED REVISION OF SPECIFIC SUBPARAGRAPHS OF SECTION XIV,
ASPR, ON INSPECTION AND ACCEPTANCE

14-000 Scope of Section. This Section deals with inspection and acceptance under contracts for supplies ~~(other than construction contracts or services).~~
/ and services /

14-102 Activities Responsible for Inspection. Inspection, or the arrangement therefor, is the responsibility of the contracting activity. Where a Department or activity uses the inspection services of another Department or activity, the Department or activity performing such inspection has primary inspection cognizance and its inspection determinations are binding on the Department or activity for which the inspection services are performed. In coordinated or interdepartmental procurements, where Government inspection is to be made at the source, it generally will be made by inspectors of the contracting agency; but this general rule does not alter inspection interchange agreements or preclude the use of inspectors of another Department or activity located at or servicing the contractor's plant / or the site of construction. / Where Government inspection at destination is required in coordinated or interdepartmental procurements, the requiring agency or activity may be requested to arrange for the inspection.

14-103 Inspection Interchange Agreements. By appropriate inspection interchange agreements, Departments and activities shall provide for the use of inspection services of other Departments or Government agencies to assure the most economical and effective inspection consistent with the best interest of the Government. Wherever there are multiple Government inspection assignments in a supplier's plant or at a construction site or each of the activities involved shall arrange for the interchange of inspection services, except that contracts involving special requirements may be exempted in accordance with policies established by the Department of Defense. Inspection interchange agreements should be designed to eliminate duplication, overlapping, or multiple assignments of Government inspection activities in any one plant

or at any construction site. or Departmental procedures generally should permit detailed inspection interchange agreements to be initiated and completed at the operating level. Inspection interchange agreements shall be in accordance with the following:

- (i) when inspection is to be made by other military procuring activities or Military Departments, such inspection shall be performed without reimbursement except to the extent that reimbursement in kind is practicable;
- (ii) when inspection is to be made by or for other Government agencies, such inspection will be on a mutually acceptable basis; and
- (iii) all agreements shall include specific provisions for: (A) use of the practices, records, and forms of the activity performing inspection, unless the use of others is mutually agreeable; (B) channels of communication; and (C) designation of source and delivery date of any Government inspection equipment to be supplied.

14-104 Contractor Responsibility. [When] the standard inspection clauses in Section VII require the contractor to maintain an inspection system acceptable to the Government and records of all inspection work performed by the contractor, the contractor's inspection system should be such as to provide reasonable assurance that the supplies subject to inspection will conform to contract requirements and should include any quality control procedures necessary to this end. Contracts for complex supplies shall include the Quality Control System clause in 7-104.28 [as required]. This clause specifically requires contractors to maintain a quality control system acceptable to the Government. In this regard the Contracting Officer, or his representatives, shall assure that the contractor maintains quality control measures for all manufacturing processes and documentation pertinent to quality, testing and inspection, fabrication, and delivery. Government inspection activities shall plan and conduct systematic evaluation and verification of suppliers' inspection systems, quality control systems, and supplies, for the purpose of obtaining the maximum assurance of quality consistent with efficient use of Government and contractor manpower and facilities. In any case, when Military or Federal specifications are used to establish requirements in the contract, the supplier shall be required to perform all examinations and tests called for by the specifications except those which the Government is expressly required to make.

14-108 Government Inspection under Subcontracts. Government in-

spection of subcontracted supplies shall be made only when required in the interest of the Government. The primary purpose of subcontract inspection is to assist the Government inspector at the prime contractor's plant or at a construction site in determining the conformance of supplies with contract requirements. It does not relieve the prime contractor of any of his responsibilities under the contract. Supplies that do not qualify under the criteria in 14-105.2 for Government inspection at source shall not be inspected by the Government at the subcontractor's plant. Supplies for which certificates, records, reports, and similar evidence of quality are available at the prime contractor's plant or at a construction site shall not be Government inspected at the subcontractor's plant except occasionally to verify such evidence. However, Government inspection shall be performed at a subcontractor's plant whenever the Government contract requires. All oral and written statements and contract provisions relating to the inspection of subcontracted supplies shall be so worded as not to (i) affect the contractual relationship between the prime contractor and the Government or between the prime contractor and the subcontractor, (ii) establish a contractual relationship between the Government and the subcontractor or (iii) constitute a waiver of the Government's right to inspect or reject supplies.

14-201 General. As used in Department of Defense contracts, "acceptance" generally means the act of an authorized representative of the Government by which the Government assents to ownership by it of existing and identified supplies, or approves specific services rendered, as partial or complete performance of the contract. Except as provided in 14-205, and subject to other terms and conditions of the contract, the Government thereby acknowledges that the supplies or services are in conformity with contract requirements, including those of quality, quantity, packaging, and marking. Depending upon the provisions of the contract, acceptance may be effected prior to, at the time of, or after delivery. However, supplies and services shall not be accepted prior to inspection, except as permitted in 14-204. Acceptance shall ordinarily be accomplished by execution of an acceptance certificate on the applicable inspection and receiving report form (for example, DD Form 250, DD Form 1155, or Standard Form 44) or other written notice of acceptance or Where acceptance is accomplished at a point other than destination supplies shall not be reinspected at destination for acceptance purposes.

CLAUSE FOR CONSTRUCTION CONTRACTS

TAB B

INSPECTION

(a) All material and workmanship shall be subject to inspection, examination, and test by the Contracting Officer at any and all places where such manufacture and/or construction are carried on and in any event prior to acceptance. The Government shall have the right to reject defective material and workmanship or require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be satisfactorily replaced with proper material without charge therefor, and the Contractor shall promptly segregate and remove the rejected material from the premises. If the Contractor fails to proceed at once with the replacement of rejected material and/or the correction of defective workmanship the Government may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost thereof to the Contractor, or may terminate the right of the Contractor to proceed as provided in Clause 5 of this contract, the Contractor and surety being liable for any damage to the same extent as provided in said Clause 5 for terminations thereunder.

(b) The Contractor shall furnish promptly without additional charge, all reasonable facilities, labor, and materials necessary for the safe and convenient inspection and test that may be required by the Contracting Officer. All inspection and tests by the Government shall be performed in such manner as not unnecessarily to delay the work. Special, full size, and performance tests shall be as described in the specifications. The Government reserves the right

to charge the Contractor with any additional cost of inspection when material and workmanship are not ready at the time inspection is requested by the Contractor or when reinspection or retest is necessitated by prior rejection.

(c) Normally the Government shall inspect during construction. However, should it be considered necessary or advisable by the Government at any time before acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, the Contractor shall on request promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect, due to fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet requirements of the contract, the actual direct cost of labor and material necessarily involved in the examination and replacement, plus 15 percent, shall be allowed the Contractor and he shall, in addition, if completion of the work has been delayed thereby, be granted a suitable extension of time on account of the additional work involved.

(d) Government inspection of material and finished articles to be incorporated in the work at the site shall be made at the site unless the Contracting Officer requires inspection by the Government at place of production, manufacture, or shipment. The inspection and test by the Government of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered

prior to acceptance. Except as otherwise provided in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

6 September 1960

MEMORANDUM FOR THE CHAIRMAN, ASPR CASE 60-66, INSPECTION AND
CONSTRUCTION CONTRACTS

SUBJECT: Minority Report

Because of the divergence in subcommittee views, it is requested that this minority report be forwarded with the subcommittee proceedings to the ASPR committee.

MINORITY REPORT

Proposal of a requirement for the contractor to maintain an inspection system has been the most difficult consideration facing the subcommittee. Generally speaking, the members (but not the advisors) have voiced agreement with the requirement for a contractor's inspection system. All participants have agreed that no requirement for a quality control system should be established.

Members have evidenced some disagreement concerning the nature of the inspection system requirement. Army and Navy opinions centered about a requirement that would imply that the requirements for the inspection system were specifically written into the specifications of the materials and services. The Air Force and OSD members consider that the inspection is an examination function distinct from the erection operations and in surveillance and monitoring over them.

At first suggestions to add the inspection system requirement in language orienting it specifically to the specifications were rejected. It was agreed to insert the provisions as worded elsewhere in ASPR. Later the chairman indicated an Army and Navy reversal of this position.

From the outset of S&L's interest in Construction, the inspection system provision has been recognized as the one most essential for improving the acceptability of construction and at the same time the most revolutionary and controversial. However, in the light of other departures from tradition in construction procurement now facing industry and the Government the new inspection system provision is less unusual than it may appear. Reference is made to the general imposition of standard ASPR provisions for contracting, to the consideration of negotiation in place of competitive bidding, to the acknowledgment of the need for lumber suppliers to maintain inspection systems and similar innovations.

