SPECIFICATION S-00-002

GENERAL PROVISIONS

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**Donated By:
Herbert Rogers Jr.
Rogers Engineering Co.**

FOR

HGP-A WELLHEAD GENERATOR
PROOF-OF-FEASIBILITY PROJECT

Prepared by

ROGERS ENGINEERING CO., INC.
SAN FRANCISCO, CALIFORNIA

0 11/27/78 Released for Purchasing
No. Date Description

APPROVED FOR PURCHASING
11-27-78 11-16-78
Ck R.App C.App

ROGERS ENGINEERING CO., INC.
111 PINE STREET
SAN FRANCISCO, CALIF. 94111

HGP-A Hawaii
3 MW Geothermal Power Plant

SPECIFICATION	REV.
S-00-002	0

JOB NO. S-78020-00

Client RCJH

Date 11/27/78

SHEET 1 OF 5

DISCLAIMER

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GENERAL PROVISIONS

SPECIFICATION No. S-00-002

Reference: U.S. Department of Energy General Provisions
DOE/SAN Cost-Type Contracts with Commercial Organizations
Dated March, 1978

The following clauses only from the referenced DOE document apply to
this Purchase Order under the conditions noted.

A. Applies to all Purchase Orders regardless of price

Clause	Title
5	Inspection
12	Buy American Act
13	Convict Labor
15	Contract Work Hours and Safety Standards Act - Overtime Compensation
16	Equal Opportunity
17	Officials Not to Benefit
18	Covenant Against Contingent Fees
20	Patent Rights
25	Audit
34	Renegotiation
35	Authorization and Consent
36	Additional Technical Data Requirements

ROGERS ENGINEERING CO., INC.
111 PINE STREET
SAN FRANCISCO, CALIF. 94111

JOB NO. S-78020-00

HGP-A Hawaii
3 MW Geothermal Power Plant

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- 37 Rights in Technical Data
- 51 Preference for U.S. Flag Air Carriers

B. If this Purchase Order is for \$2,500 up to \$10,000, the following clause applies in addition to those listed in A. above.

- 31 Employment of the Handicapped

C. If this Purchase Order is for an amount exceeding \$10,000 to and including \$100,000, the following clauses apply in addition to the clauses listed in A. and B. above.

- 7 Examination of Records by the Comptroller General
- 14 Walsh-Healey Public Contracts Act
- 19 Notice and Assistance Regarding Patent and Copyright
- 29 Disabled Veterans and Veterans of the Vietnam Era
- 38 Reporting of Royalties

D. If this Purchase Order is for an amount exceeding \$100,000 to and including \$500,000, the following clauses apply in addition to the clauses listed in A., B. and C. above.

- 27 Subcontractor Cost or Pricing Data
- 32 Clean Air and Water
- 46 Cost Accounting Standards
- 47 Administration of Cost Accounting Standards

ROGERS ENGINEERING CO., INC. 111 PINE STREET SAN FRANCISCO, CALIF. 94111 JOB NO. S-78020-00 GS-COB	HGP-A Hawaii 3 MW Geothermal Power Plant	SPECIFICATION	REV.
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E. If this Purchase Order is for an amount in excess of \$500,000, the following clauses apply in addition to those listed in A., B., C. and D. above.

- 48 Small Business Subcontracting Program
- 49 Labor Surplus Area Subcontracting Program
- 50 Minority Business Enterprises Subcontracting Program

In relation to the above clauses, the term "subcontractor" is substituted for the term "contractor" and the term "contractor" is substituted for the term "government", "Contracting Officer" and "ERDA" (or DOE as appropriate), (1) except that only the term "subcontractor" shall be substituted for the term "contractor" in the clauses entitled "Inspection", "Examination of Records by Comptroller General", "Covenant Against Contingent Fees", "Audit", "Subcontractor Cost or Pricing Data", "Cost Accounting Standards" with paragraph (b) deleted, "Small Business Subcontracting Program", "Labor Surplus Area Subcontracting Program", "Minority Business Enterprises Subcontracting Program", "Notice and Assistance Regarding Patent and Copyright Infringement", "Rights in Technical Data", "Patent Rights", "Preference for U.S. Flag Air Carriers", and "Administration of Cost Accounting Standards"; (2) except for the clause entitled "Contract Work Hours and Safety Standards Act - Overtime Compensation" with paragraph (e) deleted; and (3) except where the term "contractor" and "subcontractor" are used in a clause wherein the normal relationship between the parties denoted by those terms is stated or implied.

ROGERS ENGINEERING CO., INC.
111 PINE STREET
SAN FRANCISCO, CALIF. 94111

JOB NO. S-78020-00

HGP-A Hawaii
3 MW Geothermal Power Plant

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All references to the Contracting Officer shall refer to the Contracting Officer for the Department of Energy prime contract under which this subcontract is issued and all references to the Secretary means the Secretary of the Department of Energy. All references to the Disputes clause are hereby deleted and this provision does not give the subcontractor any right of direct appeal to the Contracting Officer or the Government.

ROGERS ENGINEERING CO., INC.
111 PINE STREET
SAN FRANCISCO, CALIF. 94111

JOB NO. S-78020-00

GS-C08

HGP-A Hawaii
3 MW Geothermal Power Plant

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GENERAL PROVISIONS
DOE/SAN COST-TYPE CONTRACTS
WITH COMMERCIAL ORGANIZATIONS
DATED MARCH, 1978

SAN FRANCISCO OPERATIONS OFFICE

GENERAL PROVISIONS

<u>Clause</u>		<u>Procurement* Regulation References</u>	<u>Page</u>
1	DEFINITIONS	9-7.402-1 1-7.102-1 9-7.102-1	1
2	LIMITATION OF COST	9-7.402 1-7.202-3	1
3	ALLOWABLE COST, FIXED-FEE AND PAYMENT	9-7.402-1 1-7.402-3 9-7.402-3	2
4	STANDARDS OF WORK	9-7.402 1-7.402-4 1-7.302-3	4
5	INSPECTION	9-7.402 1-7.402-5(c)	4
6	ASSIGNMENT OF CLAIMS	9-7.402 1-7.402-6 1-30.703	4
7	EXAMINATION OF RECORDS BY THE COMPTROLLER GENERAL	9-7.402-7 1-7.103-3 9-7.103-3	4
8	SUBCONTRACTS	9-7.402-8 1-7.402-8 9-7.103-28	5
9	UTILIZATION OF SMALL BUSINESS CONCERNS	9-7.402 1-7.402-9 1-1.710-3(a)	6
10	TERMINATION FOR DEFAULT OR FOR CONVENIENCE OF THE GOVERNMENT	9-7.402-10 1-8.702 9-7.102-19	6
11	DISPUTES	9-7.402 1-7.102-12	10
12	BUY AMERICAN ACT	9-7.402 1-7.402-13 1-6.104-5	10

*In the event of an inconsistency between the text of the reference cited below and the language of this contract, the language of this contract will govern.

GENERAL PROVISIONS

<u>Clause</u>		<u>Procurement Regulation References</u>	<u>Page</u>
13	CONVICT LABOR	9-7.402 1-7.402-14 1-12.204	11
14	WALSH-HEALEY PUBLIC CONTRACTS ACT	9-7.402 1-7.402-15 1-12.605	11
15	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION	1-7.402-16 1-12.303	11
16	EQUAL OPPORTUNITY	9-7.402 1-7.402-17 1-12.803-2	12
17	OFFICIALS NOT TO BENEFIT	9-7.402 1-7.402-18 1-7.102-17	13
18	COVENANT AGAINST CONTINGENT FEES	9-7.402 1-7.402-19 1-1.503	13
19	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT	9-7.402-21 9-9.104	13
20	PATENT RIGHTS	9-7.402-22 9-7.402-53 9-9.107-5(a)	13
21	GOVERNMENT PROPERTY	9-7.402 1-7.402-25 1-7.203-21(a)	21
22	UTILIZATION OF LABOR SURPLUS AREA CONCERNS	9-7.402 1-7.402-27 1-1.805-3	25
23	PAYMENT FOR OVERTIME PREMIUMS	9-7.402 1-7.402-28 1-7.202-29	25
24	COMPETITION IN SUBCONTRACTING	9-7.402 1-7.402-29 1-7.202-30	26

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<u>Clause</u>		<u>Procurement Regulation References</u>	<u>Page</u>
25	AUDIT	9-7.402 1-7.402-30 1-3.814-2	26
26	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA	9-7.402 1-7.402-31 1-3.814-1	27
27	SUBCONTRACTOR COST OR PRICING DATA	9-7.402 1-7.402-32 1-3.814-3	27
28	UTILIZATION OF MINORITY BUSINESS ENTERPRISES	9-7.402 1-7.402-33 1-1.1310-2	28
29	DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA	9-7.402 1-7.402-34 1-12.1102-2	28
30	PAYMENT OF INTEREST ON CONTRACTORS' CLAIMS	9-7.402 1-7.402-35 1-1.322(b)	30
31	EMPLOYMENT OF THE HANDICAPPED	9-7.402 1-7.402-36 1-12.1304-1	31
32	CLEAN AIR AND WATER	9-7.402 1-1.2302	31
33	ORDER OF PRECEDENCE	9-7.402-50 9-7.102-50	32
34	RENEGOTIATION	9-7.402-51 9-7.102-51	32
35	AUTHORIZATION AND CONSENT	9-7.402-52 9-9.102-2	32
36	ADDITIONAL TECHNICAL DATA REQUIREMENTS	9-7.402-54 9-9.202-3(c)	33
37	RIGHTS IN TECHNICAL DATA	9-7.402.55 9-9.202-3(e)(2)	33
38	REPORTING OF ROYALTIES	9-7.402-56 9-9.110	36

GENERAL PROVISIONS

<u>Clause</u>		<u>Procurement Regulation References</u>	<u>Page</u>
39	RIGHTS TO PROPOSAL DATA	9-3.150-2(c)	36
40	PRINTING	9-7.402-57 9-7.302-57	36
41	FEDERAL REPORTS ACT	9-7.402-58 9-7.302-58	36
42	STOP WORK ORDER	9-7.402-59	37
43	FOREIGN TRAVEL	9-7.402-60	37
44	NEGOTIATED OVERHEAD RATES	9-7.403-9 1-3.704-1	37
45	EXCUSABLE DELAYS	9-7.000 1-7.403-5 1-8.708	38
46	COST ACCOUNTING STANDARDS	9-7.000 1-7.403-50 1-3.1204	38
47	ADMINISTRATION OF COST ACCOUNTING STANDARDS	9-7.000 1-7.403-50 1-3.1204	40
48	SMALL BUSINESS SUBCONTRACTING PROGRAM	9-7.000 1-7.403-53 1-1.710-3(b)	41
49	LABOR SURPLUS AREA SUBCONTRACTING PROGRAM	1-7.403-54 1-1.805.3(b)	42
50	MINORITY BUSINESS ENTERPRISES - SUBCONTRACTING PROGRAM	1-7.403-55 1-1.1310-2	43
51	PREFERENCE FOR U. S. FLAG AIR CARRIERS	9-7.000 1-7.403-58 1-1.323-2	44
52	CHANGES	9-7.000 1-7.404-5	44
53	PERMITS	9-7.404-51 9-7.104-51	45
54	INSURANCE	9-7.404-9 1-7.204-5 9-7.204-5	45

CLAUSE 1 DEFINITIONS

As used throughout this contract, the following terms shall have the meanings set forth below:

- (a) The term "head of the agency" or "Secretary" as used herein means the Secretary, the Under Secretary, any Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the head of the agency or the Secretary.
- (b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.
- (c) Except as otherwise provided in this contract, the term "subcontracts" includes purchase orders under this contract.
- (d) The term "DOE" means the U. S. Department of Energy.
- (e) The term "DOEPR" means "ERDAPR."

CLAUSE 2 LIMITATION OF COST

- (a) It is estimated that the total cost to the Government for the performance of this contract, exclusive of any fixed fee, will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost. If, at any time, the Contractor has reason to believe that the costs which he expects to incur in the performance of this contract in the next succeeding 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost then set forth in the Schedule, or if, at any time, the Contractor has reason to believe that the total cost to the Government for the performance of this contract, exclusive of any fee, will be greater or substantially less than the then estimated cost hereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving the revised estimate of such total cost for the performance of this contract.

