The following pages contain privileged and confidential information and have been removed from this document: 311971-311980, 311985-311988, 312017-312022, 312117, 312145-312154, 312156, 312505, 312542-312543, 312545-312602, 312604-312610, 312618-312622, 312624-312641, 312643-312648, 312650-312656, 312661, 312663-312676, 312692, 312698-312703, 312707-312710, 312712-312751, 312753-312774, 312776-312777, 312779-312780, 312782-312783, 312785-312787, 312789-312792, 312794, 312796, 312803 and 312805-312806. The confidential portions of this document are on file at U.S. EPA Region III headquarters.
Environmental Acquisition Branch
Contracting Division


OHM Remediation Services Corporation
Suite 101
100 W. 22nd Street
Lombard, IL 60148

Gentlemen:

Reference is made to the following:

a. Baltimore District Letter, dated January 14, 1996, issued by the Contracting Officer, directing you to stop all work on hazardous waste feed to the incinerator.

b. Allegheny Mountain Resident Office Letter Number 166, dated February 2, 1996, instructing the Contractor that the Stop Work order was to continue.


By notice of this letter, you are advised that the original Stop Work Order Notice, dated January 14, 1996 is canceled in its entirety. The cancellation of the Stop Work Order shall be effective 12:00 A.M., September 23, 1996.

In addition, enclosed for your concurrence are two copies of Modification No. A00039 which converts the contract type from a Firm Fixed Price to a Cost-Plus-Fixed Fee Contract.

If the terms of enclosed modification are satisfactory, please have the acceptance signed by a duly authorized officer, as provided for in the modification. All copies of the modification should be returned to this office. After execution by the Contracting Officer, a signed copy will be returned to you for your files.
If further information is required, please contact the undersigned or Shelia D. Salter at (410) 962-0175.

Sincerely,

JAMES K. HERSHEY
Chief, Environmental Acquisition Branch
Contracting Division

Enclosures

CF:

OHM Remediation Services Corp.
180 Myrtle Street
Lock Haven, PA 17745

CENAB-COF-HA/Curley
CENAB-CO-C/Ware
CENAB-COF-HA/Modricker

RECEIPT ACKNOWLEDGED:
OHM Remediation Services Corp.

Ronald A. Campbell

Name & Title of Signer (Type or Print)

Vice President

(Signature of Person Authorized to Sign)  9/20/96

Date Signed
AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

<table>
<thead>
<tr>
<th>2. AMENDMENT/MODIFICATION NO.</th>
<th>3. EFFECTIVE DATE</th>
<th>4. REQUISITION/PURCHASE REQ. NO.</th>
<th>5. PROJECT NO. (if applicable)</th>
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<td>09/23/96</td>
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<td>OHM Remediation Services Corporation</td>
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<td>Suite 101</td>
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7. ADMINISTERED BY (If other than item 6) CODE

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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)

| Appropriation: 96X3122 |
| Cost Code: BZDE331EOA0000 - Decrease $ 10,448,934.20 |

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

This Change Order is issued pursuant to: (Specify authority) the changes set forth in Item 14 are made in the contract order no. in item 10a.

B. The above numbered contract/order is modified to reflect the administrative changes (such as changes in paying office, appropriation date, etc.) set forth in Item 14, pursuant to the authority of FAR 48.103(b).

C. This supplemental agreement is entered into pursuant to authority of: Contract Clause, Changes--Cost Reimbursement (AUG 1987) Alt 1(APR 1984)

D. OTHER (Specify type of modification and authority)

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

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

CHANGE "BH" - Cost Conversion Cost

Provide all Plant, Labor, Equipment and Materials to perform the following:

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.

3A. NAME AND TITLE OF SIGNER (Type or print)

Ronald A Campbell

3B. DATE SIGNED

9/20/96

5A. NAME AND TITLE OF SIGNER (Type or print)

James K. Hershey

5B. DATE SIGNED

20 Sep 96

STANDARD FORM 30 (Rev. 10-83)

AR311733
1. This modification serves to convert Contract No. DACW45-93-C-0200, for the unfinished work from Firm Fixed Price (FFP) to Cost-Plus-Fixed-Fee (CPFF) Contract on a Completion Form basis in accordance with FAR 16.306(d)(1). The “Effective Date” of the conversion is 23 September 1996 and shall remain in effect for the remaining duration of the contract, unless otherwise modified. The work performed during the period 15 November 1993, (Notice to Proceed) through 14 January 1996, shall be addressed under Change “BI” in accordance with the terms set forth in the revised Schedule, Section B, Contract Line Item No. 0001, in a firm fixed price amount NOT TO EXCEED $26,445,424.00. Change BI is defined as the work performed in accordance with the Scope of Work under Section C of the original contract and not covered by Clin 0002, 0003 or 0003a. All work performed during the period from 15 January 1996 to 23 September 1996 shall be in accordance with the terms set forth in Change BB, as described in the revised Schedule, Section B, Line Item No. 0002, in a firm fixed price amount NOT TO EXCEED $11,500,000.00.

2. Clin 0001 (Change BI) and Clin 0002 (Change BB) shall constitute any and all requests for compensation for work completed to date and estimated work to be completed up to September 23, 1996.

3. Therefore, as a result of the current agreement to the Firm Fixed Price Contract as originally awarded on 30 September 1993, the Firm Fixed Price portion of the contract is decreased from the current contract amount of $59,741,135.22 to the Not To Exceed amount of $37,945,424.00.

4. The contractor agrees that, by entering into this modification, consideration has been given and compensation granted for any direction given by the Government or notification to the Government by the contractor, whether it be in writing or otherwise, that occurred prior to September 23, 1996, to include any Claims, Requests for Equitable Adjustments, Changes or any other action that occurred prior to 23 September 1996.

5. Part I, The Schedule, Section B, as it was issued under the original Contract and subsequently modified to date, is hereby deleted in its entirety, and the attached revised Part I, The Schedule, Section B, is substituted therefor. This modification (Change “BH”) implements Contract Line Item Numbers 0001 and 0002, on a firm fixed price basis and Item 0003 on a cost-plus-fixed-fee, completion basis as set forth in the attached, revised Section B. Option Item Number 0003a as set forth in the revised Section B shall be exercised in accordance with the terms specified in Section B and Contract Clause FAR 52.217-7, entitled Option for Increased Quantity - Separately Priced Line Item.
6. The total estimated contract of the Cost Plus Fixed Fee portion of the contract (Clins 0003 and 0003a) is $60,971,226.27, for which funding for Clin 0003 in the amount of $11,346,777.02 is obligated at this time.

7. The following documents entitled Change “BH”, are hereby incorporated and made a part of this contract effective on September 23, 1996 and shall remain in effect for the duration of the contract:

   OHM Remediation Services Corp.’s Proposal, dated June 22, 1996, Volumes 1 and 2

   Part I, The Schedule

   Section B, Supplies; or Services and Prices/Costs
   Section C, Description/Specs/Work Statement
   Section E, Inspection and Acceptance
   Section F, Deliveries or Performance
   Section G, Contract Administration Data
   Section H, Special Contract Requirements

   Part II - Contract Clauses

   Section I, Contract Clauses

   Part III, List of Documents, Exhibits and Other Attach.

   Section J, List of Attachments

   Original Contract Drawings

   Construction Management Procedures (CMP s) Nos. I. through XIX.

   OHM Remediation Services Corporation’s revised Subcontracting Plan, approved 23 September 1996.

8. CHANGE IN CONTRACT SPECIFICATIONS: The attached revised Scope of Work, dated 23 September 1996 (Section C) are applicable to Line Item numbers 0003 and 0003a set forth in the revised Section B.
9. CHANGE IN CONTRACT DRAWINGS: None. The contract drawings as originally issued and as modified through A00039 remain in full force and effect.

10. Parts I through Part IV, of the original solicitation and subsequent contract as modified shall be applicable to the work performed on a firm fixed price basis for Line Items 0001 and 0002.

11. The revised sections contained in Parts I through III, attachments to this modification, Change BH, Line Item Numbers 0003 and 0003a shall be applicable to all work performed on a cost reimbursable basis under this contract, effective 23 September 1996 through contract duration, unless otherwise modified.

12. CONTRACT PERFORMANCE TIME: It is understood that, there have been modifications issued, during the life of this contract, which resulted in increases in the contract performance time. However, it is further understood, that by the issuance of this modification, those increases are hereby incorporated into the performance time as specified under Change "BH", Part I, Section F, Paragraph F.2. As a result, performance shall not extend beyond the performance time as specified under Change "BH" unless contract performance time is extended by virtue of modifications issued subsequent to 23 September 1996.

The performance periods are identified below by Contract Line Items:

   Line Item No. 0001, Change BI - 15 Nov 93 to 14 Jan 96
   Line Item No. 0002, Change BB - 15 Jan 96 to 23 Sep 96
   Line Item No. 0003, Change BH - 23 Sep 96 to 15 Nov 98
The following Contract Line Item Numbers (CLINs) shall be Firm Fixed Price:

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>DESCRIPTION</th>
<th>QUANTITY</th>
<th>UNIT</th>
<th>PRICE</th>
<th>AMOUNT</th>
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<tr>
<td>0001</td>
<td>Firm Fixed Price Settlement for Change “BI”</td>
<td>JOB</td>
<td>LS</td>
<td>XXX</td>
<td>NOT TO EXCEED</td>
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<td>$</td>
<td>$26,445,424.00</td>
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<tr>
<td>0002</td>
<td>Firm Fixed Price Settlement For Stop Work Order Change “BB”.</td>
<td>JOB</td>
<td>L.S.</td>
<td>XXX</td>
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<td>$11,500,000.00</td>
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<td>TOTAL ESTIMATED AMOUNT ITEMS 0001 AND 0002</td>
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<td></td>
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<td>$37,945,424.00</td>
</tr>
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The following Contract Line Item Numbers (CLINs) shall be Cost Plus Fixed Fee:

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<thead>
<tr>
<th>ITEM NO.</th>
<th>DESCRIPTION</th>
<th>AMOUNT</th>
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<tbody>
<tr>
<td>0003</td>
<td>The contractor shall provide all work in accordance with Change “BH”, Modification A00039, from 23 September 1996 to Soil Incineration Operation Feed.</td>
<td>ESTIMATED COST $10,552,816.27 FIXED FEE $793,960.75 TOTAL EST CPFF $11,346,777.02</td>
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*OPTION

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<tr>
<th>ITEM NO.</th>
<th>DESCRIPTION</th>
<th>AMOUNT</th>
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<tbody>
<tr>
<td>0003a</td>
<td>The contractor shall provide all work in accordance with Change “BH”, Modification A00039 from start-up of Soil Incineration Operation Feed through Site Restoration.</td>
<td>ESTIMATED COST $46,128,005.37 FIXED FEE $3,496,443.88 TOTAL EST CPFF $49,624,449.25</td>
</tr>
</tbody>
</table>

TOTAL ESTIMATED CPFF AMOUNT (Items 0003 and 0003a) $60,971,226.27

TOTAL ESTIMATED CONTRACT AMOUNT (Items 0001 thru 0003a) $98,916,650.27
*THE OPTIONAL ITEM SHALL BE EXERCISED WITHIN 210 CALENDAR DAYS FROM THE EFFECTIVE DATE OF THIS MODIFICATION, CHANGE “BH”*

NOTES:

1. CLIN 0001 and 0002: The amounts specified in these CLINs establish the maximum ceiling amounts. Clins 0001 and 0002 are subject to a downward adjustment only, based on future negotiations, relative to their respective changes.

2. CLIN 0001: The amount specified in this CLIN establishes the Not To Exceed amount for the Firm Fixed Price settlement for work performed in accordance with the statement of work under Section C of the original contract and not covered by Clins 0002, 0003 or 0003a.

3. CLIN 0002: The amount specified in this CLIN establishes the Not To Exceed amount for the period from issuance of the Stop Work Order directive, dated 14 January 1996, to 23 September 1996. The work performed under this CLIN is in accordance with Directives issued 14 January 1996 to 23 September 1996.

3 CLIN 0003a: The Government may exercise the option at the price stated in the Schedule by giving written notice to the Contractor within 210 calendar days from the effective date of this modification (Change “BH”). Should the Government not exercise the option within the period specified in accordance with Contract Clause FAR 52.217-7, the contractor shall be given the option to renegotiate the cost.
SECTION C
DESCRIPTION/SPECS./WORK STATEMENT

INDEX

1. BACKGROUND
2. DESCRIPTION OF WORK
3. CONTRACTOR USE OF SITE
1. BACKGROUND

1.1. DRAKE SITE BACKGROUND:

1.2.1. The Drake Chemical Superfund Site is located at Lock Haven, Clinton County, Pennsylvania. The total area of the site is 9.63 acres and the location and site features are as shown on the Contract Drawings. The site was a chemical manufacturing facility that manufactured chemical intermediates used in dye, cosmetics, textiles, pharmaceuticals, and pesticides industries. Over the period the Drake Chemical Company operated, it was cited many times by State and Federal agencies for violating environmental and health and safety regulations.

1.2.2. Immediately adjacent to and west of the Drake Chemical Superfund Site is the American Color and Chemical Company (AC&C) which is currently undergoing a Resource Conservation and Recovery Act (RCRA) cleanup. The Hammermill Paper Company operates an industrial facility 1.2 miles southwest of the site. A Conrail railway runs along the east side of the Drake site to the Hammermill Paper Company. A public street, Myrtle Street, runs along the northern boundary of the site.

1.2.3. Site features at the Drake site include an unlined leachate lagoon, a dry and unlined sludge lagoon, a demolition landfill, and an abandoned railroad track. The demolition landfill is about 3 feet higher than the surrounding area north of the leachate lagoon and is composed of mostly soil and construction debris from the demolition of site buildings during previous remedial actions. Much of the site surface is covered by contaminated soils, chemical sludge, and assorted debris, such as brick, rocks, gravel, and metal scraps.

1.2.4. Soil samples, high in either metals or organic contamination levels were collected from the Drake site. The Soil samples, which were taken and burned in a pilot scale rotary kiln incinerator, produced some fly ash with metal content higher than the Pennsylvania Department of Environmental Resources (PADEP) disposal criteria.

1.2.5. The Vadose zone is from surface to approximately 12 1/2 feet deep.
1.2.6. Groundwater flows north, east, and south from the Drake site, then gradually heads south and southeast toward Bald Eagle Creek.

1.2.7. The soils and sludges at the Drake Chemical Superfund Site are contaminated with volatile organics, semi-volatile organics, Fenac, Beta-naphthylamine, and metals.

2. DESCRIPTION OF WORK.

2.1. DESCRIPTION OF WORK

2.1.1. The contract requirements include the excavation and on-site incineration of all soils and debris within the site boundary of the Drake Chemical Superfund Site to an approximate bottom elevation of 545 feet msl; the decontamination or off-site disposal at a licensed hazardous waste landfill of all materials from the site not designated for incineration, such as, large concrete rubble and railroad tracks; backfilling site excavation with incinerated soil or decontaminated debris; (and off-site disposal of non-hazardous debris); on and off site monitoring including mobile offsite monitoring; ongoing stack testing for various compounds; and analytical services. The contractor will be responsible for developing a hazardous waste operations and emergency response program; for providing emergency response and waste characterization; for handling technical and administrative submittals; for progress scheduling and reporting; for developing and implementing a contractor quality control system; for support and temporary facilities to include field office trailers for itself as well as USACE, complete with utilities, furnishings, telephones, facsimile machines, and computers; for site security and existing security fencing around the site; for utilities, and for access roadways. Upon completion of the incineration operations, the Contractor will be responsible for removal of all equipment, foundations, paved areas, site restoration, grading of the site in accordance with Contract Drawings, and top soil and seeding of the site.

2.1.2. A demonstration that the Thermal Destruction Facility (TDF) can remediate to the requirements imposed by the trial burn plan and conducting a trial burn. The contractor shall obtain an Equivalency Permit to operate the TDF from PADEP.

2.1.3. Upon completion of the trial burn a Risk Burn shall be conducted.

2.1.4. All work performed under the contract shall be in accordance with all applicable Federal, State and Local regulations and their specifications. The above regulations may change from time to time and the work shall be executed based on

01000-3

CONTRACT NO. DACW45-93-C-0200
MODIFICATION NO. A00039
CHANGE "BH"
USEPA and USACE guidance.

2.2. DESCRIPTION OF WORK TERMS DEFINED

2.2.1. Analytical Services shall include the contractor providing an on-site lab, and utilizing approved offsite labs.

2.2.2. Excavation shall include but not be limited to excavation of contaminated soils, sludges and debris. Rather, excavation shall include the breakup of any and all existing foundations, support of excavation surfaces, dewatering of excavation site, control of fugitive emissions including dust and volatile emissions as necessary, and transportation of soil to staging area pending incineration at the Thermal Destruction Facility (TDF). Excavation shall also be understood to include the transportation of excavated soils but not be limited to transportation of contaminated soils only. Rather, transportation shall include transport of foundation rubble, trees, rocks, railroad ties, and other debris to the staging area at the TDF or offsite.

2.2.3. Maintenance activities shall include but are not limited to maintenance of the TDF and support facilities:

2.2.3.1. feed preparation and waste separation facilities and building,

2.2.3.2. soil incineration equipment including soil feed system,

2.2.3.3. incineration chamber(s), off gas treatment system, and stack,

2.2.3.4. bottom ash process facility including chemical storage and handling equipment,

2.2.3.5. staging facilities for feed soils, ash, and other materials,

2.2.3.6. support facilities for USACE and Contractor personnel: control room, personnel and equipment decontamination facilities, shower toilet and locker rooms, lunch rooms, and offices.

2.2.3.7. remote monitoring station for public observation of the TDF operation,
2.2.3.8. air monitoring facilities.

2.2.4. TDF Start-Up and Trial Burn activities shall include but are not limited to initial operation and startup of all TDF equipment including waste feed preparation equipment and operations including the waste separation facilities. The Trial Burn shall be completed and approved using contaminated soil. Full operation of the TDF will not be allowed until final results of the Trial Burn have been approved by USACE.

2.2.5. Incineration activities shall include but are not limited to all work associated with storage, sorting, blending, feeding and incineration of contaminated soil and sludges, chipped brush, roots and trees, and other combustibles generated as a result of the actions of the Contractor. The activities also include all work associated with handling and treating all waters; all off-gas treatment operations including residual treatment and/or disposal; all sampling and analysis of soils and incinerated material including all off-gas operations and treatment; and all process monitoring, recording and data management. Also included as part of incineration work effort is the handling, storage and analysis of bottom ash prior to stabilization or backfill.

2.2.6. Ash fixation activities shall include but are not limited to all work associated with fixation of bottom ash and other residuals. The work includes all handling, processing, final testing, and storing prior to backfilling.

2.2.7. Debris removal activities shall include but are not limited to the handling and separation of debris into waste streams suitable or not suitable for incineration at the TDF. Wastes not to be incinerated will be decontaminated by methods such as high-pressure water jet or steam cleaning, characterized, and backfilled on site, or properly disposed of offsite. Wastes such as woods and trees designated for incineration will require size reduction prior to feeding to the TDF.

2.2.8. Backfill activities shall include but are not limited to on-site disposal of incinerated soil, fixed ash, and decontaminated debris. The soils or ash shall be compacted to the required density and graded as shown in the drawings or otherwise approved by USACE. The work includes all necessary provisions for sediments and erosion control. Backfill from off-site activities shall include but are not limited to the supply, transport, placement, and compaction of clean fill materials from off-site sources.

2.2.9. Top soiling and seeding activities shall include but are not limited to the supply, transport, placement, and grading of top soil from off-site sources to final contours as shown on the Drawings. The work shall also include the provision of a
vegetative cover on the finished grade.

2.2.10. Wastewater management activities shall include but are not limited to collection and treatment of all on-site wastewater streams. The operation includes provision of pipelines, treatment systems, and connection to storm sewer system.

2.2.11 Storm drainage system activities shall include but are not limited to providing a permanent storm drainage system for the site. The system shall include buried concrete or PVC pipes discharging surface water collected at the site to existing storm sewer system.

2.2.12. Site restoration activities shall include the removal of fences along Myrtle Street and the Conrail railroad track and around the TDF area, the installation or repair of fence along AC&C and the project site, the cleaning of the site, and the re-surface of Myrtle Street. The work shall also include the removal of all equipment and cleaning of the site and placement of imported cover material.

2.2.13. If off site disposal of hazardous wastes is required and approved by USACE the activities shall include but are not limited to work associated with analysis, identification, storing, shipping and final disposal of hazardous wastes in accordance with RCRA and U.S. Department of Transportation (DOT) regulations. The work shall also include packaging, marking, labeling, and manifesting of such wastes. Wastes disposed off site may include but are not limited to hazardous wastes resulting from site closure activities after final shutdown of the TDF.

2.2.14. Off-site disposal of non-hazardous wastes activities shall include but are not limited to work associated with analysis, identification, storing, shipping and final disposal of nonhazardous wastes in accordance with acceptance criteria of local disposal sites. Wastes disposed off site may include but are not limited to nonhazardous waste such as railroad tracks that have been decontaminated but are not suitable for on-site disposal.

2.2.15. Perimeter and off-site air monitoring activities shall include but are not limited to the establishment and maintenance of perimeter and off-site air monitoring stations, collection of air samples, and analysis of air samples.
2.2.16. Emergency response and waste characterization activities shall include but are not limited to the handling, characterization, and disposal of unknown buried objects such as drums, underground storage tanks, containers, and buried pipes encountered during the excavation of the site. The Contractor shall have equipment and trained personnel on site that can perform reconnaissance in Level B protection upon detection of these unknown buried objects. The contents of these buried objects shall be sampled and characterized. After the characteristics of the drum contents are known, the encountered buried object and its contents shall be disposed of accordingly.

2.2.17. Chasing shall include the excavation, incineration, disposal, and backfill of visible or detectable contamination which occurs below the approximate bottom elevation of 545 feet msl within the site boundary of the Drake Chemical Superfund Site.

3. CONTRACTOR USE OF SITE. The Contractor shall have use of the site for execution of the work. The USEPA, USACE, PADEP, and their designated representatives shall also have complete use of the site for observation and inspection. The groundwater investigation or remediation contractor shall also have access to the site provided written permissions have been given by the USACE and the USEPA.