From the standpoint of assuring quality and acceptability there is every reason to require inspection systems. Unlike other industries, (1) the

amount of hand work and non-standard materials and equipment (2) inaccessibility for inspection after completion and (3) impracticability of correction of defects after completion are all very great in the construction industry. If other suppliers need inspection systems the motivation is even greater for construction suppliers if the industry truly desires to maintain the quality of its output.

The central question is not whether inspection is needed. The real question is can the Government by itself provide adequately the inspection absolutely essential if the quality of construction is not to be taken on blind faith by the contractor and the Government.

Precedents supporting the requirement abound even in the construction industry itself, e. g., local building inspection activity by municipalities, safety inspection on construction jobs, the inspection of rivets in steel erection. Arguments against the cost of inspection systems are unrealistic when considered in the light of construction shortcomings which occur all too frequently.

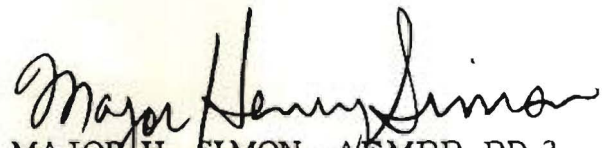
Traditions that reflect the absence of inspection are a poor argument for an industry that is advancing rapidly and radically into new forms of construction and the use of new materials, i. e., aluminum, prestressed concrete, prefabrication, aerated concrete. Test and combat structures such as ICBM gantries, launching pads, coffins and silos are requiring degrees of alignment, fit, cleanliness and workmanship never before demanded. Materials employed are sometimes extremely costly and in short supply and the urgency of scheduled completion is often vital. In such circumstances it seems most unwise not to obtain the added protection that a contractor's inspection system can provide.


Objections to the requirement of an inspection system based upon a lack of detailed description of such a system should not preclude the requirement. For almost ten years the exact requirement has appeared for general supply contracts without an accompanying detailed explanation. Furthermore, elsewhere in ASPR for other functions requirements for sound business practices such as production control systems, accounting systems and like pursuits are included without detailed explanations. Any sound inspection system suffices. The proof of the system is in the results. The construction industry knows what constitutes a good system for inspection of construction. Present Government inspection serves as a usable example.

In view of the arguments advanced we feel that ASPR should require that contracts for construction include the requirement for a contractor's inspection system in the following fashion:

The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract.

Also, by deleting the opening word "When" and inserting a period after the first phrase "work performed by the contractor.", the content of 14-104 should be made mandatory.


MAJOR H. SIMON, AFMPP-PD 2
Department of the Air Force


RICHARD P. HUSSEY
OASD (S&L)

ASPR EDITING SUBCOMMITTEE

23 September 1960

REPORT TO THE ASPR COMMITTEE

Subj: Case 60-66, Inspection and Acceptance - Construction Contracts

1. The subject matter has been edited on an expedited basis as requested by the ASPR Committee on 21 September 1960.

2. Delete ASPR 14-000.

3. Revise ASPR 14-102, 14-103, 14-104, 14-108 and 14-201 as set forth in Tab A.

4. Add a new ¶7-601 in Part 6 of Section VII as set forth in Tab B. Pending the development of additional clauses for construction contracts, the final format for the new Part 6 is not submitted with this report.

5. If it is the intent of the ASPR Committee that the new Inspection clause for construction contracts shall be used where the contract is for both supplies and construction, then in ASPR 7-103.5 following the Inspection clause, add the following text material:

In fixed price supply contracts which also provide for a substantial amount of construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property, the Inspection clause in 7-601 shall be used in lieu of the above clause.

DONALD T. RUBY
Lt. Colonel, JAGC
Army Member

ALBERT GREEN
Chairman
Navy Member

JOHN D. KELLY
Air Force Member

14-102 Activities Responsible for Inspection. Inspection, or the arrangement therefor, is the responsibility of the contracting activity. Where a Department or activity uses the inspection services of another Department or activity, the Department or activity performing such inspection has primary inspection cognizance and its inspection determinations are binding on the Department or activity for which the inspection services are performed. In coordinated or interdepartmental procurements, where Government inspection is to be made at the source, it generally will be made by inspectors of the contracting agency; but this general rule does not alter inspection interchange agreements or preclude the use of inspectors of another Department or activity located at or servicing the contractor's plant or the site of construction. Where Government inspection at destination is required in coordinated or interdepartmental procurements, the requiring agency or activity may be requested to arrange for the inspection.

14-103 Inspection Interchange Agreements. (a) By appropriate inspection interchange agreements, Departments and activities shall provide for the use of inspection services of other Departments or Government agencies to assure the most economical and effective inspection consistent with the best interest of the Government. Where there are multiple Government inspection assignments at the place of the performance of the contract, each of the activities involved shall arrange for the interchange of inspection services, except that contracts involving special requirements may be exempted pursuant to policies established by the Department of Defense. Inspection interchange agreements should eliminate duplication, overlapping, or multiple assignments of Government inspection activities at any one place. Departmental procedures generally should permit detailed inspection interchange agreements to be initiated and completed at the operating level.

(b) Inspection interchange agreements shall be in conformity with (1) through (3) below.

(1) When inspection is to be made by other activities or Departments within the Department of Defense such inspection shall be performed without reimbursement except to the extent that reimbursement in kind is practicable.

(2) When inspection is to be made by or for Government agencies outside the Department of Defense, such inspection will be on a mutually acceptable basis.

(3) All agreements shall include specific provisions for: (i) use of the practices, records, and forms of the activity performing inspection, unless the use of others is mutually agreeable; (ii) channels of communication; and (iii) designation of source and delivery date of any Government inspection equipment to be supplied.

14-104 Contractor Responsibility. The standard inspection clauses in Section VII require the contractor to maintain an adequate inspection system and records of inspection work performed by the contractor. The contractor's inspection system should provide reasonable assurance that the work performed under the contract will conform to contract requirements and should include any quality control procedures necessary to this end. The Quality Control System clause in 7-104.28, required in contracts for complex supplies, obligates contractors to maintain a quality control system acceptable to the Government. The Contracting Officer, or his representatives, shall assure that the contractor maintains adequate (i) quality control measures for all manufacturing processes and (ii) documentation pertinent to quality, testing and inspection, fabrication, and delivery. Government inspection activities shall plan and conduct systematic evaluation and verification of suppliers' inspection systems, quality control systems, and supplies, for the purpose of obtaining the maximum assurance of quality consistent with efficient use of Government and contractor manpower and facilities. When Military or Federal specifications are used to establish requirements in the contract, the supplier shall be required to perform all examinations and tests called for by the specifications except those which the Government is expressly required to make.

* * * * *

14-108 Government Inspection under Subcontracts. Government inspection of subcontracted supplies or services shall be made only when required in the interest of the Government. The primary purpose of subcontract inspection is to assist the Government inspector cognizant of the prime contractor in determining the conformance of supplies or services with prime contract requirements. It does not relieve the prime contractor of any of his responsibilities under the contract. Supplies that do not qualify under the criteria in 14-105.2 for Government inspection at source shall not be inspected by the Government at the subcontractor's plant. Supplies for which certificates, records, reports, and similar evidence of quality are available at the prime contractor's plant or at a

Part 6 - Clauses for Fixed-Price Construction Contracts

7-601 Inspection Clause. Fixed-price contracts (with or without a provision for escalation or price redetermination or revision) in excess of \$2,000 for the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property shall contain the following clause.

INSPECTION

(a) All material and workmanship shall be subject to inspection, examination, and test by the Contracting Officer prior to acceptance at all places where work under this contract is performed. The Government shall have the right to reject defective material and workmanship or require its correction. The Contractor shall, without charge, correct rejected workmanship and replace rejected material with proper material. The Contractor shall promptly segregate and remove rejected material from the premises. If the Contractor fails to proceed at once with the replacement of rejected material or the correction of defective workmanship, the Government may, by contract or otherwise, replace such material and correct such workmanship and charge the cost thereof to the Contractor, or may terminate the right of the Contractor to proceed as provided in Clause 5* of this contract, the Contractor and surety being liable for any damage to the same extent as provided in said Clause 5* for terminations thereunder.

(b) The Contractor shall furnish promptly without additional charge, all reasonable facilities, labor, and materials necessary for the safe and convenient inspection and test that may be required by the Contracting Officer. All inspection and tests by the Government shall be performed in such manner as to not unnecessarily delay the work. Special, full size, and performance tests shall be as described in the specifications. The Government reserves the right to charge the Contractor with any additional cost of inspection when material and workmanship are not ready at the time inspection is requested by the Contractor or when reinspection or retest is necessitated by prior rejection.