- (b) Except as required by other provisions of this contract specifically citing and stated to be an exception from this clause, the Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue performance under the contract (including actions under the Termination clause) or otherwise to incur costs in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. No notice, communication, or representation in any other form or from any person other than the Contracting Officer shall affect the estimated cost of this contract. In the absence of the specified notice, the Government shall not be obligated to reimburse the Contractor for any costs in excess of the estimated cost set forth in the Schedule, whether those excess costs were incurred during the course of the contract or as a result of termination. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of the estimated cost prior to such increase shall be allowable to the same extent as if such costs had been incurred after the increase; unless the Contracting Officer issues a termination or other notice and directs that the increase is solely for the purpose of covering termination or other specified expenses.
- (c) Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the estimated cost set forth in the Schedule in the absence of a statement in the change order, or other contract modification, increasing the estimated cost.
- (d) In the event that this contract is terminated or the estimated cost 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.

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CLAUSE 3 ALLOWABLE COST, FIXED FEE AND PAYMENT

(a) For the performance of this contract, the Government shall pay to the Contractor:

(1) The cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with:

(1) Subpart 1-15.2 of the Federal Procurement Regulations (41 CFR 1-15.2) as supplemented or modified by DOEPR 9-15.2 (41 CFR 9-15.2), as in effect on the date of this contract; and

(ii) The terms of this contract; and

(2) Such fixed fee, if any, as may be provided for in the Schedule.

(b) Payments shall be made to the Contractor when requested as work progresses, but not more frequently than bi-weekly in amounts approved by the Contracting Officer. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost for the performance of this contract and claimed to constitute allowable cost. For this purpose, except as provided herein with respect to pension contributions, the term "costs" shall include only those recorded costs which result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract, together with (when the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business) costs incurred, but not necessarily paid, for materials which have been issued from the Contractor's stores inventory and placed in the production process for use on the contract, for direct labor, for direct travel, for other direct inhouse costs, and for properly allocable and allowable indirect costs, as is shown by records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts plus the amount of progress payments which have been paid to the Contractor's subcontractors under similar cost standards. In addition, when pension contributions are paid by the Contractor to the retirement fund less frequently than quarterly, accrued costs therefor shall be excluded from indirect

costs for payment purposes until such costs are paid. If pension contributions are paid on a quarterly or more frequent basis, accruals therefor may be included in indirect costs for payment purposes provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from indirect cost for payment purposes until payment has been made. The restriction on payment more frequently than bi-weekly and the requirement of prior payment for items or services purchased directly for the contract shall not apply when the Contractor is a small business concern.

(c) Promptly after receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract subject to the provisions of (d), below, make payment thereon as approved by the Contracting Officer. Payment of the fixed fee, if any, shall be made to the Contractor as specified in the Schedule: Provided, however, That after payment of 85 percent of the fixed fee set forth in the Schedule, the Contracting Officer may withhold further payment of fee until a reserve shall have been set aside in an amount which he considers necessary to protect the interests of the Government, but such reserve shall not exceed 15 percent of the total fixed fee, or \$100,000, whichever is less.

(d) At any time or times prior to final payment under this contract the Contracting Officer may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(e) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including, without limitation, the provisions relating to patents and the provisions of (f), below), the Government shall promptly pay to the Contractor any balance of allowable cost, and any part of the fixed fee, which has been withheld pursuant to (c), above, or otherwise not

paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than 1 year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

- (f) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this Contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this Contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

- (1) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and
- (2) A release discharging the Government, its officers, agents and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:
 - (i) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;
 - (ii) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract: Provided, however, That such claims are not known to the Contractor on the date of the execution of the release; and provided further,

that the Contractor gives notice of such claims in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

- (iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.
- (g) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at his expense or without cost to the Government.
- (h) Financial Plans; Cost Limitations. In addition to the limitations provided for elsewhere in this contract, DOE may, through Financial Plan or other directives issued to the Contractor, establish controls on the costs to be incurred in the performance of the contract work. Such plans and instructions may be amended or supplemented from time to time by DOE. All such plans and instructions shall be compatible with the performance and work requirements stipulated under this contract or as such performance and work requirements may be changed by modification thereto. The Contractor hereby agrees to comply with the specific limitations (absolute ceilings) on costs set forth in such plans and directives, to use its best efforts to comply with the other requirements of such plans and directives, and to promptly notify DOE in writing whenever it has reason to believe the authorized financial levels of costs will be exceeded or substantially underrun.

CLAUSE 4 STANDARDS OF WORK

The Contractor agrees that the performance of work and services pursuant to the requirements of this contract shall conform to high professional standards.

CLAUSE 5 INSPECTION

The Government, through any authorized representatives, has the right at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection, or evaluation is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require his subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

CLAUSE 6 ASSIGNMENT OF CLAIMS

- (a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating \$1,000 or more, claims for moneys due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payments to assignee of any moneys due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or setoff. (The preceding sentence applies only if this contract is made in time of war or national emergency as defined in said Act and is with the Department of Defense, the General Services Administration, the Department of Energy, the National Aeronautics and Space Administration, the Federal Aviation Agency, or any other department or agency of the United States designated by the President pursuant to Clause 4 of the proviso of section 1 of the Assignment of

Claims Act of 1940, as amended by the Act of May 15, 1951, 65 Stat. 41.)

- (b) In no event shall copies of this contract or any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

CLAUSE 7 EXAMINATION OF RECORDS BY COMPTROLLER GENERAL

- (a) This clause is applicable if the amount of this contract exceeds \$10,000 and was entered into by means of negotiation, including small business restricted advertising, but is not applicable if this contract was entered into by means of formal advertising.
- (b) The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under this contract, unless DOE authorizes their prior disposition, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.
- (c) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, unless DOE authorizes their prior disposition, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding \$10,000 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.
- (d) The periods of access and examination described in (b) and (c), above, for

records which relate to (1) appeals under the "Disputes" clause of this contract, (2) litigation or the settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

CLAUSE 8 SUBCONTRACTS

- (a) The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract which (1) is cost-reimbursement type, time and materials, or labor-hour, or (2) is fixed-price type and exceeds in dollar amount either \$25,000 or 5 percent of the total estimated cost of this contract, or (3) provides for the fabrication, purchase, rental, installation or other acquisition of special test equipment having a value in excess of \$1,000 or of any items of industrial facilities, or (4) has experimental, developmental, or research work as one of its purposes.
- (b) In the case of a proposed subcontract which is (1) cost-reimbursement type, time and materials, or labor-hour which would involve an estimated amount in excess of \$10,000, including any fee, (2) is proposed to exceed \$100,000, or (3) is one of a number of subcontracts under this contract with a single subcontractor for the same or related supplies or services which, in the aggregate are expected to exceed \$100,000, the advance notification required by (a), above, shall include:
- (1) A description of the supplies or services to be called for by the subcontract;
 - (2) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained;
 - (3) The proposed subcontract price, together with the Contractor's cost or price analysis thereof;
 - (4) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current cost or Pricing Data when such data and certificate are required by other provisions of

this contract to be obtained from the subcontractor;

- (5) Identification of the type of subcontract to be used and a copy of the proposed subcontract if it either exceeds \$100,000 or is otherwise required by the Contracting Officer;
- (6) A memorandum of negotiation which sets forth the principal elements of the subcontract price negotiations. A copy of this memorandum shall be retained in the Contractor's file for the use of Government reviewing authorities. The memorandum shall be in sufficient detail to reflect the most significant considerations controlling the establishment of initial or revised prices. The memorandum should include an explanation of why cost or pricing data was, or was not required, and, if it was not required in the case of any price negotiation in excess of \$100,000, a statement of the basis for determining that the price resulted from or was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. If cost or pricing data was submitted and a certificate of cost or pricing data was required, the memorandum shall reflect the extent to which reliance was not placed upon the factual cost or pricing data submitted and the extent to which this data was not used by the Contractor in determining the total price objective and in negotiating the final price. The memorandum shall also reflect the extent to which it was recognized in the negotiation that any cost or pricing data submitted by the subcontractor was not accurate, complete, or current; the action taken by the Contractor and the subcontractor as a result; and the effect, if any, of such defective data on the total price negotiated. Where the total price negotiated differs significantly from the Contractor's total price objective, the memorandum shall explain this difference;
- (7) When incentives are used, the memorandum of negotiation shall contain an explanation of the incentive fee/profit plan identifying each critical performance element, management

decisions used to quantify each incentive element, reasons for incentives on particular performance characteristics, and a brief summary of trade-off possibilities considered as to cost, performance, and time; and

- (8) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract to be obtained from the subcontractor.
- (c) The Contractor shall obtain the written consent of the Contracting Officer prior to placing any subcontract for which advance notification is required under (a) above. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (c).
- (d) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.
- (e) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost.
- (f) The Contractor shall give the Contracting Officer immediate notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any subcontractor or vendor which 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.
- (g) Notwithstanding (c) above, the Contractor may enter into subcontracts within (1) or (2) of (a) above, without the consent of the Contracting Officer, if the Contracting Officer has approved in writing the Contractor's procurement system and the subcontract is within the scope of such approval. (This subparagraph (g) however,

shall not be applicable to those subcontracts subject to subparagraph (i) below, if any.)

- (h) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to provide progress payments on the fixed-price types of subcontracts of those subcontractors which are small business concerns, in conformity with the standards for customary progress payments stated in the Federal Procurement Regulations, Subpart 1-30.5, as in effect on the date of this contract. The Contractor further agrees that the need for such progress payments will not be considered as a handicap or adverse factor in the award of subcontracts.
- (i) Notwithstanding approval of the procurement system, the Contractor shall not enter into certain subcontracts or classes of subcontracts set forth elsewhere in this contract without the prior written consent of the Contracting Officer.

CLAUSE 9 UTILIZATION OF SMALL BUSINESS CONCERNS

- (a) It is the policy of the Government as declared by the Congress that a fair proportion of the purchases and contracts for supplies and services for the Government be placed with small business concerns.
- (b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

CLAUSE 10 TERMINATION FOR DEFAULT OR FOR CONVENIENCE OF THE GOVERNMENT

- (a) The performance of work under the contract may be terminated by the Government in accordance with this Clause in whole, or from time to time in part:
- (1) Whenever the Contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten days (or such longer period as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default; or

- (2) Whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government.

Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this contract for default under (1) above, it is determined for any reason that the Contractor was not in default pursuant to (1), 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 pursuant to the provisions of the Clause of this contract relating to excusable delays, the Notice of Termination shall be deemed to have been issued under (2) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

- (b) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall:

- (1) Stop work under the contract on the date and to the extent specified in the Notice of Termination;
- (2) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;
- (3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (4) Assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

- (5) With approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this Clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this contract;

- (6) Transfer title to the Government (to the extent that title has not already been transferred) and deliver in the manner, at the times, and to the extent directed by the Contracting Officer, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination; (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Government; and (iii) the jigs, dies, and fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the Contractor has been or will be reimbursed under this contract;

- (7) Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (6) above: Provided, however, that the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer: And provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

- (8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and
- (9) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of the fee, or any item of reimbursable cost, under this Clause. At any time after expiration of the plant clearance period, as defined in Subpart 1-8.1 of the Federal Procurement Regulations (41 CFR 1-8.1), as the definition may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept such items and remove them or enter into a storage agreement covering the same: Provided, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items or, if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

- (c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such one-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time

after such one-year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

- (d) Subject to the provisions of paragraph (c), and subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid (including an allowance for the fee) to the Contractor by reason of the total or partial termination of work pursuant to this Clause. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

- (e) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (d), as to the amounts with respect to costs and fee, or as to the amount of the fee, to be paid to the Contractor in connection with the termination of work pursuant to this Clause, the Contracting Officer shall, subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amount determined as follows:

- (1) If the settlement includes cost and fee --

- (1) There shall be included therein all costs and expenses reimbursable in accordance with this contract, not previously paid to the Contractor for the performance of this contract prior to the effective date of the Notice of Termination, and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by the Contracting Officer: Provided, however, that the Contractor shall proceed as rapidly

as practicable to discontinue such costs;

- (ii) There shall be included therein so far as not included under (i) above, the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(5) above, which are properly chargeable to the terminated portion of the contract;
- (iii) There shall be included therein the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory: Provided, however, that if the termination is for default of the Contractor there shall not be included any amounts for the preparation of the Contractor's settlement proposal; and
- (iv) There shall be included therein a portion of the fee payable under the contract determined as follows:
 - (A) In the event of the termination of this contract for the convenience of the Government and not for the default of the Contractor, there shall be paid a percentage of the fee equivalent to the percentage of the completion of work contemplated by the contract, but exclusive of subcontract effort included in subcontractor's termination claims, less fee payments previously made hereunder; or
 - (B) In the event of the termination of this contract for the default of the

Contractor, the total fee payable shall be such proportionate part of the fee (or, if this contract calls for articles of different types, of such part of the fee as is reasonably allocable to the type of article under consideration) as the total number of articles delivered to and accepted by the Government bears to the total number of articles of a like kind called for by this contract.