-- END OF SECTION --
**INDEX OF CLAUSES**

<table>
<thead>
<tr>
<th>E.1</th>
<th>52.246-0005</th>
<th>INSPECTION OF SERVICES--COST-REIMBURSEMENT (APR 1984)</th>
</tr>
</thead>
<tbody>
<tr>
<td>E.2</td>
<td>52.246-0015</td>
<td>CERTIFICATE OF CONFORMANCE (APR 1984)</td>
</tr>
<tr>
<td>E.3</td>
<td>52.246-4034</td>
<td>FINAL INSPECTION AND ACCEPTANCE.</td>
</tr>
</tbody>
</table>

**ACW45-93-C-0200**  
MODIFICATION NO. A00039  
CHANGE "BH"
SECTION E
INSPECTION AND ACCEPTANCE

E.1 52.246-5 INSPECTION OF SERVICES--COST-REIMBURSEMENT (APR 1984)

(a) Definition. "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all places and times during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If any of the services performed do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Government may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce any fee payable under the contract to reflect the reduced value of the services performed.

(e) If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the Government may (1) by contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances or (2) terminate the contract for default.

(End of clause)

(R 7-1909.5 1971 NOV)

E.2 52.246-15 CERTIFICATE OF CONFORMANCE (APR 1984)

(a) When authorized in writing by the cognizant Contract Administration Office (CAO), the Contractor shall ship with a Certificate of Conformance any supplies for which the contract would otherwise require inspection at source. In no case shall the Government’s right to inspect supplies under the inspection provisions of this contract be prejudiced. Shipments of such supplies will not be made under this contract until use of the

DACW45-93-C-0200
MODIFICATION NO. A00039
CHANGE "BH"

AR311747
Certificate of Conformance has been authorized in writing by the CAO, or inspection and acceptance have occurred.

(b) The Contractor's signed certificate shall be attached to or included on the top copy of the inspection or receiving report distributed to the payment office or attached to the CAO copy when contract administration (Block 10 of the DD Form 250) is performed by the Defense Contract Administration Services. In addition, a copy of the signed certificate shall also be attached to or entered on copies of the inspection or receiving report accompanying the shipment.

(c) The Government has the right to reject defective supplies or services within a reasonable time after delivery by written notification to the Contractor. The Contractor shall in such event promptly replace, correct, or repair the rejected supplies or services at the Contractor's expense.

(d) The certificate shall read as follows:

"I certify that on ____________ [insert date], the ___________ [insert Contractor's name] furnished the supplies or services called for by Contract No. _______________ via ____________________________ [carrier] on ____________________ [identify the bill of lading or shipping document] in accordance with all applicable requirements. I further certify that the supplies or services are of the quality specified and conform in all respects with the contract requirements, including specifications, drawings, preservation, packaging, packing, marking requirements, and physical item identification (part number), and are in the quantity shown on this or on the attached acceptance document."

Date of Execution: __________________
Signature: _________________________
Title: ___________________________

(End of clause)

(R 7-104.100)

E.3 FINAL INSPECTION AND ACCEPTANCE.

Acceptance of supplies and/or services is the responsibility of the Contracting Officer or his duly authorized representative (COR).

Unless otherwise specified, final inspection and acceptance of supplies and/or services called for hereunder will be made at
INDEX OF CLAUSES
DACW31-96-R-0053
SECTION F

F.1 52.242-0015 I STOP-WORK ORDER (OCT 1995)--ALTERNATE I (OCT 1995) F.2

Commencement, Prosecution and Completion of Work

DACW45-93-C-0200
MODIFICATION NO. A00039
CHANGE "BH"

AR311750
(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either--

(1) Cancel the stop-work order; or
(2) Terminate the work covered by the order as provided in the Termination clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected and the contract shall be modified, in writing, accordingly, if--

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.
F.2. COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK.

The total duration of this contract, including the option, may not exceed 1825 calendar days based on the initial contract Notice to Proceed which results in a contract completion date of 14 November 1998.

END OF SECTION F
INDEX OF CLAUSES
DACW45-93-C-0200
MODIFICATION NO. A00039
CHANGE "BH"

DACW31-96-R-0053
SECTION G

G.1 52.201-7000 CONTRACTING OFFICER'S REPRESENTATIVE (DEC 1991) G-1
G.2 Submission of Vouchers G-2
G.3 Federal Legal Holidays G-2
G.1 252.201-7000 CONTRACTING OFFICER'S REPRESENTATIVE (DEC 1991)

(a) Definition. "Contracting officer's representative" means an individual designated in accordance with subsection 201.602-2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the Contracting Officer to perform specific technical or administrative functions.

(b) If the Contracting Officer designates a contracting officer's representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the Contracting Officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

(End of clause)
G.2. SUBMISSION OF VOUCHERS

Public vouchers for services performed under this contract shall be submitted through the cognizant audit agency to the Corps of Engineers, administrative Contracting Officer (ACO) for review and certification prior to payment as follows:

(a) Original and three (3) copies shall be forwarded to the cognizant audit agency. In addition, one (1) copy shall be forwarded to U.S. Army Engineer District, Baltimore, Harrisburg Area Office, 285 18th Street, New Cumberland, PA 17070-5016.

(b) The cognizant audit agency, after certification, shall forward vouchers to the ACO, who in turn forwards the vouchers to and payment will be made by the:

U.S. Army Engineer District, Baltimore
Finance and Accounting Officer
P.O. Box 1715
Baltimore, MD 21203-1715

G.3. FEDERAL LEGAL HOLIDAYS

The following Federal legal holidays are observed by this installation.

New Year's Day 1 January
Martin Luther King's Birthday Third Monday in January
President's Day Third Monday in February
Memorial Day Las Monday In May
Independence Day 4 July
Labor Day First Monday in September
Columbus Day Second Monday in October
Veterans Day 11 November
Thanksgiving Day Fourth Thursday in November
Christmas Day 25 December

If a wage determination applies, the number of holidays specified on it has priority over this clause.
<table>
<thead>
<tr>
<th>Clause</th>
<th>Number</th>
<th>Description</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>H.1</td>
<td>52.222-0023</td>
<td>NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT</td>
<td>H-1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>OPPORTUNITY (APR 1984)</td>
<td></td>
</tr>
<tr>
<td>H.3</td>
<td>52.236-0005</td>
<td>MATERIAL AND WORKMANSHIP (APR 1984)</td>
<td>H-3</td>
</tr>
<tr>
<td>H.4</td>
<td>52.236-0007</td>
<td>PERMITS AND RESPONSIBILITIES (NOV 1991)</td>
<td>H-4</td>
</tr>
<tr>
<td>H.5</td>
<td>52.204-7000</td>
<td>DISCLOSURE OF INFORMATION (DEC 1991)</td>
<td>H-4</td>
</tr>
<tr>
<td>H.6</td>
<td>52.209-7000</td>
<td>ACQUISITION FROM SUBCONTRACTORS SUBJECT TO ON-SITE INSPECTION UNDER THE</td>
<td>H-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>INTERMEDIATE-RANGE NUCLEAR FORCES (INF) TREATY (NOV 1995)</td>
<td></td>
</tr>
<tr>
<td>H.7</td>
<td>52.214-4024</td>
<td>DELIVERY OF BIDS/PROPOSALS</td>
<td>H-5</td>
</tr>
<tr>
<td>H.8</td>
<td>52.228-4001</td>
<td>REQUIRED INSURANCE</td>
<td>H-5</td>
</tr>
<tr>
<td>H.9</td>
<td></td>
<td>WAGE DETERMINATION</td>
<td>H-6</td>
</tr>
<tr>
<td>H.10</td>
<td></td>
<td>ADVANCE AGREEMENTS/CONSTRUCTION MANAGEMENT PROCEDURES</td>
<td>H-7</td>
</tr>
<tr>
<td>H.11</td>
<td></td>
<td>FEE STRUCTURE</td>
<td>H-8</td>
</tr>
<tr>
<td>H.12</td>
<td></td>
<td>USE OF EQUIPMENT UPON DEFAULT</td>
<td>H-8</td>
</tr>
<tr>
<td>H.13</td>
<td></td>
<td>CONTRACT DRAWINGS AND SPECIFICATIONS</td>
<td>H-9</td>
</tr>
<tr>
<td>H.14</td>
<td></td>
<td>PHYSICAL DATA</td>
<td>H-9</td>
</tr>
<tr>
<td>H.15</td>
<td></td>
<td>UTILITY SERVICE INTERRUPTIONS</td>
<td>H-9</td>
</tr>
<tr>
<td>H.16</td>
<td></td>
<td>QUANTITY SURVEYS</td>
<td>H-9</td>
</tr>
<tr>
<td>H.17</td>
<td></td>
<td>IDENTIFICATION OF EMPLOYEES</td>
<td>H-10</td>
</tr>
<tr>
<td>H.18</td>
<td></td>
<td>PERFORMANCE EVALUATION OF CONTRACTOR</td>
<td>H-10</td>
</tr>
<tr>
<td>H.19</td>
<td></td>
<td>PERFORMANCE OF WORK BY CONTRACTOR (1984 APR)</td>
<td>H-11</td>
</tr>
<tr>
<td>H.20</td>
<td></td>
<td>APPLICABILITY OF DAVIS-BACON ACT</td>
<td>H-11</td>
</tr>
<tr>
<td>H.21</td>
<td></td>
<td>KEY PERSONNEL SUBSTITUTIONS</td>
<td>H-11</td>
</tr>
</tbody>
</table>
SECTION H  
SPECIAL CONTRACT REQUIREMENTS

H.1 52.222-23 NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (APR 1984)

(a) The offeror's attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

(b) The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

<table>
<thead>
<tr>
<th>Goals for minority participation for each trade</th>
<th>Goals for female participation for each trade</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.7%</td>
<td>6.9%</td>
</tr>
</tbody>
</table>

These goals are applicable to all the Contractor's construction work performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, the Contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the Federal Register in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

(c) The Contractor's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4 shall be based on (1) its implementation of the Equal Opportunity clause, (2) specific affirmative action obligations required by the clause entitled "Affirmative Action Compliance Requirements for Construction," and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor, or from project to project, for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

(d) The Contractor shall provide written notification to the Director, Office of Federal Contract Compliance Programs, within 10 working days following award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the--
(1) Name, address, and telephone number of the subcontractor;
(2) Employer's identification number of the subcontractor;
(3) Estimated dollar amount of the subcontract;
(4) Estimated starting and completion dates of the subcontract; and
(5) Geographical area in which the subcontract is to be performed.

(e) As used in this Notice, and in any contract resulting from this solicitation, the "covered area" is Williamsport, Pennsylvania, Clinton County, Pennsylvania.

(End of provision)
(R 7-2003.14(d) 1978 SEP)

H.2 52.225-5 BUY AMERICAN ACT--CONSTRUCTION MATERIALS (MAY 1992)

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic construction material.

"Components," as used in this clause, means those articles, materials, and supplies incorporated directly into construction materials.

"Construction materials," as used in this clause, means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

"Domestic construction material," as used in this clause, means (1) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to subparagraph 25.202(a)(3) of the Federal Acquisition Regulation (FAR) shall be treated as domestic.

(b) 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 foreign construction
materials, if any, listed in this contract. (The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954, as amended, and Subpart 25.2 of the FAR).

(End of clause)

H.3 52.236-S MATERIAL AND WORKMANSHIP (APR 1984)

(a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

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

(End of clause)

(R 7-602.9 1964 JUN)
H.4 52.236-7 PERMITS AND RESPONSIBILITIES (NOV 1991)

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

(End of clause)

H.5 252.204-7000 DISCLOSURE OF INFORMATION (DEC 1991)

(a) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless--

(1) The Contracting Officer has given prior written approval; or
(2) The information is otherwise in the public domain before the date of release.

(b) Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its request to the Contracting Officer at least 45 days before the proposed date for release.

(c) The Contractor agrees to include a similar requirement in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime Contractor to the Contracting Officer.

(End of clause)

H.6 252.209-7000 ACQUISITION FROM SUBCONTRACTORS SUBJECT TO ON-SITE INSPECTION UNDER THE INTERMEDIATE-RANGE NUCLEAR FORCES (INF) TREATY (NOV 1995)

(a) The Contractor shall not deny consideration for a subcontract award under this contract to a potential subcontractor subject to on-site
inspection under the INF Treaty, or a similar treaty, solely or in part because of the actual or potential presence of Soviet inspectors at the subcontractor’s facility, unless the decision is approved by the Contracting Officer.

(b) The Contractor shall incorporate this clause, including this paragraph (b), in all solicitations and contracts exceeding the simplified acquisition threshold in Part 13 of the Federal Acquisition Regulation, except those for commercial items.

(End of clause)

H.7 DELIVERY OF BIDS/PROPOSALS

Bids/Proposals may be delivered in person to the Contracting Division, Baltimore District, Corps of Engineers, Room 700J, City Crescent Building, 10 South Howard Street, Baltimore, Maryland 21201.

(CENAB-CT JUL 1893)
(FAR 14.302)
(52.0214-4024)

H.8 REQUIRED INSURANCE

Pursuant to the contract clause entitled, FAR 52.228-5, the contractor shall procure and maintain during the entire period of his performance under the contract the following minimum insurance:

<table>
<thead>
<tr>
<th>Type</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comprehensive General Liability</td>
<td>$500,000 per occurrence</td>
</tr>
<tr>
<td>Bodily injury or death</td>
<td></td>
</tr>
<tr>
<td>Motor Vehicle Liability (for each</td>
<td></td>
</tr>
</tbody>
</table>
motor vehicle):
Bodily injury or death $200,000 per person
$500,000 per occurrence

Property Damage: $ 20,000 per occurrence

Workers' Compensation and Employer's Liability: $100,000 per person

Workers' Compensation and Employer's Liability: Contractors are required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so comingle with a contractor's commercial operations that it would not be practical to require this coverage. Employer's liability coverage of at least $100,000 shall be required, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers.

Prior to the commencement of work hereunder, the Contractor shall furnish to the Contracting Officer a certificate or written statement of the above required insurance. The policies evidencing required insurance shall contain an endorsement to the effect that cancellation or any material change in policies adversely affecting the interests of the Government in such insurance shall not be effective for such period as may be prescribed by the laws of the State in which this contract is to be performed and in no event less than thirty (30) days after written notice thereof to the Contracting Officer.

The Contractor agrees to insert the substance of this clause, including this paragraph, in all subcontracts hereunder.

(CENAB-CT MAY 1992)
(FAR 28.307-2(a))

H.9. WAGE DETERMINATION

U.S. Department of Labor Wage Determinations applicable to the original contract remain unchanged and are applicable this contract conversion.

DACW45-93-C-0200
MODIFICATION NO. A00039
CHANGE "BH"
H.10 ADVANCE AGREEMENTS/CONSTRUCTION MANAGEMENT PROCEDURES

Advance Agreements/Construction Management Procedures (CMPs), Drake Chemical Superfund Site, On-Site Soil Incineration, Lock Haven, PA. are hereby incorporated and made a part of this contract. The CMPs identified below are an attachment to Part III, Section J of this modification.

H.10.1 Personnel and Company Policies
H.10.2 Logistics Management Plan
H.10.3 Government Property Management Plan
H.10.4 Key Personnel
H.10.5 Resource Utilization
H.10.6 Equipment Costs and Procedures
H.10.7 Management Information System
H.10.8 Closeout Procedures
H.10.9 Indirect Cost Rates
H.10.10 Contractor Training
H.10.11 Warranties
H.10.12 Transportation and Disposal Policies/Procedures
H.10.13 PY*ROX 8212 (TDU) - Predetermined Direct Costs
H.10.14 DELETED
H.10.15 Identify those subcontracts that are to be fixed price and those that are cost.
H.10.16 Government Furnished Property
H.10.17 Work Authorization Document (WAD) System
H.10.18 Change Order/Cost Growth Management

H.10.19 Contracting Officer Ratification/Consent to Subcontract

H.11 Fee Structure

This supplemental agreement converts Contract No. DACW45-93-C-0200 for the unfinished work (CLINS 0003 and 0003a) set forth in Section B, Supplies or Services and Prices/Costs from a firm fixed price (FFP) to a Cost-Plus-Fixed Fee Completion form basis in accordance with (FAR 16.306(d)(1)).

H.12 USE OF EQUIPMENT UPON DEFAULT

In the event the Contractor fails to perform in accordance with the contract or abandons the work, the Government may assert its rights and remedies under Contract Clauses FAR 52.249-6, Termination (Cost Reimbursement) (May 1986). In addition to the rights and remedies contained in Contract Clause FAR 52.249-6, the Government reserves the right to take possession of, and use any materials, equipment and plant on the work site necessary to complete the work. The Government may further direct the Contractor (in writing) to remove the Thermal Destruction Unit (TDU) from the work site. If the Contractor fails to begin removal of the unit within five (5) calendar days and complete the removal action within 120 calendar days, the Government may take over its removal or relocation by contract or other methods as determined by the Contracting Officer.
H. 13 CONTRACT DRAWINGS AND SPECIFICATIONS.

H. 13.1 NOTIFICATION OF DISCREPANCIES. The Contractor shall check all drawings furnished him immediately upon their receipt and shall promptly notify the Contracting Officer of any discrepancies. Dimensions marked on drawings shall be followed in lieu of scale measurements. Enlarged plans and details shall govern where the same work is shown at smaller scales. The Contractor shall compare all drawings and verify the figures before laying out the work and will be responsible for any errors which might have been avoided thereby.

H. 13-2. OMISSIONS. Omissions from the drawings or specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

H. 14 PHYSICAL DATA. "Information and data furnished or referred to below are furnished for general information only and the Government may not be held liable for any interpretation or conclusions drawn therefrom by the Contractor.

H. 14.1 SOURCE OF DATA. The physical conditions indicated on the drawings are for informational purposes only.

H. 14.2 WEATHER. Weather conditions shall have been investigated by the Contractor to satisfy himself as to the hazards likely to arise therefrom. Complete weather records and reports may be obtained from the local U.S. Weather Bureau.

H. 14.3 ACCESS ROUTES. Transportation facilities shall have been investigated by the Contractor to satisfy himself as to the existence of access highways and railroad facilities.

H. 15 UTILITY SERVICE INTERRUPTIONS. Utility service shall not be interrupted except as authorized by the COR.

H. 16 QUANTITY SURVEYS.

H. 16.1 Quantity surveys shall be conducted, and the data derived from these surveys shall be used in computing the quantities of work performed and the actual construction completed and in place.

H. 16.2 The Contractor shall conduct the original and final surveys. At a minimum, surveys shall be conducted on a monthly basis when excavation or backfill activities are going on. All these surveys shall be conducted under the direction of a representative of the CO, unless the CO waives this requirement in a specific instance. The Government shall make such computations.
as are necessary to determine the quantities of work performed of finally in place.

H. 16.3 Promptly upon completing a survey, the Contractor shall furnish the originals of all field notes and all other records relating to the survey or to the layout of the work to the CO. The Contractor shall retain copies of all such material furnished to the CO.

H. 16.4 The Contractor shall develop, or obtain, a quantity calculation program, which shall rely on IBM-compatible software, and which shall be utilized to calculate the quantities. The quantity calculation program shall calculate quantities, using an inputted centerline elevation and the Contract Specified template, as the basis for developing the cross-sectional area for each station. The quantity calculation program shall incorporate the ability to calculate the centroid of each cross-sectional area, so that the quantities can be corrected for curves, either to the right or to the left, in the centerline alignment. The Contractor shall conduct a centerline survey, to determine the centerline elevations, and shall utilize the quantity calculation program to calculate quantities each time a payment request is submitted. Final quantity calculations shall be based upon measurement of the cubic yards in place, or excavated, as the case may be, between the existing ground surface and the fill/excavation lines shown on the drawings or specified in the specifications. Measurement for the final quantities shall be by the average end area method. A copy of the software that is purchased or developed for use in complying with the specification paragraph shall be made available for the use of the Government until all quantities have been finalized. The Government shall also receive a copy of any/all instruction manuals or literature related to the quantity calculation program.

H. 17 IDENTIFICATION OF EMPLOYEES. The Contractor shall furnish to each employee and require each employee engaged on the work to display such identification as may be approved and directed by the CO. All prescribed identification shall immediately be canceled by the Contractor upon release of any employees. When required by the CO, the Contractor shall obtain and submit fingerprints of all persons employed or to be employed on the project.

H. 18 PERFORMANCE EVALUATION OF CONTRACTOR. The Contractor's performance will be evaluated upon final acceptance of the work. However, interim evaluation may be prepared at any time during Contract performance when determined to be in the best interest of the Government. The format for the evaluation will be Standard Form (SF) 1420, and the Contractor will be rated either outstanding, satisfactory, or unsatisfactory in the areas of Contractor Quality Control, Timely Performance, Effectiveness of Management, Compliance with Labor Standards, and Compliance with Safety Standards. The Contractor will be advised of any unsatisfactory rating, either in an individual element or in the overall rating, prior to completing the evaluation, and all Contractor comments will be made a part of the official record. Performance Evaluation Reports will be available to all Department of Defense (DOD) contracting offices for their future use in determining Contractor responsibility, in compliance with DFARS 36.201(e)(1).
H. 19 PERFORMANCE OF WORK BY CONTRACTOR (1984 APR). The Contractor shall perform on the site, and with its own organization, work equivalent to at least 20 percent of the total amount of work to be performed under the Contract. This percentage may be reduced by a supplemental agreement to this Contract if, during performing the work, the Contractor requests a reduction and the CO determines that the reduction would be to the advantage of the Government (FAR 52.236-1).

H. 20 APPLICABILITY OF DAVIS-BACON ACT. It is the position of the Department of Defense that the Davis-Bacon Act, 40 U.S.C. 276a is applicable to temporary facilities such as batch plants, sand pits, rock quarries, and similar operations located off the immediate site of the construction but set up exclusively to furnish required materials for a construction project on the site of the work. Clause "Payrolls and Basic Records" of the Contract Clauses is applicable to such operations.

