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1. GOVERNMENT OVERSIGHT

A. Concept

The following describes the general procedures by which the U.S. Government will oversee the operations of any system transferred to the private sector as a result of this RFP. It is designed to ensure that the Secretary of Commerce is aware of all important issues and has access to timely advice from concerned agencies, while at the same time not interfering with the substantive authorities vested by law in those agencies. It is the responsibility of each offeror to be familiar with the legal constraints and requirements applicable to its operation of the particular system(s) covered by its proposal, and to indicate its understanding by appropriate discussion in relevant portions of its proposal.

B. Framework

- (1) The Department of Commerce will provide the contact point through which most inquiries and mandatory submissions from private operators of the LANDSAT system are received and acted on by the U.S. Government. Except as set forth below, matters will be handled directly by the Department of Commerce, through the Contracting Officer.
- (2) On matters where an independent regulatory agency such as the Federal Communications Commission, has authority, all contacts should be made directly with that agency. The owner/operator must promptly notify the Contracting Officer when contact has been made with the independent regulatory agency and the outcome of that contact. The Department may, at its initiative, provide its views to that agency.
- (3) In instances when the inquiries and submissions involve issues vested by statute or Executive Order in regulatory agencies within the Executive Branch, as with Federal Aviation Administration licensing (private launches), Department of State administration of the Arms Export Control Act and its implementing regulations, or Department of Commerce administration of the Export Administration Act and its implementing regulations, the operator must submit these inquiries and submissions to the Department of Commerce, through the Contracting Officer, for transmittal to the appropriate agency or department. The agency or department will then contact the operator directly and will inform the Department of Commerce of the outcome.
- (4) Questions concerning the obligations imposed, or compliance with the obligations, in the International Commitments and National Security sections of this RFP will also be handled through the Contracting Officer. As in the case of Executive Branch regulatory agencies or departments, the decisions will be made by the appropriate agency or department. However, unlike the situation explained in paragraph 3 above, the

agency or department will provide the Department of Commerce with the guidance or decision that is to be passed on to the operator of these systems.

- (5) It is anticipated that an Interagency Board will be established to provide the Department of Commerce with policy guidance as well as to perform an oversight function over the entire process to ensure that the interests of the U.S. Government are being met.

### C. ENFORCEMENT

- (1) It is expected that the legislation authorizing the transfer will provide for a broad range of legal procedures to protect the interests of the U.S., including authorizing the Secretary of Commerce to impose civil penalties for noncompliance with the national security and international commitment requirements set forth in this RFP. It is also expected that the legislation will authorize the promulgation of necessary regulations. Although the legislation may authorize regulation of all private sector remote sensing satellites under the jurisdiction of the U.S., for the purposes of this RFP, offerors should assume that, if any regulations are promulgated, they will apply only to the operators of the system covered by this RFP.
- (2) Although there do not appear to be any antitrust problems inherent in the transfer of this system to the private sector, such problems may or may not arise depending on the substantive content of the proposal(s) received.

### 2. GOVERNMENT EMPLOYEES DISPLACED BY CONTRACT

This is not a requirement under OMB Circular A-76 where there is a cost comparison between the cost of Government operation and contract operation. However, the Government will require that Government employees be given the right of first refusal for employment openings. Consistent with Government conflict of interest standards, the Contractor shall give Government employees, displaced as a result of the conversion to contract performance, the right of first refusal for employment openings on the contract in positions for which they are qualified.

### 3. LATE PROPOSAL CLAUSE

- (a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made, and:
  - (1) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th day of the month must have been mailed by the 15th or earlier);
  - (2) It was sent by mail (or telegram if authorized) and it is

4. POTENTIAL CONFLICT OF INTEREST

Offerors have an affirmative obligation to disclose to the Government any personal or business relationships with Government personnel, or financial interest, which could present the appearance of an existing or potential conflict of interest. Failure to do so, if such becomes known by other means, could result in a determination of non-responsibility before award, or termination of the contract.

5. UNITED STATES FIRM

(a) Proposals will only be acceptable from United States firms. A United States firm is defined as follows:

(1)

- A. The principal place of business and corporate headquarters shall be in the United States;
- B. A majority of the corporate officers shall be United States citizens;
- C. Key management and supervisory personnel shall be United States citizens; and
- D. Corporate tax returns shall have been filed in the United States for a minimum of one year; or

(2)

A joint venture, corporation, or unincorporated association, owned or consisting entirely of individuals, corporations or partnerships meeting the requirements set forth in paragraph (1) above.

