



THE SECRETARY OF THE NAVY  
WASHINGTON, D. C. 20350-1000

SEP 28 2007

MEMORANDUM OF DECISION

**SUBJECT: Authority to Indemnify Certain Contractors and Subcontractors Against Nuclear Risks and Unusually Hazardous Risks Attributable to the Utilization of High Energy Propellants**

Subject to the following limitations, cognizant Contracting Officers are authorized during Fiscal Year 2008 to include in prime contracts described in the next paragraph contract provisions for the indemnification of the contractors listed in Attachment (1) and their subcontractors of any tier. The indemnity provided is against losses, not compensated by insurance or otherwise, for claims by third persons for death and personal injury and for loss of, damage to, or loss of use of the Government's, the contractor's or subcontractor's property, arising out of and resulting from nuclear risks, or from unusually hazardous risks attributable to the utilization of high energy propellants, or from both. This action is authorized 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 (DoD) FAR Supplement Part 250.

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 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 and Logistics Management of all changes in coverage for 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 hereafter 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 comply with FAR Subpart 50.4 and FAR 50.307.

When indemnification provisions are included in a prime contract pursuant to the 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 and of a nuclear incident or unusually hazardous incident 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 supersedes the memorandum of September 26, 2006.



Donald C. Winter

Attachments:  
As stated