

## VII.8 International and Foreign Policy Considerations

The following section has been drafted with the understanding that is mandatory for a bidder to propose development and operation of a follow-on earth remote sensing system to the present Landsat 4/D'. Acquisition and operation of the Landsat 4/D' system is optional.

Transfer of the Landsat program will require the U.S. Government and the future private operator to address three broad problem areas: (1) conformity of private operation with applicable laws (I.E. international treaty obligations and export control legislation). Such conformity will be required of private operators of both the Landsat 4/D' and follow-on earth remote sensing systems; (2) availability of data for international use. This issue will also apply to operators of both the Landsat 4/D' and follow-on earth remote sensing system (See Section VII.8.2.B. i-iii below); (3) relations with foreign Landsat ground station operators. Differences in approach to this issue between private operation of the present Landsat 4/D' system and follow-on systems are set forth in Section VII.8.3.B. below

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### 1. Applicable Laws A. International Treaty Obligations

Current United States policies and practices regarding the Landsat systems and programs are embodied in a number of international obligations. Principal among these are:

(i) The 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space ... which stipulates, inter alia, that member States shall be responsible for all activities in outer space of their nationals, whether Government agencies or non-governmental entities;

(ii) The 1973 Convention on International Liability for Damage Caused by Space Objects. Which makes member Governments fully liable for damage caused by space objects under their registration, whether such objects are launched/operated by Government agencies or non-governmental entities;

(iii) The 1976 Convention on Registration of Objects Launched into Outer Space. Which holds member States responsible for notifying appropriate international authorities of all objects launched into space by their nationals, whether Government agencies or non-governmental entities, and holds member States responsible for seeing that such objects are properly registered with appropriate international authorities.

### B. Export Control Legislation

(i) Arms Export Control Act of 1976. Which authorizes the Chief Executive and his designees to control articles in furtherance of world peace and the foreign policy and national security of the United States. All satellites, related ground support equipment, and related technical data are subject to the export controls established under the 1976 Act, in accordance with the provisions of the regulations on international traffic in arms. Therefore, should an American private operator of earth remote sensing systems wish to export to foreign countries equipment and technologies

relating to the satellite portion of the system/program, he would require licensing approval from the Office of Munitions Control, Department of State. If the private operator wished to export to foreign countries equipment and technologies relating to the ground segment of the earth remote sensing system, he would require licensing approval from the Department of Commerce.

### C. Obligations

(i) Private owner(s)/operator(s) of the Landsat and/or follow-on earth remote sensing systems shall be (a) United States firm(s) as set forth in sections III and V above;

(ii) Private owner(s)/operator(s) shall obtain the prior approval/concurrence of the U.S. Government on all matters involving:

(a) overall U.S. space and export control policies, and international treaty obligations;

(b) relations of the private owner(s)/operator(s) with foreign governments, agencies, or international bodies;

(c) other matters specifically identified in this section VII.8.

(iii) Private owner(s)/operator(s) shall provide 30 day advance notification of negotiations with foreign governments, agencies or business entities as well as international bodies so that the U.S. Government may advise him (them) of relevant foreign policy concerns and/or provide such assistance as may be deemed appropriate;

(iv) All notifications and requests for approval/concurrence, concerning matters governed by this Section VII.8 shall be directed to the Government's Contracting Officer identified in Section V. Government decisions shall be made or communicated through the mechanism set forth in Section III.

(v) To ensure that the proposer understands the issues involved, each proposal shall include, in addition to the matters required elsewhere in this Section, the plans and procedures to address the international and foreign policy issues mentioned herein, as well as when and how the proposer will provide the required notifications or requests for approval/disapproval.

## 2. Data Availability for International Use

### A. Background

Since the inception of the U.S. Government Landsat program over a decade ago, data have been provided to international users on an equal, open, non-discriminatory basis. At the time of the launch of ERTS (Landsat) 1, concerns were raised internationally about the potential of countries with land remote sensing capabilities to derive and exploit exclusive information concerning the natural resources of lesser developed countries. These concerns led to discussions in the United Nations and other organizations of mechanisms which might be used to restrict or restrain certain aspects of remote sensing from space. In response, the United States took the following steps which have muted international efforts to restrict land remote sensing from space:

(i) Declared that Landsat data were available to anyone who wished to use them. To implement this declaration, a central depository for all U.S. processed data was established at the EROS Data Center and data were sold to any person or nation without discrimination as to timeliness or price;

(ii) Promoted and encouraged other nations to build and operate their own facilities to receive and process Landsat data, and agreed to turn on the transmitter (subject to technical limitations) whenever the satellite was within range of such foreign ground stations in exchange for a yearly access fee;

(iii) Further encouraged regional distribution of Landsat data by making it a condition of the agreement to turn on the satellite's transmitter over a foreign ground station so that these stations would also distribute processed data to other nations without restriction;

(iv) Encouraged participation of foreign nationals in U.S. research programs and, in some cases, funded research by foreign nationals and provided financial support for operational applications demonstrations. Scientists and technicians from developing nations were trained to understand the use of Landsat data and to support research or economic/social objectives of each interested nation;

(v) Set fees to purchase Landsat data from the EROS Data Center at the cost of reproduction. This had the effect of not preventing poorer nations from purchasing and using Landsat data.

