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~~SECRET~~ **NEGOTIATED CONTRACT** (SUPPLIES AND SERVICES) *Comm*

REQUISITION OR OTHER PURCHASE AUTHORITY: **58-12519** CONTRACT/TASK ORDER NO.: **046-12519-8**

**CONFIDENTIAL**

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**ISSUING OFFICE**

NAME: [ ] ADDRESS: [ ]

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**CONTRACTOR**

NAME: [ ] ADDRESS: [ ]

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CONTRACT FOR: **Radio Sets** AMOUNT subject to provision 39 hereof: **\$ 94,299.00**

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APPROPRIATION AND OTHER ADMINISTRATIVE DATA

BOG 2 REV DATE 050580 BY 010996  
 CRG COMD 035 CRY 56 CRY 06  
 CRG CLASS 3 CRY 19 CRY C  
 JUST 22 REV DATE 2010 CRY 010996

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This negotiated contract is entered into pursuant to statutory authority and any required determination and findings have been made.

This contract is entered into, by and between the United States of America, hereinafter called the Government, represented by the Contracting Officer executing this contract, and above named Contractor who is an  Individual,  Partnership,  Corporation, incorporated in the State of \_\_\_\_\_, hereinafter called the Contractor.

The parties hereto agree that the Contractor shall furnish the facilities and deliver all supplies and perform all the services set forth in the attached Schedule, or Task Orders, issued hereunder, for the consideration stated therein.

The rights and obligations of the parties to this contract shall be subject to and governed by the terms and conditions on the reverse hereof, attached Schedule and General Provisions. To the extent of any inconsistency between the Schedule and General Provisions, and any specifications or other provisions which are made a part of the contract by reference or otherwise, the Schedule and the General Provisions shall control. To the extent of any inconsistency between the Schedule and the General Provisions, the Schedule shall control.

The Contractor represents (a) that it  is,  is not, a small business concern. For this purpose, a small business concern is one that (i) is not dominant in its field of operation and, with its affiliates, employs fewer than 500 employees, or (ii) is certified as a small business concern by the Small Business Administration. (See Code of Federal Reg., Title 13, Ch. II, Part 103, 21 Fed. Reg. 9708, which contains the detailed definition and related procedures.), (b) that it  has,  has not, previously been denied a Small Business Certificate by the Small Business Administration, and (c) if offeror is a regular dealer, it also represents that all supplies to be furnished hereunder  will,  will not be manufactured or produced in the United States or its territories or possessions by a small business manufacturer or producer; and, further, makes the representations regarding contingent or other fees, set forth on the reverse hereof.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of 26 June 19 58.

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SIGNATURES (Type or print all names under all signatures)

CONTRACTOR: [ ] THE UNITED STATES OF AMERICA

BY: [ ] TITLE: [ ] BY: [ ] CONTRACTING OFFICER

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WITNESSES (In case of corporation, witnesses not required, but certificate on the reverse must be completed.)

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**NOTICE**

This material contains information affecting the National Defense of the United States within the meaning of the Espionage Laws, Title 18, U.S.C. Secs. 793 and 794, the transmission or revelation of which in any manner to an unauthorized person is prohibited by law.

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FORM  
3-58 1398 BACK**SECRET**  
(When Filled In)

(12)

## SECURITY NOTE

This contract and correspondence relating thereto must be handled in strict accordance with classified handling and storage instructions furnished the contractor under separate cover by the procuring activity.

**NOTE:** Contractor, if a corporation, should cause the following certificate to be executed under its corporate seal, provided that the same officer shall not execute both the contract and the certificate.

## CERTIFICATE

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_  
\_\_\_\_\_ of the corporation named as Contractor herein; that  
\_\_\_\_\_, who signed this contract on behalf of the Contractor, was then \_\_\_\_\_ of said corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

\_\_\_\_\_  
(SIGNATURE) (Corporate Seal)

## CONTRACTOR'S STATEMENT OF CONTINGENT OR OTHER FEES

The Contractor represents: (a) that he  has,  has not, employed or retained any company or person (other than a full-time bona fide employee working solely for the Contractor) to solicit or secure this contract; and (b) that he  has,  has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the Contractor) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to furnish information relating thereto as requested by the Contracting Officer. (Note: For interpretation of the representation, including the term "bona fide employee," see General Services Administration Regulations, Title 41, Secs. 150.7 and 150.5(d), Fed. Reg. Dec. 31, 1952, Vol. 17, No. 253.)

## TERMS AND CONDITIONS

1. **SELLER'S INVOICES** -- Invoices shall be prepared and submitted in triplicate unless otherwise specified. Invoices shall contain the following information: Contract number, Order number (if any), Item number; contract description of supplies or services, sizes, quantities, unit prices, and extended totals. Bill of lading number and weight of shipment will be shown for shipments made on Government bills of lading. The Contractor or his authorized representative will sign ONLY the original (ribbon typed copy, if typed). When the invoice is signed or received in the name of a company or corporation the name of the person signing, as well as the capacity in which he signs, must appear. For example: "John Doe Company, by John Smith, Secretary," "Treasurer," or as the case may be.

