

CONFIDENTIAL

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MEMORANDUM FOR: Director of Central Intelligence
VIA: Deputy Director of Central Intelligence
FROM: * Stanley Sporkin
General Counsel
SUBJECT: Briefing Paper - CIA Contracting Safeguards

1. The Agency faces several unique problems in its procurement activities, problems that arise from the exigencies of national security and the need to protect intelligence sources and methods. Two of the more critical areas of CIA procurement involve:

(a) monitoring contractor activities to ensure compliance with Agency security regulations and federal law; and

(b) preventing situations where contractors might be misled into assuming there is CIA involvement in a procurement activity when such is not the case.

2. The attached briefing paper summarizes those contracting procedures currently in effect, the authorities upon which they are based, and the concerns to which they are directed.



Stanley Sporkin

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Attachment:
Briefing Paper

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THE PRESIDENT

UNITED STATES INTELLIGENCE ACTIVITIES

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The President

United States Intelligence Activities

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Timely and accurate information about the activities, capabilities, plans, and intentions of foreign powers, organizations, and persons, and their agents, is essential to the national security of the United States. All reasonable and lawful means must be used to ensure that the United States will receive the best intelligence available. For that purpose, by virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the National Security Act of 1947, as amended, and as President of the United States of America, in order to provide for the effective conduct of United States intelligence activities and the protection of constitutional rights, it is hereby ordered as follows:

Part 1*Goals, Direction, Duties and Responsibilities With Respect to the National Intelligence Effort*

1.1 Goals. The United States intelligence effort shall provide the President and the National Security Council with the necessary information on which to base decisions concerning the conduct and development of foreign, defense and economic policy, and the protection of United States national interests from foreign security threats. All departments and agencies shall cooperate fully to fulfill this goal.

(a) Maximum emphasis should be given to fostering analytical competition among appropriate elements of the Intelligence Community.

(b) All means, consistent with applicable United States law and this Order, and with full consideration of the rights of United States persons, shall be used to develop intelligence information for the President and the National Security Council. A balanced approach between technical collection efforts and other means should be maintained and encouraged.

(c) Special emphasis should be given to detecting and countering espionage and other threats and activities directed by foreign intelligence services against the United States Government, or United States corporations, establishments, or persons.

(d) To the greatest extent possible consistent with applicable United States law and this Order, and with full consideration of the rights of United States persons, all agencies and departments should seek to ensure full and free exchange of information in order to derive maximum benefit from the United States intelligence effort.

1.2 The National Security Council.

(a) *Purpose.* The National Security Council (NSC) was established by the National Security Act of 1947 to advise the President with respect to the integration of domestic, foreign and military policies relating to the national security. The NSC shall act as the highest Executive Branch entity that provides review of, guidance for and direction to the conduct of all national foreign intelligence, counterintelligence, and special activities, and attendant policies and programs.

(b) *Committees.* The NSC shall establish such committees as may be necessary to carry out its functions and responsibilities under this Order. The NSC, or a committee established by it, shall consider and submit to the President a policy recommendation, including all dissents, on each special activity and shall review proposals for other sensitive intelligence operations.

1.3 National Foreign Intelligence Advisory Groups.

(a) *Establishment and Duties.* The Director of Central Intelligence shall establish such boards, councils, or groups as required for the purpose of obtaining advice from within the Intelligence Community concerning:

- (1) Production, review and coordination of national foreign intelligence;
- (2) Priorities for the National Foreign Intelligence Program budget;
- (3) Interagency exchanges of foreign intelligence information;
- (4) Arrangements with foreign governments on intelligence matters;
- (5) Protection of intelligence sources and methods;
- (6) Activities of common concern; and

(7) Such other matters as may be referred by the Director of Central Intelligence.

(b) *Membership.* Advisory groups established pursuant to this section shall be chaired by the Director of Central Intelligence or his designated representative and shall consist of senior representatives from organizations within the Intelligence Community and from departments or agencies containing such organizations, as designated by the Director of Central Intelligence. Groups for consideration of substantive intelligence matters will include representatives

of organizations involved in the collection, processing and analysis of intelligence. A senior representative of the Secretary of Commerce, the Attorney General, the Assistant to the President for National Security Affairs, and the Office of the Secretary of Defense shall be invited to participate in any group which deals with other than substantive intelligence matters.