* When this clause is used other than in Standard Form 23A, reference shall be made to the clause that provides for termination for default.

(c) If at any time before acceptance of the entire work the Government considers it necessary or advisable to make an examination of work already completed, by removing or tearing out same, the Contractor shall on request promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect, due to the fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of the reconstruction. If, however, such work is found to meet requirements of the contract, the actual direct cost of labor and material necessarily involved in the examination and replacement, plus 15 percent, shall be allowed the Contractor and he shall, in addition, if completion of the work has been delayed thereby, be granted a suitable extension of time on account of the additional work involved. An equitable adjustment shall be made in the contract price or the time required for performance, or both, in accordance with the procedures provided for in the Changes clause of this contract.

(d) Government inspection of material and finished articles to be incorporated in the work at the site shall be made at the site unless the Contracting Officer requires inspection by the Government at place of production, manufacture, or shipment. The inspection and test by the Government of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(e) The Contractor shall (i) perform such inspections as will assure that the work performed under the contract conforms to contract requirements, (ii) maintain and make available to the Government adequate records of such inspections, and (iii) permit concurrent inspection by the Government during the performance of the contract.

Car file

60-66

22 November 1960

MEMORANDUM FOR THE ASPR COMMITTEE

SUBJECT: ASPR Case No. 60-66 "Inspection and Acceptance -
Construction Contracts"

1. The attached draft of the Inspection Clause to be used in the SF 23A has been the subject of agreement between the GSA representative, Mr. Spencer, and the undersigned. This differs from the 18 November 1960 draft, submitted by Mr. Gasque to the ASPR Committee last Friday, in the following respects:

(a) The words "and acceptance" have been added to the title.

(b) The words "except as otherwise provided in this contract" were added to paragraph (a) and the substance of that paragraph and paragraph (d) were consolidated.

(c) Paragraphs (b) and (c) remain the same.

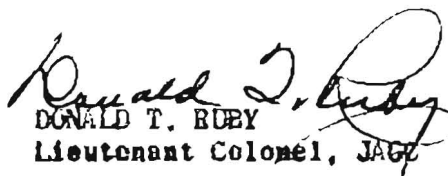
(d) Old paragraph (e) now becomes paragraph (d).

(e) Paragraph (f) now becomes paragraph (e). The word "final" was deleted in the second line.

(f) A new paragraph (f) has been drafted.

2. Copies of this draft have been submitted to all members of the ASPR Committee for their information.

1 Incl:
Draft


DONALD T. RUEY
Lieutenant Colonel, JAGC

CASE NO 60-66

Draft - 21 November 1960

10. INSPECTION AND ACCEPTANCE

(a) Except as otherwise provided in this contract, inspection and tests by the Government of material and workmanship required by this contract shall be made at reasonable times and at the site of the work, unless ^{the} Contracting Officer determines that such inspection or test of material which is to be incorporated in the work shall be made at the place of production, manufacture or shipment of such material. To the extent specified by the Contracting Officer at the time of determining to make the off-site inspection or test such inspection or test shall be conclusive as to whether the material involved conforms to the contract requirements. Such off-site inspection or test shall not ~~relieve~~ the contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way effect the continuing rights of the Government after acceptance of the completed work under the terms of paragraph (f) of this clause, except as hereinabove provided.

(b) The Contractor shall, without charge, replace any material or correct any workmanship found by the Government not to conform to the contract requirements, unless in the public interest the Government consents to accept such material or workmanship with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(c) If the Contractor does not promptly replace rejected material or correct rejected workmanship, the Government (1) may,

by contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed in accordance with Clause 5 of these General Provisions.

(d) The Contractor shall furnish promptly, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspection and tests as may be required by the Contracting Officer. All inspection and tests by the Government shall be performed in such manner as not unnecessarily to delay the work. Special, full size, and performance tests shall be performed as described in this contract. The Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready at the time specified by the Contractor for its inspection.

(e) Should it be considered necessary or advisable by the Government at any time before acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, the Contractor shall, on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect, due to fault of the Contractor or his subcontractors, he shall defray all expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the actual direct cost of labor and material necessarily involved

in the examination and replacement, plus 15 percent, shall be allowed the Contractor, and, if completion of the work has been delayed thereby, he shall, in addition, be granted a suitable extension of time on account of the additional work involved.

(f) Unless otherwise provided in this contract, acceptance by the Government shall be made as promptly as practicable after completion and inspection of all work required by this contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistake as may amount to fraud, or as regards the Government's rights under any warranty or guarantee.

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
(Logistics)

20 June 1960

Case 60-66 - Inspection and Acceptance -
Construction Contracts

Extend due date of Case 60-66 from
20 June to 11 July. Interim report will be
submitted by Subcommittee early next week.

↑ 4 E 596

6 January 1960

MEMORANDUM FOR CHAIRMAN, ASPR COMMITTEE

SUBJECT: GSA Drafts of Revised Standard Construction Contract Forms

1. Pursuant to your request Mr. Brewer and I reviewed the original file of the latest GSA drafts of revised Standard Contract Forms on or about 13 December 1960, and found that they concided with our previous agreements reached with Mr. Casque and his staff.
2. We have one comment however, with respect to the use of the term "Amendment" used in Standard Form 21. The use of this word resulted from your request made in a letter to Mr. Casque, dated 25 March 1960, wherein it was requested that this term be used instead of the terms "Addenda" and "Addendum". While this is contrary to ASPR's present practice of using the terms "Modification" and "Supplemental Agreement" we do not believe that we can now ask FPR to change this term.
3. Since our original review GSA has received comments from their agencies, which resulted in changes to several of the forms, which are reflected in the covering letter from Mr. Casque to Captain Malloy, Staff Director, ASPR Division, Office of Procurement Policy, dated 30 December 1960, and in the inked in changes made on the copies of the forms attached. Since submission of these changed forms, the undersigned has been advised by Mr. Casque that the forms have been submitted to the Bureau of the Budget for approval and that unless any proposed change was legally required, Mr. Casque would not like to request withdrawal of the documents submitted to the Bureau of the Budget for approval.
4. As no such changes are required, it is my belief that the Case 60-66 and 59-192 may now be closed with respect to those areas of responsibility which the Committee imposed upon Mr. Brewer and myself. In case there is any question concerning areas of "Bid Bonds" see Minutes, 6 July 1960, Case 59-192, unscheduled items, this matter has been handled under Case 59-151, see Minutes, 30 September 1960. This material accepted by GSA has been cleared with GAO and the Federal Procurement Regulations now contains appropriate coverage in FPR 1-10.102-4(a)(2).

DONALD T. RUBY
Lieutenant Colonel, JAGC
Contract Law Branch
Procurement Law Division

59-192 for
Drafts



26 June 1962

Charles
Dear Mr. Casper:

In connection with ASPR Case 61-15 we submitted comments to you concerning recommended changes in your proposed Part 1-14 "Inspection and Acceptance" of the FPR and our ASPR coverage of the same subject. Since that time representatives of your office and the ASPR Committee have discussed the matter in order to resolve differences and to obtain a compatibility in the regulatory coverage issued by GSA and DOD.

The 11 May 1962 draft of proposed FPR Part 1-14 has been agreed to by our representatives with the understanding that Section I-14.102(b), covering an acceptance for quality only, would not be picked up in ASPR as such partial acceptance procedures are not utilized by DOD activities. In view of the agreement of our representatives and confirmation by the ASPR Committee, no objection is interposed to your issuance of FPR 1-14 as contained in the above dated draft.

Action is being taken to revise ASPR Section XIV.

Sincerely,

/s/
WILLIAM W. THYBONY
Colonel, USA
Chairman,
ASPR Committee

Mr. Charles W. Casper, Jr.
Asst. Commissioner for Procurement Policy
General Services Administration
Washington 25, D. C.

Prepared by: ABCarter/dw/Jun26, 1962
30780/X75476

Case 60-66

File Copy

26 June 1962

Charlie
Dear Mr. Guepka

In connection with ASPR Case 61-15 we submitted comments to you concerning recommended changes in your proposed Part 1-14 "Inspection and Acceptance" of the FPR and our ASPR coverage of the same subject. Since that time representatives of your office and the ASPR Committee have discussed the matter in order to resolve differences and to obtain a compatibility in the regulatory coverage issued by USA and DOD.

The 11 May 1962 draft of proposed FPR Part 1-14 has been agreed to by our representatives with the understanding that Section 1-14.102(b), covering an acceptance for quality only, would not be picked up in ASPR as such partial acceptance procedures are not utilized by DOD activities. In view of the agreement of our representatives and confirmation by the ASPR Committee, no objection is interposed to your issuance of FPR 1-14 as contained in the above dated draft.