2. **LABOR INFORMATION** -- Attention is invited to the possibility that wage determinations may have been made under the Walsh-Healey Public Contracts Act providing minimum wages for employees engaged in the manufacture for sale to the Government of the supplies covered by this contract. Information in this connection, as well as general information as to the requirements of the act concerning overtime payment, child labor, safety and health provisions, etc. may be obtained from Wage and Hour and Public Contracts Division, Department of Labor, Washington 25, D. C.

3. **DISCOUNTS:** In connection with any discount offered, time will be computed from date of delivery of the supplies to carrier when delivery and acceptance are at point of origin or from date of delivery at destination or port of embarkation when delivery and acceptance are at either of those points, or from date correct invoice or voucher (properly certified by the Contractor) is received in the office specified by the Government if the latter date is later than the date of delivery.

4. **SAMPLES:** Samples of items, when required, must be submitted within the time specified and at no expense to the Government. If not destroyed by testing, they will be returned at Contractor's request and expense, unless otherwise specified in the Schedule.

5. **GOVERNMENT-FURNISHED PROPERTY** -- No material, labor, or facilities will be furnished by the Government unless otherwise provided in the Schedule.

6. **AGENTS** -- Contracts signed by an agent must be accompanied by evidence of his authority.

7. **ALTERATIONS** -- Any alterations in this contract made by the Contractor must be initialed by both the Contractor and Contracting Officer.

8. **MISTAKES** -- Contractors are expected to examine the drawings, specifications, circulars, schedule and all instructions pertaining to the supplies or services. Failure to do so will be at the Contractor's risk. In case of mistake in extension of price the unit price will govern.

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SCHEDULE (SUPPLY CONTRACT) <b>SECRET</b>					PAGE NO. 1	NUMBER OF PAGES OF SCHEDULE
The supplies or services to be furnished, the specifications, the discounts, the time and place of delivery, and any other special terms and conditions applicable to the Contract, Invitation for Bids, or Request for Proposals (as applicable) are set forth below.						
REQUISITION NO. OR OTHER PURCHASE AUTHORITY 58-12519			CONTRACT/TASK ORDER/INVITATION/REQUEST NO. (as applicable) 046-12519-8			
SHIP TO (consignee and destination)  To be picked up by the Government at the Contractor's Plant			MAIL INVOICES TO  Issuing Office			
PERFORMANCE PERIOD/DELIVERY SCHEDULE Prototype for acceptance testing shall be available by 31 October 1958. Performance shall be completed within two months after receipt by the Contractor of the Contracting Officer's acceptance of the prototype.						
DELIVERY F.O.B.			INSPECTION			25X1
			At Contractor's Plant			
FOLLOWING DISCOUNTS WILL BE ALLOWED BY CONTRACTOR, BIDDER OR OFFEROR FOR PROMPT PAYMENT						
10 CALENDAR DAYS		PERCENT	20 CALENDAR DAYS		PERCENT	30 CALENDAR DAYS
ITEM NO.	SUPPLIES OR SERVICES		QUANTITY (Number of Units)	UNIT	UNIT PRICE	AMOUNT
1.	Engineering and drafting necessary to provide commercial type operating and maintenance manual, manufacturing drawings sufficient to reproduce RS-16A field units by persons skilled in the art, and such mechanical and electrical modifications to the present unit (sample RS-16A unit to be furnished by the Government to the Contractor as provided herein) as are required to correct improper construction techniques.					
				for the sum of		\$14,349.00
2.	Radio Set: RS-16A, incorporating the improvements provided under Item 1 above;					
					TOTAL	
NAME OF CONTRACTOR						

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FORM 1412  
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CONTINUATION SHEET (SUPPLY CONTRACT)		SECRET			CONTRACT, REQUEST OR INVITATION NO. (As applicable)		PAGE NO.
					046-12519-8		2
ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number of Units)	UNIT	UNIT PRICE	AMOUNT		
2 cont'd		10	ea	7,995	\$79,950.00		
<u>GOVERNMENT FURNISHED PROPERTY</u>							
<p>The Government shall timely furnish to the Contractor an existing RS-16A unit, specifications of the crystal frequencies desired for each unit, an overall schematic of the RS-16A, applicable available drawings and assistance in test and final check out of the improved RS-16A units provided by the Contractor under Item 2 hereof. The units produced under Item 2 shall equal in performance the existing RS-16A provided by the Government pursuant to the above.</p>							
<u>PACKING AND PACKAGING:</u>							
<p>Shall be in accordance with standard commercial practice for domestic shipment, as set forth in the uniform freight classification for commercial practice, to assure safe arrival at destination in servicable condition.</p>							
<u>ADDITIONAL PROVISIONS:</u>							
<p>The attached provisions 35, 36, 37, 38 and 39 entitled "Patent Rights", "Government Furnished Property", "Special Tooling", "Rights In Data -- Unlimited" and "Price Redetermination", respectively, were added to this contract prior to its execution by the parties hereto.</p>							
<u>RIGHTS IN DATA</u>							
<p>The Contractor shall: (i) make written disclosure promptly and deliver to the Contracting Officer reports concerning all "Subject Data", as defined in the provision hereof entitled "RIGHTS IN DATA - UNLIMITED", of the Contractor which are conceived or first reduced to practice during the term of this contract, as a result of the work performed hereunder and as such, this "Subject Data" shall be deemed to come within the meaning of the said "RIGHTS IN DATA - UNLIMITED" provision hereof or (ii) certify to the Contracting Officer that, to the best of the Contractor's knowledge and belief, no "Subject Data" was conceived or first reduced to practice during the term of this contract as a result of the work performed hereunder.</p>							
					subject to provision 39 hereof.	TOTAL	\$94,299.00
NAME OF CONTRACTOR, BIDDER OR OFFEROR							