1.4 *The Intelligence Community.* The agencies within the Intelligence Community shall, in accordance with applicable United States law and with the other provisions of this Order, conduct intelligence activities necessary for the conduct of foreign relations and the protection of the national security of the United States, including:

(a) Collection of information needed by the President, the National Security Council, the Secretaries of State and Defense, and other Executive Branch officials for the performance of their duties and responsibilities;

(b) Production and dissemination of intelligence;

(c) Collection of information concerning, and the conduct of activities to protect against, intelligence activities directed against the United States, international terrorist and international narcotics activities, and other hostile activities directed against the United States by foreign powers, organizations, persons, and their agents;

(d) Special activities;

(e) Administrative and support activities within the United States and abroad necessary for the performance of authorized activities; and

(f) Such other intelligence activities as the President may direct from time to time.

1.5 *Director of Central Intelligence.* In order to discharge the duties and responsibilities prescribed by law, the Director of Central Intelligence shall be responsible directly to the President and the NSC and shall:

(a) Act as the primary adviser to the President and the NSC on national foreign intelligence and provide the President and other officials in the Executive Branch with national foreign intelligence;

(b) Develop such objectives and guidance for the Intelligence Community as will enhance capabilities for responding to expected future needs for national foreign intelligence;

(c) Promote the development and maintenance of services of common concern by designated intelligence organizations on behalf of the Intelligence Community;

(d) Ensure implementation of special activities;

(e) Formulate policies concerning foreign intelligence and counterintelligence arrangements with foreign governments, coordinate foreign intelligence and counterintelligence relationships between agencies of the Intelligence Community and the intelligence or internal security services of foreign governments, and establish procedures governing the conduct of liaison by any department or agency with such services on narcotics activities;

(f) Participate in the development of procedures approved by the Attorney General governing criminal narcotics intelligence activities abroad to ensure that these activities are consistent with foreign intelligence programs;

(g) Ensure the establishment by the Intelligence Community of common security and access standards for managing and handling foreign intelligence systems, information, and products;

(h) Ensure that programs are developed which protect intelligence sources, methods, and analytical procedures;

(i) Establish uniform criteria for the determination of relative priorities for the transmission of critical national foreign intelligence, and advise the Secretary of Defense concerning the communications requirements of the Intelligence Community for the transmission of such intelligence;



- (j) Establish appropriate staffs, committees, or other advisory groups to assist in the execution of the Director's responsibilities;
- (k) Have full responsibility for production and dissemination of national foreign intelligence, and authority to levy analytic tasks on departmental intelligence production organizations, in consultation with those organizations, ensuring that appropriate mechanisms for competitive analysis are developed so that diverse points of view are considered fully and differences of judgment within the Intelligence Community are brought to the attention of national policymakers;
- (l) Ensure the timely exploitation and dissemination of data gathered by national foreign intelligence collection means, and ensure that the resulting intelligence is disseminated immediately to appropriate government entities and military commands;
- (m) Establish mechanisms which translate national foreign intelligence objectives and priorities approved by the NSC into specific guidance for the Intelligence Community, resolve conflicts in tasking priority, provide to departments and agencies having information collection capabilities that are not part of the National Foreign Intelligence Program advisory tasking concerning collection of national foreign intelligence, and provide for the development of plans and arrangements for transfer of required collection tasking authority to the Secretary of Defense when directed by the President;
- (n) Develop, with the advice of the program managers and departments and agencies concerned, the consolidated National Foreign Intelligence Program budget, and present it to the President and the Congress;
- (o) Review and approve all requests for reprogramming National Foreign Intelligence Program funds, in accordance with guidelines established by the Office of Management and Budget;
- (p) Monitor National Foreign Intelligence Program implementation, and, as necessary, conduct program and performance audits and evaluations;
- (q) Together with the Secretary of Defense, ensure that there is no unnecessary overlap between national foreign intelligence programs and Department of Defense intelligence programs consistent with the requirement to develop competitive analysis, and provide to and obtain from the Secretary of Defense all information necessary for this purpose;
- (r) In accordance with law and relevant procedures approved by the Attorney General under this Order, give the heads of the departments and agencies access to all intelligence, developed by the CIA or the staff elements of the Director of Central Intelligence, relevant to the national intelligence needs of the departments and agencies; and
- (s) Facilitate the use of national foreign intelligence products by Congress in a secure manner.