H. 21 KEY PERSONNEL SUBSTITUTIONS. After contract award, the Contractor shall not substitute key personnel, supplier or subcontractor included in their proposal without the approval of the Contracting Officer. No substitution will be approved unless proposed key personnel, supplier or subcontractor provide product(s), which, in the opinion of the Contracting Officer, has comparable experience, reputation, and capabilities equivalent to or better than those rated in the evaluation.
<table>
<thead>
<tr>
<th>Clause Number</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I.1</td>
<td>52.252-0002 Clauses Incorporated by Reference (Jun 1988)</td>
<td>1-1</td>
</tr>
<tr>
<td>I.2</td>
<td>52.202-0001 Definitions (Oct 1995)</td>
<td>1-1</td>
</tr>
<tr>
<td>I.3</td>
<td>52.203-0003 Gratuities (Apr 1984)</td>
<td>1-3</td>
</tr>
<tr>
<td>I.4</td>
<td>52.203-0005 Covenant Against Contingent Fees (Apr 1984)</td>
<td>1-4</td>
</tr>
<tr>
<td>I.5</td>
<td>52.203-0006 Restrictions on Subcontractor Sales to the Government (Jul 1995)</td>
<td>1-4</td>
</tr>
<tr>
<td>I.6</td>
<td>52.203-0007 Anti-Kickback Procedures (Jul 1995)</td>
<td>1-5</td>
</tr>
<tr>
<td>I.7</td>
<td>52.203-0009 Requirement for Certificate of Procurement Integrity--Modification (Sep 1995)</td>
<td>1-6</td>
</tr>
<tr>
<td>I.8</td>
<td>52.203-0010 Price or Fee Adjustment for Illegal or Improper Activity (Sep 1990)</td>
<td>1-8</td>
</tr>
<tr>
<td>I.9</td>
<td>52.203-0012 Limitation on Payments to Influence Certain Federal Transactions (Jan 1990)</td>
<td>1-10</td>
</tr>
<tr>
<td>I.10</td>
<td>52.204-0002 Security Requirements (Jul 1995)</td>
<td>1-15</td>
</tr>
<tr>
<td>I.11</td>
<td>52.204-0004 Printing/Copying Double-Sided on Recycled Paper (Jun 1996)</td>
<td>1-16</td>
</tr>
<tr>
<td>I.12</td>
<td>52.209-0006 Protecting the Government's Interest When Subcontracting with Contractor Debarred, Suspended, or Proposed for Debarment (Jul 1995)</td>
<td>1-17</td>
</tr>
<tr>
<td>I.13</td>
<td>52.215-0002 Audit and Records--Negotiation (Aug 1996)</td>
<td>1-18</td>
</tr>
<tr>
<td>I.14</td>
<td>52.215-0022 Price Reduction for Defective Cost or Pricing Data (Oct 1995)</td>
<td>1-19</td>
</tr>
<tr>
<td>I.15</td>
<td>52.215-0023 Price Reduction for Defective Cost or Pricing Data--Modifications (Oct 1995)</td>
<td>1-21</td>
</tr>
<tr>
<td>I.16</td>
<td>52.215-0024 Subcontractor Cost or Pricing Data (Oct 1995)</td>
<td>1-23</td>
</tr>
<tr>
<td>I.17</td>
<td>52.215-0025 Subcontractor Cost or Pricing Data--Modifications (Oct 1995)</td>
<td>1-24</td>
</tr>
<tr>
<td>I.18</td>
<td>52.215-0027 Termination of Defined Benefit Pension Plans (Mar 1996)</td>
<td>1-24</td>
</tr>
<tr>
<td>I.19</td>
<td>52.215-0030 Facilities Capital Cost of Money (Sep 1997)</td>
<td>1-25</td>
</tr>
<tr>
<td>I.20</td>
<td>52.215-0033 Order of Precedence (Jan 1996)</td>
<td>1-25</td>
</tr>
<tr>
<td>I.21</td>
<td>52.215-0039 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (Feb 1996)</td>
<td>1-25</td>
</tr>
<tr>
<td>I.22</td>
<td>52.215-0040 Notification of Ownership Changes (Feb 1995)</td>
<td>1-26</td>
</tr>
<tr>
<td>I.23</td>
<td>52.215-0042 Requirements for Cost or Pricing Data or Information Other Than Costs or Pricing Data--Modifications (Oct 1995)</td>
<td>1-26</td>
</tr>
<tr>
<td>I.24</td>
<td>52.216-0007 Allowable Cost and Payment (Aug 1996)</td>
<td>1-29</td>
</tr>
<tr>
<td>I.25*</td>
<td>52.216-0008 Fixed Fee (Apr 1984)</td>
<td>1-32</td>
</tr>
<tr>
<td>I.26*</td>
<td>52.219-0008 Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (Oct 1995)</td>
<td>1-33</td>
</tr>
<tr>
<td>I.28</td>
<td>52.219-0013 Reserved</td>
<td>1-39</td>
</tr>
<tr>
<td>I.29</td>
<td>52.219-0014 Limitations on Subcontracting (Jan 1991)</td>
<td>1-39</td>
</tr>
<tr>
<td>Section</td>
<td>Document Title</td>
<td>Page</td>
</tr>
<tr>
<td>---------</td>
<td>---------------------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>1.30</td>
<td>52.219-0016 LIQUIDATED DAMAGES--SUBCONTRACTING PLAN (OCT 1995)</td>
<td>I-40</td>
</tr>
<tr>
<td>1.31</td>
<td>52.222-0001 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (APR 1984)</td>
<td>I-41</td>
</tr>
<tr>
<td>1.32</td>
<td>52.222-0002 PAYMENT FOR OVERTIME PREMIUMS (JUL 1990)</td>
<td>I-41</td>
</tr>
<tr>
<td>1.33</td>
<td>52.222-0003 CONVICT LABOR (AUG 1996)</td>
<td>I-42</td>
</tr>
<tr>
<td>1.34</td>
<td>52.222-0004 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT--OVERTIME COMPENSATION (JUL 1995)</td>
<td>I-42</td>
</tr>
<tr>
<td>1.35</td>
<td>52.222-0006 DAVIS-BACON ACT (FEB 1995)</td>
<td>I-44</td>
</tr>
<tr>
<td>1.36</td>
<td>52.222-0007 WITHHOLDING OF FUNDS (FEB 1988)</td>
<td>I-46</td>
</tr>
<tr>
<td>1.37</td>
<td>52.222-0008 PAYROLLS AND BASIC RECORDS (FEB 1988)</td>
<td>I-47</td>
</tr>
<tr>
<td>1.38</td>
<td>52.222-0009 APPRENTICES AND TRAINEES (FEB 1988)</td>
<td>I-49</td>
</tr>
<tr>
<td>1.39</td>
<td>52.222-0010 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)</td>
<td>I-50</td>
</tr>
<tr>
<td>1.40</td>
<td>52.222-0011 SUBCONTRACTS (LABOR STANDARDS) (FEB 1988)</td>
<td>I-51</td>
</tr>
<tr>
<td>1.41</td>
<td>52.222-0012 CONTRACT TERMINATION--DEBARMENT (FEB 1988)</td>
<td>I-51</td>
</tr>
<tr>
<td>1.42</td>
<td>52.222-0013 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)</td>
<td>I-52</td>
</tr>
<tr>
<td>1.43</td>
<td>52.222-0014 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)</td>
<td>I-52</td>
</tr>
<tr>
<td>1.44</td>
<td>52.222-0015 CERTIFICATION OF ELIGIBILITY (FEB 1988)</td>
<td>I-52</td>
</tr>
<tr>
<td>1.45</td>
<td>52.222-0016 APPROVAL OF WAGE RATES (FEB 1988)</td>
<td>I-53</td>
</tr>
<tr>
<td>1.46</td>
<td>52.222-0026 EQUAL OPPORTUNITY (APR 1984)</td>
<td>I-53</td>
</tr>
<tr>
<td>1.47</td>
<td>52.222-0028 EQUAL OPPORTUNITY PREAWARD CLEARANCE OF SUBCONTRACTS (APR 1984)</td>
<td>I-55</td>
</tr>
<tr>
<td>1.48</td>
<td>52.222-0035 AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS (APR 1984)</td>
<td>I-55</td>
</tr>
<tr>
<td>1.49</td>
<td>52.222-0036 AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (APR 1984)</td>
<td>I-58</td>
</tr>
<tr>
<td>1.50</td>
<td>52.222-0037 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1988)</td>
<td>I-60</td>
</tr>
<tr>
<td>1.51</td>
<td>52.222-0041 SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989)</td>
<td>I-61</td>
</tr>
<tr>
<td>1.52</td>
<td>52.222-0042 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)</td>
<td>I-69</td>
</tr>
<tr>
<td>1.53</td>
<td>52.223-0002 CLEAN AIR AND WATER (APR 1984)</td>
<td>I-70</td>
</tr>
<tr>
<td>1.54</td>
<td>52.223-0003 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (NOV 1991)</td>
<td>I-71</td>
</tr>
<tr>
<td>1.55</td>
<td>52.223-0006 DRUG-FREE WORKPLACE (JUL 1990)</td>
<td>I-73</td>
</tr>
<tr>
<td>1.56</td>
<td>52.223-0014 TOXIC CHEMICAL RELEASE REPORTING (OCT 1995)</td>
<td>I-75</td>
</tr>
<tr>
<td>1.57</td>
<td>52.226-0011 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (OCT 1996)</td>
<td>I-76</td>
</tr>
<tr>
<td>1.58</td>
<td>52.226-0001 utilization of indian organizations and indian-owned economic enterprise (SEP 1996)</td>
<td>I-76</td>
</tr>
<tr>
<td>1.59</td>
<td>52.227-0001 AUTHORIZATION AND CONSENT (JUL 1995)</td>
<td>I-78</td>
</tr>
<tr>
<td>1.60</td>
<td>52.227-0002 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)</td>
<td>I-78</td>
</tr>
<tr>
<td>1.61</td>
<td>52.227-0011 PATENT RIGHTS--RETENTION BY THE CONTRACTOR (SHORT FORM) (JUN 1989)</td>
<td>I-79</td>
</tr>
<tr>
<td>1.62</td>
<td>52.227-0014 RIGHTS IN DATA--GENERAL (JUN 1987)</td>
<td>I-86</td>
</tr>
<tr>
<td>Section</td>
<td>Title</td>
<td>Page</td>
</tr>
<tr>
<td>---------</td>
<td>----------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>52.227-0023</td>
<td>RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)</td>
<td>1-91</td>
</tr>
<tr>
<td>52.228-0005</td>
<td>INSURANCE--WORK ON A GOVERNMENT INSTALLATION (SEP 1989)</td>
<td>1-92</td>
</tr>
<tr>
<td>52.228-0007</td>
<td>INSURANCE--LIABILITY TO THIRD PERSONS (MAR 1996)</td>
<td>1-92</td>
</tr>
<tr>
<td>52.230-0002</td>
<td>COST ACCOUNTING STANDARDS (APR 1996)</td>
<td>1-94</td>
</tr>
<tr>
<td>52.230-6</td>
<td>ADMINISTRATION OF COST ACCOUNTING STANDARDS (APR 1996)</td>
<td>1-96</td>
</tr>
<tr>
<td>52.232-0009</td>
<td>LIMITATION ON WITHHOLDING OF PAYMENTS (APR 1984)</td>
<td>1-99</td>
</tr>
<tr>
<td>52.232-0017</td>
<td>INTEREST (JUN 1996)</td>
<td>1-100</td>
</tr>
<tr>
<td>52.232-0020</td>
<td>LIMITATION OF COST (APR 1984)</td>
<td>1-100</td>
</tr>
<tr>
<td>52.232-0023</td>
<td>ASSIGNMENT OF CLAIMS (JAN 1986)</td>
<td>1-102</td>
</tr>
<tr>
<td>52.232-0025</td>
<td>PROMPT PAYMENT (MAR 1994)</td>
<td>1-102</td>
</tr>
<tr>
<td>52.232-0028</td>
<td>ELECTRONIC FUNDS TRANSFER PAYMENT METHODS (APR 1989)</td>
<td>1-107</td>
</tr>
<tr>
<td>52.233-0001</td>
<td>DISPUTES (OCT 1995)</td>
<td>1-109</td>
</tr>
<tr>
<td>52.233-0003</td>
<td>PROTEST AFTER AWARD (OCT 1995)--ALTERNATE I (JUN 1985)</td>
<td>1-111</td>
</tr>
<tr>
<td>52.237-0002</td>
<td>PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)</td>
<td>1-112</td>
</tr>
<tr>
<td>52.237-0003</td>
<td>CONTINUITY OF SERVICES (JAN 1991)</td>
<td>1-112</td>
</tr>
<tr>
<td>52.242-0001</td>
<td>NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)</td>
<td>1-113</td>
</tr>
<tr>
<td>52.242-0003</td>
<td>PENALTIES FOR UNALLOWABLE COSTS (OCT 1995)</td>
<td>1-114</td>
</tr>
<tr>
<td>52.242-0005</td>
<td>RESERVED</td>
<td>1-115</td>
</tr>
<tr>
<td>52.242-013</td>
<td>BANKRUPTCY (JUL 1995)</td>
<td>1-115</td>
</tr>
<tr>
<td>52.243-0002</td>
<td>CHANGES--COST-REIMBURSEMENT (AUG 1987)--ALTERNATE I (APR 1984)</td>
<td>1-115</td>
</tr>
<tr>
<td>52.244-0002</td>
<td>SUBCONTRACTS (COST-REIMBURSEMENT AND LETTER CONTRACTS) (MAR 1996)</td>
<td>1-116</td>
</tr>
<tr>
<td>52.244-0005</td>
<td>COMPETITION IN SUBCONTRACTING (JAN 1996)</td>
<td>1-119</td>
</tr>
<tr>
<td>52.244-0006</td>
<td>SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (OCT 1995)</td>
<td>1-119</td>
</tr>
<tr>
<td>52.245-0005</td>
<td>GOVERNMENT PROPERTY (COST-REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACTS) (JAN 1996)</td>
<td>1-120</td>
</tr>
<tr>
<td>52.246-0020</td>
<td>WARRANT OF SERVICES (APR 1984)</td>
<td>1-127</td>
</tr>
<tr>
<td>52.246-0025</td>
<td>LIMITATION OF LIABILITY--SERVICES (APR 1984)</td>
<td>1-127</td>
</tr>
<tr>
<td>52.248-0001</td>
<td>VALUE ENGINEERING (MAR 1989)</td>
<td>1-128</td>
</tr>
<tr>
<td>52.249-0006</td>
<td>TERMINATION (COST-REIMBURSEMENT) (MAY 1986)</td>
<td>1-136</td>
</tr>
<tr>
<td>52.249-0014</td>
<td>EXCUSABLE DELAYS (APR 1984)</td>
<td>1-141</td>
</tr>
<tr>
<td>52.252-0004</td>
<td>ALTERATIONS IN CONTRACT (APR 1984)</td>
<td>1-142</td>
</tr>
<tr>
<td>52.252-0005</td>
<td>AUTHORIZED DEVIATIONS IN PROVISIONS (APR 1984)</td>
<td>1-142</td>
</tr>
<tr>
<td>52.252-0006</td>
<td>AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)</td>
<td>1-142</td>
</tr>
<tr>
<td>52.253-0001</td>
<td>COMPUTER GENERATED FORMS (JAN 1991)</td>
<td>1-143</td>
</tr>
<tr>
<td>52.203-7000</td>
<td>STATUTORY PROHIBITION ON COMPENSATION TO FORMER DEPARTMENT OF DEFENSE EMPLOYEES (NOV 1995)</td>
<td>1-143</td>
</tr>
<tr>
<td>Paragraph</td>
<td>Regulation Number</td>
<td>Title</td>
</tr>
<tr>
<td>-----------</td>
<td>------------------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>1.97</td>
<td>52.203-7001</td>
<td>SPECIAL PROHIBITION ON EMPLOYMENT (NOV 1995)</td>
</tr>
<tr>
<td>1.98</td>
<td>52.203-7002</td>
<td>DISPLAY OF DOD HOTLINE POSTER (DEC 1991)</td>
</tr>
<tr>
<td>1.99</td>
<td>52.204-7003</td>
<td>CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)</td>
</tr>
<tr>
<td>1.100</td>
<td>52.205-7000</td>
<td>PROVISION OF INFORMATION TO COOPERATIVE AGREEMENT HOLDERS (JUN 1991)</td>
</tr>
<tr>
<td>1.101</td>
<td>52.215-7000</td>
<td>PRICING ADJUSTMENTS (DEC 1991)</td>
</tr>
<tr>
<td>1.102</td>
<td>52.219-7002</td>
<td>NOTICE OF SMALL DISADVANTAGED BUSINESS SET-ASIDE (MAY 1995)</td>
</tr>
<tr>
<td>1.103</td>
<td>52.219-7003</td>
<td>SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS) (APR 1996)</td>
</tr>
<tr>
<td>1.104</td>
<td>52.223-7004</td>
<td>DRUG-FREE WORK FORCE (SEP 1988)</td>
</tr>
<tr>
<td>1.105</td>
<td>52.223-7006</td>
<td>PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS (APR 1996)</td>
</tr>
<tr>
<td>1.106</td>
<td>52.225-7012</td>
<td>PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (NOV 1995)</td>
</tr>
<tr>
<td>1.107</td>
<td>52.225-7035</td>
<td>buy american act--north american free trade agreement implementation act--balance of payments program certificate (MAY 1996)</td>
</tr>
<tr>
<td>1.108</td>
<td>52.227-7000</td>
<td>NON-ESTOPPEL (OCT 1966)</td>
</tr>
<tr>
<td>1.109</td>
<td>52.227-7013</td>
<td>RIGHTS IN TECHNICAL DATA--NONCOMMERCIAL ITEMS (NOV 1995)</td>
</tr>
<tr>
<td>1.110</td>
<td>52.227-7018</td>
<td>RIGHTS IN NONCOMMERCIAL TECHNICAL DATA AND COMPUTER SOFTWARE--SMALL BUSINESS INNOVATION RESEARCH AND DEVELOPMENT PROGRAM (JUN 1995)</td>
</tr>
<tr>
<td>1.111</td>
<td>52.227-7029</td>
<td>RESERVED</td>
</tr>
<tr>
<td>1.112</td>
<td>52.231-7000</td>
<td>SUPPLEMENTAL COST PRINCIPLES (DEC 1991)</td>
</tr>
<tr>
<td>1.113</td>
<td>52.232-7006</td>
<td>REDUCTION OR SUSPENSION OF CONTRACT PAYMENTS UPON FINDING OF FRAUD (AUG 1992)</td>
</tr>
<tr>
<td>1.114</td>
<td>52.233-7000</td>
<td>CERTIFICATION OF CLAIMS AND REQUESTS FOR ADJUSTMENT OR RELIEF (MAY 1994)</td>
</tr>
<tr>
<td>1.115</td>
<td>52.242-7001</td>
<td>reserved</td>
</tr>
<tr>
<td>1.116</td>
<td>52.242-7004</td>
<td>MATERIAL MANAGEMENT AND ACCOUNTING SYSTEM (DEC 1991)</td>
</tr>
<tr>
<td>1.117</td>
<td>52.243-7000</td>
<td>ENGINEERING CHANGE PROPOSALS (MAY 1994)</td>
</tr>
<tr>
<td>1.118</td>
<td>52.243-7001</td>
<td>PRICING OF CONTRACT MODIFICATIONS (DEC 1991)</td>
</tr>
<tr>
<td>1.119</td>
<td>52.245-7001</td>
<td>REPORTS OF GOVERNMENT PROPERTY (MAY 1994)</td>
</tr>
<tr>
<td>1.120</td>
<td>52.247-7023</td>
<td>TRANSPORTATION OF SUPPLIES BY SEA (NOV 1995)</td>
</tr>
<tr>
<td>1.121</td>
<td>52.247-7024</td>
<td>NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (NOV 1995)</td>
</tr>
<tr>
<td>1.122</td>
<td>52.249-7001</td>
<td>NOTIFICATION OF SUBSTANTIAL IMPACT ON EMPLOYMENT (DEC 1991)</td>
</tr>
<tr>
<td>1.123</td>
<td>52.249-7002</td>
<td>NOTIFICATION OF PROPOSED PROGRAM TERMINATION OR REDUCTION (MAY 1995)</td>
</tr>
<tr>
<td>1.124</td>
<td>52.243-4066</td>
<td>ENGINEERING CHANGE PROPOSALS (AUG 1992) ALTERNATE I (DEC 1991) (Cost Reimbursement Type Contracts)</td>
</tr>
<tr>
<td>1.125</td>
<td>52.217-5</td>
<td>EVALUATION OF OPTIONS (JUL 1990)</td>
</tr>
<tr>
<td>1.126</td>
<td>52.217-7</td>
<td>OPTION FOR INCREASED QUANTITY - SEPARATELY PRICED LINE ITEM (MAR 1989)</td>
</tr>
</tbody>
</table>
SECTION I
CONTRACT CLAUSES

I.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE (JUN 1988)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

(End of clause)

I.2 52.202-1 DEFINITIONS (OCT 1995)

(a) "Head of the agency" (also called "agency head") or "Secretary" means the Secretary (or Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, including any deputy or assistant chief official of the agency; and the term "authorized representative" means any person, persons, or board (other than the Contracting Officer) authorized to act for the head of the agency or Secretary.

(b) Commercial component means any component that is a commercial item.

(c) Commercial item means--
   (i) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that--
      (1) Has been sold, leased, or licensed to the general public; or
      (2) Has been offered for sale, lease, or license to the general public;
   (2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;
   (3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for--
      (1) Modifications of a type customarily available in the commercial marketplace; or
      (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values
and percentages may be used as guideposts, but are not conclusive
evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs
(c)(1), (2), (3), or (5) of this clause that are of a type customarily
combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services,
training services, and other services if such services are procured for
support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of
this clause, and if the source of such services--

(i) Offers such services to the general public and the Federal
Government contemporaneously and under similar terms and conditions;
and

(ii) Offers to use the same work force for providing the Federal
Government with such services as the source uses for providing such
services to the general public;

(6) Services of a type offered and sold competitively in substantial
quantities in the commercial marketplace based on established catalog or
market prices for specific tasks performed under standard commercial
terms and conditions. This does not include services that are sold based
on hourly rates without an established catalog or market price for a
specific service performed;

(7) Any item, combination of items, or service referred to in
subparagraphs (c)(1) through (c)(6), notwithstanding the fact that the
item, combination of items, or service is transferred between or among
separate divisions, subsidiaries, or affiliates of a Contractor; or

(8) A nondevelopmental item, if the procuring agency determines the
item was developed exclusively at private expense and sold in
substantial quantities, on a competitive basis, to multiple State
and local Governments.

(d) Component means any item supplied to the Federal Government as part
of an end item or of another component.

(e) Nondevelopmental item means--

(1) Any previously developed item of supply used exclusively for
governmental purposes by a Federal agency, a State or local government,
or a foreign government with which the United States has a mutual defense
cooperation agreement;

(2) Any item described in paragraph (e)(1) of this definition that
requires only minor modification or modifications of a type customarily
available in the commercial marketplace in order to meet the requirements
of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the
requirements of paragraph (e)(1) or (e)(2) solely because the item is not yet in use.