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(SCHEDULE) **SECRET**

PAGE 3 OF PAGES

CONTRACT/TASK ORDER NO.

046-12519-8

SECURITY REQUIREMENTS:

With reference to provision 33 hereof relative to the security aspects of this contract, the following shall be added:

"In addition to the above, all phases of this contract including the end item to be delivered thereunder are security classified "SECRET - [redacted]". Accordingly, the Contractor shall diligently comply with all security instructions and agreements conveyed by the Government in connection therewith.

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NAME OF CONTRACTOR

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5 PATENT RIGHTS

(a) As used in this clause, the following terms shall have the meanings set forth below:

- (i) The term "Subject Invention" means by invention, improvement, or discovery (whether or not patentable) conceived or first actually reduced to practice either--
- (A) in the performance of the experimental, developmental, or research work called for or required under this contract; or
- (B) in the performance of any experimental, developmental, or research work relating to the subject matter of this contract which was done upon an understanding in writing that a contract would be awarded;

provided that the term, "Subject Invention" shall not include any invention which is specifically identified and listed in the Schedule for the purpose of excluding it from the license granted by this clause.

- (ii) The term "Technical Personnel" means any person employed by or working under contract with the Contractor (other than a subcontractor whose responsibilities with respect to rights accruing to the Government in inventions arising under subcontracts set forth in (g), (h), and (i) below) who, by reason of the nature of his duties in connection with the performance of this contract, would reasonably be expected to make inventions.
- (iii) The terms "subcontract" and "subcontractor" means any subcontract or subcontractor of the Contractor, and any lower-tier subcontractor or subcontractor under this contract.

(b) (1) The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, nontransferable, and royalty-free license to practice, and cause to be practiced by or for the United States Government, throughout the world, each Subject Invention in the manufacture, use and disposition according to law, of any article or material, and in use of any method. No license granted herein shall convey any right to the Government to manufacture, have manufactured, or use any Subject Invention for the purpose of providing services or supplies to the general public in competition with the Contractor or the Contractor's commercial licensees in the licensed fields.

(2) With respect to:

- (i) any Subject Invention made by other than Technical Personnel;
- (ii) any Subject Invention conceived prior to, but first actually reduced to practice in the course of, any of the experimental, developmental, or research work specified in (a)(i) above; and
- (iii) the practice of any Subject Invention in foreign countries; the obligation of the Contractor to grant a license as provided in (b)(1) above, to convey title as provided in (d)(ii) (B) or (d)(iv) below, shall be limited to the extent of the Contractor's right to grant the same without incurring any obligation to pay royalties or other compensation to others solely on account of said grant. Nothing contained in this Patent Rights clause shall be deemed to grant any license under any invention other than a Subject Invention.

(c) The Contractor shall furnish to the Contracting Officer the following information and reports concerning Subject Inventions which reasonably appear to be patentable:

- (i) a written disclosure promptly after conception or first actual reduction to practice of each such Invention together with a written statement specifying whether or not a United States patent application claiming the Invention has been or will be filed by or on behalf of the Contractor;
- (ii) interim reports at least every twelve months, commencing with the date of this contract, each listing all such Inventions conceived or first actually reduced to practice more than three months prior to the date of the report, and not listed on a prior interim report, or certifying that there are no such unreported Inventions; and
- (iii) prior to final settlement of this contract, a final report listing in such Inventions including all those previously listed in interim reports.

(d) In connection with each Subject Invention referred to in (c) (i) above, the Contractor shall do the following:

- (i) if the Contractor specifies that a United States patent application claiming such Invention will be filed, the Contractor shall file or cause to be filed such application in due form and time; however, if the Contractor, after having specified that such an application would be filed, decides not to file or cause to be filed said application, the Contractor shall so notify the Contracting Officer at the earliest practicable date and in any event not later than eight months after first publication, public use or sale.
- (ii) if the contractor specifies that a United States patent application claiming such Invention has not been filed and will not be filed (or having specified that such an application will be filed thereafter notifies the Contracting Officer to the contrary), the Contractor shall:
  - (A) inform the Contracting Officer in writing at the earliest practicable date of any publication of such Invention made by or known to the Contractor or, where applicable, of any contemplated publication by the Contractor, stating the date and identity of such publication or contemplated publication; and
  - (B) convey to the Government the Contractor's entire right, title, and interest in such Invention by delivering to Contracting Officer upon written request such duly executed instruments (prepared by the Government) of assignment and application, and such other papers as are deemed necessary to vest in the Government the Contractor's right, title, and interest aforesaid, and the right to apply for and prosecute patent applications covering such Invention throughout the world, subject, however, to the right of the Contractor specified in (e) below to file foreign applications, and subject further to the reservation of a non-exclusive and royalty-free license to the Contractor (and to its existing and future associated and affiliated companies, if any, within the corporate structure of which the Contractor is a part) which license shall be assignable to the successor of that part of the Contractor's business to which such Invention pertains;