1.6 Duties and Responsibilities of the Heads of Executive Branch Departments and Agencies.

- (a) The heads of all Executive Branch departments and agencies shall, in accordance with law and relevant procedures approved by the Attorney General under this Order, give the Director of Central Intelligence access to all information relevant to the national intelligence needs of the United States, and shall give due consideration to the requests from the Director of Central Intelligence for appropriate support for Intelligence Community activities.
- (b) The heads of departments and agencies involved in the National Foreign Intelligence Program shall ensure timely development and submission to the Director of Central Intelligence by the program managers and heads of component activities of proposed national programs and budgets in the format designated by the Director of Central Intelligence, and shall also ensure that the Director of Central Intelligence is provided, in a timely and responsive manner, all information necessary to perform the Director's program and budget responsibilities.

(c) The heads of departments and agencies involved in the National Foreign Intelligence Program may appeal to the President decisions by the Director of Central Intelligence on budget or reprogramming matters of the National Foreign Intelligence Program.

1.7 Senior Officials of the Intelligence Community. The heads of departments and agencies with organizations in the Intelligence Community or the heads of such organizations, as appropriate, shall:

(a) Report to the Attorney General possible violations of federal criminal laws by employees and of specified federal criminal laws by any other person as provided in procedures agreed upon by the Attorney General and the head of the department or agency concerned, in a manner consistent with the protection of intelligence sources and methods, as specified in those procedures;

(b) In any case involving serious or continuing breaches of security, recommend to the Attorney General that the case be referred to the FBI for further investigation;

(c) Furnish the Director of Central Intelligence and the NSC, in accordance with applicable law and procedures approved by the Attorney General under this Order, the information required for the performance of their respective duties;

(d) Report to the Intelligence Oversight Board, and keep the Director of Central Intelligence appropriately informed, concerning any intelligence activities of their organizations that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive;

(e) Protect intelligence and intelligence sources and methods from unauthorized disclosure consistent with guidance from the Director of Central Intelligence;

(f) Disseminate intelligence to cooperating foreign governments under arrangements established or agreed to by the Director of Central Intelligence;

(g) Participate in the development of procedures approved by the Attorney General governing production and dissemination of intelligence resulting from criminal narcotics intelligence activities abroad if their departments, agencies, or organizations have intelligence responsibilities for foreign or domestic narcotics production and trafficking;

(h) Instruct their employees to cooperate fully with the Intelligence Oversight Board; and

(i) Ensure that the Inspectors General and General Counsels for their organizations have access to any information necessary to perform their duties assigned by this Order.

1.8 The Central Intelligence Agency. All duties and responsibilities of the CIA shall be related to the intelligence functions set out below. As authorized by this Order; the National Security Act of 1947, as amended; the CIA Act of 1949, as amended; appropriate directives or other applicable law, the CIA shall:

(a) Collect, produce and disseminate foreign intelligence and counterintelligence, including information not otherwise obtainable. The collection of foreign intelligence or counterintelligence within the United States shall be coordinated with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

(b) Collect, produce and disseminate intelligence on foreign aspects of narcotics production and trafficking;

(c) Conduct counterintelligence activities outside the United States and, without assuming or performing any internal security functions, conduct counterintelligence activities within the United States in coordination with the FBI as required by procedures agreed upon the Director of Central Intelligence and the Attorney General;

(d) Coordinate counterintelligence activities and the collection of information not otherwise obtainable when conducted outside the United States by other departments and agencies;

(e) Conduct special activities approved by the President. No agency except the CIA (or the Armed Forces of the United States in time of war declared by Congress or during any period covered by a report from the President to the Congress under the War Powers Resolution (87 Stat. 855)) may conduct any special activity unless the President determines that another agency is more likely to achieve a particular objective;

(f) Conduct services of common concern for the Intelligence Community as directed by the NSC;



(g) Carry out or contract for research, development and procurement of technical systems and devices relating to authorized functions;



(h) Protect the security of its installations, activities, information, property, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the CIA as are necessary; and



(i) Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (a) and through (h) above, including procurement and essential cover and proprietary arrangements.