(f) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(g) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

(End of clause)

I.3 52.203-3 GRATUITIES (APR 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--

1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) above, the Government is entitled--

1) To pursue the same remedies as in a breach of the contract; and

2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

(R 7-104.16 1952 MAR)
I.4 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. 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 the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a Contractor and subject to the Contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of clause)

(R 7-103.20 1958 JAN)

(R 1-1.503)

(R 1-7.102-18)

I.5 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)

(a) Except as provided in (b) below, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process.
(including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) above does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed $100,000.

(End of clause)

1.6 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)

(a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.
"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.


(1) Providing or attempting to provide or offering to provide any kickback;
(2) Soliciting, accepting, or attempting to accept any kickback; or
(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.
(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.
(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.
(5) The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed $100,000.

(End of clause)
(a) Definitions. The definitions set forth in FAR 3.104-4 are hereby incorporated in this clause.

(b) The Contractor agrees that it will execute the certification set forth in paragraph (c) of this clause when requested by the Contracting Officer in connection with the execution of any modification of this contract.

(c) Certification. As required in paragraph (b) of this clause, the officer or employee responsible for the modification proposal shall execute the following certification. The certification in paragraph (c)(2) of this clause is not required for a modification which procure commercial items.

CERTIFICATE OF PROCUREMENT INTEGRITY--MODIFICATION (NOV 1990)

1. I, ____________________[Name of certifier] am the officer or employee responsible for the preparation of this modification proposal and hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certification, I have no information concerning a violation or possible violation of subsection 27(a), (b), (d) or (f) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), (hereinafter referred to as "the Act"), as implemented in the FAR, occurring during the conduct of this procurement _________________(contract and modification number).

2. As required by subsection 27(e)(1)(B) of the Act, I further certify that to the best of my knowledge and belief, each officer, employee, agent, representative, and consultant of ____________________________[Name of offeror] who has participated personally and substantially in the preparation or submission of this proposal has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act, as implemented in the FAR, pertaining to this procurement.

3. Violations or possible violations: (Continue on plain bond paper if necessary and label Certificate of Procurement Integrity--Modification (Continuation Sheet), ENTER "NONE" IF NONE EXISTS)
Subsections 27(a), (b), and (d) are effective on December 1, 1990.
Subsection 27(f) is effective on June 1, 1991.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(d) In making the certification in paragraph (2) of the certificate, the officer or employee of the competing Contractor responsible for the offer or bid, may rely upon a one-time certification from each individual required to submit a certification to the competing Contractor, supplemented by periodic training. These certifications shall be obtained at the earliest possible date after an individual required to certify begins employment or association with the Contractor. If a Contractor decides to rely on a certification executed prior to the suspension of section 27 (i.e., prior to December 1, 1989), the Contractor shall ensure that an individual who has so certified is notified that section 27 has been reinstated. These certifications shall be maintained by the Contractor for a period of 6 years from the date a certifying employee's employment with the company ends or, for an agency, representative, or consultant, 6 years from the date such individual ceases to act on behalf of the Contractor.

(e) The certification required by paragraph (c) of this clause is a material representation of fact upon which reliance will be placed in executing this modification.

I.8 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (SEP 1990)

(a) The Government, at its election, may reduce the price of a fixed-price type contract or contract modification and the total cost and fee under a cost-type contract or contract modification by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or his or her designee determines.
that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the FAR. In the case of a contract modification, the fee subject to reduction is the fee specified in the particular contract modification at the time of execution, except as provided in subparagraph (b)(5) of this clause.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be--

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;

(3) For cost-plus-award-fee contracts--

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may--

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts or contract modifications, by 10 percent of the initial contract price; 10 percent of the contract modification price; or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award or modification.

(c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time
the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

I.9 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JAN 1990)

(a) Definitions.

"Agency," as used in this clause, means executive agency as defined in 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:
(a) The awarding of any Federal contract.
(b) The making of any Federal grant.
(c) The making of any Federal loan.
(d) The entering into of any cooperative agreement.
(e) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:
(a) An individual who is appointed to a position in the Government under...
title 5, United States Code, including a position under a temporary appointment.

(b) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.

c) A special Government employee, as defined in section 202, title 18, United States Code.

d) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract; an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State,
and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.
(1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees.
    (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.
    (B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.
    (C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:
        (1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.
        (2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action—

1. Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
2. Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
3. Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) Professional and technical services.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of—

1. A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
2. Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice
provided by an engineer on the performance or operational capability of
a piece of equipment rendered directly in the negotiation of a contract
is allowable. However, communications with the intent to influence
made by a professional (such as a licensed lawyer) or a technical
person (such as a licensed accountant) are not allowable under this
section unless they provide advice and analysis directly applying their
professional or technical expertise and unless the advice or analysis
is rendered directly and solely in the preparation, submission or
negotiation of a covered Federal action. Thus, for example,
communications with the intent to influence made by a lawyer that do
not provide legal advice or analysis directly and solely related to the
legal aspects of his or her client’s proposal, but generally advocate
one proposal over another are not allowable under this section because
the lawyer is not providing professional legal services. Similarly,
communications with the intent to influence made by an engineer
providing an engineering analysis prior to the preparation or
submission of a bid or proposal are not allowable under this section
since the engineer is providing technical services but not directly in
the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for
receiving a covered Federal award include those required by law or
regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions
(b)(3)(ii)(A)(1) and (2) of this clause are permitted under this
clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with
respect to payments of reasonable compensation made to regularly
employed officers or employees of a person.

(c) Disclosure.

(1) The Contractor who requests or receives from an agency a Federal
contract shall file with that agency a disclosure form, OMB standard
form LLL, Disclosure of Lobbying Activities, if such person has made or
has agreed to make any payment using nonappropriated funds (to include
profits from any covered Federal action), which would be prohibited
under subparagraph (b)(1) of this clause, if paid for with appropriated
funds.

(2) The Contractor shall file a disclosure form at the end of each
calendar quarter in which there occurs any event that materially
affects the accuracy of the information contained in any disclosure
form previously filed by such person under subparagraph (c)(1) of this
clause. An event that materially affects the accuracy of the
information reported includes—

(i) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding $100,000 under the Federal contract.

(4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(d) Agreement. The Contractor agrees not to make any payment prohibited by this clause.

(e) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(End of clause)
access to information classified "Confidential," "Secret," or "Top Secret."

(b) The Contractor shall comply with (1) the Security Agreement (DD Form 441), including the National Industrial Security Program Operating Manual (DOD 5220.23-M), and (2) any revisions to that manual, notice of which has been furnished to the Contractor.

(c) If, subsequent to the date of this contract, the security classification or security requirements under this contract are changed by the Government and if the changes cause an increase or decrease in security costs or otherwise affect any other term or condition of this contract, the contract shall be subject to an equitable adjustment as if the changes were directed under the Changes clause of this contract.

(d) The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph (d) but excluding any reference to the Changes clause of this contract, in all subcontracts under this contract that involve access to classified information.

(End of clause)

(R 7-104.12 1971 APR)
(R 7-204.12 1971 APR)
(R 7-702.39 1973 APR)
(R 7-704.32 1976 JUL)
(R 7-902.3 1976 JUL)

52.204-4 PRINTING/COPYING DOUBLE-SIDED ON RECYCLED PAPER (JUN 1996)

(a) In accordance with Executive Order 12873, dated October 20, 1993, as amended by Executive Order 12995, dated March 25, 1996, the Offeror/Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed/copied double-sided on recycled paper that has at least 20 percent postconsumer material.

(b) The 20 percent standard applies to high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white woven envelopes, and other uncoated printed and writing paper, such as writing and office paper, book paper, cotton fiber paper, and cover stock. An alternative to meeting the 20 percent postconsumer material standard is 50 percent recovered material content of certain industrial by-products.

(End of clause)
(a) The Government suspends or debars Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of $25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed the $25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Procurement Programs). The notice must include the following:

1. The name of the subcontractor.
2. The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Procurement Programs.
3. The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Procurement Programs.
4. The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(End of clause)
(a) As used in this clause, 'records' includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeemable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examinations shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer or an authorized representatives of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to:

(1) The proposal for the contract, subcontract, or modification;
(2) The discussions conducted on the proposal(s), including those related to negotiating;
(3) Pricing of the contract, subcontract, or modification; or
(4) Performance of the contract, subcontract or modification.

(d) Comptroller General. The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(f) Availability. The Contractor shall make available at its office at all reasonable times the records, materials and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition--

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3
years after any resulting final termination settlement; and

(2) Records relating to appeals under the Disputes clause or to
litigation or the settlement of claims arising under or relating to
this contract shall be made available until such appeals, litigation,
or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the
terms of this clause, including this paragraph (g), in all
subcontracts under this contract that exceed the simplified
acquisition threshold, and--

(1) That are cost-reimbursement, incentive,
time-and-materials, labor-hour, or price-redeterminable type or any
combination of these;

(2) For which cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as
discussed in paragraph (e) of this clause.

This clause may be altered only as necessary to identify
properly the contracting parties and the Contracting Officer under
the Government prime contract.

(End of clause)

I.14 52.215-22 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1995)

(a) If any price, including profit or fee, negotiated in connection
with this contract, or any cost reimbursable under this contract, was
increased by any significant amount because (1) the Contractor or a
subcontractor furnished cost or pricing data that were not complete,
accurate, and current as certified in its Certificate of Current Cost or
Pricing Data, (2) a subcontractor or prospective subcontractor furnished
the Contractor cost or pricing data that were not complete, accurate, and
current as certified in the Contractor's Certificate of Current Cost or
Pricing Data, or (3) any of these parties furnished data of any
description that were not accurate, the price or cost shall be reduced
accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) above due
to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(c)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

   (i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

   (ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

   (iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

   (iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

   (A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

   (B) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

   (ii) An offset shall not be allowed if—

   (A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

   (B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of
agreement on price.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

(End of clause)
to defective data from a prospective subcontractor that was not
subsequently awarded the subcontract shall be limited to the amount, plus
applicable overhead and profit markup, by which (1) the actual subcontract
or (2) the actual cost to the Contractor, if there was no subcontract, was
less than the prospective subcontract cost estimate submitted by the
Contractor; provided, that the actual subcontract price was not itself
affected by defective cost or pricing data.

(d)(1) If the Contracting Officer determines under paragraph (b) of this
clause that a price or cost reduction should be made, the Contractor agrees
not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or
otherwise was in a superior bargaining position and thus the price of
the contract would not have been modified even if accurate, complete,
and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or
pricing data in issue were defective even though the Contractor or
subcontractor took no affirmative action to bring the character of the
data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost
of the contract and there was no agreement about the cost of each item
procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of
Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (d)(2)(ii) of this clause,
an offset in an amount determined appropriate by the Contracting
Officer based upon the facts shall be allowed against the amount of a
contract price reduction if--

(A) The Contractor certifies to the Contracting Officer that, to
the best of the Contractor's knowledge and belief, the Contractor is
entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were
available before the date of agreement on the price of the contract
(or price of the modification) and that the data were not submitted
before such date.

(ii) An offset shall not be allowed if--

(A) The understated data was known by the Contractor to be
understated when the Certificate of Current Cost or Pricing Data was
signed; or

(B) The Government proves that the facts demonstrate that the
contract price would not have increased in the amount to be offset
even if the available data had been submitted before the date of
agreement on price.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid--

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

(End of clause)

I.16 52.215-24 SUBCONTRACTOR COST OR PRICING DATA (OCT 1995)

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.804-1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in subsection 15.804-4 of the Federal Acquisition Regulation (FAR) that, to the best of its knowledge and belief, the data submitted under paragraph (a) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), when entered into, the Contractor shall insert either--

(1) The substance of this clause, including this paragraph (c), if paragraph (a) above requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-25, Subcontractor Cost
or Pricing Data—Modifications.

(End of clause)

I.17 52.215-25 SUBCONTRACTOR COST OR PRICING DATA—MODIFICATIONS (OCT 1995)

(a) The requirements of paragraphs (b) and (c) of this clause shall (1) become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1); and (2) be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.804-1 applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.804-4 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1) on the date of agreement on price or the date of award, whichever is later. (End of clause)

I.18 52.215-27 TERMINATION OF DEFINED BENEFIT PENSION PLANS (MAR 1996)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined benefit pension plan or otherwise recapture such pension fund assets. If pension fund assets revert to the Contractor or are constructively received by it under a termination or otherwise, the Contractor shall make a refund or gift a credit to the Government for its equitable share of the gross amount.
withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data (see 15.804 of the Federal Acquisition Regulation (FAR)) were submitted or which are subject to FAR Part 31. The Contractor shall include the substance of this clause in all subcontracts under this contract which meets the applicability requirements of FAR 15.604-8(e).

(End of clause)

I.19 52.215-30 FACILITIES CAPITAL COST OF MONEY (SEP 1987)

(a) Facilities capital cost of money will be an allowable cost under the contemplated contract, if the criteria for allowability in subparagraph 31.205-10(a)(2) of the Federal Acquisition Regulation are met. One of the allowability criteria requires the prospective contractor to propose facilities capital cost of money in its offer.

(b) If the prospective Contractor does not propose this cost, the resulting contract will include the clause Waiver of Facilities Capital Cost of Money.

(End of provision)

I.20 52.215-33 ORDER OF PRECEDENCE (JAN 1986)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) representations and other instructions; (c) contract clauses; (d) other documents, exhibits, and attachments; and (e) the specifications.

(End of clause)

I.21 52.215-39 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS OTHER THAN PENSIONS (PRB) (MAR 1996)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively
received by it under a plan termination, reduction, or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share of any amount of previously funded PRB costs which revert or inure to the Contractor. Such equitable share shall reflect the Government's previous participation in PRB costs through those contracts for which cost or pricing data (see 15.804 of the Federal Acquisition Regulation (FAR)) were submitted or which are subject to FAR Part 31. The Contractor shall include the substance of this clause in all subcontracts under this contract which meet the applicability requirements of FAR 15.804-8(f).

(End of clause)

I.22 52.215-40 NOTIFICATION OF OWNERSHIP CHANGES (FEB 1995)

(a) The Contractor shall make the following notifications in writing.

(1) When the Contractor becomes aware that a change in its ownership has occurred or is certain to occur which could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

(2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall: (1) maintain current, accurate, and complete inventory records of assets and their costs; (2) provide the ACO or designated representative ready access to the records upon request; (3) ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and (4) retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

(c) The Contractor shall include the substance of this clause in all subcontracts under this contract which meet the applicability requirement of FAR 15.804-8(g).

(End of clause)

I.23 52.215-42 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COSTS OR
PRICING DATA--MODIFICATIONS (OCT 1995)

(a) Exceptions from cost or pricing data. (1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.804-2(a)(1) on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable--

(i) Information relative to an exception granted for prior or repetitive acquisitions.

(ii) Catalog price information as follows:

(A) Attach a copy of or identify the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which this proposal is being made.

(B) Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, and reseller.

(C) Additionally, for each catalog item that exceeds $________ (extended value not unit price), provide evidence of substantial sales to the general public. This may include sales order, contract, shipment, invoice, actual recorded sales or other records that are verifiable. In addition, if the basis of the price proposal is sales of essentially the same commercial item by affiliates, other manufacturers or vendors, those sales may be included. The offeror shall explain the basis of each offered price and its relationship to the established catalog price. When substantial general public sales have also been made at prices other than catalog or price list prices, the offeror shall indicate how the proposed price relates to the price of such recent sales in quantities similar to the proposed quantities.

(iii) Market price information. Include the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. The nature of the market should be described. The supply or service being purchased should be the same as or similar to the market price supply or service. Data supporting substantial sales to the general public is also required.

(iv) Identification of the law or regulation establishing the price
offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(v) Information on modifications of contracts or subcontracts for commercial items.

(A) If (1) The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition, catalog or market prices of commercial items, or prices set by law or regulation; and (2) the modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(B) For a commercial item exception, the Contractor may provide information on prices at which the same item or similar items have been sold in the commercial market.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. Access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(3) By submitting information to qualify for an exception, an offeror is not representing that this is the only exception that may apply.

(b) Requirements for cost or pricing data. If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The Contractor shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in accordance with Table 15-2 of FAR 15.804-6(b)(2).

(2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.804-4.
(a) Invoicing. The Government shall make payments to the
Contractor when requested as work progresses, but (except for small
business concerns) not more often than once every 2 weeks, in amounts
determined to be allowable by the Contracting Officer in accordance
with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in
effect on the date of this contract and the terms of this contract.
The Contractor may submit to an authorized representative of the
Contracting Officer, in such form and reasonable detail as the
representative may require, an invoice or voucher supported by a
statement of the claimed allowable cost for performing this contract.

(b) Reimbursing costs. (1) For the purpose of reimbursing
allowable costs (except as provided in subparagraph (2) below, with
respect to pension, deferred profit sharing, and employee stock
ownership plan contributions), the term 'costs' includes only--

(i) Those recorded costs that, at the time of the request for
reimbursement, the Contractor has paid by cash, check, or other form
of actual payment for items or services purchased directly for the
contract;

(ii) When the Contractor is not delinquent in paying costs of
contract performance in the ordinary course of business, costs
incurred, but not necessarily paid, for--
(A) Materials issued from the Contractor's inventory and placed
in the production process for use on the contract;

(B) Direct labor;

(C) Direct travel;

(D) Other direct in-house costs; and

(E) Properly allocable and allowable indirect costs, as shown in
the records maintained by the Contractor for purposes of obtaining
reimbursement under Government contracts; and

(iii) The amount of progress payments that have been paid to the
Contractor's subcontractors under similar cost standards.

(2) Contractor contributions to any pension or other
postretirement benefit, profit-sharing or employee stock ownership
plan funds that are paid quarterly or more often may be included in
indirect costs for payment purposes; Provided, that the Contractor
pays the contribution to the fund within 30 days after the close of the
period covered. Payments made 30 days or more after the close of
a period shall not be included until the Contractor actually makes the
payment. Accrued costs for such contributions that are paid less often
than quarterly shall be excluded from indirect costs for payment
purposes until the Contractor actually makes the payment.

(3) Notwithstanding the audit and adjustment of invoices or
vouchers under paragraph (g) below, allowable indirect costs under
this contract shall be obtained by applying indirect cost rates
established in accordance with paragraph (d) below.

(4) Any statements in specifications or other documents
incorporated in this contract by reference designating performance of
services or furnishing of materials at the Contractor's expense or at
no cost to the Government shall be disregarded for purposes of
cost-reimbursement under this clause.

(c) Small business concerns. A small business concern may be paid
more often than every 2 weeks and may invoice and be paid for recorded
costs for items or services purchased directly for the contract, even
though the concern has not yet paid for those items or services.

(d) Final indirect cost rates. (1) Final annual indirect cost
rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2) The Contractor shall, within 90 days after the expiration of each of its fiscal years, or by a later date approved by the Contracting Officer, submit to the cognizant Contracting Officer responsible for negotiating its final indirect cost rates and, if required by agency procedures, to the cognizant audit activity proposed final indirect cost rates for that period and supporting cost data specifying the contract and/or subcontract to which the rates apply. The proposed rates shall be based on the Contractor’s actual cost experience for that period. The appropriate Government representative and Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor’s proposal.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(e) Billing rates. Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates—

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party’s request, to prevent substantial overpayment or underpayment.

(f) Quick-closeout procedures. Quick closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

(g) Audit. At any time or times before final payment, the Contracting Officer may have the Contractor’s invoices or vouchers and statements of cost audited. Any payment may be (1) reduced by amounts found by the Contracting Officer not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.

(h) Final payment. (1) The Contractor shall submit a completion invoice or voucher, designated as such, promptly upon completion of the work, but no later than one year (or longer, as the Contracting Officer may approve in writing) from the completion date. Upon approval of that invoice or voucher, and upon the Contractor’s compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to
costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver—

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except—

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

(End of clause)
52.216-8   FIXED FEE (APR 1984)

(a) The Government shall pay the Contractor for performing this contract the fixed fee specified in the Schedule.

(b) Payment of the fixed fee shall be made as specified in the Schedule; provided, that after payment of 85 percent of the fixed fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total fixed fee or $100,000, whichever is less.

(End of clause)

*See MIS Section of CMP 7.
(a) It is the policy of the United States that small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract
performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern (1) which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is unconditionally owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more of such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR 124. The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act. The Contractor shall presume that socially and economically disadvantaged entities also include Indian Tribes and Native Hawaiian Organizations.

(d) The term "small business concern owned and controlled by women" shall mean a small business concern (i) which is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and (ii) whose management and daily business operations are controlled by one or more women; and

(e) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals or a small business concern owned and controlled by women.
(a) This clause does not apply to small business concerns.
(b) 'Commercial product,' as used in this clause, means a product
in regular production that is sold in substantial quantities to the
general public and/or industry at established catalog or market
prices. It also means a product which, in the opinion of the
Contracting Officer, differs only insignificantly from the
Contractor's commercial product.
'Subcontract,' as used in this clause, means any agreement (other
than one involving an employer-employee relationship) entered into by
a Federal Government prime Contractor or subcontractor calling for
supplies or services required for performance of the contract or
subcontract.
(c) The offerer, upon request by the Contracting Officer, shall
submit and negotiate a subcontracting plan, where applicable, which
separately addresses subcontracting with small business concerns;
with small disadvantaged business concerns and with women-owned
small business concerns. If the offerer is submitting an individual
contract plan, the plan must separately address subcontracting with
small business concerns, small disadvantaged business concerns, and
women-owned small business concerns with a separate part for the
basic contract and separate parts for each option (if any). The plan
shall be included in and made a part of the resultant contract. The
subcontracting plan shall be negotiated within the time specified by
the Contracting Officer. Failure to submit and negotiate the
subcontracting plan shall make the offerer ineligible for award of a
contract.
(d) The offerer's subcontracting plan shall include the
following:
(1) Goals, expressed in terms of percentages of total planned
subcontracting dollars, for the use of small business concerns,
small disadvantaged business concerns, and women-owned small business
concerns as subcontractors. The offerer shall include all
subcontracts that contribute to contract performance, and may include
a proportionate share of products and services that are normally
allocated as indirect costs.
(2) A statement of--
(i) Total dollars planned to be subcontracted;
(ii) Total dollars planned to be subcontracted to small business
concerns;
(iii) Total dollars planned to be subcontracted to small
disadvantaged business concerns; and
(iv) Total dollars planned to be subcontracted to women-owned
small business concerns.
(3) A description of the principal types of supplies and services
to be subcontracted, and an identification of the types planned for
subcontracting to (i) small business concerns (ii) small
disadvantaged business concerns, and (iii) women-owned small business
concerns.
(4) A description of the method used to develop the
subcontracting goals in paragraph (d)(1) of this clause.
(5) A description of the method used to identify potential
sources for solicitation purposes (e.g., existing company source
lists, the Procurement Automated Source System (PASS) of the Small
Business Administration, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, small disadvantaged and women-owned small business concerns trade associations). A firm may rely on the information contained in PASS as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list. A firm may rely on PASS as its small business source list. Use of the PASS as its source list does not relieve a firm of its responsibilities (i.e., outreach, assistance, counseling, publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with (i) small business concerns (ii) small disadvantaged business concerns, and (iii) women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small, small disadvantaged and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause in this contract entitled 'Utilization of Small, Small Disadvantaged and Women-Owned Business Concerns' in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) who receive subcontracts in excess of $500,000 ($1,000,000 for construction of any public facility), to adopt a plan similar to the plan agreed to by the offeror.