Action is being taken to revise ASPR Section XIV.

Sincerely,

WILLIAM W. THIBODY
Colonel, USA
Chairman,
ASPR Committee

Mr. Charles W. Guepka, Jr.
Asst. Commissioner for Procurement Policy
General Services Administration
Washington 25, D. C.

Prepared by: AHCarter/dw/June 26, 1962
30780/X75476

See draft of FPR in
62-104

file in 30-66 61-15
D R A F T 25 June 1962

Dear Mr. Gasque:

In connection with ASPR Case 61-15 we submitted comments to you concerning recommended changes in your proposed Part 1-14 "Inspection and Acceptance" of the FPR and our ASPR coverage of the same subject. Since that time representatives of your office and the ASPR Committee have discussed the matter in order to resolve differences and to obtain a compatibility in the regulatory coverage issued by GSA and DOD.

The 11 May 1962 draft of proposed FPR Part 1-14 has been agreed to by our representatives with the understanding that Section I-14.102(b), covering an acceptance for quality only, would not be picked up in ASPR as such partial acceptance procedures are not utilized by DOD activities. In view of the agreement of our representatives and confirmation by the ASPR Committee, no objection is interposed to your issuance of FPR 1-14 as contained in the above dated draft.

Action is being taken to revise ASPR Section XIV.

Sincerely,

Mr. Charles W. Gasque, Jr.
Asst. Commissioner for Procurement Policy
General Services Administration
Washington 25, D.C.

*yellow - file in
copy 62-104*

*Note to be on bottom
of copies for
see draft of FPR in file
62-104*

TITLE 41 - PUBLIC CONTRACTS

CHAPTER 1 - FEDERAL PROCUREMENT REGULATIONS

INSPECTION AND ACCEPTANCE

Chapter 1 of Title 41 is amended as set forth below:

1. The part table of contents is amended by adding a reference to Part 1-14 as follows:

1-14 Inspection and acceptance.

2. New Part 1-14 is added to read as follows:

PART 1-14 - INSPECTION AND ACCEPTANCE

Sec.

1-14.000 Scope of part.

SUBPART 1-14.1 - INSPECTION

1-14.100 Definitions.

1-14.101 General.

1-14.102 Responsibility for inspection.

1-14.103 Use of Government inspection facilities.

1-14.103-1 General.

1-14.103-2 Inspection interchange agreements.

1-14.103-3 Inspection services available from Federal agencies.

1-14.103-4 Furnishing inspection services.

1-14.103-5 Reimbursement for services.

1-14.104 Contractor responsibility.

1-14.105 Places of inspection.

- 1-14.105-1 General.
- 1-14.105-2 Inspection at source.
- 1-14.105-3 Inspection at destination.
- 1-14.106 Inspection of small purchases (\$2,500 or less).
- 1-14.107 Rejection of nonconforming supplies or services.
- 1-14.108 Government inspection of supplies under subcontracts.
- 1-14.109 Inspection for foreign governments.

SUBPART 1-14.2 - ACCEPTANCE

- 1-14.201 General.
- 1-14.202 [Reserved.]
- 1-14.203 Point of acceptance.
- 1-14.204 Responsibility for acceptance.
- 1-14.205 Certificates of conformance.
- 1-14.206 Acceptance of supplies or services not conforming with contract requirements.

AUTHORITY: §§ 1-14.000 through 1-14.206 issued under Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 1-14.000 Scope of part.

This part deals with inspection and acceptance under contracts for supplies or services (other than construction contracts).

SUBPART 1-14.1 - INSPECTION

§ 1-14.100 Definitions.

(a) "Inspection" means the examination (including testing) of supplies and services (including, when appropriate, raw materials, components,

and intermediate assemblies) to determine whether the supplies and services conform to contract requirements.

(b) "Testing" is an element of inspection and generally denotes the determination by technical means of the properties or elements of supplies, or components thereof, and involves the application of established scientific principles and procedures.

§ 1-14.101 General.

(a) Inspection on behalf of the Government shall be conducted in all cases prior to acceptance, except as permitted by § 1-14.205. Inspection shall be accomplished by or under the direction or supervision of Government personnel. The contractor may be required under the terms of the contract to establish and maintain an acceptable inspection or quality control system (see § 1-14.104) to assure compliance with contract specifications with a minimum of Government inspection. Except as otherwise provided in the contract, testing required to be performed by the contractor may be performed in the contractor's or subcontractor's laboratory or any other laboratory acceptable to the Government. A manufacturer's certificate or other statement of quality or quantity may be considered in determining whether supplies or services are in conformity with the contract. In no event shall any contract preclude the Government from performing inspection.

(b) The type and extent of inspection needed depend on the particular procurement. For example, when items which would involve small losses

in the event of defects or when knowledge of the contractor's reputation or past performance provides assurance that the supplies would be replaced or corrected without contest, and the cost of detailed inspection is not justified, inspection may consist only of checks for identity, quantity, and shipping damage.

§ 1-14.102 Responsibility for inspection.

[(a)] Inspection, or the arrangement therefor, is the responsibility of the contracting activity. Where a contracting activity uses the inspection services of another Federal agency, the agency performing such inspection has primary inspection cognizance, and its inspection determinations are binding on the contracting activity for which the inspection services are performed. In interdepartmental procurements where Government inspection is to be made at source, it generally will be made by inspectors of the contracting agency; but this general rule does not alter inspection interchange agreements or preclude the use of inspectors of another agency located at or servicing the contractor's plant. Where Government inspection at destination is required in interdepartmental procurements, the agency requiring the supplies may be requested to arrange for the inspection.

[(b)] Where an agency determines to inspect for quality at a place other than the place of delivery specified in the contract and the supplies so inspected are found to conform with contract specifications, such supplies may be approved and accepted for quality only, subject to latent defects, fraud, or gross mistakes amounting to fraud, and thereafter released for shipment upon appropriate notice being furnished the contractor. In such cases, inspection for quality shall not thereafter be repeated by the

Government upon arrival of the supplies at the place of delivery specified in the contract. However, such supplies should be examined at destination for damage in transit, quantity, and possible substitution or fraud.]

§ 1-14.103 Use of Government inspection facilities.

§ 1-14.103-1 General.

By appropriate inspection agreements, executive agencies shall provide for the use of inspection services of other agencies when such use will assure the most economical and effective inspection consistent with the best interest of the Government.

(a) Inspection services may be arranged for on the basis of individual plants, geographic areas, specified contracts, or groups or classes of contracts or commodities.

(b) Inspection agreements shall set forth the arrangements regarding reimbursement, if any, for inspection services (see § 1-14.103-5) and shall include specific provisions for (1) use of the practices, records, and forms of the activity performing inspection, unless the use of others is mutually agreeable; (2) channels of communication; and (3) designation of source and delivery date of any Government inspection equipment to be supplied.

§ 1-14.103-2 Inspection interchange agreements.

(a) Wherever there are multiple Government inspection assignments in a supplier's plant, the agencies involved shall by an inspection interchange agreement provide for the interchange of inspection services. Specific contracts may be exempted from interchange agreements if they are:

(1) Contracts for research, development, testing, or experimental work involving inspection tasks that the contracting agency determines can be most effectively performed by its own inspection activity; or

(2) Production contracts which can be effectively serviced only by the contracting agency's inspectors because they have acquired special skills required to perform the unusual or highly technical tasks involved.

(b) Inspection interchange agreements shall be designed to eliminate duplication, overlapping, or multiple assignments of Government inspection

activities in any one plant.

(c) Agency procedures should permit detailed inspection interchange agreements to be initiated and completed at the operating level which is in a position to insure coordinated and effective implementation. Where operating level activities are unable to reach inspection interchange agreements or the propriety of exemptions is questioned and cannot be resolved, such matters shall be referred independently by each operating level activity through channels to the head of its agency for resolution.

§ 1-14.103-3 Inspection services available from Federal agencies.

(a) General Services Administration.

(1) Agencies may arrange with the nearest General Services Administration regional Quality Control Division for inspection services (including sampling and laboratory, chemical, and physical testing and advice required for the proper acceptance of purchased supplies and services. Requests which involve unusually large or continuing inspection programs should be made to the General Services Administration, Federal Supply Service, Quality Control Division, General Services Regional Office Building, Washington 25, D. C. Such inspection services and advice will be rendered to the maximum extent that current workload permits and in accordance with the reimbursement policy outlined in § 1-14.103-5. Special attention will be given to assisting ordering offices in the inspection of supplies and services procured under Federal Supply Schedule contracts.

(2) If the General Services Administration is unable to render the inspection assistance requested, it will endeavor to arrange for another Federal agency to provide the required services.