1.9 *The Department of State.* The Secretary of State shall:

(a) Overtly collect information relevant to United States foreign policy concerns;

(b) Produce and disseminate foreign intelligence relating to United States foreign policy as required for the execution of the Secretary's responsibilities;

(c) Disseminate, as appropriate, reports received from United States diplomatic and consular posts;

(d) Transmit reporting requirements of the Intelligence Community to the Chiefs of United States Missions abroad; and

(e) Support Chiefs of Missions in discharging their statutory responsibilities for direction and coordination of mission activities.

1.10 *The Department of the Treasury.* The Secretary of the Treasury shall:

(a) Overtly collect foreign financial and monetary information;

(b) Participate with the Department of State in the overt collection of general foreign economic information;

(c) Produce and disseminate foreign intelligence relating to United States economic policy as required for the execution of the Secretary's responsibilities; and

(d) Conduct, through the United States Secret Service, activities to determine the existence and capability of surveillance equipment being used against the President of the United States, the Executive Office of the President, and, as authorized by the Secretary of the Treasury or the President, other Secret Service protectees and United States officials. No information shall be acquired intentionally through such activities except to protect against such surveillance, and those activities shall be conducted pursuant to procedures agreed upon by the Secretary of the Treasury and the Attorney General.

1.11 *The Department of Defense.* The Secretary of Defense shall:

(a) Collect national foreign intelligence and be responsive to collection tasking by the Director of Central Intelligence;

(b) Collect, produce and disseminate military and military-related foreign intelligence and counterintelligence as required for execution of the Secretary's responsibilities;

(c) Conduct programs and missions necessary to fulfill national, departmental and tactical foreign intelligence requirements;

(d) Conduct counterintelligence activities in support of Department of Defense components outside the United States in coordination with the CIA, and within the United States in coordination with the FBI pursuant to procedures agreed upon by the Secretary of Defense and the Attorney General;

(e) Conduct, as the executive agent of the United States Government, signals intelligence and communications security activities, except as otherwise directed by the NSC;

(f) Provide for the timely transmission of critical intelligence, as defined by the Director of Central Intelligence, within the United States Government;

(g) Carry out or contract for research, development and procurement of technical systems and devices relating to authorized intelligence functions;

(h) Protect the security of Department of Defense installations, activities, property, information, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the Department of Defense as are necessary;

(i) Establish and maintain military intelligence relationships and military intelligence exchange programs with selected cooperative foreign defense establishments and international organizations, and ensure that such relationships and programs are in accordance with policies formulated by the Director of Central Intelligence;

(j) Direct, operate, control and provide fiscal management for the National Security Agency and for defense and military intelligence and national reconnaissance entities; and

(k) Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (a) through (j) above.

1.12 *Intelligence Components Utilized by the Secretary of Defense.* In carrying out the responsibilities assigned in section 1.11, the Secretary of Defense is authorized to utilize the following:

(a) *Defense Intelligence Agency*, whose responsibilities shall include:

(1) Collection, production, or, through tasking and coordination, provision of military and military-related intelligence for the Secretary of Defense, the Joint Chiefs of Staff, other Defense components, and, as appropriate, non-Defense agencies;

(2) Collection and provision of military intelligence for national foreign intelligence and counterintelligence products;

(3) Coordination of all Department of Defense intelligence collection requirements;

(4) Management of the Defense Attache system; and

(5) Provision of foreign intelligence and counterintelligence staff support as directed by the Joint Chiefs of Staff.

(b) *National Security Agency*, whose responsibilities shall include:

(1) Establishment and operation of an effective unified organization for signals intelligence activities, except for the delegation of operational control over certain operations that are conducted through other elements of the Intelligence Community. No other department or agency may engage in signals intelligence activities except pursuant to a delegation by the Secretary of Defense;

(2) Control of signals intelligence collection and processing activities, including assignment of resources to an appropriate agent for such periods and tasks as required for the direct support of military commanders;