(10) Assurances that the offeror will (i) cooperate in any studies or surveys as may be required, (ii) submit periodic reports in order to allow the Government to determine the extent of compliance by the offeror with the subcontracting plan, (iii) submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms, and (iv) ensure that its subcontractors agree to submit Standard Forms 294 and 295.

(11) A recitation of the types of records the offeror will maintain to demonstrate procedures that have been adopted to comply with requirements and goals in the plan, including establishing source lists; and a description of its efforts to locate small, small disadvantaged and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists, (e.g., PASS guides) and other data that identify small, small disadvantaged and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small, small disadvantaged or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than $100,000, indicating (A) whether small business concerns were solicited and if not, why not, (B) whether small disadvantaged business concerns were solicited and if not, why not,
(iv) Records of any outreach efforts to contact (A) trade associations, (B) business development organizations, and (C) conferences and trade fairs to locate small, small disadvantaged and women-owned small business sources.

(v) Records of internal guidance and encouragement provided to buyers through (A) workshops, seminars, training, etc., and (B) monitoring performance to evaluate compliance with the program’s requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having company or division-wide annual plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small, small disadvantaged and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor’s lists of potential small, small disadvantaged and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small, small disadvantaged and women-owned small business concerns in all ‘make-or-buy’ decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small, small disadvantaged and women-owned small business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, small disadvantaged or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor’s subcontracting plan.

(f) A master subcontracting plan on a plant or division-wide basis which contains all the elements required by (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided, (1) the master plan has been approved, (2) the offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval to the Contracting Officer, and (3) goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g)(1) If a commercial product is offered, the subcontracting plan required by this clause may relate to the offeror’s production generally, for both commercial and noncommercial products, rather than solely to the Government contract. In these cases, the offeror shall, with the concurrence of the Contracting Officer, submit one company-wide or division-wide annual plan.

(2) The annual plan shall be reviewed for approval by the agency awarding the offeror its first prime contract requiring a subcontracting plan during the fiscal year, or by an agency.
satisfactory to the Contracting Officer.

(3) The approved plan shall remain in effect during the offeror's fiscal year for all of the offeror's commercial products.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled 'Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns,' or (2) an approved plan required by this clause, shall be a material breach of the contract.

(End of clause)
(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for—

(1) Services (except construction). At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

(2) Supplies (other than procurement from a regular dealer in such supplies). The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.

(3) General construction. The concern will perform at least 20 percent of the cost of the contract, not including the cost of materials, with its own employees.

(4) Construction by special trade contractors. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

(End of clause)
(a) "Failure to make a good faith effort to comply with the subcontracting plan," as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) If, at contract completion, or in the case of a commercial product plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply, shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal or, in the case of a commercial products plan, that portion of the dollar amount allocable to Government contracts by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial product plans; i.e., company-wide or division-wide subcontracting plans approved under paragraph (g) of the clause in this contract entitled "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan," the Contracting Officer of the agency that originally approved the plan will exercise the functions of the Contracting Officer under this clause on behalf of all agencies that awarded contracts covered by that commercial product plan.

(e) The Contractor shall have the right of appeal, under the clause in
this contract entitled, Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

(End of clause)

I.31 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (APR 1984)

(a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract to which a labor dispute may delay the timely performance of this contract; except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the prime Contractor, as the case may be, of all relevant information concerning the dispute.

(End of clause)
(R 7-203.27 1967 JUN)
(AV 7-104.4 1958 SEP)
(AV 7-603.1 1958 SEP)

I.32 52.222-2 PAYMENT FOR OVERTIME PREMIUMS (JUL 1990)

(a) The use of overtime is authorized under this contract if the overtime premium does not exceed

1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

2) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

3) To perform tests, industrial processes, laboratory procedures,
loading or unloading of transportation conveyances, and operations in
flight or afloat that are continuous in nature and cannot reasonably be
interrupted or completed otherwise; or
(4) That will result in lower overall costs to the Government.
(b) Any request for estimated overtime premiums that exceeds the amount
specified above shall include all estimated overtime for contract
completion and shall--
(1) Identify the work unit: e.g., department or section in which the
requested overtime will be used, together with present workload,
staffing, and other data of the affected unit sufficient to permit the
Contracting Officer to evaluate the necessity for the overtime;
(2) Demonstrate the effect that denial of the request will have on the
contract delivery or performance schedule;
(3) Identify the extent to which approval of overtime would affect the
performance or payments in connection with other Government contracts,
together with identification of each affected contract; and
(4) Provide reasons why the required work cannot be performed by using
multishift operations or by employing additional personnel.

* Refer to CMP 5, Section J.

I.33 52.222-3 CONVICT LABOR (AUG 1996)

The Contractor agrees not to employ in the performance of this
contract any person undergoing a sentence of imprisonment which has
been imposed by any court of a State, the District of Columbia, the
Commonwealth of Puerto Rico, the Virgin Islands, Guam, American
Samoa, the Commonwealth of the Northern Mariana Islands, or the
Trust Territory of the Pacific Islands. This limitation, however,
shall not prohibit the employment by the Contractor in the
performance of this contract of persons on parole or probation to
work at paid employment during the term of their sentence or persons
who have been pardoned or who have served their terms. Nor shall it
prohibit the employment by the Contractor in the performance of this
contract of persons confined for violation of the laws of any of the
States, the District of Columbia, the Commonwealth of Puerto Rico,
the Virgin Islands, Guam, American Samoa, the Commonwealth of the
Northern Mariana Islands, or the Trust Territory of the Pacific
Islands who are authorized to work at paid employment in the
community under the laws of such jurisdiction, if--
(a)(1) The worker is paid or is in an approved work training
program on a voluntary basis;
(2) Representatives of local union central bodies or similar
labor union organizations have been consulted;
(3) Such paid employment will not result in the displacement of
employed workers, or be applied in skills, crafts, or trades in
which there is a surplus of available gainful labor in the locality,
or impair existing contracts for services; and
(4) The rates of pay and other conditions of employment will
not be less than those paid or provided for work of a similar nature
in the locality in which the work is being performed; and
(b) The Attorney General of the United States has certified that
the work-release laws or regulations of the jurisdiction involved are
in conformity with the requirements of Executive Order 11755, as
amended by Executive Orders 12608 and 12943.

(End of clause)
(a) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) Withholding for unpaid wages and liquidated damages. The Contracting Officer shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) Payrolls and basic records. (1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of contract work and shall preserve them for a period of 3 years from the completion of the contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of
the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.

(e) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts exceeding $100,000, the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

(End of clause)

I.35 52.222-6 DAVIS-BACON ACT (FEB 1995)

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records
accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(iv) With respect to helpers, such a classification prevails in the area in which the work is performed.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized
representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(End of clause)

1.36 52.222-7 WITHHOLDING OF FUNDS (FEB 1988)

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment.
1.37 52.222-8 PAYROLLS AND BASIC RECORDS (FEB 1988)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of
Compliance,* signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify—

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(End of clause)
(a) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable
(b) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(End of clause)
are hereby incorporated by reference in this contract. 

(End of clause)

I.40 52.222-11  SUBCONTRACTS (LABOR STANDARDS) (FEB 1988)

(a) The Contractor or subcontractor shall insert in any subcontracts the clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act—Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination—Debarment, Disputes Concerning Labor Standards, Compliance with Davis-Bacon and Related Act Regulations, and Certification of Eligibility, and such other clauses as the Contracting Officer may, by appropriate instructions, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.

(b) (1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Statement and Acknowledgment Form (SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

(End of clause)

I.41 52.222-12  CONTRACT TERMINATION—DEBARMENT (FEB 1988)

A breach of the contract clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act—Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

(End of clause)
All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

(End of clause)

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees of their representatives.

(End of clause)

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(End of clause)
I.45 52.222-16  APPROVAL OF WAGE RATES [FEB 1988]

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under this contract must be submitted for approval in writing by the head of the contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the contract. Any amount paid by the Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Contractor and shall not be reimbursed by the Government. If the Government refuses to authorize the use of the overtime, the Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

(End of clause)

I.46 52.222-26  EQUAL OPPORTUNITY (APR 1984)

(a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of $10,000, the Contractor shall comply with subparagraphs (b) through (i) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During performing this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

(8) The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraph (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any
subcontract or purchase order as the contracting agency may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

(End of clause)

(R 7-103.18 1978 SEP)
(R 1-12.003-2)
(R 7-607.13 1978 SEP)

I.47 52.222-28 EQUAL OPPORTUNITY PREAWARD CLEARANCE OF SUBCONTRACTS (APR 1984)

Notwithstanding the clause of this contract entitled "Subcontracts," the Contractor shall not enter into a first-tier subcontract for an estimated or actual amount of $1 million or more without obtaining in writing from the Contracting Officer a clearance that the proposed subcontractor is in compliance with equal opportunity requirements and therefore is eligible for award.

(End of clause)

(AV 7-104.22 1971 OCT)

I.46 52.222-35 AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS (APR 1984)

(a) Definitions.

"Appropriate office of the State employment service system," as used in this clause, means the local office of the Federal-State national system of public employment offices assigned to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

"Openings that the Contractor proposes to fill from within its own organization," as used in this clause, means employment openings for which no one outside the Contractor's organization (including any affiliates,
subsidiaries, and the parent companies) will be considered and includes any openings that the Contractor proposes to fill from regularly established "recall" lists.

"Openings that the Contractor proposes to fill under a customary and traditional employer-union hiring arrangement," as used in this clause, means employment openings that the Contractor proposes to fill from union halls, under their customary and traditional employer-union hiring relationship.

"Suitable employment openings," as used in this clause--

(1) Includes, but is not limited to, openings that occur in jobs categorized as--
   (i) Production and nonproduction;
   (ii) Plant and office;
   (iii) Laborers and mechanics;
   (iv) Supervisory and nonsupervisory;
   (v) Technical; and
   (vi) Executive, administrative, and professional positions compensated on a salary basis of less than $25,000 a year; and

(2) Includes full-time employment, temporary employment of over 3 days, and part-time employment, but not openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement, nor openings in an educational institution that are restricted to students of that institution.

(b) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a special disabled or Vietnam Era veteran. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their disability or veterans' status in all employment practices such as--
   (i) Employment;
   (ii) Upgrading;
   (iii) Demotion or transfer;
   (iv) Recruitment;
   (v) Advertising;
   (vi) Layoff or termination;
   (vii) Rates of pay or other forms of compensation; and
   (viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the

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MODIFICATION NO. A00039
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Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing openings. (1) The Contractor agrees to list all suitable employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of $10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.

(3) The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(5) Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations when (i) the Government's needs cannot reasonably be supplied, (ii) listing would be contrary to national security, or (iii) the requirement of listing would not be in the Government's interest.

(d) Applicability. (1) This clause does not apply to the listing of employment openings which occur and are filled outside the 50 States, the District of Columbia, Puerto Rico, Guam, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(2) The terms of paragraph (c) above of this clause do not apply to openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring
arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

(e) Postings. (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified special disabled and Vietnam Era veterans.

(f) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

(End of clause)
(R 7-103.27 1976 JUL)
(R FPR Temp. Reg. 39)

I.49 52.222-36 AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (APR 1984)

(a) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental handicap. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental
handicap in all employment practices such as--
   (i) Employment;
   (ii) Upgrading;
   (iii) Demotion or transfer;
   (iv) Recruitment;
   (v) Advertising;
   (vi) Layoff or termination;
   (vii) Rates of pay or other forms of compensation; and
   (viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings. (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped individuals and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified physically and mentally handicapped individuals.

(c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of $2,500 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

(End of clause)
(R 7-103.28 1976 MAY)
(R FPR Temp. Reg. 38)
(a) The contractor shall report at least annually, as required by the Secretary of Labor, on:

(1) The number of special disabled veterans and the number of veterans of the Vietnam era in the workforce of the contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of special disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

(c) Reports shall be submitted no later than March 31 of each year beginning March 31, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date:

(1) As of the end of any pay period during the period January through March 1st of the year the report is due, or

(2) As of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each contractor subject to the reporting requirements at 38 U.S.C. 2012(d) shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 2012 to identify themselves to the contractor. The invitation shall state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 2012.

(f) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

"Contractor,* as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

"Service employee,* as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) Applicability. This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.

(c) Compensation. (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class
of employee performs any contract work. The Contracting Officer shall
review the proposed classification and rate and promptly submit the
completed SF 1444 (which must include information regarding the
agreement or disagreement of the employees' authorized representatives
or the employees themselves together with the agency recommendation),
and all pertinent information to the Wage and Hour Division,
Employment Standards Administration, U.S. Department of Labor. The
Wage and Hour Division will approve, modify, or disapprove the action
or render a final determination in the event of disagreement within 30
days of receipt or will notify the Contracting Officer within 30 days
of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage
and Hour Division shall be transmitted to the Contracting Officer who
shall promptly notify the Contractor of the action taken. Each
affected employee shall be furnished by the Contractor with a written
copy of such determination or it shall be posted as a part of the wage
determination.

(iv) (A) The process of establishing wage and fringe benefit rates
that bear a reasonable relationship to those listed in a wage
determination cannot be reduced to any single formula. The approach
used may vary from wage determination to wage determination depending
on the circumstances. Standard wage and salary administration
practices which rank various job classifications by pay grade pursuant
to point schemes or other job factors may, for example, be relied
upon. Guidance may also be obtained from the way different jobs are
rated under Federal pay systems (Federal Wage Board Pay System and the
General Schedule) or from other wage determinations issued in the same
locality. Basic to the establishment of any conformable wage rate(s)
is the concept that a pay relationship should be maintained between
job classifications based on the skill required and the duties
performed.

(B) In the case of a contract modification, an exercise of an
option, or extension of an existing contract, or in any other case
where a Contractor succeeds a contract under which the
classification in question was previously conformed pursuant to
paragraph (c) of this clause, a new conformed wage rate and fringe
benefits may be assigned to the conformed classification by indexing
(i.e., adjusting) the previous conformed rate and fringe benefits by
an amount equal to the average (mean) percentage increase (or
decline, where appropriate) between the wages and fringe benefits
specified for all classifications to be used on the contract which
are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive, to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) Adjustment of Compensation. If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) Obligation to Furnish Fringe Benefits. The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) Minimum Wage. In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938.
Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) Successor Contracts. If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date...
of the final administrative decision.

(g) Notification to Employees. The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) Safe and Sanitary Working Conditions. The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) Records. (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Act--

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.
(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) Pay Periods. The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(k) Withholding of Payments and Termination of Contract. The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) Subcontracts. The Contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) Collective Bargaining Agreements Applicable to Service Employees. If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement
which is or will be effective during any period in which the contract is
being performed, the Government Prime Contractor shall report such fact to
the Contracting Officer, together with full information as to the
application and accrual of such wages and fringe benefits, including any
prospective increases, to service employees engaged in work on the
contract, and a copy of the collective bargaining agreement. Such report
shall be made upon commencing performance of the contract, in the case of
collective bargaining agreements effective at such time, and in the case
of such agreements or provisions or amendments thereof effective at a later
time during the period of contract performance such agreements shall be
reported promptly after negotiation thereof.

(n) Seniority List. Not less than 10 days prior to completion of any
contract being performed at a Federal facility where service employees may
be retained in the performance of the succeeding contract and subject to a
wage determination which contains vacation or other benefit provisions
based upon length of service with a Contractor (predecessor) or successor
(29 CFR 4.173), the incumbent Prime Contractor shall furnish the
Contracting Officer a certified list of the names of all service employees
on the Contractor's or subcontractor's payroll during the last month of
contract performance. Such list shall also contain anniversary dates of
employment on the contract either with the current or predecessor
Contractors of each such service employee. The Contracting Officer shall
turn over such list to the successor Contractor at the commencement of the
succeeding contract.

(o) Rulings and Interpretations. Rulings and interpretations of the Act
are contained in Regulations, 29 CFR Part 4.

(p) Contractor's Certification. (1) By entering into this contract, the
Contractor (and officials thereof) certifies that neither it (nor he or
she) nor any person or firm who has a substantial interest in the
Contractor's firm is a person or firm ineligible to be awarded Government
contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or
firm ineligible for award of a Government contract under section 5 of
the Act.

(3) The penalty for making false statements is prescribed in the U.S.

(q) Variations, Tolerances, and Exemptions Involving Employment.
Notwithstanding any of the provisions in paragraphs (b) through (o) of
this clause, the following employees may be employed in accordance with
the following variations, tolerances, and exemptions, which the Secretary
of Labor, pursuant to section 4(b) of the Act prior to its amendment by
Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 526.

(2) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeymen classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman’s rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.
(s) Tips. An employee engaged in an occupation in which the employee customarily and regularly receives more than $30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations 29 CFR Part 531. However, the amount of credit shall not exceed $1.34 per hour beginning January 1, 1981. To use this provision--

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and
(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(t) Disputes Concerning Labor Standards. The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)
(a) "Air Act", as used in this clause, means the Clean Air Act (42 U.S.C. 7401, et seq.).

"Clean air standards," as used in this clause, means--

(1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;

(2) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d));

(3) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or

(4) An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412(d)).

"Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the EPA or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

"Compliance," as used in this clause, means compliance with--

(1) Clean air or water standards; or

(2) A schedule or plan ordered or approved by a court of competent jurisdiction, the EPA, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

"Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the EPA determines that independent facilities are collocated in one geographical area.

"Water Act," as used in this clause, means Clean Water Act (33 U.S.C. 1251, et seq.).
(b) The Contractor agrees--

(1) To comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;

(2) That no portion of the work required by this prime contract will be performed in a facility listed on the EPA List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

(3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and

(4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (b)(4).

(End of clause)
(c) The apparently successful Offeror, by acceptance of the contract, certifies that the list in paragraph (b) of this clause is complete. This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful Offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful Offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful Offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause or the certification submitted under paragraph (c) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government’s rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to—

   (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

   (ii) Obtain medical treatment for those affected by the material; and

   (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.
The Government is not precluded from using similar or data acquired from other sources.

(End of clause)

1.55 52.223-6 DRUG-FREE WORKPLACE (JUL 1990)

(a) Definitions. As used in this clause,  
"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.  
"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.  
"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.  
"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.  
"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract.  "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.  
"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.  
(b) The Contractor, if other than an individual, shall—within 30 calendar days after award (unless a longer period is agreed to in writing for contracts of 30 calendar days or more performance duration), or as soon as possible for contracts of less than 30 calendar days performance duration—  
(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;  
(2) Establish an ongoing drug-free awareness program to inform such
employees about—

(i) The dangers of drug abuse in the workplace;
(ii) The Contractor's policy of maintaining a drug-free workplace;
(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will—

(i) Abide by the terms of the statement; and
(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 calendar days after such conviction.

(5) Notify the Contracting Officer in writing within 10 calendar days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 calendar days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Take appropriate personnel action against such employee, up to and including termination; or
(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (b) or (c) of this clause may, pursuant to FAR 21.506, render the Contractor subject to suspension of contract payments, termination of the contract.
for default, and suspension or debarment.

(End of clause)

1.56 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (OCT 1995)

(a) Unless otherwise exempt, the Contractor owned or operated facilities used in the performance of a contract shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313 (a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023 (a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). Such Contractor facilities shall file the annual Form R throughout the life of the contract.

(b) A Contractor is exempt from the requirement to file an annual Form R if none of the Contractor owned or operated facilities used in the performance of this contract:

1) Manufacture, process or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);
2) Have 10 or more full-time employees, as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);
3) Meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA); or
4) Fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in FAR 19.102.

(c) If the Contractor has certified to be exempt in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any one of its owned or operated facilities used in the performance of this contract is no longer exempt--

1) The Contractor shall notify the Contracting Officer; and
2) The Contractor owned and operated facilities used in the performance of this contract, unless otherwise exempt, shall (i) submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the Contractor becomes eligible; and (ii) continue to file the annual Form R for the life of the contract.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting.
requirements.

(e) Except for acquisitions of commercial items, as defined in FAR Part 12, the Contractor shall:

(1) For competitive subcontracts expected to exceed $100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and

(2) Include in any resultant subcontract exceeding $100,000 (including all options), with subcontractors having SCI designations of major groups 20 through 39 as set forth in FAR 19.102, the substance of this clause, except this paragraph (e).

(End of clause)

I.57 52.225-11 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (OCT 1996)

(a) Unless advance written approval of the Contracting Officer is obtained, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries include Cuba, Iran, Iraq, Libya, and North Korea.

(b) The Contractor shall not acquire for use in the performance of this contract supplies or services from entities controlled by the government of Iraq.

(c) The Contractor agrees to insert the provisions of this clause, including this paragraph (c), in all subcontracts hereunder.

(End of clause)
a) For Department of Defense contracts, this clause applies only if the contract includes a subcontracting plan incorporated under the terms of the clause at 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan. It does not apply to contracts awarded based on a subcontracting plan submitted and approved under paragraph (g) of the clause at 52.219-9.

(b) Definitions. As used in this clause:

'Indian' means any person who is a member of any Indian tribe, band, group, pueblo or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any 'Native' as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

'Indian organization' means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian Tribe for the purposes of 25 U.S.C., chapter 17.

'Indian-owned economic enterprise' means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership shall constitute not less than 51 percent of the enterprise.

'Indian tribe' means any Indian tribe, band, group, pueblo or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1542(c).