If the amount determined under this subparagraph (1) is less than the total payment theretofore made to the Contractor, the Contractor shall repay to the Government the excess amount.

- (2) If the settlement includes only the fee, the amount thereof will be determined in accordance with subparagraph (1)(iv) above.
- (f) Costs claimed, agreed to, or determined pursuant to paragraphs (c), (d), and (e) of this clause shall be in accordance with the contract cost principles and procedures in Subpart 1-15 of the Federal Procurement Regulations (41 CFR 1-15.2) as supplemented or modified by DOEPR Part 9-15.2 (41 CFR 9-15.2) in effect on the date of the contract.
- (g) The Contractor shall have the right of appeal, under the Clause of this contract entitled "Disputes," from any determination made by the Contracting Officer under paragraph (c) or (e) above, except that, if the Contractor has failed to submit his claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (1) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (2) if an appeal has been taken, the amount finally determined on such appeal.
- (h) In arriving at the amount due the Contractor under this Clause there shall be deducted (1) all unliquidated advance or other payments theretofore made to the

Contractor, applicable to the terminated portion of this contract, (2) any claim which the Government may have against the Contractor in connection with this contract, and (3) the agreed price for, or the proceeds of sale, of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this Clause and not otherwise recovered by or credited to the Government.

- (i) In the event of a partial termination, the portion of the fee which is payable with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the Contractor and the Contracting Officer, and such adjustment shall be evidenced by an amendment to this contract.
- (j) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this Clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury pursuant to Pub. L. 92-41 (50 U.S.C. App. 1215(b)(2)) for the Renegotiation Board, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: Provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.
- (k) The provisions of this Clause relating to the fee shall be inapplicable if this contract does not provide for payment of a fee.

CLAUSE 11 DISPUTES

- (a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be

decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this Article, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

- (b) This "Disputes" Article does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: Provided, that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

CLAUSE 12 BUY AMERICAN ACT

- (a) In acquiring end products, the Buy American Act (41 U.S. Code 10a-d) provides that the Government give preference to domestic source end products. For the purpose of this Clause:
 - (i) "Components" means those articles, materials, and supplies which are directly incorporated in the end products;
 - (ii) "End products" means those articles, materials, and supplies which are to be acquired under this contract for public use; and
 - (iii) A "domestic source end product" means (A) an unmanufactured end product which has been mined or produced in the United States and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or

manufactured in the United States exceeds 50 percent of the cost of all its components. For the purposes of this (a)(iii)(B) components of foreign origin of the same type or kind as the products referred to in (b)(ii) or (iii) of this Article shall be treated as components mined, produced, or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:

- (i) Which are for use outside the United States;
- (ii) Which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;
- (iii) As to which the Secretary determines the domestic preference to be inconsistent with the public interest; or
- (iv) As to which the Secretary determines the cost to the Government to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954.)

CLAUSE 13 CONVICT LABOR

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082(c) (2)) and Executive Order 11755, December 29, 1973.

CLAUSE 14 WALSH-HEALEY PUBLIC CONTRACTS ACT

If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S. Code 35-45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

CLAUSE 15 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, apprentices, trainees, watchmen, and guards shall require or permit any laborer, mechanic, apprentice, trainee, watchman, or guard in any workweek in which he is employed on such work to work in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer, mechanic, apprentice, trainee, watchman, or guard receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek, whichever is the greater number of overtime hours.

(b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions of paragraph (a), the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, apprentice, trainee, watchman, or guard employed in violation of the provisions of paragraph (a) in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of 8 hours or in excess of his standard workweek of 40 hours without payment of the overtime wages required by paragraph (a).

(c) Withholding for unpaid wages and liquidated damages. The Contracting Officer may withhold from the Government Prime Contractor, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively 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 as provided in the provisions of paragraph (b).

- (d) Subcontracts. The Contractor shall insert paragraphs (a) through (d) of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.
- (e) Records. The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for 3 years from the completion of the contract.

CLAUSE 16 EQUAL OPPORTUNITY

(The following clause is applicable unless this contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor (41 CFR, ch. 60).)

During the performance of this contract, the Contractor agrees as follows:

- (a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will 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. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.
 - (b) The Contractor will, 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.
 - (c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understand-
- ing, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - (d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - (e) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - (f) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - (g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the

contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

CLAUSE 17 OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

CLAUSE 18 COVENANT AGAINST CONTINGENT FEES

(a) Warranty - Termination or Deduction for Breach. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. 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 such commission, percentage, brokerage, or contingent fee.

(b) Subcontracts and Purchase Orders. Unless otherwise authorized by the Contracting Officer in writing, the Contractor shall cause provisions similar to the foregoing to be inserted in all subcontracts and purchase orders entered into under this contract.

CLAUSE 19 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

The provisions of this clause shall be applicable only if the amount of this contract exceeds \$10,000.

(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 hereunder, 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) This clause shall be included in all subcontracts.

CLAUSE 20 PATENT RIGHTS

(a) Definitions.

(1) "Subject Invention" means any invention or discovery of the Contractor conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plants, whether patented or unpatented under the Patent Laws of the United States of America or any foreign country.

(2) "Contract" means any contract, grant, agreement, understanding, or other arrangement, which includes research, development, or demonstration work, and includes any assignment or substitution of parties.

(3) "States and domestic municipal governments" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and any political subdivision and agencies thereof.

(4) "Government agency" includes an executive department, independent commission, board, office, agency, administration, authority, Government corporation, or other Government establishment of the Executive Branch of the Government of the United States of America.

(5) "To the point of practical application" means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine

and under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

- (6) "Patent Counsel" means the DOE Patent Counsel assisting the procuring activity.

(b) Allocation of principal rights.

- (1) Assignment to the Government. The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each Subject Invention, except to the extent that rights are retained by the Contractor under paragraphs (b)(2) and (c) of this clause.
- (2) Greater rights determinations. The Contractor or the employee-inventor with authorization of the Contractor may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (c) of this clause on identified inventions in accordance with 41 CFR 9-9.109-6. Such requests must be submitted to Patent Counsel (with notification by Patent Counsel to the Contracting Officer) at the time of the first disclosure pursuant to paragraph (e)(2) of this clause, or not later than 9 months after conception or first actual reduction to practice, whichever occurs first, or such longer period as may be authorized by Patent Counsel (with notification by Patent Counsel to the Contracting Officer) for good cause shown in writing by the Contractor.

(c) Minimum rights to the Contractor.

- (1) Contractor license. The Contractor reserves a revocable, nonexclusive, paid-up license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government acquires title. The license shall extend to the Contractor's domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and shall include 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 shall be transferable only with

approval of DOE except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

- (2) Revocation limitations. The Contractor's nonexclusive license retained pursuant to paragraph (c)(1) of this clause and sublicenses granted thereunder may be revoked or modified by DOE, either in whole or in part, only to the extent necessary to achieve expeditious practical application of the Subject Invention under DOE's published licensing regulations (10 CFR 781), and only to the extent an exclusive license is actually granted. This license shall not be revoked in that field of use and/or the geographical areas in which the Contractor, or its sublicensee, has brought the invention to the point of practical application and continues to make the benefits of the invention reasonably accessible to the public, or is expected to do so within a reasonable time.
- (3) Revocation procedures. Before modification or revocation of the license or sublicense, pursuant to paragraph (c)(2) of this clause, DOE shall furnish the Contractor a written notice of its intention to modify or revoke the license and any sublicense thereunder, and the Contractor shall be allowed 30 days, or such longer period as may be authorized by the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) for good cause shown in writing by the Contractor, after such notice to show cause why the license or any sublicense should not be modified or revoked. The Contractor shall have the right to appeal, in accordance with 10 CFR 781, any decision concerning the modification or revocation of his license or any sublicense.
- (4) Foreign patent rights. Upon written request to Patent Counsel (with notification by Patent Counsel to the Contracting Officer), in accordance with paragraph (e)(2)(i) of this clause, and subject to DOE security regulations and requirements, there shall be reserved to the Contractor, or the employee-inventor with authorization of the Contractor, the patent rights to a Subject Invention in any

foreign country where the Government has elected not to secure such rights provided:

- (1) The recipient of such rights, when specifically requested by DOE and three years after issuance of a foreign patent disclosing said Subject Invention, shall furnish DOE a report setting forth:
 - (A) The commercial use that is being made, or is intended to be made, of said invention, and
 - (B) The steps taken to bring the invention to the point of practical application or to make the invention available for licensing.
- (ii) The Government shall retain at least an irrevocable, nonexclusive, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government (including any Government agency) and States and domestic municipal governments, unless the Secretary or his designee determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments.
- (iii) Subject to the rights granted in (c)(1), (2) and (3) of this clause, the Secretary or his designee shall have the right to terminate the foreign patent rights granted to this paragraph (c)(4) in whole or in part unless the recipient of such rights demonstrates to the satisfaction of the Secretary or designee that effective steps necessary to accomplish substantial utilization of the invention have been taken or within a reasonable time will be taken.
- (iv) Subject to the rights granted in (c)(1), (2), and (3) of this clause, the Secretary or designee shall have the right, commencing four years after foreign patent rights are accorded under this paragraph (c)(4) to require the granting of a nonexclusive or

partially exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances and in appropriate circumstances to terminate said foreign patent rights in whole or in part, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing:

- (A) If the Secretary or designee determines, upon review of such material as he deems relevant, and after the recipient of such rights, or other interested person, has had the opportunity to provide such relevant and material information as the Secretary or designee may require, that such foreign patent rights have tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates; or
 - (B) Unless the recipient of such rights demonstrates to the satisfaction of the Secretary or designee at such hearing that the recipient has taken effective steps, or within a reasonable time thereafter is expected to take such steps, necessary to accomplish substantial utilization of the invention.
- (d) Filing of patent applications.
- (1) With respect to each Subject Invention in which the Contractor or the inventor requests foreign patent rights in accordance with paragraph (c)(4) of this clause, a request may also be made for the right to file and prosecute the U.S. application on behalf of the U.S. Government. If such request is granted, the Contractor or inventor shall file a domestic patent application on the invention within 6 months after the request for foreign patent rights is granted, or such longer period of time as may be approved by the Patent Counsel for good cause

shown in writing by the requestor. With respect to the invention, the requestor shall promptly notify the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) of any decision not to file an application.

- (2) For each Subject Invention on which a domestic patent application is filed by the Contractor or inventor, the Contractor or inventor shall:

(i) Within 2 months after the filing or within 2 months after submission of the invention disclosure if the patent application previously has been filed, deliver to the Patent Counsel a copy of the application as filed including the filing date and serial number;

(ii) Within 6 months after filing the application or within 6 months after submitting the invention disclosure if the application has been filed previously, deliver to the Patent Counsel a duly executed and approved Assignment to the Government, on a form specified by the Government;

(iii) Provide the Patent Counsel with the original patent grant promptly after a patent is issued on the application; and

(iv) Not less than 30 days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the Patent Counsel of any decision not to continue prosecution of the application.

- (3) With respect to each Subject Invention in which the Contractor or inventor has requested foreign patent rights, the Contractor or inventor shall file a patent application on the invention in each foreign country in which such request is granted in accordance with applicable statutes and regulations and within one of the following periods:

(i) Eight months from the date of filing a corresponding United States application, or if such an application is not filed, six

months from the date of the request was granted;

(ii) Six months from the date a license is granted by the Commissioner of Patents and Trademarks to file the foreign patent application where such filing has been prohibited by security reasons; or

(iii) Such longer periods as may be approved by the Patent Counsel for good cause shown in writing by the Contractor or inventor.

(4) Subject to the license specified in paragraphs (c)(1), (2) and (3) of this clause, the Contractor or inventor agrees to convey to the Government, upon request, the entire right, title, and interest in any foreign country in which the Contractor or inventor fails to have a patent application filed in accordance with paragraph (d)(3) of this clause, or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the Contractor or inventor shall, not less than 60 days before the expiration period for any action required by any Patent Office, notify the Patent Counsel of such failure or decision, and deliver to the Patent Counsel the executed instruments necessary for the conveyance specified in this paragraph.

(e) Invention identification, disclosures, and reports.

