



Department of Energy

Carlsbad Area Office
P. O. Box 3090
Carlsbad, New Mexico 88221

NOV 29 1996

• Received

Jennifer Salisbury, Chair
Radioactive Waste Consultation Task Force
State of New Mexico, Energy, Minerals
and Natural Resources Department
2040 Pacheco
Santa Fe, NM 87505

DEC 04 1996

Energy, Minerals & Natural
Resources Department
Office of the Secretary

Dear Ms. Salisbury:

The July 1981 Agreement for Consultation and Cooperation (C & C), between the State of New Mexico and the Department of Energy, and subsequently, the Supplemental Stipulated Agreement (SSA) of December 27, 1982, require the Department of Energy to address certain state concerns.

The SSA states in paragraph III. A. 2 b) (2) as follows: "Delivery of All WIPP Contracts to the State. The D.O.E. agrees and stipulates that it will deliver and file with the State of New Mexico copies of all WIPP-related contracts, or portions thereof, which relate to the Price-Anderson indemnification coverage for the State of New Mexico and its citizens in order for the State to review them to insure that such protections are being provided, including but not limited to (1) the WIPP operating contract; (2) prime contracts for the operation of any 'production or utilization facilities' or other facilities which may be the source or destination of any nuclear waste transported to or from the WIPP site; and (3) any contracts with the transporters of the waste to the WIPP site."

In accordance with the above stated requirement, the following clauses contained in the Westinghouse, Waste Isolation Division (WID) Management and Operating contract and in the Colorado Allstate Transportation, Inc. (CAST) subcontract for transportation are attached for your review:

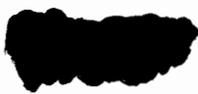
DEAR 952.250-70 Nuclear Hazards Indemnity Agreement (Jan 1992) - (WID)

General Provisions: Nuclear Hazards Indemnification Representation - (CAST)

It is our understanding from telephone conversations between Chris Wentz and Barbara Smith, (formerly of CAO) and Lynn Eaton (WID), that the State of New Mexico does not want copies of our contracts as required under the SSA. These contracts would be submitted to you at your request.

NOV 1997

961120



If you have any questions, please contact Ann Blackstone, at (505) 234-7331.

Sincerely,


George E. Dials
Manager

Enclosures

cc:

C. Wayman, CAO

R. Smith, CAO

K. Hunter, CAO

A. Miner, CAO

L. Eaton, WID

C. Wentz, State of New Mexico

DATE: 03/13/96
DELIVERY DUE: 04/01/96

WESTINGHOUSE ELECTRIC CORPORATION
WASTE ISOLATION DIVISION
P.O. BOX 2078
CARLSBAD, NM 88221

PURCHASE ORDER POF 69770
CHANGE ORDER 1

PAGE: 1 of 2

VENDOR: C22512
Colorado All State Transportation

1960 31st Street
Denver, CO 80216

CAST

PAYMENT TERMS: NET 30 DAYS
FOB: Not Applicable
SHIP VIA: Not Applicable

This Order is issued under Westinghouse Prime Contract
DE-AC04-86AL31950 with the U.S. Dept. of Energy. DPAS DO-E2
rating applies.

SHIP TO: Westinghouse Electric Corp.
Waste Isolation Division
For the U.S. Dept. of Energy
WIPP Site
30 Miles Southeast of Carlsbad
Carlsbad, NM 88220

BILL TO: Westinghouse Electric Corp.
Waste Isolation Division
Accounts Payable Dept.
P.O. Box 2078
Carlsbad, NM 88221

MAR 15 1996

NOTE: RECEIVING HOURS - 7:30 A.M. TO 3:00 P.M. MONDAY THRU FRIDAY

SB-SDB/WO Sol? : SB
P.O. Coding : MZC2

QA Code : Y2
West Commodity : GEO

Acct Commodity : 41

Line Nbr	Item ID / Description	Quantity Ordered	U/M	Unit Price	U/M	Total Price
The following line item has been added to this purchase order:						
2	96239-00019 MISC SVC: TRANSPORTATION SERVICES EXERCISE OPTION ONE FOR AN ADDITIONAL PERIOD OF PERFORMANCE OF 04/01/96 THROUGH 03/31/97.	1.00000	EA			

This change notice is issued to modify the subcontract as follows:

- a) Exercise option year 1, extending the period of performance from 4-1-96 through 3-31-97 in accordance with the option clause 4.0 of the subcontract. The total not to exceed cost for the option period is however, only \$155,790.00 of approved funds is available through September 30, 1996. Performance beyond this point is contingent upon the availability of appropriate funds for FY97 from which payment for contract purposes can be made.
- b) Incorporate DOL Wage Determination 94-2517 (Rev.4) Dated August 25, 1995. The subcontractor will be responsible for insuring that non exempt employees are paid at least the minimum wage listed in the new Wage Determination. A request for the most current Labor wage Determination will be requested from the U.S. Department of Labor. Should the U.S. DOL. determine that the rates for the identified labor categories will be higher, the subcontractor will be responsible for insuring that non exempt employees performing the services described in this order are paid that wage as a minimum and the subcontract will be adjusted accordingly.
- c) Revise Section 8.0 seller's key personnel as follows:

Remove the name of Mr. Jeff E. Donaue as traffic Manager and replace with Mr. Chriss Mann. Revise estimated labor hours for the traffic manager (attachment C) from 1,040 hours to 2,080 hours. The rate for the traffic manager shall remain as listed. The ceiling cost and fixed fee for option 1 period shall remain as shown in Par. 4.1 of the base subcontract.
- d) Revise Section 9.2 Subcontract Technical Representative as follows:

Remove the name of Steve Kouba and replace with:
Mr. Ed Hess, Manager, TRU-Waste Programs Tel: 505-234-8630

Add: Jeff Winkel Telephone 505-234-8127, as a alternate.

Revise Section 10 Change Authority as follows:

Remove the name of Mr. D. D. Tawater and replace with
Mr. D.D. Davis, Manager, Subcontracts.

Previous authorized not to exceed total
Option year 1 estimated cost
Fixed fee
New not to exceed total amount

Except changes hereby incorporated, all terms and conditions per base subcontract shall apply.

DATE: 03/13/96
DELIVERY DUE: 04/01/96

WESTINGHOUSE ELECTRIC CORPORATION
WASTE ISOLATION DIVISION
P.O. BOX 2078
CARLSBAD, NM 88221

PURCHASE ORDER POF 69770
CHANGE ORDER 1

PAGE: 2 of 2

Previous Amount Authorized:

Total Of Line Items
Discount
Sub-Total
Misc. charge-1
Misc. charge-2
Tax
Freight

Purchase Order Total

Current Amount Authorized:

Total Of Line Items
Discount
Sub-Total
Misc. charge-1
Misc. charge-2
Tax
Freight

Purchase Order Total

ADDRESS CORRESPONDENCE

TO: Peter Debeer

PHONE:

(505) 234-8870

AUTHORIZED BY:

[Handwritten Signature]
[Handwritten Signature]
[Handwritten Signature]
3-18-96

24.2 All insurance shall be written on companies acceptable to the Buyer, and policies shall include such terms and conditions as required by the Buyer. As evidence of insurance maintained, a complete duplicate certified copy of the liability insurance policy or policies shall be furnished to the Buyer's SA. before commencing operations under this subcontract. Each insurance policy shall include the following statement:

It is a condition of this policy that the Company shall furnish:

- (a) Written notice, thirty days in advance of the effective date of any reduction in, or cancellation of, this policy; and
- (b) A complete duplicate certified copy of any renewal policy, not less than fifteen days prior to the expiration of any current policy on file. The Seller shall provide, to the insurance carrier, the name and address of the SA identified in Subsection 9.1 of this subcontract.

25.0 ORDER OF PRECEDENCE

In the event of any inconsistency between any provisions or requirements of this subcontract, such inconsistency shall be resolved by the following order of precedence:

- 25.1 Subcontract Change Notices
- 25.2 General Provisions
- 25.3 Statement of Work
- 25.4 Specifications Referenced in the Statement of Work
- 25.5 Other provisions of the subcontract, whether incorporated by reference or otherwise.

26.0 ATTACHMENTS

- A. Statement of Work, Revision 1, dated July 15, 1994
- ✓ B. WP Form 1125, dated September, 1993 Provisions for Cost Reimbursement Subcontracts All Values
- C. Estimated Labor Hours by Labor Category
- D. Service Contract Act Wage Determination 94-2517, Rev. 1, dated August 19, 1994.
- E. Subcontract Travel Reimbursement, Instruction PS Form 019
- F. WP Form 7180, Administrative Instructions for Contracts Issued Under Prime Contract De-ACO4-86AL31950
- G. WP Form 1149, Application for Payment-Cost Type Purchase Order/Subcontract/Agreement.