(b) Each offeror shall include, with its proposal, a certification that it is a U.S. firm, as defined above.

(c) It is essential for the Government to obtain information about foreign ownership, control, or influence which is sufficient to enable it to determine whether award of a contract to a firm may have a significant adverse effect on the national security or public health and safety. Therefore, in its response to Section VIII of this RFP, each offeror must indicate, in relevant places, its relationships with foreign interests.

(d) A foreign interest is any of the following:

- (1) Foreign government or foreign government agency or instrumentality thereof;
- (2) Any form of business enterprise organized under the laws of any country other than the United States or its possessions;

- (3) Any form of business enterprise organized or incorporated under the laws of the U.S., or a state or other jurisdiction within the U.S. which is owned, controlled, or influenced by a foreign government, agency, firm, corporation, or person; or
- (4) Any natural person who is not a U.S. citizen.
- (e) Foreign ownership, control, or influence (FOCI) will be considered to exist when the degree of ownership, control, or influence over an offeror/bidder or a contractor by a foreign interest is such that a reasonable basis exists for concluding the compromise of classified information or unclassified sensitive information may possibly result.

## 6. FAIR AND EQUITABLE COMPENSATION TO PROFESSIONAL EMPLOYEES

### NOTICE TO OFFERORS

NOTE THE SOLICITATION PROVISIONS RELATING TO FAIR AND EQUITABLE COMPENSATION TO PROFESSIONAL EMPLOYEES SET FORTH ELSEWHERE IN THIS SOLICITATION. FAILURE TO COMPLY WITH THESE PROVISIONS MAY CONSTITUTE SUFFICIENT CAUSE TO JUSTIFY NONSELECTION OF A PROPOSAL. THE TOTAL COMPENSATION PLAN REQUIRED TO BE SUBMITTED BY THE OFFEROR WILL BE VIEWED AS BEING WITHIN THE PURVIEW OF PUBLIC LAW 87-653 (FPR 1-3.807-3).

### INSTRUCTIONS TO OFFERORS

- (a) Total compensation (salary and fringe benefits) of professional employees under service contracts may, in some cases, be lowered by recompetition of these contracts. Lowering of compensation can be detrimental in obtaining the necessary quality of professional services needed for adequate performance of service contracts. It is, therefore, in the best interest of the Government that professional employees, as defined in 29 CFR 541, be properly and fairly compensated in these contracts. As a part of their proposals, offerors will submit a "Total Compensation Plan" (salaries and fringe benefits) for these professional employees for evaluation purposes.
- (b) The Government will evaluate the Total Compensation Plan to ensure that this compensation reflects a sound management approach and an understanding of the requirements to be performed. It will include an assessment of the offeror's ability to provide uninterrupted work of high quality. The total compensation proposed will be evaluated in terms of enhancing recruitment and retention of personnel and its realism and consistency with a total plan for compensation (both salaries and fringe benefits).
- (c) Criteria for evaluation, therefore, will include an assessment of the Total Compensation Plan submitted by each offeror.

## 7. RELEASE OF INFORMATION

Information pertaining to the proposals status will only be disclosed in accordance with Federal Procurement Regulations 41 CFR 1-3.103, Dissemination of procurement information.

## 6.4 Oceanography

6.5. Government Use of Data for R&D Purposes

The ability to engage in global research has been fostered by the U.S. policy of providing non-discriminatory access to remote sensing data -- both within the U.S. and internationally. R&D programs have not been subject to geographical limitations. U.S. scientists have thus enjoyed unrestricted access to worldwide data of prime scientific interest in reaching an understanding of global phenomena. Efforts to maintain non-discriminatory data access have been supported by the Government in the deliberations of the United Nations Outer Space Committee.

The U.S. Government conducts a wide variety of space-based experiments to evaluate remote sensing techniques for basic and applied studies of the Earth. Experimental sensors placed on orbiting spacecraft can be used to collect remote sensing data in many different parts of the world. Wide dissemination of this data within the global research community is essential to evaluate fully its utility. Past experience with has demonstrated the desirability of involving foreign participants in U.S. Government research programs, in part in order to obtain necessary ground truth measurements. Similarly, a broad spectrum of U.S. investigators participate in these research programs. Limitations on the availability of such data would restrict the scope and extent of research, which, in turn, would reduce the Government's overall return on its investment in specific orbital experiments.

