



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3010

SEP 27 2007

MEMORANDUM OF DECISION

SUBJECT: Authority To Indemnify Certain Contractors Against Nuclear Risks and Unusually Hazardous Risks Attributable To The Utilization Of High Energy Propellants

Pursuant to Public Law 85-804, Executive Order 10789, as amended by Executive Order 11610, Federal Acquisition Regulation (FAR) Part 50 and Department of Defense FAR Supplement Part 250, I approve the contractor requests (identified at Attachment) for indemnification against unusually hazardous or nuclear risks during FY 2008.

This decision is limited to prime contracts by or for the Navy for:

- Procurement of nuclear-powered vessels or components thereof; or
- Procurement of POLARIS, POSEIDON, TRIDENT or Tomahawk Cruise Missiles, or components thereof, or other components or subcomponents of the POLARIS, POSEIDON, TRIDENT or Tomahawk Cruise Missile weapon systems; or
- Repair, modification, support or services relating to nuclear-powered vessels, POLARIS, POSEIDON, TRIDENT or Tomahawk Cruise Missiles or other components of the POLARIS, POSEIDON, TRIDENT or Tomahawk Cruise Missile weapon systems or components thereof.

As used in this decision:

- “Nuclear risks” are those risks attributable to the radioactive toxic, explosive, or other hazardous properties of “special nuclear material,” “by-product material” or “source material,” as such materials are defined in the Atomic Energy Act of 1954, as amended.
- “Unusually hazardous risks” are the risks of explosion, detonation, burning or propulsion attributable to the utilization of high energy propellants in (i) POLARIS, POSEIDON, TRIDENT, or Tomahawk Cruise Missiles, or of any component thereof, or (ii) propellant-powered POLARIS, POSEIDON, TRIDENT or Tomahawk Cruise test missiles or of any component thereof, or (iii) any other component or subcomponent of the POLARIS, POSEIDON, TRIDENT or Tomahawk Cruise Missile weapon systems which uses high energy propellants.



This decision is based upon the condition that each listed contractor maintains insurance coverage of the types and the amounts set forth in Attachment (1). If the amount of coverage for any contractor is more than 10% less than the amount set forth in Attachment 1, this class decision shall no longer apply to that contractor and any indemnification of that corporation under Public Law 85-804 shall be made only upon separate request to and decision by the Secretary of the Navy. Regardless of the amount involved, Contracting Officers shall notify the Office of the Deputy Assistant Secretary of the Navy for Acquisition Management of all changes in coverage upon any listed contractor.

This decision does not authorize (i) amendments without consideration within the meaning of FAR Part 50, Subpart 50.3; (ii) indemnification under any contract or subcontract against any incidents occurring before indemnification provisions, as authorized herein, are included in such contract or subcontract; or (iii) indemnification under research or development contracts against claims, losses or damage when indemnity has been authorized under Title 10, United States Code, Section 2354.

Indemnification of subcontractors may be provided under authority of this decision only when:

- The government will receive the benefits of any cost savings to the subcontractors, the prime contractor and all higher tier subcontractors resulting from such subcontractor indemnification,
- Either:
 - the subcontract is a new subcontract entered into on or after the date of this Memorandum of Decision, or
 - the subcontract contains an express provision for the inclusion of such subcontractor indemnification without further consideration, which provision was included in the subcontract prior to the date of this Memorandum of Decision pursuant to express provision therefore in the prime contract and in each higher tier subcontract, and
- The contracting officer approves in writing.

All contract indemnification clauses shall comply with FAR Subpart 50.4 and FAR 50.307.

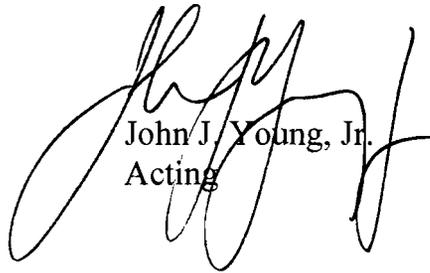
When indemnification provisions are included in a prime contract pursuant to this decision, the cognizant purchasing office shall immediately submit to the Contract Adjustment Board a report referencing this Memorandum of Decision and containing the following information: (i) name and address of the contractor, (ii) cognizant purchasing

office, (iii) contract number and date, and (iv) a brief description of the supplies or services procured under the contract.

The actual or potential cost of this indemnification is impossible to estimate since it is contingent upon the occurrence of a nuclear incident or unusually hazardous incidents attributable to the utilization of high-energy propellants. Such incidents may never occur; but in the event of a major event, losses could be catastrophic.

I find that this action will facilitate the national defense. In the event of a major incident arising from nuclear risks or unusually hazardous risks attributable to the utilization of high-energy propellants, the possible claims against and loss to the contractors and subcontractors could exceed amounts that contractors should be expected to cover and could easily exceed available insurance.

This decision is a follow-on to the memorandum on this subject of September 29, 2006.



John J. Young, Jr.
Acting

Attachment:
As stated