(1) The Contractor shall establish and maintain active and effective procedures to ensure that Subject Inventions are promptly identified and timely disclosed. These procedures shall include the maintenance of laboratory notebooks or equivalent records and any other records that are reasonably necessary to document the conception and/or the first actual reduction to practice of Subject Inventions, and records which show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of these procedures so that he may evaluate and determine their effectiveness.

(2) The Contractor shall furnish the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) on a DOE-approved form:

(i) A written report containing full and complete technical information concerning each Subject Invention within 6 months after conception or first actual reduction to practice whichever occurs first in the course of or under this contract, but in any event prior to any sale, public use or public disclosure of such invention known to the Contractor. The report shall identify the contract and inventor and shall be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention. The report should also include any request for foreign patent rights under paragraph (c)(4) of this clause and any request to file a domestic patent application under (d)(1) of this clause. However, such requests shall be made within the period set forth in paragraph (b)(2) of this clause. When an invention is reported under this paragraph (e)(2)(i), it shall be presumed to have been made in the manner specified in Section 9(a)(1) and (2) of 42 USC 5908 unless the Contractor contends it was not so made in accordance with paragraph (g)(2)(ii) of this clause.

(ii) Upon request, but not more than annually, interim reports on a DOE-approved form listing Subject Inventions and subcontracts awarded containing a Patent Rights clause for that period and certifying that:

(A) The Contractor's procedures for identifying and disclosing Subject Inventions as required by this paragraph

(e) have been followed throughout the reporting period;

(B) All Subject Inventions have been disclosed or that there are no such inventions;

(C) All subcontracts containing a Patent Rights clause have been reported or that no such subcontracts have been awarded; and

(iii) A final report on an DOE-approved form within 3 months after completion of the contract work listing all Subject Inventions and all subcontracts awarded containing a Patent Rights clause and certifying that:

(A) All Subject Inventions have been disclosed or that there were no such inventions; and

(B) All subcontracts containing a Patent Rights clause have been reported or that no such subcontracts have been awarded.

(3) The Contractor shall obtain patent agreements to effectuate the provisions of this clause from all persons in its employ who perform any part of the work under this contract except nontechnical personnel, such as clerical employees and manual laborers.

(4) The Contractor agrees that the Government may duplicate and disclose Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause. If the Contractor is to file a foreign patent application on a Subject Invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures until the expiration of the time period specified in paragraph (d)(1) of this clause, but in no event shall the Government or its employees be liable for any publication thereof.

(f) Publication.

It is recognized that during the course of the work under this contract, the Contractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Contractor, patent approval for release or publication shall be secured from Patent Counsel prior to any such release or publication.

(g) Forfeiture of rights in unreported Subject Inventions.

(1) The Contractor shall forfeit to the Government, at the request of the Secretary or designee, all rights in any Subject Invention which the contractor fails to report to the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) within six months after the time the Contractor:

(i) Files or causes to be filed a United States or foreign patent application thereon; or

(ii) Submits the final report required by paragraph (e)(2)(iii) of this clause, whichever is later.

(2) However, the Contractor shall not forfeit rights in a Subject Invention if, within the time specified in (1)(i) or (1)(ii) of this paragraph (g), the Contractor:

(i) Prepared a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract and delivers the same with the Patent Counsel (with notification by Patent Counsel to the Contracting Officer); or

(ii) Contending that the invention is not a Subject Invention the Contractor nevertheless discloses the invention and all facts pertinent to this contention to

the Patent Counsel (with notification by Patent Counsel to the Contracting Officer); or

(iii) Establishes that the failure to disclose did not result from the Contractor's fault or negligence.

(3) Pending written assignment of the patent applications and patents on a Subject Invention determined by the Secretary or designee to be forfeited (such determination to be a final decision under the Disputes Clause of this contract), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (g) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to Subject Inventions.

(h) Examination of records relating to inventions.

(1) The Contracting Officer or his authorized representative, until the expiration of 3 years after final payment under this contract, shall have the right to examine any books (including laboratory notebooks), records, documents, and other supporting data of the Contractor which the Contracting Officer or his authorized representative reasonably deem pertinent to the discovery or identification of Subject Inventions or to determine compliance with the requirements of this clause.

(2) The Contracting Officer or his authorized representative shall have the right to examine all books (including laboratory notebooks), records and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether any such inventions are Subject Inventions, if the Contractor refuses or fails to:

(1) Establish the procedures of paragraph (e)(1) of this clause; or

- (ii) Maintain and follow such procedures; or
 - (iii) Correct or eliminate any material deficiency in the procedures within thirty (30) days after the Contracting Officer notifies the Contractor of such a deficiency.
- (1) Withholding of payment (Not applicable to subcontracts).
- (1) Any time before final payment of the amount of this contract, the Contracting Officer may, if he deems such action warranted, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if in his opinion the Contractor fails to:
- (i) Establish, maintain and follow effective procedures for identifying and disclosing Subject Inventions pursuant to paragraph (e)(1) of this clause; or
 - (ii) Disclose any Subject Invention pursuant to paragraph (e)(2)(i) of this clause; or
 - (iii) Deliver the interim reports pursuant to paragraph (e)(2)(ii) of this clause; or
 - (iv) Provide the information regarding subcontracts pursuant to paragraph (j)(5) of this clause; or
 - (v) Convey to the Government on a DOE-approved form the title and/or rights of the Government in each Subject Invention as required by this clause.
- (2) The reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.
- (3) Final payment under this contract shall not be made by the Contracting Officer before the Contractor delivers to Patent Counsel all disclosures of Subject Inventions and other information required by (e)(2)(i) of this clause, the final report required by

(e)(2)(iii) of this clause, and Patent Counsel has issued a patent clearance certification to the Contracting Officer.

- (4) The Contracting Officer may, in his discretion, decrease or increase the sums withheld up to the maximum authorized above. If the Contractor is a nonprofit organization, the maximum amount that may be withheld under this paragraph shall not exceed \$50,000 or 1 percent of the amount of this contract, whichever is less. No amount shall be withheld under this paragraph while the amount specified in this paragraph is being withheld under other provisions of the contract. The withholding of any amount or subsequent payment thereof shall not be construed as a waiver of any rights accruing to the Government under this contract.

(j) Subcontracts.

- (1) For the purpose of this paragraph the term "Contractor" means the party awarding a subcontract and the term "Subcontractor" means the party being awarded a subcontract, regardless of tier.
- (2) Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the Patent Rights clause of 41 CFR 9-9.107-5(a) or 41 CFR 9-9.107-6 as appropriate, modified to identify the parties in any subcontract hereunder having as a purpose the conduct of research, development, or demonstration work. In the event of refusal by a Subcontractor to accept this clause, or if in the opinion of the Contractor this clause is inconsistent with DOE's patent policies, the Contractor:
- (i) Shall promptly submit written notice to the Contracting Officer setting forth reasons for the Subcontractor refusal and other pertinent information which may expedite disposition of the matter; and
 - (ii) Shall not proceed with the subcontract without the written authorization of the Contracting Officer.

- (3) Except as may be otherwise provided in this clause, the Contractor shall not, in any subcontract or by using a subcontract as consideration therefor, acquire any rights in its Subcontractor's Subject Invention for the Contractor's own use (as distinguished from such rights as may be required solely to fulfill the Contractor's contract obligations to the Government in the performance of this contract).
- (4) All invention disclosures, reports, instruments, and other information required to be furnished by the Subcontractor to DOE, under the provisions of a Patent Rights clause in any subcontract hereunder may, in the discretion of the Contracting Officer, be furnished to the Contractor for transmission to DOE.
- (5) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract containing a Patent Rights clause by identifying the Subcontractor, the work to be performed under the subcontract, and the dates of award, and estimated completion. Upon the request of the Contracting Officer, the Contractor shall furnish him a copy of the subcontract.
- (6) The Contractor shall identify all Subject Inventions of the Subcontractor of which it acquires knowledge in the performance of this contract and shall notify the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) promptly upon the identification of the inventions.
- (7) It is understood that the Government is a third party beneficiary of any subcontract clause granting rights to the Government in Subject Inventions, and the Contractor hereby assigns to the Government all rights that the Contractor would have to enforce the Subcontractor's obligations for the benefit of the Government with respect to Subject Inventions. The Contractor shall not be obligated to enforce the agreements of any Subcontractor hereunder relating to the obligations of the Subcontractor to the Government regarding Subject Inventions.

(k) Background Patents.

- (1) "Background Patent" means a domestic patent covering an invention or discovery which is not a Subject Invention and which is owned or controlled by the Contractor at any time through the completion of this contract:
- (i) Which the Contractor, but not the Government, has the right to license to others without obligation to pay royalties thereon; and
- (ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this contract.
- (2) The Contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive, license under any Background Patent for practicing a subject of this contract for purposes research, development, and demonstration work only.
- (3) The Contractor also agrees that upon written application by the DOE, it will grant to responsible parties for purposes of practicing a subject of this contract, nonexclusive licenses under any Background Patent on terms that are reasonable under the circumstances. If, however, the Contractor believes that exclusive or partially exclusive rights are necessary to achieve expeditious commercial development or utilization, then a request may be made to DOE for approval of such licensing by the Contractor.
- (4) Notwithstanding the foregoing paragraph (k)(3), the Contractor shall not be obligated to license any Background Patent if the Contractor demonstrates to the satisfaction of the Secretary or his designee that:

- (1) A competitive alternative to the subject matter covered by said Background Patent is commercially available or readily introducible from one or more other sources; or

- (ii) The Contractor or its licensees are supplying the subject matter covered by said Background Patent in sufficient quantity and at reasonable prices to satisfy market needs, or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter.

(1) Atomic Energy.

- (1) No claim for pecuniary award or compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted by the Contractor or its employees with respect to any invention or discovery made or conceived in the course of or under this contract.

- (2) Except as otherwise authorized in writing by the Contracting Officer, the Contractor will obtain patent agreements to effectuate the provisions of paragraph (1)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(m) Limitation of rights.

Nothing contained in this patent rights clause shall be deemed to give the Government any rights with respect to any invention other than a subject invention except as set forth in the Patent Rights clause of this contract with respect to Background Patents and the Facilities License.

CLAUSE 21 GOVERNMENT PROPERTY

- (a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as Government-furnished property in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished

Property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under 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 such delivery or performance dates. In the event that Government-furnished property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor make a determination of the delay, if any, occasioned the Contractor and shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provisions affected by any such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event that Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt thereof notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (1) return such property at the Government's expense or otherwise dispose of the property, or (2) effect repairs or modifications. Upon completion of (1) or (2), above, the Contracting Officer upon written request of the Contractor shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provision affected by the return or disposition, or the repair or modification in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished property or delivery of such property in a condition not suitable for its intended use.

- (b) (1) By notice in writing, the Contracting Officer may (i) decrease the property furnished or to be furnished by the Government under this contract or (ii) substitute other Government-owned property for property to be furnished 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

with respect to the removal and shipping of property covered by such notice.

- (2) In the event of any decrease in or substitution of property pursuant to paragraph (1), above, or any withdrawal of authority to use property provided under any contract or lease, which property the Government had agreed in the Schedule to make available for the performance of this contract, the Contracting Officer, upon the written request of the Contractor (or, if the substitution of property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution, or withdrawal, in accordance with the procedures provided for in the "Changes" clause of this contract.
- (c) Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, for the cost of 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 delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under the contract, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this contract, or (2) commencement of processing or use of such property in the performance of this contract, or (3) reimbursement of the cost thereof by the Government in whole or in part, whichever first occurs. All Government-furnished property, together with all property acquired by the Contractor title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as "Government property." Title to the Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.
- (d) The Contractor shall be directly responsible for and accountable for all Government property provided under this contract. The Contractor shall establish and maintain a system to control, protect, preserve, and maintain all Government property. This system shall, upon request by the Contracting Officer, be submitted for review and, if satisfactory, approved in writing by the Contracting Officer. The Contractor shall maintain and make available such records as are required by the approved system and must account for all Government property until relieved of responsibility therefor in accordance with the written instructions of the Contracting Officer. To the extent directed by the Contracting Officer, the Contractor shall identify Government property by marking, tagging, or segregating in such manner as to clearly indicate its ownership by the Government.
- (e) The Government property shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.
- (f) The Contractor shall maintain and administer, in accordance with sound industrial practice, a program for the utilization, maintenance, repair, protection, and preservation of Government property so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all appropriate directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of Government property.
- (g) (1) The Contractor shall not be liable for any loss of or damage to the Government property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto):
- (i) Which results from willful misconduct or lack of good faith on the part of any one of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of:
- (A) All or substantially all of the Contractor's business; or
- (B) All or substantially all of the Contractor's operations at any one plant or separate

location in which this contract is being performed; or

- (C) A separate and complete major industrial operation in connection with the performance of this contract.
- (ii) Which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of his directors, officers, or other representatives mentioned in subparagraph (i), above:
 - (A) To maintain and administer, in accordance with sound industrial practice, the program for utilization, maintenance, repair, protection, and preservation of Government property as required by paragraph (f) hereof, or to take all reasonable steps to comply with any appropriate written direction of the Contracting Officer under paragraph (f) hereof, or
 - (B) To establish, maintain, and administer in accordance with paragraph (d) hereof a system for control of Government property.
- (iii) For which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule;
- (iv) Which results from a risk expressly required to be insured under this contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or
- (v) Which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement.