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(iii) the Contractor shall furnish promptly to the Contracting Officer on request an irrevocable power of attorney to inspect and make copies of each United States patent application filed by or on behalf of the Contractor covering any such Invention;

(iv) in the event the Contractor, or those other than the Government deriving rights from the Contractor, elects not to continue prosecution of any such United States patent application filed by or on behalf of the Contractor, the Contractor shall so notify the Contracting Officer not less than sixty days before the expiration of the response period and, upon written request, deliver to the Contracting Officer such duly executed instruments (prepared by the Government) as are deemed necessary to vest in the Government the Contractor's entire right, title and interest in such Invention and the application, subject to the reservation as specified in (d)(ii) above; and

(v) The contractor shall deliver to the Contracting Officer duly executed instruments fully confirmatory of any license rights herein agreed to be granted to the Government.

(e) The Contractor, or those other than the Government deriving rights from the Contractor, shall have the exclusive rights to file applications on Subject Inventions in each foreign country within:

(i) nine months from the date a corresponding United States application is filed;

(ii) six months from the date permission is granted to file foreign applications where such filing had been prohibited for security reasons; or

(iii) such longer period as may be approved by the Contracting Officer. The Contractor shall, upon written request of the Contracting Officer, convey to the Government the Contractor's entire right, title, and interest in each Subject Invention in each foreign country in which an application has not been filed within the time above specified, subject to the reservation of a nonexclusive and royalty-free license to the Contractor together with the right of the Contractor to grant sublicenses, which license and right shall be assignable to the successor of that part of the Contractor's business to which the Subject Invention pertains.

(f) If the Contractor fails to deliver to the Contracting Officer, the interim reports required by (c)(ii) above, or fails to furnish the written disclosures for all Subject Inventions required by (c)(i) above shown to be due in accordance with any interim report delivered under (c)(ii) or otherwise known to be unreported, there shall be withheld from payment until the Contractor shall have corrected such failures either ten per cent (10%) of the amount of this contract, as from time to time amended, or five thousand dollars (\$5,000), whichever is less. After payment of eighty per cent (80%) of the amount of this contract, as from time to time amended, payment shall be withheld until a reserve of either ten per cent (10%) of such amount, or five thousand dollars (\$5,000), whichever is less, shall have been set aside, such reserve or balance thereof to be retained until the Contractor shall have furnished to the Contracting Officer:

(i) the final report required by (e)(iii) above;

(ii) written disclosures for all Subject Inventions required by (c)(i) above which are shown to be due in accordance with interim reports delivered under (c)(ii) above or in accordance with such final reports or are otherwise known to be unreported; and

(iii) the information as to any subcontractor required by (h) below



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The maximum amount which may be withheld under this paragraph (f) shall not exceed ten per cent (10%) of the amount of this contract or five thousand dollars (\$5,000), whichever is less, and no amount shall be withheld under this paragraph (f) when the amount specified by this paragraph (f) is being withheld under other provisions of this contract. The withholding of any amount or subsequent payment thereof to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract. This paragraph (f) shall not be construed as requiring the Contractor to withhold any amounts from a subcontractor to enforce compliance with the patent provisions of a subcontract.

(g) The Contractor shall exert all reasonable effort in negotiating for the inclusion of this Patent Rights clause in any subcontract hereunder of three thousand dollars (\$3,000) or more having experimental developmental, or research work as one of its purposes. In the event of refusal by a subcontractor to accept the Patent Rights clause, the Contractor shall not proceed with the subcontract without written authorization of the Contracting Officer, and upon obtaining such authorization, shall cooperate with the Government in the negotiation with such subcontractor of an acceptable patent rights clause; provided, however, that the Contractor shall in any event require the subcontractor to grant to the Government patent rights under Subject Inventions of no less scope and on no less favorable terms than those which the Contractor has under such subcontracts, except that in no event shall the subcontractor be required to grant to the Government patent rights in excess of those herein agreed to be granted to the Government by the Contractor.

(h) The Contractor shall, at the earliest practicable date, notify the Contracting Officer in writing of any subcontract containing a patent rights clause, furnish the Contracting Officer a copy of such clause, and notify the Contracting Officer when such subcontract is completed. It is understood that with respect to such subcontract clause, the Government is a third party beneficiary; and the Contractor hereby assigns to the Government all the 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 Subject Inventions.