'Interested party' means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(c) The Contractor agrees to use its best efforts to give Indian organizations and Indian-owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in the subcontract it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on self-certification of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the self-certification of a subcontractor, the Contracting Officer shall refer the matter to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Attn: Chief, Division of Contracting and Grants Administration, 1849 C Street, NW, MS-334A-SIB, Washington, DC 20245. The BIA will determine the eligibility and notify the Contracting Officer. The 5 percent incentive payment will not be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:
(i) The estimated cost of a cost-type contract;
(ii) The target cost of a cost-plus-incentive-fee prime contract;
(iii) The target cost and ceiling price of a fixed-price incentive prime contract; or
(iv) The price of a firm-fixed-price prime contract.

(3) The amount of the equitable adjustment to the prime contract shall be 5 percent of the estimated cost, target cost or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(d) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, shall authorize an incentive payment of 5 percent of the amount paid to the subcontractor. Contracting Officers shall seek funding in accordance with agency procedures. The Contracting Officer's decision is final and not subject to the Disputes clause of this contract.

(End of clause)

I.59 52.227-1 AUTHORIZATION AND CONSENT (JUL 1995)

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold); however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

(End of clause)
1.60 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at FAR 2.101.

(End of clause)

I.61 52.227-11 PATENT RIGHTS--RETENTION BY THE CONTRACTOR (SHORT FORM) (JUN 1989)

(a) Definitions.

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(2) "Made" when used in relation to any invention means the conception of first actual reduction to practice of such invention.

(3) "Nonprofit organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(4) "Practical application" means to manufacture, in the case of a composition of product; to practice, in the case of a process or method,
or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(5) "Small business firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) "Subject invention" means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(b) Allocation of principal rights. The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention disclosure, election of title, and filing of patent application by Contractor. (1) The Contractor will disclose each subject invention to the Federal agency within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor will elect in writing whether or not to retain
title disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within 1 year after election if title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure election, and filing under subparagraphs (c)(1), (2), and (3) of this clause may, at the discretion of the agency, be granted.

(d) Conditions when the Government may obtain title. The Contractor will convey to the Federal agency, upon written request, title to any subject invention--

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title, provided, that the agency may only request title within 60 days after learning of the failure of the Contractor to disclose or elect within the specified times.

(2) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country.

(3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum rights to Contractor and protection of the Contractor right to file. (1) The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the
invention within the times specified in paragraph (c) of this clause. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and agency regulations, if any, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) Contractor action to protect the Government's interest. (1) The Contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) of this clause and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose
promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor will notify the Federal agency of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by (identify the Federal agency). The Government has certain rights in the invention."

(g) Subcontracts. (1) The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The Contractor will include in all other subcontracts, regardless of tier, for experimental, developmental, or research work the patent rights clause required by Subpart 27.3.

(3) In the case of subcontracts, at any tier, the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceeding under paragraph (j) of this clause.

(h) Reporting on utilization of subject inventions. The Contractor
agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(i) Preference for United States industry. Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in rights. The Contractor agrees that, with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request the Federal agency has the right to grant such a license itself if the Federal agency determines that--

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;
(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special provisions for contracts with nonprofit organizations. If the Contractor is a nonprofit organization, it agrees that--

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions as the Contractor;

(2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-investors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(4).
(1) Communications.
(Complete according to agency instructions.)
(End of clause)

I.62  52.227-14  RIGHTS IN DATA--GENERAL (JUN 1987)

(a) Definitions. "Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof. "Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

"Form, fit, and function data," as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

"Limited rights," as used in this clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this clause.

"Limited rights data," as used in this clause, means data (other than computer software) that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications thereof.

"Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of such computer software.

"Restricted rights," as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.
"Technical data," as used in this clause, means data (other than computer software) which are of a scientific or technical nature.

"Unlimited rights," as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of rights. (1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in--

(i) Data first produced in the performance of this contract;
(ii) Form, fit, and function data delivered under this contract;
(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and
(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to--

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;
(ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;
(iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and
(iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (c)(1) of this clause.

(c) Copyright. (1) Data first produced in the performance of this contract. Unless provided otherwise in paragraph (d) of this clause, the Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written
permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

(2) Data not first produced in the performance of this contract. The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in subparagraph (g)(3) of this clause if included in this contract or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

(3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, publication and use of data. (1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract.

(2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which
contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(e) Unauthorized marking of data. Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the Contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Contractor a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made...
subject to any disclosure prohibitions), or by final disposition of the
matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in subparagraph (e)(1)
of this clause may be modified in accordance with agency regulations
implementing the Freedom of Information Act (5 U.S.C. 552) if necessary
to respond to a request thereunder.

(3) This paragraph (e) does not apply if this contract is for a major
system or for support of a major system by a civilian agency other than
NASA and the U.S. Coast Guard agency subject to the provisions of Title

(4) Except to the extent the Government's action occurs as the result
of final disposition of the matter by a court of competent jurisdiction,
the Contractor is not precluded by this paragraph (e) from bringing a
claim under the Contract Disputes Act, including pursuant to the Disputes
clause of this contract, as applicable, that may arise as the result of
the Government removing or ignoring authorized markings on data delivered
under this contract.

(f) Omitted or incorrect markings. (1) Data delivered to the Government
without either the limited rights or restricted rights notice as
authorized by paragraph (g) of this clause, or the copyright notice
required by paragraph (c) of this clause, shall be deemed to have been
furnished with unlimited rights, and the Government assumes no liability
for the disclosure, use, or reproduction of such data. However, to the
extent the data has not been disclosed without restriction outside the
Government, the Contractor may request, within 6 months (or a longer time
approved by the Contracting Officer for good cause shown) after delivery
of such data, permission to have notices placed on qualifying data at the
Contractor's expense, and the Contracting Officer may agree to do so if
the Contractor--

(i) Identifies the data to which the omitted notice is to be applied;
(ii) Demonstrates that the omission of the notice was inadvertent;
(iii) Establishes that the use of the proposed notice is authorized;
and
(iv) Acknowledges that the Government has no liability with respect
to the disclosure, use, or reproduction of any such data made prior to
the addition of the notice or resulting from the omission of the
notice.

(2) The Contracting Officer may also (i) permit correction at the
Contractor's expense of incorrect notices if the Contractor identifies
the data on which correction of the notice is to be made, and
demonstrates that the correct notice is authorized, or (ii) correct any
incorrect notices.

(g) Protection of limited rights data and restricted computer software.
(1) When data other than that listed in subdivisions (b)(i), (ii), and (iii) of this clause are specified to be delivered under this contract and qualify as either limited rights data or restricted computer software, if the Contractor desires to continue protection of such data, the Contractor shall withhold such data and not furnish them to the Government under this contract. As a condition to this withholding, the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.

(2) Reserved.

(3) Reserved.

(h) Subcontracting. The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.

(i) Relationship to patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(End of clause)

1.63 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)

Except for data contained on pages , it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data--General" clause contained in this contract) in and to the technical data contained in the proposal dated 6/24/96 upon which this contract is based.

(End of clause)

*SPECIFICALLY IDENTIFIED BY THE CONTRACTOR AS PROPRIETARY AND/OR CONFIDENTIAL.
1.64 52.228-5 INSURANCE--WORK ON A GOVERNMENT INSTALLATION (SEP 1989)

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall certify to the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe, or (2) until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

(End of clause)

1.65 52.228-7 INSURANCE--LIABILITY TO THIRD PERSONS (MAR 1996)

(a)(1) Except as provided in subparagraph (a)(2) of this clause, the Contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting Officer may require under this contract.

(2) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

(3) All insurance required by this paragraph shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with insurers approved by the Contracting Officer.
(b) The Contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other insurance that is maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement.

(c) The Contractor shall be reimbursed--

1. For that portion (i) of the reasonable cost of insurance allocable to this contract and (ii) required or approved under this clause; and
2. For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this contract. These liabilities must arise out of the performance of this contract, whether or not caused by the negligence of the Contractor or of the Contractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by the Government. These liabilities are for--
   1. Loss of or damage to property (other than property owned, occupied, or used by the Contractor, rented to the Contractor, or in the care, custody, or control of the Contractor); or
   2. Death or bodily injury.

(d) The Government's liability under paragraph (c) of this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(e) The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities)--

1. For which the Contractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the contract;
2. For which the Contractor has failed to insure or to maintain insurance as required by the Contracting Officer; or
3. That result from willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of--
   1. All or substantially all of the Contractor's business;
   2. All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or
   3. A separate and complete major industrial operation in
connection with the performance of this contract.

(f) The provisions of paragraph (e) of this clause shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required in accordance with this clause; provided, that such cost is allowable under the Allowable Cost and Payment clause of this contract.

(g) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall--

1. Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;
2. Authorize Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and
3. Authorize Government representatives to settle or defend the claim and to represent the Contractor in or to take charge of any litigation, if required by the Government, when the liability is not insured or covered by bond. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)
Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9904, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery.

I-95
of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR, Part 9904 or a CAS rule or regulation in 48 CFR, Part 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor’s award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor’s signed Certificate of Current Cost or Pricing Data. This requirement shall apply only to negotiated subcontracts in excess of $500,000 where the price negotiated is not based on:

(1) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(2) Prices set by law or regulation, and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1. 

(End of clause)
For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (a) through (g) of this clause:

(a) Submit to the Contracting Officer a description of any cost accounting practice change, the total potential impact of the change on contracts containing a CAS clause, and a general dollar magnitude of the change which identifies the potential shift of costs between CAS-covered contracts by contract type (i.e., firm-fixed-price, incentive, cost-plus-fixed fee, etc.) and other contractor business activity. As related to CAS-covered contracts, the analysis should identify the potential impact on funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:

(1) For any change in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards or subparagraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230-5, Cost Accounting Standards--Educational Institution, within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.

(b) After an ACO, or cognizant Federal agency official, determination of materiality, submit a cost impact proposal in the form and manner specified by the Contracting Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. The cost impact proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered contract and subcontract.

(1) Cost impact proposals submitted for changes in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards; or subparagraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230-5, Cost Accounting Standards--Educational Institution; shall identify the applicable standard or cost principle and all contracts and subcontracts containing the clauses entitled Cost Accounting Standards or Cost Accounting Standards--Educational Institution, which have an award date before the effective date of that standard or cost principle.

(2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions
(a)(4)(ii) or (iii) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards--Educational Institution; or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, shall identify all contracts and subcontracts containing the clauses at FAR 52.230-2, Cost Accounting Standards, FAR 52.230-5, Cost Accounting Standards--Educational Institution, and FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices.

(3) Cost impact proposals submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the clauses at FAR 52.230-2, Cost Accounting Standards and FAR 52.230-5, Cost Accounting Standards--Educational Institution, or by subparagraph (a)(4) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, shall identify the cost impact on each separate CAS covered contract from the date of failure to comply until the noncompliance is corrected.

(c) If the submissions required by paragraphs (a) and (b) of this clause are not submitted within the specified time, or any extension granted by the Contracting Officer, an amount not to exceed 10 percent of each subsequent amount determined payable related to the Contractor's CAS-covered prime contracts, up to the estimated dollar magnitude of the cost impact, may be withheld until such time as the required submission has been provided in the form and manner specified by the Contracting Officer.

(d) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the clauses at FAR 52.230-2 and 52.230-5 or with subparagraphs (a)(3) or (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause at FAR 52.230-3.

(e) For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, or 52.230-5--

(1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used); and

(2) Include the substance of this clause in all negotiated subcontracts. In addition, within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administrative office cognizant of the subcontractor's facility:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

(iv) Any changes the subcontractor has made or proposes to make to cost accounting practices that affect prime contracts or subcontracts containing the clauses at FAR 52.230-2, 52.230-3, or 52.230-5, unless these changes have already been reported. If award of the subcontract results in making one or more CAS effective for the first time, this fact shall also be reported.

(f) Notify the Contracting Officer in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contract price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or the prime contract appropriately.

(g) For subcontracts containing the clauses at FAR 52.230-2 or 52.230-5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

(End of clause)
If more than one clause or Schedule term of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or Schedule term at that time; provided, that this limitation shall not apply to:

(a) Withholdings pursuant to any clause relating to wages or hours of employees;
(b) Withholdings not specifically provided for by this contract;
(c) The recovery of overpayments; and
(d) Any other withholding for which the Contracting Officer determines that this limitation is inappropriate.

(End of clause)

(R 7-104.21 1958 SEP)
(R 7-403.12 1959 FEB)
1.69 52.232-17 INTEREST (JUN 1996)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

1. The date fixed under this contract.
2. The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.
3. The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.
4. If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(End of clause)

I.70 52.232-20 LIMITATION OF COST (APR 1984)

(a) The parties estimate that performance of this contract, exclusive of any fee, will not cost the Government more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the Government's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the
Government's and the Contractor's share of the cost.

(b) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that--

(1) The costs the contractor expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule; or

(2) The total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

(c) As part of the notification, the Contractor shall provide the Contracting Officer a revised estimate of the total cost of performing this contract.

(d) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause--

(1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of (i) the estimated cost specified in the Schedule or, (ii) if this is a cost-sharing contract, the estimated cost to the Government specified in the Schedule; and

(2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the Contracting Officer (i) notifies the Contractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this contract. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(e) No notice, communication, or representation in any form other than that specified in subparagraph (d)(2) above, or from any person other than the Contracting Officer, shall affect this contract's estimated cost to the Government. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the estimated cost or, if this is a cost-sharing contract, for any costs in excess of the estimated cost to the Government specified in the Schedule, whether those excess costs were incurred during the course of the contract or as a result of termination.

(f) If the estimated cost specified in the Schedule is increased, any costs the Contractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.
(g) Change orders shall not be considered an authorization to exceed the
estimated cost to the Government specified in the Schedule, unless they
contain a statement increasing the estimated cost.

(h) If this contract is terminated or the estimated cost is not
increased, the Government and the Contractor shall negotiate an equitable
distribution of all property produced or purchased under the contract,
based upon the share of costs incurred by each.

(End of clause)

(R 7-203.3(a) 1966 OCT)
(R 7-402.2(a) 1966 OCT)
(R 7-402.2(b) 1973 MAY)
(R 1-7.202-3(a))
(R 1-7.402-2(a) & (b))

I.71 52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986)

(a) The Contractor, under the Assignment of Claims Act, as amended, 31
U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign
its rights to be paid amounts due or to become due as a result of the
performance of this contract to a bank, trust company, or other financing
institution, including any Federal lending agency. The assignee under such
an assignment may thereafter further assign or reassign its right under the
original assignment to any type of financing institution described in the
preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this
clause shall cover all unpaid amounts payable under this contract, and
shall not be made to more than one party, except that an assignment or
reassignment may be made to one party as agent or trustee for two or more
parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under
this contract any classified document (including this contract) or
information related to work under this contract until the Contracting
Officer authorizes such action in writing.

(End of clause)

I.72 52.232-25 PROMPT PAYMENT (MAR 1994)
Notwithstanding any other payment clause in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. Definitions of pertinent terms are set forth in 32.902. All days referred to in this clause are calendar days, unless otherwise specified.

(a) Invoice Payments.

(1) For purposes of this clause, "invoice payment" means a Government disbursement of monies to a Contractor under a contract or other authorization for supplies or services accepted by the Government. This includes payments for partial deliveries that have been accepted by the Government and final cost or fee payments where amounts owed have been settled between the Government and the Contractor.

(2) Except as indicated in subparagraph (a)(3) and paragraph (c) of this clause, the due date for making invoice payments by the designated payment office shall be the later of the following two events:

(i) The 30th day after the designated billing office has received a proper invoice from the Contractor.

(ii) The 30th day after Government acceptance of supplies delivered or services performed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement. However, if the designated billing office fails to annotate the invoice with the actual date of receipt, the invoice payment due date shall be deemed to be the 30th day after the date the Contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(3) The due date on contracts for meat, meat food products, or fish; contracts for perishable agricultural commodities, contracts for dairy products, edible fats or oils, and food products prepared from edible fats or oils, and contracts not requiring the submission of an invoice shall be as follows:

(i) The due date for meat and meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)) and further defined in Pub. L. 98-181 to include any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, will be as close as possible to, but not later than, the 7th day after product delivery.

(ii) The due date for fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 1031b(3)).
(iii) The due date for perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(44)), will be as close as possible to, but not later than, the seventh day after product delivery.

(iv) The due date for perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(44)), will be as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

(v) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(4) An invoice is the Contractor's bill or written request for payment under the contract for supplies delivered or services performed. An invoice shall be prepared and submitted to the designated billing office specified in the contract. A proper invoice must include the items listed in subdivisions (a)(4)(i) through (a)(4)(viii) of this clause. If the invoice does not comply with these requirements, then the Contractor will be notified of the defect within 7 days after receipt of the invoice at the designated billing office (3 days for meat, meat food products, or fish, and 5 days for perishable agricultural commodities, edible fats or oils, and food products prepared from edible fats or oils). Untimely notification will be taken into account in the computation of any interest penalty owed the Contractor in the manner described in subparagraph (a)(6) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date.

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of
assignment).

(vii) Name (where practicable), title, phone number and mailing address of person to be notified in event of a defective invoice.

(viii) Any other information or documentation required by other requirements of the contract (such as evidence of shipment).

(5) An interest penalty shall be paid automatically by the Government, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(5)(i) through (a)(5)(iii) of this clause are met, if applicable.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, or contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(6) The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the contractor of a defective invoice within the periods prescribed in subparagraph (a)(4) of this clause, then the due date on the corrected invoice will be adjusted by subtracting the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties, if requested by the Contractor.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivered the supplies or performed
the services in accordance with the terms and conditions of the
contract, unless there is a disagreement over quantity, quality, or
contractor compliance with a contract provision. In the event that
actual acceptance occurs within the constructive acceptance period, the
determination of an interest penalty shall be based on the actual date
of acceptance. The constructive acceptance requirement does not,
however, compel Government officials to accept supplies or services,
perform contract administration functions, or make payment prior to
fulfilling their responsibilities.

(ii) The following periods of time will not be included in the
determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in
invoices submitted to the Government, but this may not exceed 7 days
(3 days for meat, meat food products, or fish, and 5 days for
perishable agricultural commodities, dairy products, edible fats or
oils, and food products prepared from edible fats or oils).

(B) The period between the defects notice and resubmission of the
corrected invoice by the Contractor.

(iii) Interest penalties will not continue to accrue after the filing
of a claim for such penalties under the clause at 52.233-1, Disputes,
or for more than 1 year. Interest penalties of less than $1.00 need
not be paid.

(iv) Interest penalties are not required on payment delays due to
disagreement between the Government and Contractor over the payment
amount or other issues involving contract compliance or on amounts
temporarily withheld or retained in accordance with the terms of the
contract. Claims involving disputes, and any interest that may be
payable, will be resolved in accordance with the clause at 52.233-1,
Disputes.

(7) An interest penalty shall also be paid automatically by the
designated payment office, without request from the Contractor, if a
discount for prompt payment is taken improperly. The interest penalty
will be calculated as described in subparagraph (a)(6) of this clause on
the amount of discount taken for the period beginning with the first day
after the end of the discount period through the date when the Contractor
is paid.

(8) If this contract was awarded on or after October 1, 1989, a penalty
amount, calculated in accordance with regulations issued by the Office of
Management and Budget, shall be paid in addition to the interest penalty
amount if the Contractor-

(i) is owed an interest penalty;

I-106
(ii) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and
(iii) Makes a written demand, not later than 40 days after the date the invoice amount is paid, that the agency pay such a penalty.

(b) Contract Financing Payments.

(1) For purposes of this clause, "contract financing payment" means a Government disbursement of monies to a Contractor under a contract clause or other authorization prior to acceptance of supplies or services by the Government. Contract financing payments include advance payments, progress payments based on cost under the clause at 52.232-16, Progress Payments, progress payments based on a percentage or stage of completion (32.102(e)(1)) other than those made under the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, or the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts, and interim payments on cost type contracts.

(2) For contracts that provide for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the 30th day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(3) For advance payments, loans, or other arrangements that do not involve recurrent submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(4) Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

(End of clause)

1.73 52.232-28 ELECTRONIC FUNDS TRANSFER PAYMENT METHODS (APR 1989)

Payments under this contract will be made by the Government either by check or electronic funds transfer (through the Treasury Fedline Payment...
System (FEDLINE) or the Automated Clearing House (ACH), at the option of the Government. After award, but no later than 14 days before an invoice or contract financing request is submitted, the Contractor shall designate a financial institution for receipt of electronic funds transfer payments, and shall submit this designation to the Contracting Officer or other Government official, as directed.

(a) For payment through FEDLINE, the Contractor shall provide the following information:

1. Name, address, and telegraphic abbreviation of the financial institution receiving payment.

2. The American Bankers Association 9-digit identifying number for wire transfers of the financing institution receiving payment if the institution has access to the Federal Reserve Communications System.

3. Payee's account number at the financial institution where funds are to be transferred.

4. If the financial institution does not have access to the Federal Reserve Communications System, name, address, and telegraphic abbreviation of the correspondent financial institution through which the financial institution receiving payment obtains wire transfer activity. Provide the telegraphic abbreviation and American Bankers Association identifying number for the correspondent institution.

(b) For payment through ACH, the Contractor shall provide the following information:

1. Routing transit number of the financial institution receiving payment (same as American Bankers Association identifying number used for FEDLINE).

2. Number of account to which funds are to be deposited.

3. Type of depositor account ("C" for checking, "S" for savings).

4. If the Contractor is a new enrollee to the ACH system, a "Payment Information Form," SF 3881, must be completed before payment can be processed.

(c) In the event the Contractor, during the performance of this contract, elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information specified above must be received by the appropriate Government official 30 days prior to the date such change is to become effective.