Any failure of the Contractor to act, as provided in subparagraph (ii), above, shall be conclusively presumed to be a failure resulting from willful misconduct, or lack of good faith on the part of such directors, officers, or other representatives mentioned in subparagraph (i), above, if the Contractor is notified by the Contracting Officer by registered or certified mail addressed to one of such directors, officers, or other representatives of the Government's disapproval, withdrawal of approval, or nonacceptance of the Contractor's program or system. In such event it shall be presumed that any loss or damage to Government property resulted from such failure. The Contractor shall be liable for such loss or damage unless he can establish by clear and convincing evidence that such loss or damage did not result from his failure to maintain an approved program or system, or occurred during such time as an approved program or system for control of Government property was maintained.

If more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception. 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 latter's possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, provides for the relief of 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 the utilization of the property in accordance with the provisions of the prime contract.

(2) The Contractor shall not be reimbursed for, and shall not include as an item for overhead, the cost of insurance or any provisions for a reserve, covering the risk of loss of or damage to the Government property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provisions of this contract.

(3) Upon the happening of loss or destruction of or damage to the Government property, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the loss and salvage organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the loss and salvage organizations so designated (unless the Contracting Officer has designated that no such organization be employed), shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order and furnish to the Contracting Officer a statement of:

- (i) The lost, destroyed, and 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.

The Contractor shall make repairs and renovations of the damaged Government property or take such other action as the Contracting Officer directs.

(4) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government property, he shall use the proceeds to repair, renovate, or replace the Government property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The Contractor

shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction, or damage and, upon the request of the Contracting Officer 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 the subcontractor has not been relieved from liability for any loss or destruction of or damage to Government property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government property for the benefit of the Government.

(h) The Government, and any persons designated by it, shall at all reasonable times have access to the premises where any of the Government property is located, for the purpose of inspecting the Government property.

(i) Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit to the Contracting Officer in a form acceptable to him, inventory schedules covering all items of the Government property not consumed in the performance of this contract, or not theretofore delivered to the Government, and shall deliver or make such other disposal of such 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 the contract or shall be paid in such manner as the Contracting Officer may direct. 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 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 therefor as a part of general overhead or other reimbursable cost in accordance with the Contractor's established accounting procedures.

(j) Unless otherwise provided herein, the Government:

(i) May abandon any Government property in place, and thereupon all obligations of the Government regarding such abandoned property shall cease; and

(ii) Has no obligation to the Contractor with regard to restoration or rehabilitation of the Contractor's premises, neither in case of abandonment (paragraph (j)(i), above), disposition on completion of need or of the contract (paragraph (i), above), nor otherwise, except for restoration or rehabilitation costs caused by removal of Government property pursuant to paragraph (b), above.

(k) All communications issued pursuant to this clause shall be in writing.

CLAUSE 22 UTILIZATION OF LABOR SURPLUS AREA CONCERNS

(a) It is the policy of the Government to award contracts to labor surplus area concerns that (1) have been certified by the Secretary of Labor (hereafter referred to as certified-eligible concerns with first or second preferences) regarding the employment of a proportionate number of disadvantaged individuals and have agreed to perform substantially (i) in or near sections of concentrated unemployment or underemployment or in persistent or substantial labor surplus areas or (ii) in other areas of the United States, respectively, or (2) are non-certified concerns which have agreed to perform substantially in persistent or substantial labor surplus areas, where this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use his best efforts to place his subcontracts in accordance with this policy.

(b) In complying with paragraph (a) of this clause and with paragraph (b) of the clause of this contract entitled "Utilization of Small Business Concerns," the Contractor in placing his subcontracts shall observe the following order of preference: (1) Certified-eligible concerns with a first preference which are also small business concerns; (2) other certified-eligible concerns with a first preference; (3) certified-eligible concerns with a second

preference which are also small business concerns; (4) other certified-eligible concerns with a second preference; (5) persistent or substantial labor surplus area concerns which are also small business concerns; (6) other persistent or substantial labor surplus area concerns; and (7) small business concerns which are not labor surplus area concerns.

CLAUSE 23 PAYMENT FOR OVERTIME PREMIUMS

(a) Allowable cost shall not include any amount on account of overtime premiums except when (1) specified in (d), below, or (2) paid for work:

(i) 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;

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

(iii) In the performance of tests, industrial processes, laboratory procedures, loading or unloading of transportation media, and operations in flight or afloat, which are continuous in nature and cannot reasonably be interrupted or otherwise completed; or

(iv) Which will result in lower cost to the Government.

(b) The cost of overtime premiums otherwise allowable under (a), above, shall be allowed only to the extent the amount thereof is reasonable and properly allocable to the work under the contract.

(c) Any request for overtime, in addition to any amount specified in (d), below, will be for all overtime which can be estimated with reasonable certainty shall be used for the remainder of the contract, and shall contain the following:

(i) Identification of the work unit, such as the department or section in which the requested overtime will be used, together with present workload, manning and other data of the affected

unit, sufficient to permit an evaluation by the Contracting Officer of the necessity for the overtime.

(ii) The effect that denial of the request will have on the delivery or performance schedule of the contract;

(iii) Reasons why the required work cannot be performed on the basis of utilizing multishift operations or by the employment of additional personnel; and

(iv) The extent to which approval of overtime would affect the performance or payments in connection with any other Government contracts, together with any identification of such affected contracts.

(d) The Contractor is authorized to perform overtime, in addition to that performed under (a)(2), only to the extent, if any, specified elsewhere in this contract.

CLAUSE 24 COMPETITION IN SUBCONTRACTING

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practicable extent consistent with the objectives and requirements of the contract.

CLAUSE 25 AUDIT

(a) General. The Contracting Officer or his representatives shall have the audit and inspection rights described in the applicable paragraphs (b), (c) and (d) below.

(b) Examination of costs. If this is a cost-reimbursement type, incentive, time and materials, labor hour, or price redeterminable contract, or any combination thereof, the Contractor shall maintain, and the Contracting Officer or his representatives shall have the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. Such right of examination shall include inspection at all reasonable times of the Contractor's plants, or such parts thereof, as may be engaged in the performance of this contract.

(c) Cost or pricing data. If the Contractor submitted cost or pricing data in connection with the pricing of this contract or

any change or modification thereto, unless such pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the Contracting Officer or his representatives who are employees of the United States Government shall have the right to examine all books, records, documents and other data of the Contractor related to the negotiation, pricing or performance of such contract, change or modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. Additionally, in the case of pricing any change or modification exceeding \$100,000 to formally advertised contracts, the Comptroller General of the United States or his representatives who are employees of the United States Government shall have such rights. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

(d) Availability. The materials described in (b) and (c) above, shall be made available at the office of the Contractor, at all reasonable times, for inspection, audit or reproduction, until the expiration of 3 years from the date of final payment under this contract or such lesser time specified in Part 1-20 of the Federal Procurement Regulations (41 CFR Part 1-20) and for such longer period, if any, as is required by applicable statute, or by other clauses of this contract, or by (1) and (2) below:

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for a period of 3 years from the date of any resulting final settlement.

(2) Records which relate to appeals under the "Disputes" clause of this contract, or litigation or the settlement of claims arising out of the performance of this contract, shall be made available until such appeals, litigation, or claims have been disposed of.

(e) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts hereunder except altered as necessary for proper identification

of the contracting parties and the Contracting Officer under the Government prime contract.

CLAUSE 26 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

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 sums because:

- (a) The Contractor furnished cost or pricing data which was not accurate, complete and current as certified in the Contractor's Certificate of Current Cost or Pricing Data;
- (b) A subcontractor, pursuant to the clause of this contract entitled "Subcontractor Cost or Pricing Data" or "Subcontractor Cost or Pricing Data—Price Adjustments" or any subcontract clause therein required, furnished cost or pricing data which was not accurate, complete and current as certified in the subcontractor's Certificate of Current Cost or Pricing Data;
- (c) A subcontractor or prospective subcontractor furnished cost or pricing data which was required to be accurate, complete and current and to be submitted to support a subcontract cost estimate furnished by the Contractor but which was not accurate, complete and current as of the date certified in the Contractor's Certificate of Current Cost or Pricing Data; or
- (d) The Contractor or a subcontractor or prospective subcontractor furnished any data, not within (a), (b) or (c) above, which was not accurate as submitted; the price or cost shall be reduced accordingly and the contract shall be modified in writing as may be necessary to reflect such reduction. However, any reduction in the contract price due to defective subcontract data of a prospective subcontractor when the subcontract was not subsequently awarded to such subcontractor, will be limited to the amount (plus applicable overhead and profit mark-up) by which the actual subcontract, or actual cost to the Contractor if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor: Provided, the actual subcontract price was not affected by defective cost or pricing data.

(Note: Since the contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the Contractor may expect that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors.)

CLAUSE 27 SUBCONTRACTOR COST AND PRICING DATA

- (a) The Contractor shall require subcontractors hereunder to submit, actually or by specific identification in writing, cost or pricing data under the following circumstances:
 - (1) Prior to the award of any subcontract the amount of which is expected to exceed \$100,000 when entered into;
 - (2) Prior to the pricing of any subcontract modification which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed \$100,000; except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.
- (b) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the certificate by the Prime Contractor to the Government, that to the best of their knowledge and belief, the cost and pricing data submitted under (a) above is accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract change or modification.
- (c) The Contractor shall insert the substance of this clause including this paragraph (c) in each subcontract hereunder which exceeds \$100,000 when entered into except where the price thereof is based on adequate price competition, established catalog or market prices on commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In each such excepted subcontract hereunder in excess of \$100,000 the Contractor shall insert the substance of the following clause:

**SUBCONTRACTOR COST OR PRICING
DATA--PRICE ADJUSTMENTS**

- (a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any modification made pursuant to one or more provisions of this contract which involves aggregate increases and/or decreases in costs plus applicable profits excepted to exceed \$100,000. The requirements of this clause shall be limited to such contract modifications.
- (b) The Contractor shall require subcontractors hereunder to submit, actually or by specific identification in writing, cost or pricing data under the following circumstances:
 - (1) Prior to award of any subcontract, the amount of which is expected to exceed \$100,000 when entered into;
 - (2) Prior to the pricing of any subcontract modification which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed \$100,000; except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.
- (c) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the certificate by the Prime Contractor to the Government, that to the best of their knowledge and belief the cost and pricing data submitted under (b) above is accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract change or modification.
- (d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract hereunder which exceeds \$100,000 when entered into.

**CLAUSE 28 UTILIZATION OF MINORITY BUSINESS
ENTERPRISES**

- (a) It is the policy of the Government that minority business enterprises shall have

the maximum practicable opportunity to participate in the performance of Government contracts.

- (b) The Contractor agrees to use his best efforts to carry out this policy in the award of his subcontracts to the fullest extent consistent with the efficient performance of this contract. As used in this contract, the term "minority business enterprise" means a business, at least 50 percent of which is owned by minority group members or, in case of publicly owned businesses, at least 51 percent of the stock of which is owned by minority group members. For the purposes of this definition, minority group members are Negroes, Spanish-speaking American persons, American-Orientals, American-Indians, American-Eskimos, and American Aleuts. Contractors may rely on written representations by subcontractors regarding their status as minority business enterprises in lieu of an independent investigation.

**CLAUSE 29 DISABLED VETERANS AND VETERANS OF
THE VIETNAM ERA**

- (a) The Contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans status in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- (b) The Contractor agrees that all suitable employment openings of the Contractor which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the Contractor other than the one wherein the contract is being performed but excluding those of independently operated corporate affiliates, shall be listed at an appropriate local office of the State employment service system wherein the opening occurs. The Contractor further agrees to provide such reports to such

local office regarding employment openings and hires as may be required.

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, but are not required to provide those reports set forth in paragraphs (d) and (e).