As indicated above, the U.S. Government achieves a significant "multiple effect" on the return on its research investment by permitting experimental data to be widely disseminated. Restrictions on the flow of data into the research community would reduce or diminish the overall R&D achievements of specific flight projects. The flow of such data into the worldwide research community plays an important role in expanding current awareness of the utility of space techniques.

A. R&D Requirement for Foreign Remote Sensing Data

A number of foreign nations/agencies (France, Japan, European Space Agency, Canada, India, Federal Republic of Germany, Brazil) are currently developing or plan to develop remote sensing missions. Research scientists have already made plans to obtain data from the German-developed Modular Optoelectronic Multispectral Scanner (MOMS) instrument scheduled for a June 1983 Shuttle experimental flight and the Microwave Remote Sensing Experiment (MRSE) instrument scheduled for flight on Spacelab 1 in September 1983. We anticipate future research requirements for access to European Space Agency ERS-1 data (in particular ERS-1 SAR data) in the 1988 timeframe, Japanese MOS-1 data in the 1986 timeframe, and Canadian RADARSAT data in the the early 1990s. Although we have not yet identified specific research requirements for French SPOT data, it is likely that U.S. scientists will have access to this data in the same manner as will other U.S. users -- through purchase of the data. In the other above-cited instances, it is likely that we will obtain foreign satellite data for experimental purposes through cooperative agreement in exchange for U.S. data, in support of U.S. investigators, or in return for U.S. ground truth support.

The U.S. is exploring the possibility of direct readout of foreign remote sensing satellite data by U.S. ground stations for experiment purposes. Such

arrangements could be patterned after similar arrangements whereby U.S. experimental satellite data have been acquired by direct readout at foreign ground stations on the basis of negotiated agreements.

#### B. Foreign Participation in U.S. R&D Programs

R&D efforts benefit from the participation of foreign scientists and investigators. A number of foreign scientists and counterpart foreign agency personnel have demonstrated expertise in the area of earth sciences. Their own research often complements that of their U.S. peers. In the earth sciences area, foreign scientists/investigators have participated and continue to participate in the Landsat-1, -2 and -4 investigations, Shuttle Imaging Radar-A and -B investigations, and are associated with the Skylab, Nimbus-7, Magsat and Heat Capacity Mapping missions. Foreign involvement is desirable in virtually all of the future U.S. remote sensing programs. In particular, foreign ground truth support and participation by foreign investigators will be crucial in the development of an integrated NASA Global Habitability program.

Foreign scientists and foreign counterpart agencies have command of resources which are often of value in the context of cooperative programs. Cooperation is anticipated in the joint flight of NASA's Shuttle Imaging Radar-C with the German Remote Sensing Experiment (initially flown on Spacelab 1) in the 1986 timeframe. Another example is the back-up tape recorder support at foreign Landsat ground receiving stations (operated at foreign agency expense) enabling satisfaction of U.S. Government data requirements not otherwise attainable in the pre-TDRSS era.

As foreign counterpart agencies develop their own earth science missions, we can expect reciprocity in receiving access to foreign-acquired data and participation by U.S. scientists and investigators on foreign mission science teams.

#### C. International Considerations

Like domestic investigators, foreign investigators associated with R&D efforts receive the data they need at no cost. In addition to bringing demonstrated expertise to the investigation and engaging in activities of specific interest, foreign investigators can provide valuable ground truth support and other resources of great potential value to the R&D program. See Section VII.8 for a discussion of the Government requirements with regard to international research data applications.

## VII.8. FOREIGN POLICY AND INTERNATIONAL COMMITMENTS REQUIREMENTS

This part sets forth the obligations of any private owner(s)/operator(s) of the land remote sensing satellite ("Landsats"), within the context of U.S. international requirements and foreign policy objectives and considerations. It defines the areas wherein the Department of State and other responsible Federal agencies must play a key oversight role. The institutional mechanisms for U.S. Government oversight of private owner(s)/operator(s) are set forth in Section III. In order to assure clear presentation of the obligations which private owner(s)/operator(s) are expected to assume with respect to their international activities, those of the Landsats are set forth below.