**WESTINGHOUSE ELECTRIC CORPORATION
WASTE ISOLATION DIVISION**

**GENERAL PROVISIONS
FOR
COST REIMBURSEMENT SUBCONTRACTS
ALL VALUES**

This set of General Provisions consists of Sections A through G. The articles in Section G apply only if specifically stated in the subcontract.

**Prepared for the
DEPARTMENT OF ENERGY
Waste Isolation Pilot Plant
Albuquerque Operations Office
Under Contract 75-AC04-86AL31950
February 1991**

**WP-Form 1125
September 1993**

ARTICLE G.19 - DATE OF INCURRENCE OF COST

The Seller shall be entitled to reimbursement for costs incurred in an amount not to exceed \$ _____ on or after _____ which, if incurred after this Order has been entered into, would have been reimbursable under the provisions of this Order.

ARTICLE G.20 - NUCLEAR HAZARDS INDEMNITY REPRESENTATION

WID represents that there is included in this prime contract with the Department of Energy (DOE) an indemnity agreement, entered into by DOE under the authority of Section 170 of the Atomic Energy Act of 1954, as amended including the amendments made there to by the Price-Anderson Amendments Act of 1968, Public Law 100-48 a copy of which may be obtained from the WID.

Under said agreement, the DOE has agreed to indemnify the WID and other persons indemnified, including the Seller, against claims for public liability (as defined in said Act) arising out of or in connection with the contractual activity. The indemnity applies to covered nuclear incidents which:

1. take place at a "contract location" (which term, as defined in the indemnity agreement, does not include the location of Seller's plant and facilities); or
2. arise out of or in the course of transportation of source, special nuclear, or by-product material to or from a "contract location"; or
3. involve items produced or delivered under the prime contract.

The obligation of WID to indemnify the Seller is subject to the conditions stated in the WID-DOE indemnity agreement.

ARTICLE G.21 - ORGANIZATIONAL CONFLICTS OF INTEREST - SPECIAL ARTICLE

A. Purpose

The primary purpose of this article is to aid in ensuring that the Seller (1) is not biased because of its past, present or currently planned interests (financial, contractual, organizational, or otherwise) which relate to the work under this Order, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this Order.

B. Scope

The restrictions described herein shall apply to performance or participation by the Seller and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Seller") in the activities covered by this article as the Seller, Lower-Tier Subcontractors, co-sponsor, joint venturer, or in any similar capacity.

1. Technical consulting and management support services.

- a. The Seller shall be ineligible to participate in any capacity in the WID or the DOE contracts, subcontracts, or proposals therefor (solicited or unsolicited) which stem directly from the Seller's

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1 1201

2. AMENDMENT/MODIFICATION NO. M121		3. EFFECTIVE DATE October 1, 1994	4. REQUISITION PURCHASE REQ. NO.	5. PROJECT NO. <i>(if applicable)</i>
6. ISSUED BY U.S. Department of Energy Albuquerque Operations Office Contracts and Procurement Division P.O. Box 5400 Albuquerque, NM 87185-5400		CODE	7. ADMINISTERED BY <i>(if other than item 6)</i> U.S. Department of Energy Carlsbad Area Office P.O. Box 3090 Carlsbad, NM 88221	

*Rec'd
11/30/94*

8. NAME AND ADDRESS OF CONTRACTOR <i>(No., street, country, State, and ZIP Code)</i> Westinghouse Electric Corporation Waste Isolation Division P.O. Box 2078 Carlsbad, NM 88221		WID	<input checked="" type="checkbox"/> 9A. AMENDMENT OF SOLICITATION NO.
			9B. DATED <i>(SEE ITEM 11)</i>
			<input checked="" type="checkbox"/> 10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC04-86AL31950
			10B. DATED <i>(SEE ITEM 13)</i> October 1, 1985
CODE	FACILITY CODE		

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of Offers _____ is extended, _____ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA *(if required)*