- (3) Collection of signals intelligence information for national foreign intelligence purposes in accordance with guidance from the Director of Central Intelligence;
 - (4) Processing of signals intelligence data for national foreign intelligence purposes in accordance with guidance from the Director of Central Intelligence;
 - (5) Dissemination of signals intelligence information for national foreign intelligence purposes to authorized elements of the Government, including the military services, in accordance with guidance from the Director of Central Intelligence;
 - (6) Collection, processing and dissemination of signals intelligence information for counterintelligence purposes;
 - (7) Provision of signals intelligence support for the conduct of military operations in accordance with tasking, priorities, and standards of timeliness assigned by the Secretary of Defense. If provision of such support requires use of national collection systems, these systems will be tasked within existing guidance from the Director of Central Intelligence;
 - (8) Executing the responsibilities of the Secretary of Defense as executive agent for the communications security of the United States Government;
 - (9) Conduct of research and development to meet the needs of the United States for signals intelligence and communications security;
 - (10) Protection of the security of its installations, activities, property, information, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the NSA as are necessary;
 - (11) Prescribing, within its field of authorized operations, security regulations covering operating practices, including the transmission, handling and distribution of signals intelligence and communications security material within and among the elements under control of the Director of the NSA, and exercising the necessary supervisory control to ensure compliance with the regulations;
 - (12) Conduct of foreign cryptologic liaison relationships, with liaison for intelligence purposes conducted in accordance with policies formulated by the Director of Central Intelligence; and
 - (13) Conduct of such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (1) through (12) above, including procurement.
- (c) *Offices for the collection of specialized intelligence through reconnaissance programs, whose responsibilities shall include:*
- (1) Carrying out consolidated reconnaissance programs for specialized intelligence;
 - (2) Responding to tasking in accordance with procedures established by the Director of Central Intelligence; and
 - (3) Delegating authority to the various departments and agencies for research, development, procurement, and operation of designated means of collection.
- (d) *The foreign intelligence and counterintelligence elements of the Army, Navy, Air Force, and Marine Corps, whose responsibilities shall include:*
- (1) Collection, production and dissemination of military and military-related foreign intelligence and counterintelligence, and information on the foreign aspects of narcotics production and trafficking. When collection is conducted in response to national foreign intelligence requirements, it will be conducted in accordance with guidance from the Director of Central Intelligence. Collection of national foreign intelligence, not otherwise obtainable, outside the United States shall be coordinated with the CIA, and such collection within the United States shall be coordinated with the FBI;



(2) Conduct of counterintelligence activities outside the United States in coordination with the CIA, and within the United States in coordination with the FBI; and

(3) Monitoring of the development, procurement and management of tactical intelligence systems and equipment and conducting related research, development, and test and evaluation activities.

(e) *Other offices within the Department of Defense appropriate for conduct of the intelligence missions and responsibilities assigned to the Secretary of Defense.* If such other offices are used for intelligence purposes, the provisions of Part 2 of this Order shall apply to those offices when used for those purposes.

1.13 *The Department of Energy.* The Secretary of Energy shall:

(a) Participate with the Department of State in overtly collecting information with respect to foreign energy matters;

(b) Produce and disseminate foreign intelligence necessary for the Secretary's responsibilities;

(c) Participate in formulating intelligence collection and analysis requirements where the special expert capability of the Department can contribute; and

(d) Provide expert technical, analytical and research capability to other agencies within the Intelligence Community.

1.14 *The Federal Bureau of Investigation.* Under the supervision of the Attorney General and pursuant to such regulations as the Attorney General may establish, the Director of the FBI shall:

(a) Within the United States conduct counterintelligence and coordinate counterintelligence activities of other agencies within the Intelligence Community. When a counterintelligence activity of the FBI involves military or civilian personnel of the Department of Defense, the FBI shall coordinate with the Department of Defense;

(b) Conduct counterintelligence activities outside the United States in coordination with the CIA as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

(c) Conduct within the United States, when requested by officials of the Intelligence Community designated by the President, activities undertaken to collect foreign intelligence or support foreign intelligence collection requirements of other agencies within the Intelligence Community, or, when requested by the Director of the National Security Agency, to support the communications security activities of the United States Government;

(d) Produce and disseminate foreign intelligence and counterintelligence; and

(e) Carry out or contract for research, development and procurement of technical systems and devices relating to the functions authorized above.

Part 2

Conduct of Intelligence Activities

2.1 *Need.* Accurate and timely information about the capabilities, intentions and activities of foreign powers, organizations, or persons and their agents is essential to informed decisionmaking in the areas of national defense and foreign relations. Collection of such information is a priority objective and will be pursued in a vigorous, innovative and responsible manner that is consistent with the Constitution and applicable law and respectful of the principles upon which the United States was founded.