(i) When the Contractor shows that it has been delayed in the performance of this contract by reason of its inability to obtain in accordance with (g) above a suitable patent rights clause from a qualified subcontractor for any item or service required under this contract for which the Contractor itself does not have available facilities or qualified personnel, the Contractor's delivery dates shall be extended for a period of time equal to the duration of such delay; and, upon request of the Contractor, the Contracting Officer shall determine to what extent, if any, an additional extension of the delivery dates and increase in contract prices based upon additional costs incurred by such delay are proper under the circumstances; and the contract shall be modified accordingly. If the Contractor, after exerting all reasonable effort, is unable to obtain a qualified subcontractor as set forth above, the Contractor may submit to the Contracting Officer a written request for waiver or modification of the requirement that a suitable patent rights clause be included in the subcontract.

Such request shall specifically state that the Contractor has used all reasonable effort to obtain such qualified subcontractor, and shall cite the waiver or termination provision hereinafter set forth. If, within thirty-five (35) days after the date of receipt of such request for a waiver or modification of said requirement, the Contracting Officer shall fail to deny in writing such request the requirement shall be deemed to have been waived by the Government. If within such period the Contractor shall receive a written denial of such request by the Contracting Officer, this contract shall thereupon automatically terminate and the rights and obligations of the parties shall be governed by the provisions of the clause of this contract providing for termination for the convenience of the Government.

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## GOVERNMENT-FURNISHED PROPERTY

(a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described 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 occasioned the Contractor hereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event the 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 (i) return such property at the Government's expense or otherwise dispose of the property, or (ii) effect repairs or modifications. Upon the completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by the rejection 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) By notice in writing the Contracting Officer may decrease the property furnished or to be furnished by the Government under this contract. In any such case, the Contracting Officer upon the written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provisions affected by the decrease, in accordance with the procedures provided for in the clause of this contract entitled "Changes."

(c) Title to the Government-furnished Property shall remain in the Government. Title to the Government-furnished Property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government-furnished Property, or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty. The Contractor shall maintain adequate property control records of Government-furnished Property in

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accordance with the requirements of the "Manual for Control of Government Property in Possession of Contractors" (Appendix B, Armed Services Procurement Regulation) as in effect on the date of the contract, which manual is hereby incorporated by reference and made a part of this contract.

(d) The Government-furnished Property shall, unless otherwise provided herein, be used only for the performance of this contract.

(e) The Contractor shall maintain and administer, in accordance with sound industrial practice, a program for the maintenance, repair, protection and preservation of Government-furnished Property, until disposed of by the Contractor in accordance with this clause. In the event that any damage occurs to Government-furnished Property the risk of which has been assumed by the Government under this contract, the Government shall replace such items or the Contractor shall make such repair of the property as the Government directs; provided, however, that if the Contractor cannot effect such repair within the time required, the Contractor shall dispose of such property in the manner directed by the Contracting Officer. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which the Government is responsible, and an equitable adjustment will be made in the contract price for any such repair or replacement of Government-furnished Property made at the direction of the Government. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at its own expense.

(f) (i) Except for loss, destruction or damage resulting from a failure of the Contractor due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel as defined herein, to maintain and administer the program for the maintenance, repair, protection and preservation of the Government-furnished Property, as required by paragraph (e) hereof, and except as specifically provided in the clause or clauses of this contract designated in the Schedule, the Contractor shall not be liable for loss or destruction of or damage to the Government-furnished Property (A) caused by any peril while the property is in transit off the Contractor's premises, or (B) caused by any of the following perils while the property is on the Contractor's or subcontractor's premises, or on any other premises where such property may properly be located, or be removed therefrom because of any of the following perils:

(I) Fire; lightning; windstorm, cyclone, tornado, hail; explosion; riot, riot attending a strike, civil commotion; vandalism and malicious mischief; sabotage; aircraft or objects falling therefrom; vehicles running on land or tracks, excluding vehicles owned or operated by the Contractor or any agent or employee of the Contractor; smoke; sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby rising of a body of water; hostile or warlike action, including action in hindering, combating, or defending against an actual impending or expected attack by any government or sovereign power (de jure or de facto), or by any authority using military, naval, or air forces, or by an agent of any such Government, power, authority, or forces: or

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(II) Other peril, of a type not listed above, if such other peril is customarily covered by insurance (or by a reserve for self-insurance) in accordance with the normal practice of the Contractor, or the prevailing practice in the industry in which the Contractor is engaged with respect to similar property in the same general locale.

The perils as set forth in (A) and (B) above are hereinafter called "excepted perils."

This clause shall not be construed as relieving a subcontractor from liability for loss or destruction of or damage to the Government-furnished Property while in its possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, may provide 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-furnished 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.

The term "Contractor's managerial personnel" as used herein means the Contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision of direction of (I) all or substantially all of the Contractor's business; (II) all or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed; (III) a separate and complete major industrial operation in connection with the performance of this contract.

(ii) The Contractor represents that it is not including in the price hereunder, and agrees that it will not hereafter include, in any price to the Government, any charge or reserve for insurance (including self-insurance funds or reserve) covering loss or destruction of or damage to the Government-furnished Property caused by any excepted peril.