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

<input checked="" type="checkbox"/>	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: <i>(Specify authority)</i> THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES <i>(such as changes in paying office, appropriation data, etc.)</i> SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
<input checked="" type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO THE AUTHORITY OF: Public Law 95-91 and Other Applicable Law
	D. OTHER <i>(Specify type of modification and authority)</i>

E. IMPORTANT: Contractor _____ is not, is required to sign this document and return 3 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION *(Organized by UCF section headings, including solicitation/contract subject matter where feasible.)*

This Supplemental Agreement amends this contract, as previously amended, to read in its entirety as follows:

Extended from 10-1-95 to 9-30-2000 (See F)

Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER <i>(Type or print)</i> C.M. COX GENERAL MANAGER		16A. NAME AND TITLE OF CONTRACTING OFFICER <i>(Type or print)</i> Bruce G. Twining, Manager Albuquerque Operations Office	
15B. CONTRACTOR/OFFEROR <i>(Signature of person authorized to sign)</i>	15C. DATE SIGNED 11/16/94	16B. UNITED STATES OF AMERICA BY <i>(Signature of Contracting Officer)</i>	16C. DATE SIGNED 11/18/94

clause entitled "Excusable Delays," if such clause is applicable. If not, the period of performance may be extended pursuant to this clause if approved by the Contracting Officer.

**I.66 DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT
(JAN 1992)**

- (a) *Authority.* This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)
- (b) *Definitions.* The definitions set out in the Act shall apply to this clause.
- (c) *Financial Protection.* Except as hereafter permitted or required in writing by DOE, the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Contractor by DOE.
- (d) *Indemnification.* (1) To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the Contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.
- (2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.
- (e) *Waiver of Defenses.* (1) In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the Contractor, on behalf of

itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.

(2) In the event of an extraordinary nuclear occurrence which:

(i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or

(ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or

(iii) Arises out of or results from the possession, operation, or use by the Contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or

(iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the Contractor, on behalf of itself and other persons indemnified, agrees to waive:

(A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to:

1. Negligence;
2. Contributory negligence;
3. Assumption of risk; or
4. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;

(B) Any issue or defense as to charitable or governmental immunity;
and

(C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially

(vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and

(viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

(f) *Notification and litigation of claims.* The Contractor shall give immediate written notice to DOE of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the Contractor shall furnish promptly to DOE, copies of all pertinent papers received by the Contractor or filed with respect to such actions of claims. DOE shall have the right to, and may collaborate with, the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(g) *Continuity of DOE obligations.* The obligations of DOE under this clause shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the contractor, or by the completion, termination or expiration of this contract.

(h) *Effect of other clauses.* The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, Officials Not to Benefit, and Examination of Records by the Comptroller General, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.

(i) *Civil penalties.* The Contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to

Contract No. DE-AC04-86AL31950
Modification No. M121

enforceable in accordance with its terms by the claimant against the person indemnified.

(v) The term extraordinary nuclear occurrence means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.

(vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any Contractor-owned or controlled facility, installation, or site at which the Contractor is engaged in the performance of contractual activity under this contract.

(3) The waivers set forth above:

(i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;

(ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;

(iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(iv) Shall not apply injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

(v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;

(vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders.

(j) *Criminal penalties.* Any individual director, officer, or employee of the Contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to 223c. of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.

(k) *Inclusion in subcontracts.* The Contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

(l) *Effective Date.* This indemnity agreement shall be applicable with respect to nuclear incidents occurring on or after October 1, 1990.

(m) To the extent that the Contractor is compensated by any financial protection, or is indemnified pursuant to this clause, or is effectively relieved of public liability by an order or orders limiting same, pursuant to 170e of the Act, the provisions of the clause providing general authority indemnity shall not apply.

I.67 DEAR 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (APR 1989)

Consistent with contract-authorized travel requirements, Contractor employees shall make use of the travel discounts offered to Federal travelers, through use of contracted airlines discount air fares, hotels and motels lodging rates and car rental companies, when use of such discounts would result in lower overall trip costs and the discounted services are reasonably available to Contractor employees performing official Government contract business. Vendors providing these services may require that the Contractor employee traveling on Government business be furnished with a letter of identification signed by the authorized Contracting Officer.

(a) *Contracted airlines.* Airlines participating in travel discounts are listed in the Federal Travel Directory (FTD), published monthly by the General Services Administration (GSA).