- (c) Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the Contractor from any requirements in Executive orders or regulations regarding nondiscrimination in employment.
- (d) The reports required by paragraph (b) of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the Contractor has more than one hiring location in a State with the central office of that State employment service. Such reports shall indicate for each hiring location (1) the number of individuals hired during the reporting period, (2) the number of nondisabled veterans of the Vietnam era hired, (3) the number of disabled veterans of the Vietnam era hired, and (4) the total number of disabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 U.S.C. 1787. The Contractor shall submit a report within 30 days after the end of each reporting period wherein any performance is made on this contract identifying data for each hiring location. The Contractor shall maintain at each hiring location copies of the reports submitted until the expiration of one year after final payment under the contract, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the Contracting Officer or of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment, and placement.

- (e) Whenever the Contractor becomes contractually bound to the listing provisions of this clause, it shall advise the 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 provisions and has so advised the State system, there is no need to advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.
- (f) 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, and the Virgin Islands.
- (g) The provisions of paragraphs (b), (c), (d), and (e) of this clause do not apply to openings which the Contractor proposes to fill from within his own organization or to fill pursuant to 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 his own organization or employer-union arrangement for that opening.
- (h) As used in this clause:
- (1) "All suitable employment openings" includes, but is not limited to openings which occur in the following job categories: production and non-production; plant and office; laborers and mechanics; supervisory and non-supervisory; technical; and executive, administrative, and professional openings that are compensated on a salary basis of less than \$25,000 per year. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment. It does not include openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement nor openings in an educational institution which are restricted to students of that institution. Under the most compelling circumstances an employment opening may not be suitable for listing, including such situations where the needs of the Government cannot reasonably be otherwise supplied, where listing

would be contrary to national security, or where the requirement of listing would otherwise not be for the best interest of the Government.

(2) "Appropriate office of the State employment service system" means the local office of the Federal/State national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

(3) "Openings which the Contractor proposes to fill from within his own organization" means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) and includes any openings which the Contractor proposes to fill from regularly established "recall" lists.

(4) "Openings which the Contractor proposes to fill pursuant to a customary and traditional employer-union hiring arrangement" means employment openings which the Contractor proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the Contractor and representatives of his employees.

(i) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(j) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(k) The Contractor agrees to post in conspicuous places available to employees and applicants for employment notices in a form to be prescribed by the Director, provided by or through the Contracting Officer. Such notice shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era for employment, and the rights of applicants and employees.

(l) The Contractor will 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 terms of the Vietnam Era Veteran's Readjustment Assistance Act and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era.

(m) The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

CLAUSE 30 PAYMENT OF INTEREST ON CONTRACTOR'S CLAIMS

(a) If an appeal is filed by the Contractor from a final decision of the Contracting Officer under the "Disputes" clause of this contract, denying a claim arising under the contract, simple interest on the amount of the claim finally determined owed by the Government shall be payable to the Contractor. Such interest shall be at the rate determined by the Secretary of the Treasury pursuant to Public Law 92-41, 85 Stat. 97, from the date the Contractor furnishes to the Contracting Officer his written appeal under the "Disputes" clause of this contract, to the date of (1) a final judgment by a court of competent jurisdiction, or (2) mailing to the Contractor of a supplemental agreement or execution either confirming completed negotiations between the parties or carrying out a decision of a board of contract appeals.

(b) Notwithstanding (a), above, (1) interest shall be applied only from the date payment was due, if such date is later than the filing of appeal, and (2) interest shall not be paid for any period of time that the Contracting Officer determines the Contractor was unduly delayed in pursuing his remedies before a board of contract appeals or a court of competent jurisdiction.

CLAUSE 31 EMPLOYMENT OF THE HANDICAPPED

- (a) The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. 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 the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- (b) The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Rehabilitation Act of 1973, as amended.
- (c) In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
- (d) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor, provided by or through the contracting officer. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- (e) The contractor will 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 physically and mentally handicapped individuals.
- (f) The contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant

to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs, may direct to enforce such provisions, including action for noncompliance."

CLAUSE 32 CLEAN AIR AND WATER

(Applicable only if the contract exceeds \$100,000, or the Contracting Officer had determined that the orders under an indefinite quantity contract in any one year will exceed \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1)) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA, or the contract is not otherwise exempt.)

(a) The Contractor agrees as follows:

- (1) To comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 U.S.C. 1857, et. seq., as amended by Public Law 91-604) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq., as amended by Public Law 92-500), respectively, 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, respectively, and all regulations and guidelines issued thereunder 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 Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing.
- (3) To use his best efforts to comply with Clean Air Standards and Clean Water Standards at the facilities in which the contract is being performed.
- (4) To insert the substance of the provisions of this clause in any nonexempt subcontract, including this paragraph (a)(4).

(b) The terms used in this clause have the following meanings:

- (1) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 1857 et. seq., as amended by Public Law 91-604).
- (2) The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et. seq., as amended by Public Law 92-500).
- (3) The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in Section 110(d) of the Clean Air Act (42 U.S.C. 1857c-5(d)), an approved implementation procedure or plan under Section 111(c) or Section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d)), or an approved implementation procedure under Section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).
- (4) The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. 1342), or by a local government to ensure compliance with pretreatment regulations as required by Section 307 of the Water Act (33 U.S.C. 1317).
- (5) The term "compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an air or water pollution control agency in accordance with the requirement of the Air Act or Water Act and regulations issued pursuant thereto.
- (6) The term "facility" 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, to be utilized in the performance of a contract or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

CLAUSE 33 ORDER OF PRECEDENCE

In the event of an inconsistency between provisions of this contract, the inconsistency shall be resolved by giving precedence as follows: (a) schedule; (b) statement of work; (c) the general provisions; (d) other provisions of the contract, whether incorporated by reference or otherwise; and (e) the Contractor's technical proposal, if incorporated in the contract by reference or otherwise.

CLAUSE 34 RENEGOTIATION

If this contract is subject to the Renegotiation Act of 1951, as amended, the following provision shall apply:

- (a) This contract is subject to the Renegotiation Act of 1951 (50 USC App. 1211, et seq.), as amended, and to any subsequent act of Congress providing for the renegotiation of contracts. Nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder enacted. Subject to the foregoing, this contract shall be deemed to contain all the provisions required by section 104 of the Renegotiation Act of 1951, and by such other act, without subsequent contract amendment specifically incorporating such provisions.
- (b) The Contractor agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts, as that term is defined in section 103 g. of the Renegotiation Act of 1951, as amended.

CLAUSE 35 AUTHORIZATION AND CONSENT

The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment

hereto or any subcontract hereunder (including any lower-tier subcontract).

CLAUSE 36 ADDITIONAL TECHNICAL DATA REQUIREMENTS

- (a) In addition to the technical data specified elsewhere in this contract to be delivered, the Contracting Officer may at any time during the contract performance or within one year after final payment call for the Contractor to deliver any technical data first produced or specifically used in the performance of this contract except technical data pertaining to items of standard commercial design.
- (b) The provisions of the "Rights in Technical Data" clause included in this contract are applicable to all technical data called for under this "Additional Technical Data Requirements" clause. Accordingly, nothing contained in this clause shall require the Contractor to actually deliver any technical data, the delivery of which is excused by paragraph (e) of the "Rights in Technical Data" clause.
- (c) When technical data are to be delivered under this clause, the Contractor will be compensated for appropriate costs for converting such data into the prescribed form, for reproduction, and for delivery.

CLAUSE 37 RIGHTS IN TECHNICAL DATA

(a) Definitions.

- (1) "Technical Data" means recorded information regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, or demonstration, or engineering work, or be usable or used to define a design or process, or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer software (including computer programs, computer software data bases, and computer software documentation). Examples of technical data include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical data as used

herein does not include financial reports, cost analyses, and other information incidental to contract administration.

- (2) "Proprietary Data" means technical data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:
 - (i) Are not generally known or available from other sources without obligation concerning their confidentiality,
 - (ii) Have not been made available by the owner to others without obligation concerning its confidentiality, and
 - (iii) Are not already available to the Government without obligation concerning their confidentiality.
- (3) "Contract Data" means technical data first produced in the performance of the contract, technical data which are specified to be delivered in the contract, technical data that may be called for under the "Additional Technical Data Requirements" clause of the contract, if any, or technical data actually delivered in connection with the contract.
- (4) "Unlimited Rights" means rights to use, duplicate, or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

(b) Allocation of rights.

(1) The Government shall have:

- (i) Unlimited rights in contract data except as otherwise provided below with respect to proprietary data.
- (ii) The right to remove, cancel, correct or ignore any marking not authorized by the terms of this contract on any technical data furnished hereunder, if in response to a written inquiry by DOE concerning the

propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.

- (iii) No rights under this contract in any technical data which are not contract data.

(2) The Contractor shall have:

- (i) The right to withhold proprietary data in accordance with the provisions of this clause,
- (ii) The right to use for its private purposes, subject to patent, security or other provisions of this contract, contract data it first produces in the performance of this contract provided the data requirements of this contract have been met as of the date of the private use of such data. The Contractor agrees that to the extent it receives or is given access to proprietary data or other technical, business or financial data in the form of recorded information from DOE or a DOE contractor or subcontractor, the Contractor shall treat such data in accordance with any restrictive legend contained thereon, unless use is specifically authorized by prior written approval of the Contracting Officer.

- (3) Nothing contained in this "Rights in Technical Data" clause shall imply a license to the Government under any patent or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(c) Copyrighted material.

- (1) The Contractor shall not, without prior written authorization of the Contracting Officer, establish a claim to statutory copyright in any contract data first produced in the performance of the contract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf a royalty-free, nonexclusive, irrevocable, world-wide

license for Governmental purposes to publish, distribute, translate, duplicate, exhibit and perform any such data copyrighted by the Contractor.

- (2) The Contractor agrees not to include in the technical data delivered under the contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) above. If such royalty-free license is unavailable and the Contractor nevertheless determines that such copyrighted material must be included in the technical data to be delivered, rather than merely incorporated therein by reference, the Contractor shall request the written authorization of the Contracting Officer to include such copyrighted material in the technical data without a license.

(d) Subcontracting.

It is the responsibility of the Contractor to obtain from its subcontractors technical data and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:

- (1) Promptly submit written notice to the Contracting Officer setting forth reasons for the subcontractor refusal and other pertinent information which may expedite disposition of the matter; and
- (2) Not proceed with the subcontract without the written authorization of the Contracting Officer.

(e) Withholding of proprietary data.

Notwithstanding the inclusion of the "Additional Technical Data Requirements" clause in this contract or any provision of this contract specifying the delivery of technical data, the Contractor may withhold proprietary data from delivery, provided that the Contractor furnishes in lieu of any such proprietary data so withheld technical data disclosing the source, size, configuration, mating and attachment

characteristics, functional characteristics and performance requirements ("Form, Fit and Function" data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.) or a general description of such proprietary data where "Form, Fit and Function" data are not applicable. The Government shall acquire no rights to any proprietary data so withheld except that such data shall be subject to the "inspection rights" provisions of paragraph (f), and, if included, the "Limited rights in proprietary data" provisions of paragraph (g) and the "Contractor licensing" provisions of paragraph (h).

(f) Inspection rights.

Except as may be otherwise specified in this contract for specific items of proprietary data which are not subject to this paragraph, the Contracting Officer's representatives, at all reasonable times up to three (3) years after final payment under this contract, may inspect at the Contractor's facility any proprietary data withheld under paragraph (e) and not furnished under paragraph (g) for the purposes of verifying that such data properly fall within the withholding provision of paragraph (e), or for evaluating work performance.

(g) Limited rights in proprietary data.

Except as may be otherwise specified in this contract as technical data which are not subject to this paragraph, the Contractor shall, upon written request from the Contracting Officer at any time prior to three (3) years after final payment under this contract, promptly deliver to the Government any "proprietary data" withheld pursuant to paragraph (e) of the "Rights in Technical Data" clause of this contract. The following legend and no other is authorized to be affixed on any "proprietary data" delivered pursuant to this provision, provided the "proprietary data" meets the conditions for initial withholding under paragraph (e) of the "Rights in Technical Data" clause. The Government will thereafter treat the "proprietary data" in accordance with such legend.

LIMITED RIGHTS LEGEND

This "proprietary data," furnished under Contract No. _____ with the United States Department of Energy (and Purchase Order No. _____ if

applicable) may be duplicated and used by the Government with the express limitations that the "proprietary data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

- (a) This "proprietary data" may be disclosed for evaluation purposes under the restriction that the proprietary data be retained in confidence and not be further disclosed;
- (b) This "proprietary data" may be disclosed to other Contractors participating in the Government's program of which this contract is a part for information or use in connection with the work performed under their contracts and under the restriction that the "proprietary data" be retained in confidence and not be further disclosed; or
- (c) This "proprietary data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "proprietary data" be retained in confidence and not be further disclosed.