(iii) Upon the happening of loss or destruction of or damage to any Government-furnished Property caused by an excepted peril, 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 Organization so designated (unless the Contracting Officer has directed that no such organization be employed), shall take all reasonable steps to protect the Government-furnished Property from further damage, separate the damaged and undamaged Government-furnished Property, put all the Government-furnished Property in the best possible order, and furnish to the Contracting Officer a statement of: (A) the lost, destroyed and damaged Government-furnished Property (B) the time and origin of the loss, destruction or damage, (C) all known interests in commingled property of which the Government-furnished Property is a part, and (D) the insurance, if any, covering any part of or interest in such commingled property. The Contractor


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shall be reimbursed for the expenditures made by it in performing its obligations under this subparagraph (iii) (including charges made to the Contractor by the Loss and Salvage Organization, except any of such charges the payment of which the Government has, at its option, assumed directly), to the extent approved by the Contracting Officer and set forth in a Supplemental Agreement.

(iv) With the approval of the Contracting Officer after loss or destruction of or damage to Government-furnished Property, and subject to such conditions and limitations as may be imposed by the Contracting Officer, the Contractor may, in order to minimize the loss to the Government or in order to permit resumption of business or the like, sell for the account of the Government any item of Government-furnished Property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor, that separation is impracticable.

(v) Except to the extent of any loss or destruction of or damage to Government-furnished Property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the Government-furnished Property in accordance with the provisions of this contract, the Government-furnished Property (other than property permitted to be sold) shall be returned to the Government in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph (e) above.

(vi) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government-furnished Property, caused by an excepted peril, it shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights 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 a subcontractor has not been relieved from liability for any loss or destruction of or damage to the Government-furnished Property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government-furnished Property for the benefit of the Government.

(vii) (Where applicable) In the event any aircraft are to be furnished under this contract, any loss or destruction of, or damage to, such aircraft or other Government-furnished Property occurring in connection with operations of said aircraft will be governed by the clause of this contract captioned "Flight Risks," to the extent such clause, is, by its terms, applicable.

(g) The Government shall at all reasonable times have access to the premises wherein any Government-furnished Property is located.

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(h) Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government-furnished Property not consumed in the performance of this contract (including any resulting scrap) or not theretofore delivered to the Government, and shall deliver or make such other disposal of such Government-furnished Property, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the Contract price or shall be paid in such other manner as the Contracting Officer may direct.

(i) Directions of the Contracting Officer and communications of the Contractor issued pursuant to this Clause shall be in writing.

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<p>37 SPECIAL TOOLING</p> <p>(a) The term "special tooling" as used in this clause, includes all jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, and other special articles of equipment and manufacturing aids acquired or manufactured by the Contractor for use in the performance of this contract, and replacements thereof, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of such supplies or parts hereof, or the performance of such services, called for by this contract, as are peculiar to the needs of the Government. The term does not include: (i) items of tooling or equipment heretofore acquired by the Contractor, or replacements thereof, whether or not altered or adapted for use in the performance of this contract; (ii) items of tooling or equipment which are usable for the production of supplies or parts thereof, or for the performance of services, which are not peculiar to the needs of the Government or (iii) general or special machine tools or similar capital items.</p> <p>(b) The Contractor agrees not to use any items of special tooling except in the performance of this contract, or except as otherwise provided by this clause, without prior written approval of the Contracting Officer. The Contractor may, with the approval of the Contracting Officer, use the special tooling in the performance of other contracts with the Government, or subcontracts under Government contracts, provided that the Contractor agrees not to include in the price or prices for any such contracts or subcontracts, involving the use of such special tooling, the cost of such tooling or any allowance or charge to cover depreciation or amortization which has previously been charged against this contract.</p> <p>(c) As and when any substantial portion of usable special tooling is no longer needed by the Contractor for the performance of this contract, and of other Government contracts and subcontracts as to which approval has been obtained under paragraph (b) above, the Contractor shall promptly notify the Contracting Officer thereof, and shall furnish to the Contracting Officer a list of the products, parts or services for the manufacture or performance of which such special tooling was used or designed. Upon completion or termination of all work under this contract, or of this contract and other Government contracts and subcontracts as to which approval has been obtained under paragraph (b) above, the Contractor shall furnish a final list on the same form covering all items not previously reported under this paragraph. Special tooling which has become obsolete as a result of changes in design or specification need not be reported, except as provided for in paragraph (d).</p> <p>(d) In the event of any changes in design or specifications which affect interchangeability of parts, the Contractor shall, unless otherwise agreed to by the Contracting Officer, give the Contracting Officer notice of any part which is not interchangeable with the new or superseding part and the usable</p>		
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<p>special tooling for each part covered in such notice shall be retained by the Contractor subject to the provisions of paragraph (i), pending disposition under paragraph (f).</p> <p>(e) At the time it furnishes any list or notice under (c) or (d) above, the Contractor may designate those items of special tooling (either specifically or by listing the particular products, parts, or services for which such items were used or designed) which it desires to retain, together with a written offer: (i) to retain any or all of such items, free and clear of any Government interest, for an amount designated therein, which should ordinarily not be less than the then fair value of such items (which fair value takes into account, among other things, the value of such items to the Contractor for use in further work by it); or (ii) to retain any or all such items for such period of time and subject to such terms and conditions as may be agreed to by the parties hereto, subject to ultimate retention or disposition of such items in accordance with paragraph (f) hereof.</p> <p>(f) Within 90 days after receipt of any list or notice under paragraph (c) or (d) hereof, or such further period as may be agreed upon by the parties, the Contracting Officer shall furnish to the Contractor: (i) a list specifying the particular products, parts, or services for which the Government may require special tooling, together with a request that the Contractor transfer title (to the extent not previously transferred under any other clause of this contract) and deliver to the Government all usable items of special tooling which were used or designed for the manufacture or performance of any designated portion of such products, parts, or services, and which were on hand when production of such products or parts, or performance of such services, ceased; or (ii) an acceptance or rejection of any offer made by the Contractor under paragraph (e) above, or a request for further negotiation with respect thereto; or (iii) subject to the provisions of paragraph (j) hereof, a direction to the Contractor to sell, or to dispose of as scrap, for the account of the Government, any or all of the special tooling covered by such list; or (iv) a statement with respect to any or all of the special tooling covered by such list that the Government has no further interest therein and waives its rights therein; or (v) any combination of the foregoing, as the circumstances warrant. The Contractor shall promptly comply with any request by the Contracting Officer under this paragraph to transfer title to any items of special tooling, and shall, subject to the provisions of paragraph (j) hereof, (1) immediately prepare such items for shipment by proper packaging, packing, and marking, in accordance with any instructions which may be issued by the Contracting Officer, and shall promptly deliver such items to the Government, as directed by the Contracting Officer, or (2) if a storage agreement has been entered into, prepare such items for storage in accordance therewith, as directed by the Contracting Officer. Any items of special tooling so delivered or stored shall be accompanied by such operation sheets or other appropriate data as are necessary to show the manufacturing operations or processes for which such items were used or designed. If the Contracting Officer has requested further negotiations under (ii) of this</p>					
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paragraph, the Contractor agrees that it will enter into such negotiations in good faith with the Contracting Officer. Any items of special tooling which are not disposed of by transfer of title and delivery to the Government, or by acceptance of an offer of the Contractor made under paragraph (e), or of such offer as modified in the course of negotiations, shall be disposed of in the manner set forth in (iii) or (iv) of this paragraph.