### 8.1 Background

#### (a) Current U.S. Government Landsat practices and policies

Providing non discriminatory access to remote sensing data has also been a central feature of the U.S. Government's policies on the Landsat program, which has been operating for more than a decade. At the time of the launch of ERTS 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 certain aspects of remote sensing from space. In response, the United States took the following steps which muted international efforts to restrain land remote sensing from space:

- o 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.
- o 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.
- o 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 that these stations would also distribute processed data to other nations without restriction.
- o 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.
- o 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.

The Soviet Union has also operated land observing satellite systems, but does not maintain a policy of making all data available on a non-discriminatory basis. France plans to launch SPOT, a sophisticated multispectral land remote sensing system, in 1985. Japan expects to launch an advanced land remote sensing satellite sometime between 1988-1990. France has declared that it will make its data available on a non-discriminatory basis to the international user community. At present, we have no firm information how the French will define "non-discriminatory" data availability. The price to be charged for SPOT data and the details of the agreements between SPOT Image (the commercial outlet for SPOT data) and the owners of the foreign ground stations (in most cases the same ones who receive Landsat data) may dictate that these policies be implemented differently. Other countries are considering plans to launch their own land remote sensing satellite systems, but these systems are still in the early planning stages.

The current state of international thinking on land remote sensing, at least on the governmental level, is perhaps best reflected in the report of the 1982 Unispace Conference. That report noted that although remote sensing is still in a "pre-operational" stage, "it is only a matter of time--and a short time--before this very important application attains a completely operational status." Given this reality, the report said "agreement should be reached on principles governing satellite remote sensing. Work to this effect . . . should be continued as a matter of priority, aimed at speedy agreement on such principles." In addition to a framework of general principles, concern was expressed that . . .

"Satellite operators should give assurance about continuity of data flows and provide indications about estimated lifetime of pre-operational and operational systems in order to help all countries, in particular the developing countries. Compatibility of various systems and data formats is another important aspect . . ."

At the Unispace Conference in Vienna in August, 1982, some delegations persisted in expressing serious concern regarding the dissemination of data collected by remote sensing satellites. Several developed (including the U.S.) and developing countries stated that such information should be freely available for fair-cost purchase by any interested party. Many delegations asserted that the consent of the sensed State must be obtained before remote sensing, even if the information was not to be disseminated beyond the concerned States. Other delegations felt that in no case should the information be available to any State other than the sensor and sensed States. Most representatives expressing an opinion on the point agreed that priority in access to data must be accorded the sensed State. The United States has categorically rejected any international restrictions on remote sensing. (C.f. United Nations, Report of the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space, Vienna, August 9-21, 1982; A/CONF.101/10.)



(c) International Obligations

(1) International Agreements

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

- o The 1967 Outer Space Treaty. 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;

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- o 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;
  - o 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;
- (2) Memoranda of Understanding with Foreign Landsat Ground Receiving Stations Operators.

Since 1972 the U.S. has concluded memoranda of understanding (MOU's) with several foreign ground station operators to permit those operators to directly receive data from Landsat satellites for a fixed annual fee (currently \$600,000 per year). Under the provisions of the MOU's, foreign Landsat ground stations must disseminate data to requesters on the same open, non-discriminatory basis as does the U.S. Government. Each MOU provides for termination upon cessation of U.S. Government operation of the Landsat system (see Section 8.4(e) page VII.8-14 below).

8.2 General

(a) Obligations

- (1) Private owner(s)/operator(s) shall be (a) United States firm(s) as set forth in Sections III and V above;
- (2) Private owner(s)/operator(s) shall obtain the prior approval/concurrence of the U.S. Government on matters involving:
  - (A) overall U.S. space 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
- (3) Private owner(s)/operator(s) shall provide 30 day advance notification of negotiations with foreign governments, agencies or international bodies so that the U.S. Government may advise him (them) of relevant foreign policy concerns and/or provide such assistance as it deems appropriate.

(b) Procedures

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 through the mechanism set forth in Section III.

(c) Proposal Requirements

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 foreign policy issues and international obligations mentioned herein, as well as when and how the proposer will provide the required notifications or requests for approval/disapproval.

