

contracting officer should consider whether the contractor made a good faith effort to comply with the subcontracting plan. Failure by the contractor to meet the subcontracting goals established in the subcontracting plan does not, in and of itself, constitute a failure to make a good faith effort. The contracting officer shall consider the totality of the contractor's effort. If the contractor failed to make a good faith effort to comply, section 8(d) of the Small Business Act mandates that liquidated damages must be assessed. When considering whether a good faith effort has been made, the contracting officer should examine whether the contractor:

(a) Submitted the periodic reports required by the subcontracting plan in a timely manner.

(b) Failed to meet its subcontracting goals because of a lack of diligence. Factors such as unavailability of anticipated sources or unreasonable prices may impact on the achievement of the contractor's goals.

(c) Made efforts to identify, contact, solicit and consider for award small, small disadvantaged, and women-owned small business concerns. Factors such as the contractor's efforts to request assistance from SBA or to reach out to other organizations, i.e., trade associations, business development associations, etc., in an effort to locate small, small disadvantaged, and women-owned small business concerns should be considered in evaluating the contractor's efforts.

(d) Maintained records and established procedures to comply with the subcontracting plan. The contracting officer should look for documentation of efforts to contact organizations to locate small, small disadvantaged, and women-owned small business concerns, participation in business fairs, information on who was solicited for particular solicitations, and any documentation of reasons for not awarding to small, small disadvantaged, or women-owned business concerns.

(e) Maintained a company official to administer the subcontracting program and monitor and enforce compliance.

(f) Assisted small, small disadvantaged, and women-owned small business concerns in responding to solicitations issued by the contractor.

(5) If the contracting officer's initial assessment is that the contractor did not make a good faith effort to comply with the subcontracting plan, the contracting officer must notify the contractor, in writing, calling the contractor's attention to the suspected failure. As part of the notification, the contractor must be given the opportunity to demonstrate that good faith efforts have been made. The contractor must be advised that failure to respond to the notice may be taken as an admission that no valid explanation exists.

(6) Before making a final decision, the contracting officer shall consider the contractor's response, if any, along with any pertinent information available. The contracting officer's final decision shall be documented in a "final decision" which is appealable by the contractor under the "Disputes" clause of the contract. The contracting officer's final decision should include:

(a) A description of the contractor's failure;

(b) Reference to the appropriate contract terms;

(c) A statement of the factual areas of agreement and disagreement;

(d) A statement of the contracting officer's decision with supporting rationale;

(e) A demand for liquidated damages; and

(f) An explanation of the contractor's appeal rights.

(7) For a contract containing an individual contract plan, the amount of liquidated damages to be assessed is the sum of the amounts by which the contractor failed to meet each subcontracting goal for small, and/or small disadvantaged, and/or women-owned small business concerns. For contracts containing a commercial plan, the amount of liquidated damages to be assessed is calculated based upon the total payments made under contracts subject to the commercial plan as a percentage of the contractor's total sales. For example, if the contractor's total sales are \$50 million and the Government's total payments under contracts subject to the commercial plan are \$5 million, the Government accounts for 10 percent of the contractor's total sales. The commercial plan stated that the subcontracting dollars to support the sales would be \$20 million. Therefore, the pro rata share of subcontracting attributable to the Government contracts would be 10 percent of the \$20 million or \$2 million. If the contractor failed to achieve its small business goal by 1 percent, the liquidated damages would be calculated as 1 percent of the \$2 million or \$20,000. The contracting officer shall make similar calculations for each category of small business where the contractor failed to achieve its goal and the sum of the dollars for all of the categories equals the amount of the liquidated damages to be assessed. The contracting officer of the agency that originally approved the plan will exercise the functions of the contracting officer on behalf of all agencies that awarded contracts subject to the commercial plan.

(8) Liquidated damages shall be in addition to any other remedies available to the Government by law or under the contract.

8. *Responsibilities.* The Federal Acquisition Regulatory Council shall ensure that the policies established herein are incorporated in the FAR within 210 days from the date this Policy Letter is published final in the Federal Register. Promulgation of final regulations within that 210 day period shall be considered issuance in a "timely manner" as prescribed in 41 U.S.C. 405(b).

9. *Information Contact.* Questions regarding this Policy Letter should be directed to Linda Mesaros, Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street, NW, Washington, DC 20503, telephone 202-395-3501, facsimile 202-395-5105.

10. *Judicial Review.* This Policy Letter is not intended to provide a constitutional or statutory interpretation of any kind and it is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any persons. It is intended only to provide policy guidance to agencies in the

exercise of their discretion concerning Federal contracting. Thus, this Policy Letter is not intended, and should not be construed, to create any substantive or procedural basis on which to challenge any agency action or inaction on the ground that such action or inaction was not in accordance with this policy letter.

11. *Effective Date.* The Policy Letter is effective 30 days after the date of issuance.

Steven Kelman,

*Administrator.*

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## SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

### United Fire Technology, Inc.; Order of Suspension of Trading

September 20, 1995.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of United Fire Technology, Inc. ("United Fire") because of questions regarding the accuracy of assertions by United Fire in documents sent to the National Association of Securities Dealers, Inc., market-makers of the stock of United Fire, other broker-dealers, and to investors, and by others, that, among other things: (1) United Fire's products have been, or are being, tested and/or certified by various independent testing centers, including the U.S. Navy Firefighting School; (2) the company has the capability to manufacture its products; (3) the identity of the individuals in control of United Fire; and (4) information regarding the liabilities of the company and its stock issuances.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, September 21, 1995 through 11:59 p.m. EST, on October 4, 1995.

By the Commission.

Jonathan G. Katz,

*Secretary.*

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