2.2 *Purpose.* This Order is intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers. Set forth below are certain general principles that, in addition to and consistent with applicable laws, are intended to achieve the proper balance between

the acquisition of essential information and protection of individual interests. Nothing in this Order shall be construed to apply to or interfere with any authorized civil or criminal law enforcement responsibility of any department or agency.

2.3 Collection of Information. Agencies within the Intelligence Community are authorized to collect, retain or disseminate information concerning United States persons only in accordance with procedures established by the head of the agency concerned and approved by the Attorney General, consistent with the authorities provided by Part 1 of this Order. Those procedures shall permit collection, retention and dissemination of the following types of information:

(a) Information that is publicly available or collected with the consent of the person concerned;

(b) Information constituting foreign intelligence or counterintelligence, including such information concerning corporations or other commercial organizations. Collection within the United States of foreign intelligence not otherwise obtainable shall be undertaken by the FBI or, when significant foreign intelligence is sought, by other authorized agencies of the Intelligence Community, provided that no foreign intelligence collection by such agencies may be undertaken for the purpose of acquiring information concerning the domestic activities of United States persons;

(c) Information obtained in the course of a lawful foreign intelligence, counterintelligence, international narcotics or international terrorism investigation;

(d) Information needed to protect the safety of any persons or organizations, including those who are targets, victims or hostages of international terrorist organizations;

(e) Information needed to protect foreign intelligence or counterintelligence sources or methods from unauthorized disclosure. Collection within the United States shall be undertaken by the FBI except that other agencies of the Intelligence Community may also collect such information concerning present or former employees, present or former intelligence agency contractors or their present or former employees, or applicants for any such employment or contracting;

(f) Information concerning persons who are reasonably believed to be potential sources or contacts for the purpose of determining their suitability or credibility;

(g) Information arising out of a lawful personnel, physical or communications security investigation;

(h) Information acquired by overhead reconnaissance not directed at specific United States persons;

(i) Incidentally obtained information that may indicate involvement in activities that may violate federal, state, local or foreign laws; and

(j) Information necessary for administrative purposes.

In addition, agencies within the Intelligence Community may disseminate information, other than information derived from signals intelligence, to each appropriate agency within the Intelligence Community for purposes of allowing the recipient agency to determine whether the information is relevant to its responsibilities and can be retained by it.

2.4 Collection Techniques. Agencies within the Intelligence Community shall use the least intrusive collection techniques feasible within the United States or directed against United States persons abroad. Agencies are not authorized to use such techniques as electronic surveillance, unconsented physical search, mail surveillance, physical surveillance, or monitoring devices unless they are in accordance with procedures established by the head of the agency concerned and approved by the Attorney General. Such procedures shall protect constitutional and other legal rights and limit use of such information to lawful governmental purposes. These procedures shall not authorize:

(a) The CIA to engage in electronic surveillance within the United States except for the purpose of training, testing, or conducting countermeasures to hostile electronic surveillance;

(b) Unconsented physical searches in the United States by agencies other than the FBI, except for:

(1) Searches by counterintelligence elements of the military services directed against military personnel within the United States or abroad for intelligence purposes, when authorized by a military commander empowered to approve physical searches for law enforcement purposes, based upon a finding of probable cause to believe that such persons are acting as agents of foreign powers; and

(2) Searches by CIA of personal property of non-United States persons lawfully in its possession.

(c) Physical surveillance of a United States person in the United States by agencies other than the FBI, except for:

(1) Physical surveillance of present or former employees, present or former intelligence agency contractors or their present or former employees, or applicants for any such employment or contracting; and

(2) Physical surveillance of a military person employed by a nonintelligence element of a military service.

(d) Physical surveillance of a United States person abroad to collect foreign intelligence, except to obtain significant information that cannot reasonably be acquired by other means.

2.5 *Attorney General Approval.* The Attorney General hereby is delegated the power to approve the use for intelligence purposes, within the United States or against a United States person abroad, of any technique for which a warrant would be required if undertaken for law enforcement purposes, provided that such techniques shall not be undertaken unless the Attorney General has determined in each case that there is probable cause to believe that the technique is directed against a foreign power or an agent of a foreign power. Electronic surveillance, as defined in the Foreign Intelligence Surveillance Act of 1978, shall be conducted in accordance with that Act, as well as this Order.