(g) If the Contracting Officer accepts an offer of the Contractor to retain any items of special tooling, or if any such items are sold to third parties or disposed of as scrap, the net proceeds shall: (i) be deducted from the amounts due to the Contractor under this contract and the contract amended accordingly; or (ii) be otherwise paid as the contracting officer may direct.

(h) The Contractor agrees that it will follow its normal industrial practice in maintaining property control records on all the special tooling, and that it will make such records available for inspection by the Government at all reasonable times. The Contractor further agrees that, to the extent practicable, it will identify by appropriate stamp, tag or other mark all special tooling subject to this clause.

(i) The Contractor agrees that between the date any usable items of special tooling are no longer needed by it, within the meaning of this clause, and the date of final disposition of such items under this clause, it will take all reasonable steps necessary to maintain the identity and existing conditions of such items, unless the Contracting Officer has directed that such items be disposed of as scrap or has given notice under (f) (iii). The Contractor shall not be required to keep any such items in place.

(j) Any preparation of items for shipment required of the Contractor under paragraph (f) of this clause, or any disposal as scrap under paragraph (f) (iii), or any action required of the Contractor under paragraph (i), shall be taken pursuant to written instructions of the Contracting Officer, which shall (i) provide for an equitable adjustment of the contract price to cover any additional cost, to the Contractor, not taken into account in the negotiation of this contract, of complying with such instructions, which adjustment shall be made in accordance with the procedure set forth in the clause of this contract entitled "Changes," or (ii) otherwise provide for payment to the Contractor of any such additional cost. Any failure of the Contracting Officer to issue the Contractor specific disposition instructions shall be construed as an instruction to the Contractor to take the action required under paragraph (i) with provision for equitable adjustment or payment as provided for above.

(k) The Contractor agrees that, in placing any subcontracts or purchase orders under this contract which involve the use of special tooling, the full cost of which is charged to such subcontract or purchase order, it will include therein appropriate provisions to obtain rights comparable to those granted to the Government by this clause, and agrees that it will exercise such rights for the benefit of the Government, as the Contracting Officer may direct.

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<p>38</p> <p><u>Rights in Data -- Unlimited:</u></p> <p>(a) The term "Subject Data" as used herein includes writings, sound recordings, pictorial reproductions, drawings or other graphical representations, and works of any similar nature (whether or not copyrighted) which are specified to be delivered under this contract. The term does not include financial reports, cost analyses and other information incidental to contract administration.</p> <p>(b) Subject to the proviso of (c) below, the Government may duplicate, use, and disclose in any manner and for any purpose whatsoever, and have others so do, all Subject Data delivered under this contract.</p> <p>(c) The Contractor agrees to and does hereby grant to the Government, and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, non-exclusive and irrevocable license throughout the world, to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all Subject Data now or hereafter covered by copyright; provided that with respect to such Subject Data not originated in the performance of this contract but which is incorporated in the work furnished under this contract such license shall be only to the extent that the Contractor, its employees, or any individual or concern specifically employed or assigned by the Contractor to originate and prepare such Data under this contract, now has, or prior to completion or final settlement of this contract may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.</p> <p>(d) The Contractor shall exert all reasonable effort to advise the Contracting Officer, at the time of delivery of the Subject Data furnished under this contract, of all invasions of the right of privacy contained therein and of all portions of such Data copied from work not composed or produced in the performance of this contract and not licensed under this clause.</p> <p>(e) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Subject Data delivered under this contract.</p> <p>(f) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.</p> <p>(g) The Contractor shall not affix any restrictive markings upon any Subject Data, and if such markings are affixed, the Government shall have the right at any time to modify, remove, obliterate or ignore any such marking. (ASPR 9-203.1)</p>				
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(When Filled In)