(b) Other agencies. In addition to the General Services Administration, many Federal agencies have quality control or inspection organizations which provide inspection services. Information as to the type of services available from these agencies, their policy on performing services for other Federal agencies, and the making of arrangements for their services, is contained in the Directory of U. S. Government Inspection Services and Testing Laboratories (see (c) of this § 1-14.103-3).

(c) Directory of U. S. Government Inspection Services and Testing Laboratories. The "Directory of U. S. Government Inspection Services and Testing Laboratories," issued by the General Services Administration, contains pertinent information concerning the major inspection offices and testing laboratories of the Federal Government. It should be used by all Federal agencies when requiring inspection services. The Directory will be helpful in determining the facility best equipped, staffed, and geographically located to perform the desired services most economically. Copies of the Directory are available to Federal agencies upon request to the General Services Administration Region 3, Reproduction and Distribution Division, General Services Regional Office Building, Washington 25, D. C. Copies of the Directory may be purchased from the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C.

§ 1-14.103-4 Furnishing inspection services.

Executive agencies should, upon request, provide inspection services to any Federal agency, any mixed ownership corporation (as defined in the Government Corporation Control Act), the District of Columbia, the Senate, the House of Representatives, and the Architect of the Capitol and any activity under his direction.

§ 1-14.103-5 Reimbursement for services.

(a) Any executive agency may supply, without reimbursement or transfer of funds therefor, services, work, materials, and equipment to another executive agency in connection with the inspection of supplies being purchased by the latter agency. The determination whether or not to require monetary reimbursement for inspection services rendered rests with the agency performing the services. Such determinations should be made in accordance with the following:

(1) Agencies may, and should, to the maximum extent practicable, exchange inspection services on a reimbursement-in-kind basis without requiring cross billing or monetary reimbursement.

(2) Agencies may perform inspection services of any value without requiring reimbursement where resident or itinerant inspectors are available in a manufacturing plant or nearby and where the additional work will not necessitate personnel increases.

(3) Agencies should, generally, waive reimbursements of less than \$100 and, in any event, should not seek reimbursement if the cost

of the administrative procedures attendant to billing and collecting for inspection services would equal or exceed the cost of the services performed.

(b) Whenever inspection services are performed for other than an executive agency, reimbursement therefor shall be in accordance with applicable laws and regulations.

§ 1-14.104 Contractor responsibility.

(a) The standard inspection clause in § 1-7.101-5 (and in Standard Form 32, General Provisions (Supply Contract)) requires the contractor to maintain an inspection system acceptable to the Government and records of all inspection work performed by the contractor. The contractor's inspection system should be such as to provide reasonable assurance that the supplies subject to inspection will conform to contract requirements and should include any quality control procedures necessary to this end.

(b) Where quality control procedures are considered necessary (as may be the case, for example, when complex items are being purchased), a clause specifically requiring the contractor to maintain a quality control system acceptable to the Government shall be included in the contract unless the items are being purchased under specifications which in themselves contain adequate quality control provisions. In addition, the contract shall specify the quality control requirements to be complied with by the contractor, including control measures for manufacturing processes and documentation pertinent to quality, testing and inspection, fabrication, and delivery.

(c) Government inspection activities shall plan and conduct systematic evaluation and verification of contractors' inspection systems, quality control systems, and supplies, to the extent necessary to obtain maximum assurance of quality production by the contractor consistent with efficient use of manpower and facilities. In any case, however, the contractor shall be required to perform all examinations and tests called for by the contract requirements except those which are reserved for performance by the Government.

§ 1-14.105 Places of inspection.

§ 1-14.105-1 General.

Inspection of supplies and services shall be made at such times and places (including any stage and period of manufacture, and including subcontractors' plants) as are necessary to determine that the supplies and services conform to contract requirements. Each contract shall designate the place or places at which the Government intends to perform inspection. Where the contract provides for inspection at source, the place or places of inspection may not be changed without the authorization of the contracting officer.

§ 1-14.105-2 Inspection at source.

Supplies and services shall be inspected at source where:

(a) Inspection at any other point would require uneconomical disassembly or destructive testing;

(b) Considerable loss would result from the manufacture and shipment of unacceptable supplies or from the delay in making necessary

corrections;

(c) Special instruments, gauges, or facilities required for inspection are available only at source;

(d) Inspection at any other point would destroy or require the replacement of costly special packing and packaging;

(e) A quality control system is required by the contract or inspection during performance of the contract is essential;

(f) Supplies requiring technical inspection are destined for points of embarkation for overseas shipment; or

(g) It is otherwise determined to be in the best interest of the Government.

§ 1-14. 105-3 Inspection at destination.

Supplies and services shall be inspected at destination where:

(a) Deliveries of supplies purchased "off the shelf" are made from a point other than that of manufacture;

(b) Necessary testing equipment is located only at destination;

(c) Products being purchased are processed under direct control of the National Institutes of Health or the Federal Food and Drug Administration;

(d) Perishable subsistence supplies are purchased within the United States, except that perishable subsistence supplies destined for overseas shipment will normally be inspected for condition and quantity at points of embarkation;

(e) Brand name products are purchased for authorized resale (through commissaries or similar facilities), except that where supplies are destined for direct overseas shipment, inspection (and acceptance) may be accomplished by the contracting officer or his authorized representative on the basis of a tally sheet evidencing receipt of shipment signed by the port transportation officer or other designated official at the trans-shipment point; or

(f) It is otherwise determined to be in the best interest of the Government.

§ 1-14.106 Inspection of small purchases (\$2,500 or less).

(a) This § 1-14.106 applies to all small purchases, including items described in Federal and military specifications, and qualified products. In determining the type and extent of Government inspection to be required on small purchases, the smallness of possible losses and the likelihood of uncontested replacement of defective articles shall be considered.

(b) Generally, inspection of small purchases shall be at destination. Purchasers, users, and installers may be considered inspectors for small purchase inspection purposes.

(c) Unless detailed technical inspection is necessary, inspection shall consist of examination of (1) type and kind; (2) quantity; (3) damage; (4) operability, if readily determinable; and (5) packaging and marking, if applicable.

(d) Detailed technical inspection shall be performed if special specifications are involved or if defective supplies are likely to harm personnel or equipment. Such inspection may also be necessary for other reasons (e.g., where the use of defective supplies may cause significant loss in program time or significant increase in program costs).

(e) Detailed technical inspection may be limited to those characteristics which are special or which are likely to cause harm. Where repetitive purchases are made of the same item from the same manufacturing source and there is good reason to rely upon the integrity of the manufacturer because of known safeguards and a significant history of defect-free purchases, such inspection may be further limited to a check of occasional purchases.

§ 1-14.107 Rejection of nonconforming supplies or services.

(a) Contractors ordinarily shall be given an opportunity to correct or replace nonconforming supplies or services if this can be done within the required delivery schedule. Unless the contract provides otherwise (as may be the case in some cost-reimbursement type contracts), such correction or replacement shall be without additional cost to the Government. The standard inspection clause in § 1-7.101-5 reserves to the Government the right to charge the contractor the cost of Government reinspection and retests because of prior rejection.

(b) Notices of rejection of nonconforming supplies or services shall be in writing if (1) the supplies have been delivered to a point other than the contractor's plant; (2) the contractor persists in offering nonconforming

supplies or services for acceptance; or (3) delivery or performance is, or is likely to be, overdue without excusable cause. The reasons for rejection shall be stated. If timely notice of rejection is not furnished to the contractor, acceptance may in certain cases be implied as a matter of law from such omission. Therefore, notices of rejection should be furnished promptly to contractors.

§ 1-14.108 Government inspection of supplies under subcontracts.

Government inspection of subcontracted supplies shall be made only when required in the interest of the Government. The primary purpose of subcontract inspection is to assist the Government inspector at the prime contractor's plant in determining the conformance of supplies with contract requirements. It does not relieve the prime contractor of any of his responsibilities under the contract. Supplies that do not qualify under the criteria in § 1-14.105-2 for Government inspection at source shall not be inspected by the Government at the subcontractor's plant. Supplies for which certificates, records, reports, and similar evidence of quality are available at the prime contractor's plant shall not be Government inspected at the subcontractor's plant except occasionally to verify such evidence. However, Government inspection shall be performed at a subcontractor's plant whenever the Government contract requires. All oral and written statements and contract provisions relating to the inspection of subcontracted supplies shall be so worded as not to (a) affect the contractual relationship

between the prime contractor and the Government or between the prime contractor and the subcontractor, (b) establish a contractual relationship between the Government and the subcontractor, or (c) constitute a waiver of the Government's right to inspect or reject supplies.

§ 1-14.109 Inspection for foreign governments.