(d) The documents furnishing the information required in this clause must be dated and contain the signature, title, and telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and contract number.
Contractor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

(End of clause)
(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows:
"I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(a) For Contractor claims of $100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over $100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use ADR. If the Contractor refuses an offer for alternative disputes resolution, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the request. When using arbitration conducted pursuant to 5 U.S.C. 575-580, or when using any other ADR technique that the agency elects to handle in accordance with the ADRA, any claim, regardless of amount, shall be accompanied by the certification described in subparagraph (d)(2)(iii) of this clause, and executed in accordance with subparagraph (d)(3) of this clause.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim.
appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(End of clause)

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either--

(1) Cancel the stop-work order; or
(2) Terminate the work covered by the order as provided in the Termination clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected and the contract shall be modified, in writing, accordingly, if--

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by
equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2), 33.104(h)(1), or 33.105(g)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

(End of clause)

I.76 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

(End of clause)

(R 7-104.63 1968 FEB)

I.77 52.237-3 CONTINUITY OF SERVICES (JAN 1991)

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to (1) furnish phase-in training and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice,
(1) furnish phase-in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct onsite interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

(End of clause)

I.78 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)

(a) Notwithstanding any other clause of this contract--

(1) The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this contract that have been determined not to be allowable under the contract terms; and

(2) The Contractor may, after receiving a notice under subparagraph (1) above, submit a written response to the Contracting Officer, with justification for allowance of the costs. If the Contractor does respond within 60 days, the Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

(b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Government's rights to take exception to incurred costs.

(End of clause)
I.79  52.242-3  PENALTIES FOR UNALLOWABLE COSTS (OCT 1995)

(a) Definition. Proposal, as used in this clause, means either--
   (1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which--
      (i) Relates to any payment made on the basis of billing rates; or
      (ii) Will be used in negotiating the final contract price; or
   (2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.

(b) Contractors which include unallowable indirect costs in a proposal may be subject to penalties. The penalties are prescribed in 10 U.S.C. 2324 or 41 U.S.C. 256, as applicable, which is implemented in Section 42.709 of the Federal Acquisition Regulation (FAR).

(c) The Contractor shall not include in any proposal any cost which is unallowable, as defined in Part 31 of the FAR, or an executive agency supplement to Part 31 of the FAR.

(d) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the Contractor shall be assessed a penalty equal to--
   (1) The amount of the disallowed cost allocated to this contract; plus
   (2) Simple interest, to be computed--
      (i) On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled; and
      (ii) Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).

(e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(f) Determinations under paragraphs (d) and (e) of this clause are final.

(g) Pursuant to the criteria in FAR 42.709-5, the Contracting Officer may waive the penalties in paragraph (d) or (e) of this clause.

(h) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

(End of clause)

I.80 52.242-5 RESERVED

I.81 52.242-13 BANKRUPTCY (JUL 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

(End of clause)

I.82 52.243-2 I CHANGES--COST-REIMBURSEMENT (AUG 1987)--ALTERNATE I (APR 1984)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (i.e., hours of the day, days of the week,
(3) Place of performance of the services.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the contract accordingly.

(c) The Contractor must assert its rights to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract, shall not be increased or considered to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of this contract.

(End of clause)

(R 7-1909.2 1971 NOV)

(a) "Subcontract," as used in this clause, includes but is not limited to purchase orders, and changes and modifications to purchase orders. The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract if--

(1) The proposed subcontract is of the cost-reimbursement, time-and-materials or labor-hour type;

(2) The proposed subcontract is fixed-price and exceeds either $25,000
or 5 percent of the total estimated cost of this contract;

(3) The proposed subcontract has experimental, developmental, or research work as one of its purposes; or

(4) This contract is not a facilities contract and the proposed subcontract provides for the fabrication, purchase, rental, installation, or other acquisition of special test equipment valued in excess of $25,000 or of any items of facilities.

(b) (1) In the case of a proposed subcontract that (i) is of the cost-reimbursement time-and-materials, or labor-hour type and is estimated to exceed $25,000, including any fee, (ii) is proposed to exceed $100,000, or (iii) is one of a number of subcontracts with a single subcontractor, under this contract, for the same or related supplies or services that, in the aggregate, are expected to exceed $100,000, the advance notification required by paragraph (a) above shall include the information specified in subparagraph (2) below.

(2)(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained.

(iv) The proposed subcontract price and the Contractor's cost or price analysis.

(v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting--

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason cost or pricing data were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;
(F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(c) The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is required under paragraph (a) above. However, the Contracting Officer may ratify in writing any such subcontract. Ratification shall constitute the consent of the Contracting Officer.

(d) If the Contractor has an approved purchasing system and the subcontract is within the scope of such approval, the Contractor may enter into the subcontracts described in subparagraphs (a)(1) and (a)(2) of this clause without the consent of the Contracting Officer.

(e) Even if the Contractor's purchasing system has been approved, the Contractor shall obtain the Contracting Officer's written consent before placing subcontracts identified below: Refer to Section J.1, CMP XIX.

(f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the allowability of any cost under this contract, or (3) to relieve the Contractor of any responsibility for performing this contract.

(g) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in paragraph 15.903(d) of the Federal Acquisition Regulation (FAR).

(h) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(i)(1) The Contractor shall insert in each price redetermination or incentive price revision subcontract under this contract the substance of the paragraph "Quarterly limitation on payments statement" of the clause at 52.216-5, Price Redetermination--Prospective, 52.216-6, Price Redetermination--Retroactive, 52.216-16, Incentive Price Revision--Firm Target, or 52.216-17, Incentive Price Revision--Successive Targets, as
appropriate, modified in accordance with the paragraph entitled "Subcontracts" of that clause.

(2) Additionally, the Contractor shall include in each cost-reimbursement subcontracts under this contract a requirement that the subcontractor insert the substance of the appropriate modified subparagraph referred to on subparagraph (1) above in each lower tier price redetermination or incentive price revision subcontract under that subcontract.

(j) To facilitate small business participation in subcontracting, the Contractor agrees to provide progress payments on subcontracts under this contract that are fixed-price subcontracts with small business concerns in conformity with the standards for customary progress payments stated in FAR 32.502-1 and 32.504(f), as in effect on the date of this contract. The Contractor further agrees that the need for such progress payments will not be considered a handicap or adverse factor in the award of subcontracts.

(k) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.

(End of clause)

I.84 52.244-5 COMPETITION IN SUBCONTRACTING (JAN 1996)

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protege Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its proteges.

(End of clause)

I.85 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (OCT 1995)

(a) Definition.
"Commercial item," as used in this clause, has the meaning contained in the clause at 52.202-1, Definitions.
"Subcontract," as used in this clause, includes a transfer of

I-119
commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.
(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
(c) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:
   (1) 52.222-26, Equal Opportunity (E.O. 11246);
   (2) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212(a));
   (3) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793); and
(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

(End of clause)

I.86 52.245-5 GOVERNMENT PROPERTY (COST-REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACTS) (JAN 1986)

(a) Government-furnished property.
   (1) The term "Contractor's managerial personnel," as used in paragraph (g) of this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of--
      (i) All or substantially all of the Contractor's business;
      (ii) All or substantially all of the Contractor's operation at any one plant, or separate location at which the contract is being performed; or
      (iii) A separate and complete major industrial operation connected with performing this contract.
   (2) The Government shall deliver to the Contractor, for use in

I-120
connection with and under the terms of this contract, the
Government-furnished property described in the Schedule or
specifications, together with such related data and information as the
Contractor may request and as may be reasonably required for the intended
use of the property (hereinafter referred to as "Government-furnished
property").

(3) The delivery or performance dates for this contract are based
upon the expectation that Government-furnished property suitable for use
will be delivered to the Contractor at the times stated in the Schedule
or, if not so stated, in sufficient time to enable the Contractor to meet
the contract's delivery or performance dates.

(4) If Government-furnished property is received by the Contractor in
a condition not suitable for the intended use, the Contractor shall, upon
receipt, notify the Contracting Officer, detailing the facts, and, as
directed by the Contracting Officer and at Government expense, either
effect repairs or modification or return or otherwise dispose of the
property. After completing the directed action and upon written request
of the Contractor, the Contracting Officer shall make an equitable
adjustment as provided in paragraph (h) of this clause.

(5) If Government-furnished property is not delivered to the Contractor
by the required time or times, the Contracting Officer shall, upon the
Contractor's timely written request, make a determination of the delay,
if any, caused the Contractor and shall make an equitable adjustment in
accordance with paragraph (h) of this clause.

(b) Changes in Government-furnished property. (1) The Contracting
Officer may, by written notice, (i) decrease the Government-furnished
property provided or to be provided under this contract or (ii)
substitute other Government-furnished property for the property to be
provided by the Government or to be acquired by the Contractor for the
Government under this contract. The Contractor shall promptly take such
action as the Contracting Officer may direct regarding the removal,
shipment, or disposal of the property covered by this notice.

(2) Upon the Contractor's written request, the Contracting Officer
shall make an equitable adjustment to the contract in accordance with
paragraph (h) of this clause, if the Government has agreed in the
Schedule to make such property available for performing this contract and
there is any--

(i) Decrease or substitution in this property pursuant to
subparagraph (b)(1) above; or

(ii) Withdrawal of authority to use property, if provided under any
other contract or lease.
(c) Title. (1) The Government shall retain title to all Government-furnished property.

(2) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor’s delivery of such property.

(3) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon--

(i) Issuance of the property for use in contract performance;

(ii) Commencement of processing of the property or use in contract performance; or

(iii) Reimbursement of the cost of the property by the Government, whichever occurs first.

(4) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as “Government property”), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(d) Use of Government property. The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) Property administration. (1) The Contractor shall be responsible and accountable for all Government property provided under the contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this contract.

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound business practice and the applicable provisions of FAR Subpart 45.5.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.
(f) Access. The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) Limited risk of loss. (1) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs (2) and (3) below.

(2) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage)---

(i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(v) That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.

(3)(i) If the Contractor fails to act as provided by subdivision (g)(2)(v) above, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage---

(A) Did not result from the Contractor's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by
the Contractor.

(4) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

(5) Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of--

(i) The lost, destroyed, or damaged Government property;
(ii) The time and origin of the loss, destruction, or damage;
(iii) All known interests in commingled property of which the Government property is a part; and
(iv) The insurance, if any, covering any part of or interest in such commingled property.

(6) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph.
(g) (6) in accordance with paragraph (h) of this clause. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the Contractor’s liability under this paragraph (g) when making any such equitable adjustment.

(7) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.

(8) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the Government, as directed by the Contracting Officer.

(9) The Contractor shall do nothing to prejudice the Government’s rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contractor shall, at the Government’s expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

(h) Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor’s exclusive remedy. The Government shall not be liable to suit for breach of contract for--

(1) Any delay in delivery of Government-furnished property;
(2) Delivery of Government-furnished property in a condition not suitable for its intended use;
(3) A decrease in or substitution of Government-furnished property; or
(4) Failure to repair or replace Government property for which the Government is responsible.

I-125
(i) Final accounting and disposition of Government property. Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property not consumed in performing this contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by this contract or paid to the Government as directed by the Contracting Officer. The foregoing provisions shall apply to scrap from Government property; provided, however, that the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account for it as a part of general overhead or other reimbursable costs in accordance with the Contractor's established accounting procedures.

(j) Abandonment and restoration of Contractor premises. Unless otherwise provided herein, the Government--

(1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) Communications. All communications under this clause shall be in writing.

(1) Overseas contracts. If this contract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

\& (End of clause)
(a) Definitions. "Acceptance," as used in this clause, means the act of
an authorized representative of the Government by which the Government
assumes for itself, or as an agent of another, ownership of existing and
identified supplies, or approves specific services, as partial or complete
performance of the contract.

"Correction," as used in this clause, means the elimination of a defect.

(b) Notwithstanding inspection and acceptance by the Government or any
provision concerning the conclusiveness thereof, the Contractor warrants
that all services performed under this contract will, at the time of
acceptance, be free from defects in workmanship and conform to the
requirements of this contract. The Contracting Officer shall give written
notice of any defect or nonconformance to the Contractor within a reasonable
time after the discovery of any failure, defect or damage. This notice
shall state either (1) that the Contractor shall correct or reperform any
defective or nonconforming services, or (2) that the Government does not
require correction or reperformance.

(c) If the Contractor is required to correct or reperform, it shall be at
no cost to the Government, and any services corrected or reperformed by the
Contractor shall be subject to this clause to the same extent as work
initially performed. If the Contractor fails or refuses to correct or
reperform, the Contracting Officer may, by contract or otherwise, correct
or replace with similar services and charge to the Contractor the cost
occasioned to the Government thereby, or make an equitable adjustment in
the contract price.

(d) If the Government does not require correction or reperformance, the
Contracting Officer shall make an equitable adjustment in the contract
price.

(End of clause)

(R 7-1904.5(b) 1979 SEP)
that (1) occurs after Government acceptance of services performed under this contract, and (2) results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

(d) The Contractor shall include this clause, including this paragraph (d), supplemented as necessary to reflect the relationship of the contracting parties, in all subcontracts over $25,000.

(End of clause)

1.89 52.248-1 VALUE ENGINEERING (MAR 1989)

(a) General. The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any net acquisition savings realized from accepted VECP's, in accordance with the incentive sharing rates in paragraph (f) below.

(b) Definitions. "Acquisition savings," as used in this clause, means savings resulting from the application of a VECP to contracts awarded by
the same contracting office or its successor for essentially the same unit.

Acquisition savings include:

1. Instant contract savings, which are the net cost reductions on this, the instant contract, and which are equal to the instant unit cost reduction multiplied by the number of instant contract units affected by the VECP, less the contractor's allowable development and implementation costs;

2. Concurrent contract savings, which are net reductions in the prices of other contracts that are definitized and ongoing at the time the VECP is accepted; and

3. Future contract savings, which are the product of the future unit cost reduction multiplied by the number of future contract units scheduled for delivery during the sharing period. If this contract is a multiyear contract, future contract savings include savings on quantities funded after VECP acceptance.

4. Annual acquisition savings, which are the net reduction in acquisition cost to the government of an item, resulting from an accepted Value Engineering Change Proposal which the government determines to reduce the quantity requirements on either the instant contract, concurrent and/or future contracts during the shared period.

"Collateral costs," as used in this clause, means agency cost of operation, maintenance, logistic support, or government-furnished property.

"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

"Contracting office" includes any contracting office that the acquisition is transferred to, such as another branch of the agency or another agency's office that is performing a joint acquisition action.

"Contractor's development and implementation costs," as used in this clause, means those costs the contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the contractor incurs to make the contractual changes required by government acceptance of a VECP.

"Future unit cost reduction," as used in this clause, means the instant unit cost reduction adjusted as the contracting officer considers necessary for projected learning or changes in quantity during the sharing period. It is calculated at the time the VECP is accepted and applies either (1) throughout the sharing period, unless the contracting officer decides that recalculation is necessary because conditions are significantly different from those previously anticipated or (2) to the calculation of a lump-sum
payment, which cannot later be revised.

"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistics support. The term does not include the normal administrative costs of processing the VECP or any increase in this contract's cost or price resulting from negative instant contract savings.

"Instant contract," as used in this clause, means this contract, under which the VECP is submitted. It does not include increases in quantities after acceptance of the VECP that are due to contract modifications, exercise of options, or additional orders. If this is a multiyear contract, the term does not include quantities funded after VECP acceptance. If this contract is a fixed-price contract with prospective price redetermination, the term refers to the period for which firm prices have been established.

"Instant unit cost reduction" means the amount of the decrease in unit cost of performance (without deducting any Contractor’s development or implementation cost) resulting from using the VECP on the instant contract or the amount of savings in annual acquisition cost per unit resulting from the procurement of a reduced total annual demand. In service contracts, the instant unit cost reduction is normally equal to the number of hours per line-item task saved by using the VECP on the instant contract, multiplied by the appropriate contract labor rate. Unit cost reduction for savings in annual acquisition cost will be determined by: old annual demand (OAD) of the old item multiplied by the old unit cost (OUC) minus "new" annual demand (NAD) of the new part multiplied by the new unit cost (NUC) and this quantity divided by the "new" annual demand (NAD): [(OAD x OUC) - (NAD x NUC)]/NAD.

"Negative instant contract savings" means the increase in the cost or price of this contract when the acceptance of a VECP results in an excess of the Contractor’s allowable development and implementation costs over the product of the instant unit cost reduction multiplied by the number of instant contract units affected.

"Net acquisition savings" means total acquisition savings, including instant, concurrent, and future contract savings, less Government costs.

"Sharing base," as used in this clause, means the number of affected end items on contracts of the contracting office accepting the VECP.

"Sharing period," as used in this clause, means the period beginning with acceptance of the first unit incorporating the VECP and ending at the later of (1) 3 years after the first unit affected by the VECP is accepted or (2) the last scheduled delivery date of an item affected by the VECP under this
contract's delivery schedule in effect at the time the VECP is accepted.

"Unit," as used in this clause, means the item or task to which the
Contracting Officer and the Contractor agree the VECP applies.

"Value engineering change proposal (VECP)" means a proposal that--

(1) Requires a change to this, the instant contract, to implement; and
(2) Results in reducing the overall projected cost to the agency
without impairing essential functions or characteristics; provided, that
it does not involve a change--

(i) In deliverable end item quantities only;
(ii) In research and development (R&D) end items or R&D test
quantities that is due solely to results of previous testing under this
contract; or
(iii) To the contract type only.

(c) VECP preparation. As a minimum, the Contractor shall include in each
VECP the information described in subparagraphs (1) through (8) below. If
the proposed change is affected by contractually required configuration
management or similar procedures, the instructions in those procedures
relating to format, identification, and priority assignment shall govern
VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract
requirement and the proposed requirement, the comparative advantages and
disadvantages of each, a justification when an item's function or
characteristics are being altered, the effect of the change on the end
item's performance, and any pertinent objective test data.

(2) A list and analysis of the contract requirements that must be
changed if the VECP is accepted, including any suggested specification
revisions.

(3) Identification of the unit to which the VECP applies.

(4) A separate, detailed cost estimate for (i) the affected portions of
the existing contract requirement and (ii) the VECP. The cost reduction
associated with the VECP shall take into account the Contractor's
allowable development and implementation costs, including any amount
attributable to subcontracts under the Subcontracts paragraph of this
clause, below.

(5) A description and estimate of costs the Government may incur in
implementing the VECP, such as test and evaluation and operating and
support costs.

(6) A prediction of any effects the proposed change would have on
collateral costs to the agency.

(7) A statement of the time by which a contract modification accepting
the VECP must be issued in order to achieve the maximum cost reduction,
noting any effect on the contract completion time or delivery schedule.

(8) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) Submission. The Contractor shall submit VECP's to the Contracting Officer, unless this contract states otherwise. If this contract is administered by other than the contracting office, the Contractor shall submit a copy of the VECP simultaneously to the Contracting Officer and to the Administrative Contracting Officer.

(e) Government action. (1) The Contracting Officer shall notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer shall notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it shall not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer shall notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause and made either before or within a reasonable time after contract performance is completed. Until such a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The Contracting Officer's decision to accept or reject all or part of any VECP and the decision as to which of the sharing rates applies shall be final and not subject to the Disputes clause or otherwise subject to litigation under the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

(f) Sharing rates. If a VECP is accepted, the Contractor shall share in net acquisition savings according to the percentages shown in the table below. The percentage paid the Contractor depends upon (1) this contract's type (fixed-price, incentive, or cost-reimbursement), (2) the sharing arrangement specified in paragraph (a) above (incentive, program requirement, or a combination as delineated in the Schedule), and (3) the source of the savings (the instant contract, or concurrent and future contracts), as follows:

CONTRACTOR'S SHARE OF NET ACQUISITION SAVINGS
(figures in percent)

<table>
<thead>
<tr>
<th>Contract Type</th>
<th>Incentive (voluntary)</th>
<th>Program requirement (mandatory)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Instant contract rate</td>
<td>Instant contract rate</td>
</tr>
<tr>
<td></td>
<td>Concurrent contract rate</td>
<td>Concurrent contract rate</td>
</tr>
<tr>
<td>Fixed-price (other than incentive)</td>
<td>50</td>
<td>50</td>
</tr>
<tr>
<td>Incentive (fixed-price or cost)</td>
<td>+</td>
<td>50</td>
</tr>
<tr>
<td>Cost-reimbursement (other than incentive)</td>
<td>25</td>
<td>25</td>
</tr>
</tbody>
</table>

* Same sharing arrangement as the contract's profit or fee adjustment formula.
++ Includes cost-plus-award-fee contracts.

(g) Calculating net acquisition savings. (1) Acquisition savings are realized when (i) the cost or price is reduced on the instant contract, (ii) reductions are negotiated in concurrent contracts, (iii) future contracts are awarded, or (iv) agreement is reached on a lump-sum payment for future contract savings (see subparagraph (i)(4) below). Net acquisition savings are first realized, and the Contractor shall be paid a share, when Government costs and any negative instant contract savings have been fully offset against acquisition savings.

(2) Except in incentive contracts, Government costs and any price or cost increases resulting from negative instant contract savings shall be offset against acquisition savings each time such savings are realized.

I-133
until they are fully offset. Then, the Contractor's share is calculated by multiplying net acquisition savings by the appropriate Contractor's percentage sharing rate (see paragraph (f) above). Additional Contractor shares of net acquisition savings shall be paid to the Contractor at the time realized.

(3) If this is an incentive contract, recovery of Government costs on the instant contract shall be deferred and offset against concurrent and future contract savings. The Contractor shall share through the contract incentive structure in savings on the instant contract items affected. Any negative instant contract savings shall be added to the target cost or to the target price and ceiling price, and the amount shall be offset against concurrent and future contract savings.

(4) If the Government does not receive and accept all items on which it paid the Contractor's share, the Contractor shall reimburse the Government for the proportionate share of these payments.

(h) Contract adjustment. The modification accepting the VECP (or a subsequent modification issued as soon as possible after any negotiations are completed) shall--

(1) Reduce the contract price or estimated cost by the amount of instant contract savings, unless this is an incentive contract;

(2) When the amount of instant contract savings is negative, increase the contract price, target price and ceiling price, target cost, or estimated cost by that amount;

(3) Specify the Contractor's dollar share per unit on future contracts, or provide the lump-sum payment;

(4) Specify the amount of any Government costs or negative instant contract savings to be offset in determining net acquisition savings realized from concurrent or future contract savings; and

(5) Provide the Contractor's share of any net acquisition savings under the instant contract in accordance with the following:

(i) Fixed-price contracts--add to contract price.

(ii) Cost-reimbursement contracts--add to contract fee.

Concurrent and future contract savings. (1) Payments of the Contractor's share of concurrent and future contract savings shall be made by a modification to the instant contract in accordance with subparagraph (h)(5) above. For incentive contracts, shares shall be added as a separate firm-fixed-price line item on the instant contract. The Contractor shall maintain records adequate to identify the first delivered unit for 3 years after final payment under this contract.

(2) The Contracting Officer shall calculate the Contractor's share of concurrent contract savings by (i) subtracting from the reduction in
price negotiated on the concurrent contract any Government costs or negative instant contract savings not yet offset and (ii) multiplying the result by the Contractor's sharing rate.