2.6 *Assistance to Law Enforcement Authorities.* Agencies within the Intelligence Community are authorized to:

(a) Cooperate with appropriate law enforcement agencies for the purpose of protecting the employees, information, property and facilities of any agency within the Intelligence Community;

(b) Unless otherwise precluded by law or this Order, participate in law enforcement activities to investigate or prevent clandestine intelligence activities by foreign powers, or international terrorist or narcotics activities;

(c) Provide specialized equipment, technical knowledge, or assistance of expert personnel for use by any department or agency, or, when lives are endangered, to support local law enforcement agencies. Provision of assistance by expert personnel shall be approved in each case by the General Counsel of the providing agency; and

(d) Render any other assistance and cooperation to law enforcement authorities not precluded by applicable law.

2.7 *Contracting.* Agencies within the Intelligence Community are authorized to enter into contracts or arrangements for the provision of goods or services with private companies or institutions in the United States and need not reveal the sponsorship of such contracts or arrangements for authorized intelligence purposes. Contracts or arrangements with academic institutions may be undertaken only with the consent of appropriate officials of the institution.



2.8 *Consistency With Other Laws.* Nothing in this Order shall be construed to authorize any activity in violation of the Constitution or statutes of the United States.

2.9 *Undisclosed Participation in Organizations Within the United States.* No one acting on behalf of agencies within the Intelligence Community may join or otherwise participate in any organization in the United States on behalf of any agency within the Intelligence Community without disclosing his intelligence affiliation to appropriate officials of the organization, except in accordance with procedures established by the head of the agency concerned and approved by the Attorney General. Such participation shall be authorized only if it is essential to achieving lawful purposes as determined by the agency head or designee. No such participation may be undertaken for the purpose of influencing the activity of the organization or its members except in cases where:

(a) The participation is undertaken on behalf of the FBI in the course of a lawful investigation; or

(b) The organization concerned is composed primarily of individuals who are not United States persons and is reasonably believed to be acting on behalf of a foreign power.

2.10 *Human Experimentation.* No agency within the Intelligence Community shall sponsor, contract for or conduct research on human subjects except in accordance with guidelines issued by the Department of Health and Human Services. The subject's informed consent shall be documented as required by those guidelines.

2.11 *Prohibition on Assassination.* No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.

2.12 *Indirect Participation.* No agency of the Intelligence Community shall participate in or request any person to undertake activities forbidden by this Order.

Part 3

General Provisions

3.1 *Congressional Oversight.* The duties and responsibilities of the Director of Central Intelligence and the heads of other departments, agencies, and entities engaged in intelligence activities to cooperate with the Congress in the conduct of its responsibilities for oversight of intelligence activities shall be as provided in title 50, United States Code, section 413. The requirements of section 662 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2422), and section 501 of the National Security Act of 1947, as amended (50 U.S.C. 413), shall apply to all special activities as defined in this Order.

3.2 *Implementation.* The NSC, the Secretary of Defense, the Attorney General, and the Director of Central Intelligence shall issue such appropriate directives and procedures as are necessary to implement this Order. Heads of agencies within the Intelligence Community shall issue appropriate supplementary directives and procedures consistent with this Order. The Attorney General shall provide a statement of reasons for not approving any procedures established by the head of an agency in the Intelligence Community other than the FBI. The National Security Council may establish procedures in instances where the agency head and the Attorney General are unable to reach agreement on other than constitutional or other legal grounds.

3.3 *Procedures.* Until the procedures required by this Order have been established, the activities herein authorized which require procedures shall be conducted in accordance with existing procedures or requirements established under Executive Order No. 12036. Procedures required by this Order shall be established as expeditiously as possible. All procedures promulgated pursuant to this Order shall be made available to the congressional intelligence committees.



3.4 *Definitions.* For the purposes of this Order, the following terms shall have these meanings:

(a) *Counterintelligence* means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document or communications security programs.