Inspection will be performed only for friendly foreign governments or international agencies and shall be administered in accordance with the foreign policy and security objectives of the United States. Such inspection will be provided only where consistent with or required by legislation, executive orders, or any agency policies concerning mutual security programs, setting forth foreign policy and security objectives.

SUBPART 1-14.2 - ACCEPTANCE

§ 1-14.201 General.

As used in Government contracts, "acceptance" generally means the act of an authorized representative of the Government by which the supplies delivered, ~~or services rendered, by a contractor are accepted by the Government~~ [assents to ownership by it of existing and identified supplies, or approves specific services rendered,] as partial or complete performance of the contract. Except as provided in § 1-14.206[,] and subject to other terms and conditions of the contract, the Government thereby acknowledges[, among other things,] that the supplies or services are in conformity with contract requirements, including those of quality, quantity, packaging, and markings. Acceptance [Depending upon the provisions of the contract, acceptance] may be effected before delivery, at the time of delivery, or after delivery, ~~whichever is provided for in the contract.~~ However, supplies and services shall not be

accepted prior to inspection, except as permitted by § 1-14.205. Acceptance shall ordinarily be accomplished [evidenced] by execution of a [an acceptance] certification on an inspection or receiving report form ~~that the supplies are accepted~~. Where acceptance is accomplished at a point other than destination, supplies shall not be reinspected as to quality at destination for acceptance purposes. However, such supplies should be examined at destination for damage in transit, quantity, and possible substitution or fraud. [Inspection and partial acceptance as to quality only may be made prior to delivery (see § 1-14.102(b)).]

§ 1-14.202 [Reserved.]

§ 1-14.203 Point of acceptance.

Each contract shall specify the point of acceptance. Contracts which provide for delivery f. o. b. destination shall provide for acceptance at destination whether inspection is to occur at destination or at source. Contracts which provide for delivery f. o. b. origin shall ordinarily provide for acceptance (and inspection) at source.

§ 1-14.204 Responsibility for acceptance.

Acceptance is the responsibility of the contracting officer or his authorized representative. Where a contracting activity uses services of another Federal agency for the purpose of acceptance, the acceptance by the other agency is binding on the activity for which the services are performed.

§ 1-14.205 Certificates of conformance.

A contractor's certification that supplies or services comply with contract requirements may be considered a proper element incident to

acceptance of supplies or services. Standard or commercial items, or supplies of a simple, noncritical nature, may be accepted solely on the basis of a contractor's certificate of conformance if:

(a) The contracting officer or his authorized representative determines (1) that acceptance on that basis is in the best interest of the Government, and (2) that, because of knowledge of the supplier's reputation or past performance, it is very likely that the supplies furnished will be acceptable and that any defective supplies would be replaced or corrected by the supplier without contest; and

(b) The contract (initially, or by amendment) (1) reserves to the Government the right after acceptance to inspect the supplies within a reasonable time after delivery and to reject defective items, and (2) imposes upon the contractor the obligation, in the event of such rejection, to promptly replace or correct the defective items or to reimburse the Government therefor.

§ 1-14. 206 Acceptance of supplies or services not conforming with contract requirements.

Except as provided in this § 1-14. 206, supplies or services tendered for acceptance which do not conform with contract requirements shall be rejected (see § 1-14. 107). However, if it is in the Government's best interest, for reasons of economy or the urgency of the requirement, acceptance of supplies or services which do not meet all contract requirements may occasionally be desirable. Prior to such acceptance, the contracting officer shall obtain the approval of the requiring activity. If the nonconformity

is a significant deviation from contract requirements, or if the contracting officer determines that a price reduction is appropriate, the acceptance of nonconforming supplies or services shall be covered by an appropriate modification of the contract. A deviation is significant if it adversely affects safety; durability; performance; interchangeability of parts or assemblies; weight, where weight is a significant consideration; or any other basic objective of the specification. Where acceptance of nonconforming supplies or services is to be at a reduction in price, the amount of the reduction shall be fair and reasonable (see paragraph (b) of the standard inspection clause in § 1-7.101-5).

Effective date. These regulations are effective 1 July 1962, but may be observed earlier.

Dated:

General Services Administration
Fed. Proc. Reg. (41 CFR) 1-16.401

GENERAL PROVISIONS
(CONSTRUCTION CONTRACT)

1. DEFINITIONS

(a) The term "head of the agency" or "Secretary" as used herein means the Secretary, the Under Secretary, any Assistant Secretary, or any other head or assistant head of the department or agency; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the head of the agency or the Secretary.

(b) The term "Contracting Officer" as used herein means the person executing this contract on behalf of the Government and includes a duly appointed successor or authorized representative.

2. SPECIFICATIONS AND DRAWINGS

The Contractor shall keep on the work a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy either in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at his own risk and expense. The Contracting Officer shall furnish from time to time such

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.

18. OFFICIALS NOT TO BENEFIT

No member of 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.

19. BUY AMERICAN

(a) Agreement. In accordance with the Buy American Act (41 U.S.C. 10a-10d) and Executive Order 10582, December 17, 1954 (3 CFR Supp.), 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 nondomestic material listed in the contract.

(b) Domestic construction material. "Construction material" means any article, material, or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a "domestic construction material" if it has been mined or produced in the United States. A manufactured construction material is a "domestic construction material" if it

has been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. "Component" means any article, material, or supply directly incorporated in a construction material.

(c) Domestic component. A component shall be considered to have been "mined, produced, or manufactured in the United States" (regardless of its source in fact) if the article, material, or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

20. 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.

21. NONDISCRIMINATION IN EMPLOYMENT

(a) In connection with the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision 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 hereafter in

conspicuous places, available for employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of the nondiscrimination clause.

(b) The Contractor further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

22. UTILIZATION OF SMALL BUSINESS CONCERNS

(a) 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.

(b) 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.

detail drawings and other information as he may consider necessary, unless otherwise provided.

3. CHANGES

The Contracting Officer may, at any time, by written order, and without notice to the sureties, make changes in the drawings and/or specifications of this contract if within its general scope. If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of the contract, an equitable adjustment shall be made and the contract modified in writing accordingly. Any claim of the Contractor for adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the Contractor of the notification of change unless the Contracting Officer grants a further period of time before the date of final payment under the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in Clause 6 of these General Provisions; but nothing provided in this clause shall excuse the Contractor from proceeding with the prosecution of the work as changed. Except as otherwise provided in this contract, no charge for any extra work or material will be allowed.

4. CHANGED CONDITIONS

The Contractor shall promptly, and before such conditions are disturbed, notify the Contracting Officer in writing of: (a) subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or (b) unknown physical conditions at the site, of an unusual nature, differing

materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract. The Contracting Officer shall promptly investigate the conditions, and if he finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or the time required for, performance of this contract, an equitable adjustment shall be made and the contract modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless he has given notice as above required; or unless the Contracting Officer grants a further period of time before the date of final payment under the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in Clause 6 of these General Provisions.

5. TERMINATION FOR DEFAULT-DAMAGES FOR DELAY-TIME EXTENSIONS

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, the Government may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event the Government may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the Government resulting from his refusal or failure to complete the work within the specified time.

(b) If fixed and agreed liquidated damages are provided in the contract and if the Government so terminates the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Government in completing the work.

(c) If fixed and agreed liquidated damages are provided in the contract and if the Government does not so terminate the Contractor's right to proceed, ~~he shall continue the work and~~ the resulting damage will consist of such liquidated damages until the work is completed or accepted.

(d) The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

(1) The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any such delay (unless the Contracting Officer grants a further period of time before the date of final payment under the contract), notifies the Contracting Officer in writing of the causes of delay.

The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in Clause 6 of these General Provisions.

(e) If, after notice of termination of the Contractor's right to proceed under the provisions of paragraph (a) of this clause, it is determined that *the delay is excusable* ~~such termination was not properly effected~~ under the provisions of paragraph (d) of this clause, such notice of termination shall be deemed to have been issued pursuant to the clause of this contract entitled "Termination for Convenience of the Government," and the rights and obligations of the parties hereto shall in such event be governed by such clause. (This paragraph (e) applies only if this contract contains such termination clause.)

(f) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

6. DISPUTES

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the head of the agency involved. The decision of the head of the agency or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This Disputes clause does not preclude consideration of questions of law in connection with decisions provided for in paragraph (a) above. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

7. PAYMENTS TO CONTRACTOR

(a) The Government will pay the contract price as hereinafter provided.

(b) The Government will make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. If requested by the Contracting Officer, the Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Contracting Officer, at his discretion, may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration (3) if such consideration is specifically authorized by the contract and (2) if the Contractor furnishes satisfactory evidence that he has acquired title to such material and that it will be utilized on the work covered by this contract.