(3) The Contracting Officer shall calculate the Contractor's share of future contract savings by (i) multiplying the future unit cost reduction by the number of future contract units scheduled for delivery during the sharing period, (ii) subtracting any Government costs or negative instant contract savings not yet offset, and (iii) multiplying the result by the Contractor's sharing rate.

(4) When the Government wishes and the Contractor agrees, the Contractor's share of future contract savings may be paid in a single lump sum rather than in a series of payments over time as future contracts are awarded. Under this alternate procedure, the future contract savings may be calculated when the VECP is accepted, on the basis of the Contracting Officer's forecast of the number of units that will be delivered during the sharing period. The Contractor's share shall be included in a modification to this contract (see subparagraph (h)(3) above) and shall not be subject to subsequent adjustment.

(5) Alternate no-cost settlement method. When, in accordance with subsection 48.104-3 of the Federal Acquisition Regulation, the Government and the Contractor mutually agree to use the no-cost settlement method, the following applies:

(i) The Contractor will keep all the savings on the instant contract and on its concurrent contracts only.

(ii) The Government will keep all the savings resulting from concurrent contracts placed on other sources, savings from all future contracts, and all collateral savings.

(j) Collateral savings. If a VECP is accepted, the instant contract amount shall be increased, as specified in subparagraph (h)(5) above, by 20 percent of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings shall not exceed (1) the contract's firm-fixed-price, target price, target cost, or estimated cost, at the time the VECP is accepted, or (2) $100,000, whichever is greater. The Contracting Officer shall be the sole determiner of the amount of collateral savings, and that amount shall not be subject to the Disputes clause or otherwise subject to litigation under 41 U.S.C. 601-613.

(k) Relationship to other incentives. Only those benefits of an accepted VECP not rewardable under performance, design-to-cost (production unit cost, operating and support costs, reliability and maintainability), or

I-135
similar incentives shall be rewarded under this clause. However, the
targets of such incentives affected by the VECP shall not be adjusted
because of VECP acceptance. If this contract specifies targets but
provides no incentive to surpass them, the value engineering sharing shall
apply only to the amount of achievement better than target.

(1) Subcontracts. The Contractor shall include an appropriate value
engineering clause in any subcontract of $100,000 or more and may include
one in subcontracts of lesser value. In calculating any adjustment in this
contract's price for instant contract savings (or negative instant contract
savings), the Contractor's allowable development and implementation costs
shall include any subcontractor's allowable development and implementation
costs, and any value engineering incentive payments to a subcontractor,
clearly resulting from a VECP accepted by the Government under this
contract. The Contractor may choose any arrangement for subcontractor
value engineering incentive payments; provided, that the payments shall not
reduce the Government's share of concurrent or future contract savings or
collateral savings.

(m) Data. The Contractor may restrict the Government's right to use any
part of a VECP or the supporting data by marking the following legend on
the affected parts:

*These data, furnished under the Value Engineering clause of contract
DACW45-93-C-0200, shall not be disclosed outside the Government or
duplicated, used, or disclosed, in whole or in part, for any purpose other
than to evaluate a value engineering change proposal submitted under the
clause. This restriction does not limit the Government's right to use
information contained in these data if it has been obtained or is otherwise
available from the Contractor or from another source without limitations.*

If a VECP is accepted, the Contractor hereby grants the Government
unlimited rights in the VECP and supporting data, except that, with respect
to data qualifying and submitted as limited rights technical data, the
Government shall have the rights specified in the contract modification
implementing the VECP and shall appropriately mark the data. (The terms
"unlimited rights" and "limited rights" are defined in Part 27 of the
Federal Acquisition Regulation.)

(End of clause)
in whole or, from time to time, in part, if—

(1) The Contracting Officer determines that a termination is in the Government's interest; or

(2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

(c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

1. Stop work as specified in the notice.
2. Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.
3. Terminate all subcontracts to the extent they relate to the work terminated.
4. Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
5. With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.
6. Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government (i) the fabricated or
unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (6) above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year.
or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) above, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.

(g) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (1) above.

(3) The reasonable costs of settlement of the work terminated, including--

   (i) Accounting, legal, clerical, and other expenses reasonable necessary for the preparation of termination settlement proposals and supporting data;
   (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
   (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.

(4) A portion of the fee payable under the contract, determined as follows:

   (1) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.
(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.

(5) If the settlement includes only fee, it will be determined under subparagraph (g) above.

(h) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(i) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e) or (g) above or paragraph (k) below, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (e) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (e), (g) or (k), the Government shall pay the Contractor (1) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

(j) In arriving at the amount due the Contractor under this clause, there shall be deducted--

1. All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;
2. Any claim which the Government has against the Contractor under this contract; and
3. The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.

(k) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.

(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the
Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(m) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

(End of clause)
of the Government under the termination clause of this contract.

(End of clause)

(R 7-203.11 1969 AUG)
(R 1-8.708)
(R 7-605.39)
(R 1-7.403-5)
(R 7-702.7)
(R 7-703.7)
(R 1-7.202-11)
(R 1-8.700-2(c))

1.92 52.252-4 ALTERATIONS IN CONTRACT (APR 1984)

Portions of this contract are altered as follows:
Part I, Sections B, C, E, F, G, and H; Part II, Section I; and Part III, Section J.

(End of clause)

(R 7-105.1(a) 1949 JUL)

1.93 52.252-5 AUTHORIZED DEVIATIONS IN PROVISIONS (APR 1984)

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the provision.

(b) The use in this solicitation of any Federal Acquisition Regulation (48 CFR Chapter 1) provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(End of provision)

(NM)

1.94 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.
(b) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(End of clause)

I.95 52.253-1 COMPUTER GENERATED FORMS (JAN 1991)

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

(End of clause)

I.96 252.203-7000 STATUTORY PROHIBITION ON COMPENSATION TO FORMER DEPARTMENT OF DEFENSE EMPLOYEES (NOV 1995)

(a) Definitions. As used in this clause--

(1) "Armed Forces" means the uniformed military services, excluding the U.S. Coast Guard.

(2) "Compensation" means any payment, gift, benefit, reward, favor, or gratuity which is provided directly or indirectly for services rendered by the person accepting such payment, gift, benefit, reward, favor, or gratuity, and which has a fair market value in excess of $250. Compensation is indirectly provided if it is paid to an entity other than
the individual, specifically in exchange for services performed by the individual.

(3) "Defense contractor" means an entity (including affiliates and subsidiaries which clearly engage in the performance of Department of Defense (DoD) contracts) that contracts directly with the DoD to supply goods or services. "Defense contractor" does not include a State or local government or any person who contracts to supply the Department of Defense only commercial items.

(4) "Designated agency ethics official" means a DoD officer or employee who has been appointed to administer the provisions of the Ethics in Government Act, as amended.

(5) "Former DoD employee" means a person who served in the DoD in a civilian position for which the rate of pay was equal to or greater than the minimum rate of pay for grade GS-13 of the General Schedule, or served in the Armed Forces in a pay grade of 04 or higher.

(6) "Former DoD official" means--

(i) A former DoD employee who spent the majority of working days during the last two years of DoD service performing a procurement function relating to:

(A) A DoD contract, at a site or plant that was owned or operated by the Contractor, and which was the principal location of such person's performance of that procurement function; or

(B) A major defense system and, in the performance of such function, participated on any occasion personally and substantially in a manner involving decision making responsibilities with respect to a contract for that system through contact with the Contractor;

(ii) An individual who served in a civilian position for which the rate of pay is equal to or greater than the minimum rate of pay for a Senior Executive Service position or other executive position at the same or higher level, and an individual who served in the Armed Forces in the pay grade of 07 or higher, if such individual during the last two years of DoD service--

(A) Acted as one of the primary Government representatives in the negotiation with a defense contractor of a DoD contractual action in an amount in excess of $10 million; or

(B) Acted as one of the primary Government representatives in the negotiation of a settlement of an unresolved claim of such a defense contractor in an amount in excess of $10 million. An unresolved claim shall be, for the purposes of this section, valued by the greater of the amount of the claim or the amount of the settlement.

(7) "Major defense contractor" means any business entity which, during
the Government fiscal year preceding the Government fiscal year in which compensation was first provided to a former DoD employee, was awarded DoD contracts in a total amount of $10 million or more.

(8) "Major defense system" means a combination of elements that will function together to produce the capability required to fulfill a mission need. Elements may include hardware, equipment, software, or any combination thereof, but exclude construction or other improvements to real property. A system shall be considered a major defense system if--

(i) The DoD is responsible for the system and the total expenditures (based on fiscal year 1980 constant dollars) for research, development, test and evaluation for the system, are estimated to exceed $75 million or the eventual total expenditure for procurement is estimated to exceed $300 million; or

(ii) The system is designated a major system by the head of the agency responsible for the system.

(9) "Negotiation" means exchanges of positions between representatives of the Government and a contractor with the view of reaching agreement regarding respective liabilities of the parties on a particular contract or claim. It includes deliberations regarding contract specifications, terms of delivery, allowability of costs, pricing of change orders, etc.

(10) "Primary Government representative" means, if more than one Government representative is involved in any particular transaction, the official or officials supervising the Government's effort in the matter. To act as a "representative" requires personal and substantial participation in the transaction, by personal presence, telephone conversation, or similar involvement with representatives of a Contractor.

(11) "Procurement-related function" (or "procurement function") means any function relating to--

(i) The negotiation, award, administration, or approval of a contract;

(ii) The selection of a Contractor;

(iii) The approval of a change in a contract;

(iv) The performance of quality assurance, operational and developmental testing, the approval of payment, or auditing under a contract; or

(v) The management of a procurement program.

(b) Prohibition on compensation. (1) 10 U.S.C. 2397b and 2397c prohibit a major defense Contractor from offering or providing any compensation valued in excess of $250 to a former DoD official who left DoD service on or after April 16, 1987, and who, while employed by DoD, performed
procurement-related functions in connection with that defense Contractor. This prohibition runs for the two year period beginning on the date of the official's separation from service in DoD.

(2) The Contractor, if a major defense Contractor, agrees not to provide, for the two year period, any compensation to the former DoD official.

(3) DoD employees may request from their Designated Agency Ethics Official (DAEO) a written opinion on the applicability of 10 U.S.C. 2397b prior to the acceptance of compensation. If the opinion of the DAEO is that the law is not applicable, and that the individual may accept compensation from the Contractor, there shall be a conclusive presumption that the offering and the acceptance of such compensation is not a violation of the statute.

(c) Report concerning former DoD employees. (1) The Contractor shall submit a separate written report, as described in paragraph (c)(2) of this clause, for each calendar year covered by this contract (extending through final payment) if the calendar year commenced after the end of a Government fiscal year in which the Contractor was awarded one or more DoD contracts aggregating $10 million or more. In multidivisional corporations, the corporate headquarters, and each segment which contracts directly with the Government, shall report separately. Each report shall list those persons employed or otherwise compensated, who are former DoD employees who left service on or after April 16, 1987, if--

(i) They were compensated by the Contractor during the reporting period; and

(ii) The compensation was provided within two years after the person left service in the DoD.

(2) The report shall contain:

(i) Each person's name and the agency in which the person was employed or served on active duty during the last two years of service with DoD;

(ii) Each person's job title(s) during the last two years of service with DoD, and a list of major defense systems on which each person performed any work;

(iii) A complete description (exclusive of proprietary information) of any work that each person is performing, or did perform, on behalf of the Contractor during the calendar year covered by the report. If the work is classified, the Contractor may use a generalized description which will not compromise its classified nature;

(iv) An identification of each major defense system on which each individual has performed any work on behalf of the Contractor.
(3) Submit each report not later than April 1 of the year following the end of the calendar year for which the report is being made. Send reports to the Office of the Assistant General Counsel (Legal Counsel), Standards of Conduct Office, ATTN: OAGC/LC, Pentagon, Washington, DC 20301-1600.

(4) A properly executed DD Form 1787 (Employment, Report of DoD and Defense Related) may be submitted to satisfy the reporting requirement as to any single person.

(5) The Contractor need not submit duplicate reports to the Government. Submission of a report meeting the requirements of this clause, under another, concurrent contract with DoD will satisfy the reporting requirement of this contract.

(d) Penalties for failure to comply--(1) Civil fines. A Contractor who knowingly offers or provides any compensation to a former DoD official in violation of the statute, and who knew or should have known that the acceptance of such compensation would be in violation of such statute, shall be subject to a civil fine, not to exceed $500,000.

(2) Liquidated damages.

(i) For each knowing violation of the statutory prohibition on providing compensation, the Contractor agrees to pay to the Government as liquidated damages the greater of either $100,000, or three times the total amount of compensation paid by the Contractor to the former DoD official during the period in which such compensation was in violation of the statutory prohibition.

(ii) Liability for liquidated damages under this clause survives final payment under this contract and may be recouped against payments due under other contracts with the Contractor.

(iii) Liquidated damages will be computed based upon the number of actual violations by the Contractor, and not on the number of contracts in which this clause appears.

(3) Administrative penalty. If the Contractor knowingly fails to file a report in accordance with paragraph (c) of this clause, the Contractor shall be subject to an administrative penalty not to exceed $10,000. The final determination of the penalty to be charged to the Contractor shall be made by the Secretary of Defense or designee after the Contractor is afforded an opportunity for an agency hearing on the record in accordance with agency hearing procedures. The Secretary's determination shall form a part of the record and shall be subject to judicial review under Chapter 7 of Title 5, United States Code.

(e) The rights and remedies under this clause are in addition to, and do not limit, any rights afforded the Government under this contract or as
I.97 252.203-7001  SPECIAL PROHIBITION ON EMPLOYMENT (NOV 1995)

(a) Definitions.
As used in this clause--

(1) "Arising out of a contract with the DoD" means any act in connection with--
   (i) Attempting to obtain,
   (ii) Obtaining, or
   (iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

(2) "Conviction of fraud or any other felony" means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of nolo contendere, for which sentence has been imposed.

(3) "Date of conviction" means the date judgment was entered against the individual.

(b) 10 U.S.C. 2408 provides that any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from:

   (1) Working in a management or supervisory capacity on any DoD contract or first-tier subcontract;

   (2) Serving on the board of directors of any DoD Contractor or first-tier subcontractor;

   (3) Serving as a consultant to any DoD Contractor or first-tier subcontractor.

(c) Unless waived, the prohibition in paragraph (b) applies for five years from the date of conviction.

(d) 10 U.S.C. 2408 further provides that a defense Contractor or first-tier subcontractor shall be subject to a criminal penalty of not more than $500,000 if convicted of knowingly--

   (1) Employing a person under a prohibition specified in paragraph (b) of this clause; or

   (2) Allowing such a person to serve on the board of directors of the Contractor or first-tier subcontractor.

(e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as--
(1) Suspension or debarment;
(2) Cancellation of the contract at no cost to the Government; or
(3) Termination of the contract for default.

(f) The Contractor may submit written requests for waiver of the prohibitions in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify—
(1) The person involved;
(2) The nature of the conviction and resultant sentence or punishment imposed;
(3) The reasons for the requested waiver; and,
(4) An explanation of why a waiver is in the interest of national security.

(g) The Contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in Part 13 of the Federal Acquisition Regulation, except those for commercial items or components.

(h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial of Benefits Office, U.S. Department of Justice, telephone (202) 307-1065.

(End of clause)

I.96 252.203-7002 DISPLAY OF DOD HOTLINE POSTER (DEC 1991)

(a) The Contractor shall display prominently in common work areas within business segments performing work under Department of Defense (DoD) contracts, DoD Hotline Posters prepared by the DoD Office of the Inspector General.

(b) DoD Hotline Posters may be obtained from the DoD Inspector General, ATTN: Defense Hotline, 400 Army Navy Drive, Washington, DC 22202-2884.

(c) The Contractor need not comply with paragraph (a) of this clause if it has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(End of clause)
The Contractor's procedures for protecting against unauthorized disclosure of information shall not require Department of Defense employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to the Contractor.

(End of clause)

(a) Definition.
"Cooperative agreement holder" means a State or local government; a private, nonprofit organization; a tribal organization (as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-268; 25 U.S.C. 460(c))); or an economic enterprise (as defined in section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93-362; 25 U.S.C. 1452(e))) whether such economic enterprise is organized for profit or nonprofit purposes; which has an agreement with the Defense Logistics Agency to furnish procurement technical assistance to business entities.

(b) The Contractor shall provide cooperative agreement holders, upon their request, with a list of those appropriate employees or offices responsible for entering into subcontracts under defense contracts. The list shall include the business address, telephone number, and area of responsibility of each employee or office.

(c) The Contractor need not provide the listing to a particular cooperative agreement holder more frequently than once a year.

(End of clause)

The term "pricing adjustment," as used in paragraph (a) of the clauses entitled "Price Reduction for Defective Cost or Pricing Data--Modifications," "Subcontractor Cost or Pricing Data," and "Subcontractor Cost or Pricing Data--Modifications," means the aggregate increases and/or decreases in cost plus applicable profits.

(End of clause)
(a) Definitions.

"Historically black colleges and universities," as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

"Minority institutions," as used in this clause, means institutions meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)). The term also include Hispanic-serving institutions as defined in Section 316(b)(1) of such Act (20 U.S.C. 1089c (b)(1)).

"Small disadvantaged business concern," as used in this clause, means a small business concern, owned and controlled by individuals who are both socially and economically disadvantaged, as defined by the Small Business Administration at 13 CFR Part 124, the majority of earnings of which directly accrue to such individuals. This term also means a small business concern owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian organization which meets the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively.

"United States," as used in this clause, means the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

(b) General. Offers are solicited only from small disadvantaged business concerns. Offers received from concerns that are not small disadvantaged businesses are nonresponsive and will be rejected.

(c) Agreement. A small disadvantaged business manufacturer or regular dealer, submitting an offer in its own name, agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States, except, as provided in Section 8051 of Pub. L. 103-139 and Section 8112 of Pub. L. 103-335, for contracts awarded during fiscal years 1994 and 1995, a small disadvantaged business manufacturer or regular dealer owned by an Indian tribe, including an Alaska Native Corporation, agrees to furnish only end items manufactured or produced by small business concerns in the United States.

(End of clause)
This clause supplements the Federal Acquisition Regulation 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, clause of this contract.

(a) Definitions.

"Historically black colleges and universities," as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

"Minority institutions," as used in this clause, means institutions meeting the requirements of section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)). The term also includes Hispanic-serving institutions as defined in section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

(b) Except for company or division-wide commercial items subcontracting plans, the term "small disadvantaged business," when used in the FAR 52.219-9 clause, includes historically black colleges and universities and minority institutions, in addition to small disadvantaged business concerns.

(c) Work under the contract or its subcontracts shall be credited toward meeting the small disadvantaged business concern goal required by paragraph (d) of the FAR 52.219-9 clause when:

   (1) It is performed on Indian lands or in joint venture with an Indian tribe or a tribally-owned corporation, and
   (2) It meets the requirements of 10 U.S.C. 2323a.

(d) Subcontracts awarded to workshops approved by the Committee for Purchase from People Who are Blind or Severely Disabled (41 U.S.C. 46-48), may be counted toward the Contractor's small business subcontracting goal.

(e) A mentor firm, under the Pilot Mentor-Protege Program established under Section 831 of Pub. L. 101-510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded--

   (1) Protege firms which are qualified organizations employing the severely handicapped; and
   (2) Former protege firms that meet the criteria in Section 831(g)(4) of Pub. L. 101-510.
(f) The master plan approval referred to in paragraph (f) of the FAR 52.219-9 clause is approval by the Contractor's cognizant contract administration activity.

(g) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(End of clause)
treatment with maximum respect for individual confidentiality consistent with safety and security issues;

(4) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis. Employee drug testing programs shall be established taking account of the following:

(i) The Contractor shall establish a program that provides for testing for the use of illegal drugs by employees in sensitive positions. The extent of and criteria for such testing shall be determined by the Contractor based on considerations that include the nature of the work being performed under the contract, the employee's duties, the efficient use of Contractor resources, and the risks to health, safety, or national security that could result from the failure of an employee adequately to discharge his or her position.

(ii) In addition, the Contractor may establish a program for employee drug testing--

(A) When there is a reasonable suspicion that an employee uses illegal drugs; or

(B) When an employee has been involved in an accident or unsafe practice;

(C) As part of or as a follow-up to counseling or rehabilitation for illegal drug use;

(D) As part of a voluntary employee drug testing program.

(iii) The Contractor may establish a program to test applicants for employment for illegal drug use.

(iv) For the purpose of administering this clause, testing for illegal drugs may be limited to those substances for which testing is prescribed by section 2.1 of Subpart B of the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (53 FR 11980 (April 11 1988)), issued by the Department of Health and Human Services.

(d) Contractors shall adopt appropriate personnel procedures to deal with employees who are found to be using drugs illegally. Contractors shall not allow any employee to remain on duty or perform in a sensitive position who is found to use illegal drugs until such time as the Contractor, in accordance with procedures established by the Contractor, determines that the employee may perform in such a position.

(e) The provisions of this clause pertaining to drug testing programs shall not apply to the extent they are inconsistent with state or local law, or with an existing collective bargaining agreement; provided that with respect to the latter, the Contractor agrees that those issues that are in conflict will be a subject of negotiation at the next collective bargaining session.
(End of clause)

I.105  252.223-7006  PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS (APR 1993)

(a) Definitions. As used in this clause--
   (1) "Storage" means a non-transitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include a temporary accumulation of a limited quantity of a material used in or a waste generated or resulting from authorized activities, such as servicing, maintenance, or repair of Department of Defense (DoD) items, equipment, or facilities.
   (2) "Toxic or hazardous materials" means:
      (ii) Materials that are of an explosive, flammable, or pyrotechnic nature; or
      (iii) Materials otherwise identified by the Secretary of Defense as specified in DoD regulations.

(b) In accordance with 10 U.S.C. 2692, the Contractor is prohibited from storing or disposing of non-DoD-owned toxic or hazardous materials on a DoD installation, except to the extent authorized by a statutory exception to 10 U.S.C. 2692 or as authorized by the Secretary of Defense or his designee.

(End of clause)

I.106  252.225-7012  PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (NOV 1995)

(a) The Contractor agrees to deliver under this contract only such of the following articles that have been grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico--
   (1) Food;
   (2) Clothing;
   (3) Tents, tarpaulins, or covers;
   (4) Cotton and other natural fiber products;