(vi) Established a cooperative arrangement with France, Japan and the European Space Agency (ESA) through the CLOS (Coordination on Land Observing Satellites) to coordinate international research and development and maximize technical parameters in land remote sensing.

## B. Obligations

In order to encourage and promote private commercial operation of the Landsat system/programs, the U.S. Government is willing to grant (the) potential private owner(s)/operator(s)/vendor(s) the following:

(i) Exclusive ownership of all data produced by the Landsats under his (their) management; acknowledging the copyrightable character of this data and the right of (the) owner(s)/operator(s) to protect his (their) copyright interests;

(ii) Subject to the obligations with regard to foreign Landsat ground stations set forth below, exclusive right to distribute data internationally from Landsats under his (their) management, including the right to enter into data/pricing/finance systems contracts of his (their) own determination with any foreign ground station operators (this shall include the right to negotiate with foreign Landsat ground station operators limits of liability, definitions of terms under which contracts shall cease, procedures for the settlement of disputes, and other miscellaneous provisions);

(iii) The above provisions will extend fully to any follow-on earth remote sensing system to Landsat D' developed by the private owner(s)/operator(s) during the lifetime of the contract, with the stipulation that (the) private owner(s)/operator(s) comply fully with the provisions regarding U.S. Government consultation and approval set forth in Section VII.8.1.C above.

The private owner(s)/operator(s)/vendor(s):

(i) Shall conform their earth remote sensing programs (both Landsat 4/D' and follow-on systems) as closely as is commercially possible to traditional U.S. Government practices of providing civil land remote sensing satellite data to all users on an open, equal, non-discriminatory basis;

(ii) Shall consult with and obtain the approval of the U.S. Government before instituting major changes in international data processing and distribution practices, to ensure that such changes are in conformity with the international obligations and foreign policy objectives of the U.S.;

(iii) Shall recommend the ways and means, terms and conditions under which U.S. Government agencies shall obtain sufficient Landsat (and follow-on earth remote sensing systems') data to ensure those agencies adequate data to meet their space technology assistance and other international programmatic/research needs. The agencies will endeavor to inform (the) private owner(s)/operator(s) of forthcoming requirements through the Government oversight mechanism described in Section III.

Additionally:

(i) (The) private owner(s)/operator(s) may wish to suggest ways and means by which he (they) may obtain maximum informational flow and operational/technical benefits from continued U.S. Government participation in the CL OS.

### 3. Foreign Ground Receiving Stations

#### A. Background

The U.S. Government presently has or is negotiating agreements with a dozen foreign Landsat ground receiving/processing/transmission stations around the world. The specific provisions of these agreements are set forth in the draft standard Memorandum of Understanding between NOAA and foreign Landsat ground station operators at Appendix \_\_\_\_\_ (copies of specifically concluded MOU's with several foreign Landsat ground station operators may be found in the SEB Library at NBOC 11420, Rockville, Maryland).

The current international Landsat ground station network has provided the U.S. and foreign station operators with measurable benefits and has enhanced U.S. prestige and foreign policy objectives in outer space, while providing U.S. Landsat operation agencies (NASA, NOAA) with significant annual revenues in the form of yearly access fees from the foreign ground station operators.

#### B. Obligations

(i) During the lifetime of private operation of the current Landsat program, the private operator is not required to retain existing U.S. Government arrangements with foreign Landsat ground stations. However, it is in the U.S. interest to encourage relations between a private U.S. earth remote sensing operator and foreign ground receiving/processing/transmission stations. (The) private Landsat owner(s)/operator(s) shall obtain the concurrence of the U.S. Government before terminating or initiating agreements with an existing or prospective foreign Landsat ground station operator, and must obtain U.S. Government concurrence prior to making

changes in operational procedures which could adversely affect U.S. foreign policy interests.

(ii) Federal Government review of private operators' applications to make changes in relations with foreign ground stations during the lifetime of Landsats 4 and/or D' is not susceptible to hard and fast guidelines and criteria. In general, responsible Federal agencies would have to balance existing foreign policy considerations--including maintenance of U.S. technical leadership and mutually beneficial relations with foreign Landsat ground station operators--with the objective of promoting reasonable commercial returns for the private operator.

(iii) In proposing operation of a follow-on system to Landsat D', bidders are encouraged to propose ways and means by which the present international network of foreign earth remote sensing ground receiving/processing/transmission stations can be continued during the remainder of the lifetime of the contract.