(c) In making such progress payments, there shall be retained 10 percent of the estimated amount until final completion and acceptance of the contract work. However, if the Contracting Officer, at any time after 50 percent of the work has been completed, finds that satisfactory progress is being made, he may authorize any of the remaining progress payments to be made in full. Also, whenever the work is substantially complete, the Contracting Officer, if he considers the amount retained to be in excess of the amount adequate for the protection of the Government, at his discretion, may release to the Contractor all or a portion of such excess amount. Furthermore, 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 therefor

without retention of a percentage.

(d) All material and work covered by progress payments made shall thereupon become the sole property of the Government, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work, or as waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(e) Upon completion and acceptance of all work, the amount due the Contractor under this contract shall be paid upon the presentation of a properly executed voucher and after the Contractor shall have furnished the Government with a release, if required, of all claims against the Government arising by virtue of this contract, other than claims in stated amounts as may be specifically excepted by the Contractor from the operation of the release. If the Contractor's claim to amounts payable under the contract has been assigned under the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), a release may also be required of the assignee.

8. ASSIGNMENT OF CLAIMS

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating \$1,000 or more, claims for moneys due or to become due the Contractor from the Government under this contract 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 such assignment or reassignment shall cover all amounts payable under this

contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payments to an assignee of any moneys due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or set-off. (The preceding sentence applies only if this contract is made in time of war or national emergency as defined in said Act and is with the Department of Defense, the General Services Administration, the Atomic Energy Commission, the National Aeronautics and Space Administration, the Federal Aviation Agency, or any other department or agency of the United States designated by the President pursuant to clause 4 of the proviso of section 1 of the Assignment of Claims Act of 1940, as amended by the Act of May 15, 1951, 65 Stat. 41.)

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

9. MATERIAL AND WORKMANSHIP

(a) Unless otherwise specifically provided in this contract, all equipment, material, and articles incorporated in the work covered by this contract are to

be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in this contract, reference to any equipment, material, article, or patented process, by trade name, make, or catalog number shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and the Contractor may, at his option, use any equipment, material, article, or process which, in the judgment of the Contracting Officer, is equal to that named. The Contractor shall furnish to the Contracting Officer for his approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature, and rating of the machinery and mechanical and other equipment which the Contractor contemplates incorporating in the work. When required by this contract or when called for by the Contracting Officer, the Contractor shall furnish the Contracting Officer for approval full information concerning the material or articles which he contemplates incorporating in the work. When so directed, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles installed or used without required approval shall be at the risk of subsequent rejection.

(b) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may, in writing, require the Contractor to remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

10. INSPECTION

(a) Except as otherwise provided in this contract, including paragraph (d)

hereof, all workmanship and material furnished under this contract shall be subject to inspection, examination, and test by the Contracting Officer at any and all times during manufacture and/or construction and at any and all places where such manufacture and/or construction is carried on. The Contractor shall furnish promptly, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspection and tests as may be required by the Contracting Officer. All inspection and tests by the Government shall be performed in such manner as not unnecessarily to delay the work. Special, full size, and performance tests shall be performed as described in this contract. The Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready at the time inspection is requested by the Contractor.

(b) Should it be considered necessary or advisable by the Government at any time before final acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, the Contractor shall, on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect, due to fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the actual direct cost of labor and material necessarily involved in the examination and replacement, plus 15 per cent shall be allowed the Contractor, and, if completion of the work has been delayed thereby, he shall, in addition, be granted a suitable extension of time on account of the additional work involved.

(c) The Government may reject any workmanship or material which does not conform to the requirements of the contract and may, at its option, require correction or replacement without additional charge. Rejected material shall be promptly segregated and removed from the premises by the Contractor. If the Contractor fails to proceed at once with such correction or replacement, the Government may, by contract or otherwise, correct or replace such workmanship or material at the Contractor's expense, or may terminate the right of the Contractor to proceed, and the Contractor shall be liable for resulting damage, to the extent provided in Clause 5 of these General Provisions.

(d) Inspection of material and finished articles to be incorporated in the work at the site shall, unless otherwise stated in this contract, be made at the place of production, manufacture, or shipment, whenever the Contracting Officer determines such inspection is justified; and such inspection and written or other formal acceptance shall, unless otherwise stated in the contract, be final, except as regards any latent defect, departure from specific requirements of the contract, damage or loss in transit, fraud, or such gross mistake as amounts to fraud. Except as provided in the preceding sentence, the inspection of material and workmanship for final acceptance as a whole or in part shall be made at the site. Nothing contained in this paragraph (d) shall in any way restrict the Government's rights under any warranty or guarantee.

11. SUPERINTENDENCE BY CONTRACTOR

The Contractor shall give his 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 him.

12. PERMITS AND RESPONSIBILITIES

The Contractor shall, without additional expense to the Government, be responsible 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. He shall be similarly responsible for all damages to persons or property that occur as a result of his fault or negligence. He shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. He shall also be responsible for all materials delivered and work performed until completion and ~~final~~ acceptance, *of the entire construction work* except for any completed unit thereof which theretofore may have been ~~finally~~ *of construction* accepted.

13. CONDITIONS AFFECTING THE WORK

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the work without additional expense to the Government. The Government assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this contract, unless such understanding or representations by the Government are expressly stated in the contract.

14. OTHER CONTRACTS

The Government may undertake or award other contracts for additional

work, and the Contractor shall fully cooperate with such other contractors and Government employees and carefully fit his own work to such additional work as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Government employees.

15. PATENT INDEMNITY

Except as otherwise provided, the Contractor agrees to indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any Letters Patent of the United States (except Letters Patent issued upon an application which is now or may hereafter be, for reasons of national security, ordered by the Government to be kept secret or otherwise withheld from issue) arising out of the performance of this contract or out of the use or disposal by or for the account of the Government of supplies furnished or construction work performed hereunder.

16. ADDITIONAL BOND SECURITY

If any surety upon any bond furnished in connection with this contract becomes unacceptable to the Government, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the Government, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government and of persons supplying labor or materials in the prosecution of the work contemplated by this contract.

17. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed

OCTOBER 1960

FOR DISCUSSION PURPOSES ONLY

STANDARD FORM 20
EDITION
GENERAL SERVICES ADMINISTRATION
FED. PROC. REG. (41 CFR) 1-16.401

REFERENCE

60-66

INVITATION FOR BIDS
(CONSTRUCTION CONTRACT)

DATE

NAME AND LOCATION OF PROJECT

DEPARTMENT OR AGENCY

BY (Issuing office)

Sealed bids in

for the work described herein will be received until

at

and at that time publicly opened.

Information regarding bidding material, bid guarantee, and bonds

Description of work

STANDARD FORM 21
EDITION
GENERAL SERVICES ADMINISTRATION
FED. PROC. REG. (41 CFR) 1-16.401

BID FORM
(CONSTRUCTION CONTRACT)

REFERENCE

Read the Instructions to Bidders (Standard Form 22)

This form to be submitted in

DATE OF INVITATION

NAME AND LOCATION OF PROJECT

NAME OF BIDDER (Type or print)

(Date)

TO:

In compliance with the above-dated invitation for bids, the undersigned hereby proposes to perform all work for

in strict accordance with the General Provisions (Standard Form 23A), Labor Standards Provisions Applicable to Contracts in Excess of \$2,000 (Standard Form 19A), specifications, schedules, drawings, and conditions, for the following amount(s)

INSTRUCTIONS FOR SUBMITTING BIDS

The undersigned agrees that, upon written acceptance of this bid, mailed or otherwise furnished within _____ calendar days (_____ calendar days unless a shorter period be inserted by the bidder) after the date of opening of bids, he will within _____ calendar days (unless a longer period is allowed) after receipt of the prescribed forms, execute Standard Form 23, Construction Contract, and give performance and payment bonds on Government standard forms with good and sufficient surety.

The undersigned agrees, if awarded the contract, to commence the work within _____ calendar days after the date of receipt of notice to proceed, and to complete the work within _____ calendar days after the date of receipt of notice to proceed.

(Continue on other side)

Receipt of Amendments: The undersigned acknowledges receipt of the following amendments of the invitation for bids, drawings, and/or specifications, etc. (Give number and date of each):

The bidder represents (Check appropriate boxes):

- (1) That he ☐ is, ☐ is not, a small business concern. (For this purpose, a small business concern is a business concern, including its affiliates, which (a) is independently-owned and operated, (b) is not dominant in its field of operation, and (c) had average annual receipts for the preceding three fiscal years not exceeding \$5,000,000. For additional information see governing regulations of the Small Business Administration.)
- (2) (a) That he ☐ has, ☐ has not, employed or retained any company or person (other than a full-time bona fide employee working solely for the bidder) to solicit or secure this contract, and (b) that he ☐ has, ☐ has not, paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract; and agrees to furnish information relating to (a) and (b) above as requested by the Contracting Officer. (For interpretation of the representation, including the term "bona fide employee," see Code of Federal Regulations, Title 41, Subpart 1-1.5.)
- (3) That he operates as an ☐ individual, ☐ partnership, ☐ joint venture, ☐ corporation, incorporated in State of _____.