This legend shall be marked on any reproduction of this data in whole or in part.

(h) Contractor licensing.

Except as may be otherwise specified in this contract as technical data not subject to this paragraph, the Contractor agrees that upon written application by DOE, it will grant to the Government and responsible third parties, for purposes of practicing a subject of this contract, a nonexclusive license in any contract data which are proprietary data on terms and conditions reasonable under the circumstances including appropriate provisions for confidentiality; provided, however, the Contractor shall not be obligated to license any such data if the Contractor demonstrates to the satisfaction of the Secretary or his designee that:

- (1) Such data are not essential to the manufacture or practice of hardware designed or fabricated, or processes developed, under this contract;
- (2) Such data, in the form of results obtained by their use, have a commercially competitive alternative available or readily introduceable from one or more other sources;
- (3) Such data, in the form of results obtained by their use, are being supplied by the Contractor or its licensees in sufficient quantity and at reasonable prices to satisfy market needs, or the Contractor or its licensees have taken effective steps or within a reasonable time are expected to take effective steps to so supply such data in the form of results obtained by its use; or
- (4) Such data, in the form of results obtained by their use, can be furnished by another firm skilled in the art of manufacturing items or performing processes of the same general type and character necessary to achieve the contract results.

CLAUSE 38 REPORTING OF ROYALTIES

If this contract is in an amount which exceeds \$10,000 and if any royalty payments are directly involved in the contract or are reflected in the contract price to the Government, the Contractor agrees to report in writing to the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) during the performance of this contract and prior to its completion or final settlement the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this contract together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit the identification of the patents or other basis on which the royalties are to be paid. The approval of DOE of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.

CLAUSE 39 RIGHTS TO PROPOSAL DATA

Except for technical data contained on pages ____ of the Contractor's proposal dated _____ which are asserted by the Contractor as being

proprietary data, it is agreed that as a condition of the award of this contract, and notwithstanding the provisions of any notice appearing on the proposal, the Government shall have the right to use, duplicate, and disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this contract is based. (If the blanks are not filled in, all the technical data contained in the Contractor's proposal upon which this contract was awarded shall be subject to the Government's rights set forth in this clause.)

CLAUSE 40 PRINTING

Unless otherwise specified in this contract, the Contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract: Provided, however, that performance of a requirement under this contract involving the reproduction of less than 5,000 production units of any one page, or less than 25,000 production units in the aggregate of multiple pages, will not be deemed to be printing. A production unit is defined as one sheet, size 8 by 10 and 1/2 inches, one side only, one color.

CLAUSE 41 FEDERAL REPORTS ACT

- (a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answers to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public interest, the Federal Reports Act shall apply to this contract. No plan, questionnaire, interview guide, or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).
- (b) The Contractor shall request the required OMB clearance from the Contracting Officer before expending any funds or making public contracts for the collection of data. The authority to expend funds and to proceed with the collection of data shall be in writing by the Contracting Officer. The Contractor must plan at least 90 days for OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the Contractor

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

CLAUSE 42 STOP WORK ORDER

- (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. Any such order shall be specifically identified as a stop work order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall 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 order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either:

- (i) cancel the stop work order, or
 - (ii) terminate the work covered by such order as provided in the "Termination for Default or for Convenience of the Government" clause of this contract.
- (b) If a stop work order issued under this clause is cancelled or the period of the order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment shall be made in the delivery schedule, the estimated cost, the fee, (if any), or a combination thereof, and in any other provisions 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
 - (ii) the Contractor asserts a claim for such adjustments within 30 days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify such action, he may receive and act

upon any such claim asserted at any time prior to final payment under this contract.

- (c) If a stop work order is not cancelled and the work covered by such order is terminated for default, the reasonable costs resulting from the stop work order shall be allowed by equitable adjustment or otherwise.

CLAUSE 43 FOREIGN TRAVEL

- (a) Foreign travel when charged directly shall be subject to the prior approval of the Contracting Officer for each separate trip regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions.
- (b) Requests for approval shall be submitted at least 45 days prior to the planned departure date, be on Form DOE 445 (Request for Approval of Foreign Travel), and when applicable include Form DOE 290 (Notification of Proposed Soviet-Bloc Travel).

CLAUSE 44 NEGOTIATED OVERHEAD RATES

- (a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost, Fixed Fee, and Payment," the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.
- (b) The Contractor, as soon as possible but not later than ninety (90) days after the expiration of his fiscal year, or such other period as may be specified in the contract, shall submit to the Contracting Officer, with a copy to the cognizant audit activity, a proposed final overhead rate or rates for that period based on the Contractor's actual cost experience during that period, together with supporting cost data. Negotiation of overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.
- (c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the applicable cost principles referenced in the Allowable Cost, Fixed Fee and Payment Clause, as in effect on the date of this contract.

- (d) The results of each negotiation shall be set forth in a modification to this contract, which shall specify (1) the agreed final rates, (2) the bases to which the rates apply, and (3) the periods for which the rates apply.
- (e) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated provisional rates as provided in the contract, or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over or under payment, and to apply either retroactively or prospectively: (1) Provisional rates may, at the request of either party, be revised by mutual agreement, and (2) billing rates may be adjusted at any time by the Contracting Officer. Any such revision of negotiated provisional rates provided in the contract shall be set forth in a modification to this contract.
- (f) Any failure by the parties to agree on any final rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract.

CLAUSE 45 EXCUSABLE DELAYS

Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of of a subcontractor to

perform or make progress, and if such failure arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be deemed to be in default, unless (a) the supplies or services to be furnished by the subcontractor were obtainable from other sources, (b) the Contracting Officer shall have ordered the Contractor in writing to procure such supplies or services from such other sources, and (c) the Contractor shall have failed to comply reasonably with such order. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of such failure and, if he shall determine that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Government under the Clause hereof entitled "Termination for Default or for Convenience of the Government." (As used in this Article, the terms "subcontractor" "subcontractors" mean subcontractor(s) at any tier.)

CLAUSE 46 COST ACCOUNTING STANDARDS

(Applicable if this contract exceeds \$100,000)

- (a) Unless the Cost Accounting Standards Board, or the General Services Administration in the case of non-defense contracts, has prescribed rules or regulations exempting the Contractor or this contract from standards, rules, and regulations promulgated pursuant to 50 U.S.C. App. 2168 (Public Law 91-379, August 15, 1970), or other statutory authority, the Contractor, in connection with this contract shall:

- (1) By submission of a Disclosure Statement, disclose in writing his cost accounting practices as required by regulations of the Cost Accounting Standards Board. The required disclosures must be made prior to contract award unless the Contracting Officer provides a written notice to the contractor authorizing post-award submission in accordance with regulations of the Cost Accounting Standards Board. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the contractor and which contain this COST ACCOUNTING STANDARDS clause. If the contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and

confidential, the Disclosure Statement will not be released outside of the Government.

however, that no agreement may be made under this provision that will increase costs paid by the United States.

- (2) Follow consistently the cost accounting practices disclosed pursuant to (1) above in accumulating and reporting contract performance cost data concerning this contract. If any change in disclosed practices is made for purposes of any contract or subcontract subject to Cost Accounting Standards Board 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) below, as appropriate.
- (3) Comply with all Cost Accounting Standards 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 Cost Accounting Standard which hereafter becomes 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) (A) Agree to an equitable adjustment (as provided in the Changes clause of this contract, if any) if the contract cost is affected by a change which, pursuant to (3) above, the Contractor is required to make to his established cost accounting practices whether such practices are covered by a Disclosure Statement or not.

(B) Negotiate with the Contracting Officer to determine the terms and conditions under which a change to either a disclosed cost accounting practice or an established cost accounting practice, other than a change under (4) (A) above, may be made. A change to a practice may be proposed by either the Government or the Contractor, provided,
 - (1) Established catalog or market prices of commercial items sold in substantial quantities to the general public, or
 - (ii) Prices set by law or regulation, and except that the requirement
- (5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if he or a subcontractor fails to comply with an applicable Cost Accounting Standard or to follow any practice disclosed pursuant to subparagraphs (a)(1) and (a)(2) above and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the rate determined by the Secretary of the Treasury pursuant to Public Law 92-41, 85 Stat. 97, or 7 percent per annum, whichever is less, from the time the payment by the United States was made to the time the adjustment is effected.
 - (b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable Cost Accounting Standard, rule, or regulation of the Cost Accounting Standards Board and as to any cost adjustment demanded by the United States, such failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.
 - (c) The Contractor shall permit any authorized representative of the head of the agency, of the Cost Accounting Standards Board, or of the Comptroller General of the United States 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 he enters into the substance of this clause except paragraph (b) and shall require such inclusion in all other subcontracts of any tier, except that this requirement shall apply only to negotiated subcontracts in excess of \$100,000 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
 - (ii) Prices set by law or regulation, and except that the requirement

shall not apply to negotiated subcontracts otherwise exempt from the requirement to accept the Cost Accounting Standards clause by reason of Section 331.30(b) of Title 4, Code of Federal Regulations (4 CFR 331.30(b)) or 1-3.1203(a)(2) of Title 41, Code of Federal Regulations (41 CFR 1-3.1203(a)(2)).

However, if this is a contract with an agency which permits subcontractors to appeal final decisions of the Contracting Officer directly to the head of the agency or his duly authorized representative, then the Contractor shall include the substance of paragraph (b) as well.

NOTE:

1. Subcontractors shall be required to submit their Disclosure Statements to the Contractor. However, if a subcontractor has previously submitted his Disclosure Statement to a Government Contracting Officer he may satisfy that requirement by certifying to the Contractor the date of such Statement and the address of the Contracting Officer.
2. In any case where a subcontractor determines that the Disclosure Statement information is privileged and confidential and declines to provide it to his Contractor or higher tier subcontractor, the Contractor may authorize direct submission of that subcontractor's Disclosure Statement to the same Government offices to which the Contractor was required to make submission of his Disclosure Statement. Such authorization shall in no way relieve the Contractor of liability as provided in paragraph (a)(5) of this clause. In view of the foregoing and since the contract may be subject to adjustment under this clause by reason of any failure to comply with rules, regulations, and Standards of the Cost Accounting Standard Board in connection with covered subcontracts, it is expected that the Contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor. However, the inclusion of such a clause and in terms thereof are matters for negotiation and agreement between the Contractor and the subcontractor, provided that they do not

conflict with the duties of the Contractor under its contract with the Government. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification to be submitted by his subcontractors.

- (e) The terms defined in Section 331.20 of Part 331 of Title 4, Code of Federal Regulations (4 CFR 331.20) shall have the same meanings herein. As there defined, "negotiated subcontract" means "any subcontract except a firm fixed-priced subcontract made by a contractor or subcontractor after receiving offers from at least two firms not associated with each other or such contractor or subcontractor, providing (1) the solicitation to all competing firms is identical, (2) price is the only consideration in selecting the subcontractor from among the competing firms solicited, and (3) the lowest offer received in compliance with the solicitation from among those solicited is accepted."