## 39. PRICE REDETERMINATION (Form III)

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(a) Within sixty days after the completion or termination of this contract, the Contractor will submit to the Contracting Officer a detailed statement of the costs of performing this contract. Upon the written demand of the Contracting Officer, made at any time within thirty days after the submission of such statement, the Contractor will negotiate to reduce the contract price to an amount representing fair and reasonable compensation for the performance of the contract. In such negotiations the efficiency of the Contractor in production, buying and management will be given due weight.

(b) The Contractor will furnish to the Contracting Officer such other statements of actual costs of production and such other financial statements, at such times and in such form and detail, as the Contracting Officer may prescribe, and will permit such audits and examination of its books, records and accounts as the Contracting Officer may request.

The Contractor further agrees to include in each of his subcontracts which is on a cost or cost-plus-a-fixed-fee or a price redetermination basis a provision to the effect that the subcontractor agrees (i) to submit to the Contracting Officer such cost data as may be required for price redetermination, (ii) to permit the Contracting Officer to make or cause to be made such examination and audits of the books, records and accounts as the Contracting Officer may deem necessary, and (iii) to include a like provision in each of his subcontracts which is on a cost or cost-plus-a-fixed-fee or a price redetermination basis.

(c) If within thirty (30) days after the making of such demand (or such further period as may be fixed by written agreement) the Contracting Officer and the Contractor fail to agree to a redetermined price (which term, for the purpose of this clause, shall include direct costs, indirect costs and profits), the failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

(d) The Government shall retain from amounts otherwise due the Contractor, or the Contractor shall repay to the Government, if paid to him, any amount by which the contract price is found as a result of the application of this clause to exceed a fair and reasonable price, as the Contracting Officer may direct.

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(e) Payments. Notwithstanding any provision of this contract authorizing greater payment, adjustments and refunds shall be made if the total of all amounts billed and paid or payable under this contract for items delivered to (or services performed for) and accepted by the Government (including amounts applied to liquidate progress payments), until final price revision has been made to the full extent permitted by this contract, shall exceed the sum of the following items as reported by the Contractor from time to time as hereinafter provided; (1) the total contract price of all items delivered to (or services performed for) and accepted by the Government for which final prices have been established, and (2) the total amount of costs (estimated to the extent necessary) that have been reasonably incurred for and are properly allocable solely to items delivered to (or services performed for) and accepted by the Government for which final prices have not been established, and (3) the total amount of interim profit used in establishing the initial contract price and allocable by direct proportion to items delivered to (or services performed for) and accepted by the Government for which final prices have not been established. Within 45 days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed for and accepted by the Government) under this contract, and at the end of each quarter, the Contractor shall submit a statement setting forth the respective amounts of each of the three numbered items next above, together with the total amount of all billings for items delivered to (or services performed for) and accepted by the Government (including amounts applied to liquidate progress payments) under this contract as of the end of each quarter. If on any quarterly statement these total billings exceed the sum of the three numbered items above, this gross excess (less any applicable tax credit under Section 1481 of the Internal Revenue Code of 1954) shall, after deduction of the total refunds (cash or credit memoranda not including any tax credits under the Internal Revenue Code) theretofore made, be paid immediately by the Contractor to the Government or credited against existing unpaid billings covered by such statement; provided that if any portion of such gross excess (less all tax credits under the Internal Revenue Code) has been applied to the liquidation of progress payments, such amount may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payment clause of this contract, instead of making direct refund thereof. When, after submission by the Contractor of cost data and price-redetermination offer, the Contractor and the Contracting Officer (a) have agreed in writing upon revised billing prices in the light of the cost experience and anticipated future trend (and provided that such revised prices are not higher than the smallest of (i) the existing contract price, (ii) the Contractor's price-redetermination offer and (iii) a price based upon the most recent quarterly statement, and (b) the Contractor agrees to promptly make the necessary adjustments to bring payments for past deliveries of items into alignment with the revised billing prices, and (c) so long as the Contractor bills at the agreed revised billing prices (or lower prices thereafter negotiated as final prices preliminary to confirmation by formal contract supplement), the prices so agreed upon or negotiated shall be deemed to be final prices for the purpose of this paragraph until final prices are established by supplement. For any quarter in which only the numbered items (1) above, is applicable, the Contractor may furnish a written statement to that effect instead of the quarterly statement above required.

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