8.3 Landsat System

(a) Satellites

(1) Obligations

(A) A private operator of the U.S. civil land remote sensing satellite(s) shall operate the satellite(s) as determined by any resultant contract from this RFP. However, such owner/operator shall act under constraints set forth by the international obligations entered into by the U.S. Government, enumerated in Section 8.1(c)(1) above. To implement existing international obligations which include the UN Outer Space Treaty of 1967 and related Conventions on liability and on registration, the U.S. Government must have adequate authority and opportunity for supervision of:

(i) the compliance by private owner(s)/operator(s) of space programs/systems with overall U.S. space policies and international treaty obligations;

(ii) the relations of the private owner(s)/operator(s) with foreign governments, agencies, and international bodies.

(B) In addition, a private operator/owner of land satellites shall provide the U.S. Government with information regarding intended relations with the French, Japanese, and the European Space Agency. At present the U.S., France, and Japan cooperate in land remote sensing through the Coordination on Land Observing Satellites (CLOS). The purpose of the CLOS is to maximize technical parameters of current and planned land satellite programs. Should the land satellites be commercialized, the U.S. Government will continue its active international research and development coordination role within the CLOS structure. Opportunity will be afforded the private operator to coordinate with responsible U.S. Government agencies as necessary and appropriate.

(2) Procedures

(A) The U.S. Government shall review and approve/disapprove decisions of private owner(s)/operator(s) on relevant matters and issues involving international obligations described in Section 8.1(c)(1).

(B) Relations developed between a U.S. private owner/ operator of land satellites and current or future foreign land satellite operators shall be subject to appropriate supervision/oversight by the U.S. Government.

(3) Proposal Requirements

A proposal for the Landsat satellites shall provide, as a minimum, evidence of the proposer's understanding of the issues involved pertaining to international obligations, and stipulate approach and organization for interface with foreign entities, the U.S. Government, and other satellite operators.

(b) Sensors

The U.S. Government must be notified if the operator plans to include any foreign origin sensors on future Landsats.

(1) 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:

(A) 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; and

(B) Subject to the obligations set forth in (e)(1), 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 stations 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).

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

(A) Shall conform their programs 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.

(B) 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.

(2) Proposal Requirements

The private owner(s)/operator(s) should address plans and policies for international data sale and distribution.

(d) International Research/Humanitarian Data Applications

(1) Obligations

Numerous Federal agencies including NOAA, USGS, and especially AID have employed Landsat data extensively and successfully over the past decade in a variety of worldwide space technology assistance programs. Such assistance programs include, but are not confined to, training, population census, mapping, agricultural crop assessment and forecasting, mineral resource evaluations, etc. In view of the importance of U.S. Landsat data to numerous U.S. Government space

technology assistance programs, the private Landsat owner(s)/operator(s) shall be prepared to sell data from their Landsats, upon request by the U.S. Government agencies, in order to ensure adequate U.S. Government participation in international space technology assistance programs. Furthermore, NASA has included foreign participants in its research programs to broaden the base of expertise available and also to ensure the collection of ground truth. Such foreign participants in U.S. Government research programs must continue to have operational remote sensing data made available to them on the same terms as such data is made available to U.S. participants in U.S. Government research programs.

(2) Procedures

Private Landsat owner(s)/operator(s) should be prepared to sell data to U.S. Government agencies in order to ensure those agencies adequate data to meet their space technology assistance and other international programmatic needs. Such agencies will endeavor to inform the private owner(s)/operator(s) of forthcoming requirements through the Government oversight mechanism described in Section III.

(3) Proposal Requirements

A proposal for the Landsats shall address in this part the manner in which data will be provided from privately operated satellites to fulfill the international data requirements outlined above.

(e) Foreign Landsat Ground Stations

(1) Obligations

Any private operator of the civil Landsat system must determine the disposition of the existing foreign Landsat ground stations. Over the past decade, the U.S. has actively encouraged the participation of foreign entities in the civil Landsat program. Participation has taken the form of a dozen ground data receiving/processing/transmission stations. Retention of existing arrangements with foreign Landsat ground stations is not a condition of private ownership/operation of the civil Landsat program per se. However, a private operator shall obtain the concurrence of the U.S. Government before terminating or initiating agreements with an existing or prospective foreign Landsat ground station operator, or making changes in operational procedures which could adversely affect U.S. foreign policy interests.

(2) Procedure

A private Landsat owner/operator 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 obtain concurrence prior to making changes in operational procedures which could adversely effect U.S. foreign policy interests.

(3) Proposal Requirements

A proposal for the Landsat system shall address the procedures planned for operation of current and future Landsat ground stations and retention and/or closure of existing foreign Landsat stations.