CLAUSE 47 ADMINISTRATION OF COST ACCOUNTING STANDARDS

For the purpose of administering Cost Accounting Standards requirements under this contract, the Contractor shall:

- (a) Submit to the cognizant Contracting Officer a description of the accounting change and the general dollar magnitude of the change to reflect the sum of all increases and the sum of all decreases for all contracts containing the Cost Accounting Standards clause:
 - (1) For any change in cost accounting practices required to comply with a new Cost Accounting Standard in accordance with paragraphs (a)(3) and (a)(4)(A) of the clause of this contract entitled 'Cost Accounting Standards' within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring such change;
 - (2) For any change to cost accounting practices proposed in accordance with paragraph (a)(4)(B) of the clause of this contract entitled 'Cost Accounting Standards' not less than 60 days (or such other date as may be mutually agreed to) prior to the effective date of the proposed change; or

- (3) For any failure to comply with an applicable Cost Accounting Standard or to follow a disclosed practice as contemplated by paragraph (a)(5) of the clause of this contract entitled 'Cost Accounting Standards' within 60 days (or such other date as may be mutually agreed to) after the date of agreement of such noncompliance by the Contractor.
- (b) Submit a cost impact proposal in the form and manner specified by the cognizant Contracting Officer with 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 (a)(1), (2), or (3) above.
- (c) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with paragraphs (a) (4) and (a)(5) of the clause of this contract entitled 'Cost Accounting Standards.'
- (d) Include the substance of this clause in all negotiated subcontracts containing the clause entitled 'Cost Accounting Standards.' In addition, include a provision in these subcontracts which will require such subcontractors, within thirty (30) days after receipt of award, to submit the following information to the Contracting Officer cognizant of the subcontractor's facility:
- (1) Subcontractor's name and subcontract number;
 - (2) Dollar amount and date of award;
 - (3) Name of Contractor making the award; and
 - (4) A statement as to whether the subcontractor has made or proposes to make any changes to accounting practices that affect prime contracts or subcontracts containing the Cost Accounting Standards clause, unless such changes have already been reported. If award of the subcontract results in making a Cost Accounting Standard(s) effective for the first time this shall also be reported.
- (e) In the event an adjustment is required to be made to any subcontract hereunder, notify the cognizant Contracting Officer in writing of such adjustment and agree to an adjustment in the price or estimated cost and fee of this contract, as appropriate, based upon the adjustment established under the subcontract. Such notice shall be given within 30 days after receipt of the proposed subcontract adjustment, and shall include a proposal for adjustment to such higher tier subcontract or prime contract, as appropriate.
- (f) When the Cost Accounting Standards clause and this clause are included in subcontracts, the term 'Contracting Officer' shall be suitably altered to identify the purchaser.
- CLAUSE 48 SMALL BUSINESS SUBCONTRACTING PROGRAM**
(Applicable if this contract exceeds \$500,000)
- (a) The Contractor agrees to establish and conduct a small business subcontracting program which will enable small business concerns to be considered fairly as subcontractors and suppliers under this contract. In this connection, the Contractor shall —
- (1) Designate a liaison officer who will (i) maintain liaison with the Government on small business matters, (ii) supervise compliance with the Utilization of Small Business Concerns Clause, and (iii) administer the Contractor's "Small Business Subcontracting Program."
 - (2) Provide adequate and timely consideration of the potentialities of small business concerns in all "make-or-buy" decisions.
 - (3) Assure that small business concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of small business concerns. Where the Contractor's lists of potential 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.
 - (4) Maintain records showing (i) whether each prospective subcontractor is a small business concern, (ii) procedures which have been adopted to comply with the policies set forth in this Clause, and (iii) with respect to

the letting of any subcontract (including purchase orders) exceeding \$10,000, information substantially as follows:

- (A) Whether the award went to large or small business.
- (B) Whether less than three or more than two small business concerns were solicited.
- (C) The reason for nonsolicitation of small business if such was the case.
- (D) The reason for small business failure to receive the award if such was the case when small business was solicited.

The records maintained in accordance with (iii) above may be in such form as the Contractor may determine, and the information shall be summarized quarterly and submitted by the purchasing department of each individual plant or division to the Contractor's cognizant small business liaison officer. Such quarterly summaries will be considered to be management records only and need not be submitted routinely to the Government; however, records maintained pursuant to this Clause will be kept available for review by the Government until the expiration of 1 year after the award of this contract, or for such longer period as may be required by any other Clause of this contract or by applicable law or regulation.

- (5) Notify the Contracting Officer before soliciting bids or quotations on any subcontract (including purchase orders) in excess of \$10,000 if (i) no small business concern is to be solicited, and (ii) the Contracting Officer's consent to the subcontract (or ratification) is required by a "Subcontracts" Clause in this contract. Such notice will state the Contractor's reasons for nonsolicitation of small business concerns, and will be given as early in the procurement cycle as possible so that the Contracting Officer may give SBA timely notice to permit SBA a reasonable period to suggest potentially qualified small business concerns through the Contracting Officer. In no case will the procurement action be

held up when to do so would, in the Contractor's judgment, delay performance under the contract.

- (6) Include the Utilization of Small Business Concerns Clause in subcontracts which offer substantial small business subcontracting opportunities.
- (7) Cooperate with the Contracting Officer in any studies and surveys of the Contractor's subcontracting procedures and practices that the Contracting Officer may from time to time conduct.
- (8) Submit semiannual reports of subcontracting to small business concerns on Optional Form 61, Subcontracting Program - Quarterly Report of Participating Large Company on Subcontract Commitments to Small Business Concerns and Minority Business Enterprises (February, 1977), or such other form as may be specified by the Contracting Officer. Except as otherwise provided in this contract, the reporting requirements of this subparagraph (8) do not apply to small business contractors, small business subcontractors, educational and non-profit institutions and contractors or subcontractors for standard commercial items.

- (b) A "small business concern" is a concern that meets the pertinent criteria established by the Small Business Administration and set forth in paragraph 1-1.701 of the Federal Procurement Regulations.
- (c) The Contractor agrees that, in the event he fails to comply with his contractual obligations concerning the small business subcontracting program, this contract may be terminated, in whole or in part, for default.
- (d) The Contractor further agrees to insert, in any subcontract hereunder which may exceed \$500,000 and which contains the Utilization of Small Business Concerns Clause, provisions which shall conform substantially to the language of this Clause, including this paragraph (d), and to notify the Contracting Officer of the names of such subcontractors.

CLAUSE 49 LABOR SURPLUS AREA SUBCONTRACTING PROGRAM
(Applicable if this contract exceeds \$500,000)

- (a) The Contractor agrees to establish and conduct a program which will encourage

labor surplus area concerns to compete for subcontracts within their capabilities. In this connection, the Contractor shall --

- (1) Designate a liaison officer who will
 - (i) maintain liaison with duly authorized representatives of the Government on labor surplus area matters, (ii) supervise compliance with the Utilization of Concerns in Labor Surplus Areas Clause, and (iii) administer the Contractor's "Labor Surplus Area Subcontracting Program;"
 - (2) Provide adequate and timely consideration of the potentialities of labor surplus area concerns in all "make-or-buy" decisions;
 - (3) Assure that labor surplus area concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of labor surplus area concerns;
 - (4) Maintain records showing procedures which have been adopted to comply with the policies set forth in this Clause. Records maintained pursuant to this Clause will be kept available for review by the Government until the expiration of 1 year after the award of this contract, or for such longer period as may be required by any other Article of this contract or by applicable law or regulations; and
 - (5) Include the Utilization of Concerns in Labor Surplus Areas Clause in subcontracts which offer substantial labor surplus area subcontracting opportunities.
- (b) A "labor surplus area concern" is a concern that (1) has been certified by the Secretary of Labor (hereafter referred to as a certified-eligible concern) regarding the employment of a proportionate number of disadvantaged individuals and has agreed to perform substantially in or near sections of concentrated unemployment or underemployment, in persistent or substantial labor surplus areas, or in other areas of the United States or (2) is a non-certified concern which has agreed to perform a substantial proportion of a contract in

persistent or substantial labor surplus areas. A certified-eligible concern shall be deemed to have performed a substantial proportion of a contract in or near sections of concentrated unemployment or underemployment, in persistent or substantial labor surplus areas, or in other areas if the costs that the concern will incur on account of manufacturing or production in or near such sections or in such areas (by itself, if a certified concern, or by certified concerns acting as first-tier subcontractors) amount to more than 25 percent of the contract price. A concern shall be deemed to have performed a substantial proportion of a contract in persistent or substantial labor surplus areas (by itself or first-tier subcontractors) if the costs that the concern will incur on account of production or manufacturing in such areas amount to more than 50 percent of the contract price.

- (c) The Contractor furthering this paragraph (c), and to notify the Contracting Officer of the names of such subcontractors.

CLAUSE 50 MINORITY BUSINESS ENTERPRISES SUBCONTRACTING PROGRAM

(Applicable if this contract exceeds \$500,000)

- (a) The Contractor agrees to establish and conduct a program which will enable minority business enterprises (as defined in the clause entitled "Utilization of Minority Business Enterprises") to be considered fairly as subcontractors and suppliers under this contract. In this connection, the Contractor shall --
 - (1) Designate a liaison officer who will administer the Contractor's minority business enterprises program.
 - (2) Provide adequate and timely consideration of the potentialities of known minority business enterprises in all "make-or-buy" decisions.
 - (3) Assure that known minority business enterprises will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of minority business enterprises.
 - (4) Maintain records showing (1) procedures which have been adopted to comply with the policies set forth in

this clause, including the establishment of a source list of minority business enterprises, (ii) awards to minority business enterprises on the source list, and (iii) specific efforts to identify and award contracts to minority business enterprises.

- (5) Include the Utilization of Minority Business Enterprises clause in subcontracts which offer substantial minority business enterprises subcontracting opportunities.
- (6) Cooperate with the Contracting Officer in any studies and surveys of the Contractor's minority business enterprises procedures and practices that the Contracting Officer may from time to time conduct.
- (7) Submit periodic reports of subcontracting to known minority business enterprises with respect to the records referred to in subparagraph (4), above, in such form and manner and at such time (not more often than quarterly) as the Contracting Officer may prescribe.

- (b) The Contractor further agrees to insert, in any subcontract hereunder which may exceed \$500,000, provisions which shall conform substantially to the language of this clause, including this paragraph (b), and to notify the Contracting Officer of the names of such subcontractors.

CLAUSE 51 PREFERENCE FOR U.S. FLAG AIR CARRIERS

- (a) Public Law 93-623 requires that all Federal agencies and Government contractors and subcontractors will use U.S. flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent service by such carriers is available. It further provides that the Comptroller General of the United States shall disallow any expenditure from appropriated funds for international air transportation on other than a U.S. flag air carrier in the absence of satisfactory proof of the necessity therefor.
- (b) The Contractor agrees to utilize U.S. flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent service by such carriers is available.

- (c) In the event that the contractor selects a carrier other than a U.S. flag air carrier for international air transportation, he will include a certification on vouchers involving such transportation which is essentially as follows:

CERTIFICATION OF UNAVAILABILITY OF U.S. FLAG AIR CARRIERS

I hereby certify that transportation service for personnel (and their personal effects) or property by certificated air carrier was unavailable for the following reasons: (state reasons).

- (d) The terms used in this clause have the following meanings:

- (1) "International air transportation" means transportation of persons (and their personal effects) or property by air between a place in the United States and a place outside thereof or between two places both of which are outside the United States.
- (2) "U.S. flag air carrier" means one of a class of air carriers holding a certificate of public convenience and necessity issued by the Civil Aeronautics Board, approved by the President, authorizing operations between the United States and/or its territories and one or more foreign countries.
- (3) The term "United States" includes the fifty states, Commonwealth of Puerto Rico, possessions of the United States, and the District of Columbia.

- (e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase hereunder which may involve international air transportation.

CLAUSE 52 CHANGES

- (a) The Contracting Officer may at any time, by a 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:
 - (i) Drawings, designs, or specifications;
 - (ii) Method of shipment or packing; and
 - (iii) Place of inspection, delivery or acceptance.

- (b) If any such change causes an increase or decrease in the estimated costs of, or the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, or otherwise affects any other provision of this contract, an equitable adjustment shall be made:

- (i) In the estimated cost or delivery schedule, or both;
- (ii) In the amount of any fixed fee to be paid to the Contractor; and
- (iii) In such other provisions of the contract as may be affected,

and the contract shall be modified in writing accordingly.

Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change: Provided, however, That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, except as provided in paragraph (c) below, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

- (c) Notwithstanding the provisions 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 thereof, shall not be increased or deemed 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 such modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the clause of this contract entitled "Limitation of Cost" or "Limitation of Funds."

CLAUSE 53 PERMITS AND LICENSES

Except as otherwise directed by the Contracting Officer, the Contractor shall procure all necessary permits or licenses and abide by all

applicable laws, regulations and ordinances of the United States and of the State, territory, and political subdivision in which the work under this contract is performed.

CLAUSE 54 INSURANCE

- (a) The Contractor shall procure and thereafter maintain workmen's compensation, employer's liability, comprehensive general liability (bodily injury), and comprehensive automobile liability (bodily injury and property damage) insurance, with respect to performance under this contract, and such other insurance as the Contracting Officer may from time to time require with respect to performance under this contract: Provided, That the Contractor may with the approval of the Contracting Officer maintain a self-insurance program: And provided further, That with respect to workmen's compensation the Contractor is qualified pursuant to statutory authority. All insurance required pursuant to the provisions of this paragraph shall be in such form, in such amounts, and for such periods of time as the Contracting Officer may from time to time require or approve, and with insurers approved by the Contracting Officer.
- (b) The Contractor agrees, to the extent and in the manner required by the Contracting Officer, to submit for the approval of the Contracting Officer any other insurance maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement hereunder.