Enclosed is bid guarantee, consisting of

in the amount of

NAME OF BIDDER (Type or print)	FULL NAME OF ALL PARTNERS (Type or print)
BUSINESS ADDRESS (Type or print)	
BY (Signature in ink. Type or print name under signature)	
TITLE (Type or print)	

DIRECTIONS FOR SUBMITTING BIDS

Envelopes containing bids, guarantee, etc., must be sealed, marked, and addressed as follows:

CAUTION: Bids should not be qualified by exceptions to the bidding conditions.

General Services Administration
Fed. Proc. Reg. (41 CFR) 1-16.401

INSTRUCTIONS TO BIDDERS
(CONSTRUCTION CONTRACT)

1. **Explanations to Bidders.** Any explanation desired by a bidder regarding the meaning or interpretation of the invitation for bids, drawings, specifications, etc., must be requested in writing and with sufficient time allowed for a reply to reach bidders before the submission of their bids. Any interpretation made will be in the form of an amendment of the invitation for bids, drawings, specifications, etc., and will be furnished to all prospective bidders. Its receipt by the bidder must be acknowledged in the space provided on the Bid Form (Standard Form 21) or by letter or telegram received before the time set for opening of bids. Oral explanations or instructions given before the award of the contract will not be binding.

2. **Conditions Affecting the Work.** Bidders should visit the site and take such other steps as may be reasonably necessary to ascertain the nature and location of the work, and the general and local conditions which can affect the work or the cost thereof. Failure to do so will not relieve bidders from responsibility for estimating properly the difficulty or cost of successfully performing the work. The Government will assume no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of the contract, unless included in the invitation for bids, the specifications, or related documents.

3. Bidder's Qualifications. Before a bid is considered for award, the bidder may be requested by the Government to submit a statement regarding his previous experience in performing comparable work, his business and technical organization, financial resources, and plant available to be used in performing the work.

4. Bid Guarantee. Failure to furnish a required bid guarantee in the proper amount, by the time set for opening of bids, may be cause for rejection of the bid.

A bid guarantee may be in the form of a bid bond, postal money order, certified check, cashier's check, irrevocable letter of credit or, in accordance with Treasury Department regulations, bonds or notes of the United States. Bid guarantees, other than bid bonds, will be returned (a) to unsuccessful bidders as soon as practicable after the opening of bids, and (b) to the successful bidder upon execution of such further contractual documents and bonds as may be required by the bid as accepted.

If the successful bidder withdraws his bid within the period specified therein for acceptance (60 days if no period is specified) or, upon acceptance thereof by the Government, fails to enter into the contract and give bonds within the time specified (10 days if no period is specified) after the forms are presented to him, he shall be liable for any difference by which the cost of procuring the work exceeds the amount of his bid, and the bid guarantee shall be available toward offsetting such difference.

5. Preparation of Bids. (a) Bids shall be submitted on the forms furnished, or copies thereof, and must be manually signed. If erasures or other changes

appear on the forms, each erasure or change must be initialed by the person signing the bid. Unless specifically authorized in the invitation for bids, telegraphic bids will not be considered.

(b) The bid form may provide for quotation of a price or prices for one or more items, which may be lump sum bids, alternate prices, scheduled items resulting in a bid on a unit of construction or a combination thereof, etc. Where the bid form explicitly requires that the bidder quote on all items, failure to do so will disqualify the bid. When quotations on all items are not required, bidders should insert the words "no bid" in the space provided for any item on which no quotation is made.

(c) Unless called for, alternate bids will not be considered.

(d) Modifications of bids already submitted will be considered if received at the office designated in the invitation for bids by the time set for opening of bids. Telegraphic modifications will be considered, but should not reveal the amount of the original or revised bid.

6. Submission of Bids. Bids must be sealed, marked, and addressed as directed in the invitation for bids. Failure to do so may result in a premature opening of, or a failure to open, such bid.

7. Late Bids and Modifications or Withdrawals. Bids and modifications or withdrawals thereof received at the office designated in the invitation for bids after the exact time set for opening of bids will not be considered, unless they are received before award and (a) they are submitted by mail (or by telegraph, if authorized) and (b) it is determined by the Government that late receipt was due

solely to either (1) delay in the mails (or by the telegraph company, if telegraphic bids are authorized) for which the bidder was not responsible or (2) mishandling by the Government after receipt at the Government installation. However, a modification which is received from an otherwise successful bidder and which makes the terms of the bid more favorable to the Government will be considered at any time it is received and may thereafter be accepted.

8. Withdrawal of Bids. Bids may be withdrawn by written or telegraphic request received from bidders prior to the time set for opening of bids.

9. Public Opening of Bids. Bids will be publicly opened at the time set for opening in the invitation for bids. Their content will be made public for the information of bidders and others interested, who may be present either in person or by representative.

10. Award of Contract. (a) Any contract award will be made to that responsible bidder whose conforming bid is most advantageous to the Government, price and other factors considered.

(b) The Government may, when in its interest, reject any or all bids or waive any informality in bids received.

(c) The Government may accept any item or combination of items of a bid, unless precluded by the invitation for bids or the bidder includes in his bid a restrictive limitation.

11. Contract and Bonds. The bidder whose bid is accepted will, within the time established in the bid, enter into a written contract with the Government and, if required, furnish performance and payment bonds on Government standard forms in the amounts indicated in the invitation for bids or the specifications.

STANDARD FORM 23
EDITION
GENERAL SERVICES ADMINISTRATION
FED. PROC. REG. (41 CFR) 1-16.401

CONSTRUCTION CONTRACT (See instructions on reverse)

CONTRACT NO.

DATE OF CONTRACT

NAME AND ADDRESS OF CONTRACTOR

CHECK APPROPRIATE BOX

- ☐ Individual
☐ Partnership
☐ Joint Venture
☐ Corporation, incorporated in the
State of _____

DEPARTMENT OR AGENCY

CONTRACT FOR (Work to be performed)

PLACE

CONTRACT PRICE (Express in words and figures)

ADMINISTRATIVE DATA (Optional)

The United States of America (hereinafter called the Government), represented by the Contracting Officer executing this contract, and the individual, partnership, joint venture, or corporation named above (hereinafter called the Contractor), mutually agree to perform this contract in strict accordance with the General Provisions (Standard Form 23A), Labor Standards Provisions Applicable to Contracts in Excess of \$2,000 (Standard Form 19A), and the following designated specifications, schedules, drawings, and conditions:

WORK SHALL BE STARTED

WORK SHALL BE COMPLETED

Alterations. The following alterations were made in this contract before it was signed by the parties hereto:

In witness whereof, the parties hereto have executed this contract as of the date entered on the first page hereof.

THE UNITED STATES OF AMERICA

CONTRACTOR

By _____

(Name of Contractor)

(Official title)

By _____

(Signature)

(Title)

INSTRUCTIONS

1. The full name and business address of the Contractor must be inserted in the space provided on the face of the form. The Contractor shall sign in the space provided above with his usual signature and typewrite or print his name under the signature.

2. An officer of a corporation, a member of a partnership, or an agent signing for the Contractor shall place his signature and title after the word "By" under the name of the Contractor. A contract executed by an attorney or agent on behalf of the Contractor shall be accompanied by two authenticated copies of his power of attorney or other evidence of his authority to act on behalf of the Contractor.

Case 60-66

The contractor shall provide and maintain an inspection system which will include (i) timely inspection by qualified personnel during the course of performance of the contract, and (ii) maintenance of adequate records of such inspections, available to the Government.

The Contractor shall maintain an inspection system that will assure performance of the [contract] work in accordance with the specifications relating thereto. Such a system shall provide for concurrent inspections in the course of the progress of the work.

Retention of records commensurate with the complexities of the work.

60.66

Government inspection of materials and workmanship required by this contract shall be at the site of the work unless the Contracting Officer determines that Govt inspection of materials which are to be incorporated in the work shall be made at the place of production, manufacture or shipment. Any such inspection shall, to the extent specified by the Govt, be determinative of the materials involved being in conformity with the contract requirements.

Further Govt inspection and test of any material does not relieve the Contractor from any responsibility regarding latent defects, fraud or such gross mistake as may amount to fraud or to restrict the Govt's right ^{under} to any warranty or guarantee.