(b) *Electronic surveillance* means acquisition of a nonpublic communication by electronic means without the consent of a person who is a party to an electronic communication or, in the case of a nonelectronic communication, without the consent of a person who is visibly present at the place of communication, but not including the use of radio direction-finding equipment solely to determine the location of a transmitter.

(c) *Employee* means a person employed by, assigned to or acting for an agency within the Intelligence Community.

(d) *Foreign intelligence* means information relating to the capabilities, intentions and activities of foreign powers, organizations or persons, but not including counterintelligence except for information on international terrorist activities.

(e) *Intelligence activities* means all activities that agencies within the Intelligence Community are authorized to conduct pursuant to this Order.

(f) *Intelligence Community* and *agencies within the Intelligence Community* refer to the following agencies or organizations:

(1) The Central Intelligence Agency (CIA);

(2) The National Security Agency (NSA);

(3) The Defense Intelligence Agency (DIA);

(4) The offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;

(5) The Bureau of Intelligence and Research of the Department of State;

(6) The intelligence elements of the Army, Navy, Air Force, and Marine Corps, the Federal Bureau of Investigation (FBI), the Department of the Treasury, and the Department of Energy; and

(7) The staff elements of the Director of Central Intelligence.

(g) *The National Foreign Intelligence Program* includes the programs listed below, but its composition shall be subject to review by the National Security Council and modification by the President:

(1) The programs of the CIA;

(2) The Consolidated Cryptologic Program, the General Defense Intelligence Program, and the programs of the offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance, except such elements as the Director of Central Intelligence and the Secretary of Defense agree should be excluded;

(3) Other programs of agencies within the Intelligence Community designated jointly by the Director of Central Intelligence and the head of the department or by the President as national foreign intelligence or counterintelligence activities;

(4) Activities of the staff elements of the Director of Central Intelligence;

(5) Activities to acquire the intelligence required for the planning and conduct of tactical operations by the United States military forces are not included in the National Foreign Intelligence Program.

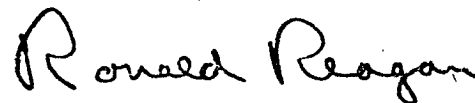
(h) *Special activities* means activities conducted in support of national foreign policy objectives abroad which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and

functions in support of such activities, but which are not intended to influence United States political processes, public opinion, policies, or media and do not include diplomatic activities or the collection and production of intelligence or related support functions.

(i) *United States person* means a United States citizen, an alien known by the intelligence agency concerned to be a permanent resident alien, an unincorporated association substantially composed of United States citizens or permanent resident aliens, or a corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments.

3.5 *Purpose and Effect.* This Order is intended to control and provide direction and guidance to the Intelligence Community. Nothing contained herein or in any procedures promulgated hereunder is intended to confer any substantive or procedural right or privilege on any person or organization.

3.6 *Revocation.* Executive Order No. 12036 of January 24, 1978, as amended, entitled "United States Intelligence Activities," is revoked.



THE WHITE HOUSE,
December 4, 1981.

[FR 81-35203

Filed 12-4-81; 4:09 pm]

Billing code 3195-01-M

ATTACHMENT TO
CONTRACT # _____

GENERAL PROVISIONS COVER SHEET

The General Provisions of this contract consist of the Sections checked (X) below, copies of which are attached:

- _____ SECTION A (GENERAL)
- _____ SECTION B (FIXED PRICE SUPPLY)
- _____ SECTION C (COST REIMBURSEMENT SUPPLY)
- _____ SECTION D (FIXED PRICE R&D)
- _____ SECTION E (COST REIMBURSEMENT R&D)
- _____ SECTION F (TIME & MATERIAL)

SECTION A

The following Articles/Clauses of Section A are applicable to this contract only if checked (X); all other Articles/Clauses of Section A do apply to this contract.

- _____ ARTICLE 1, Clause 7-104.14(a)
- _____ ARTICLE 1, Clause 7-104.14(b)
- _____ ARTICLE 2, Clause 7-104.20(a)
- _____ ARTICLE 2, Clause 7-104.20(b)
- _____ ARTICLE 41, Clauses 7-104.83(a)(1) and (b)
- _____ ARTICLE 45, Clause 7-103.29

SECTION B

The following Articles/Clauses of Section B are applicable to this contract only if checked (X); all other Articles/Clauses of Section B apply to this contract if Section B is checked above.

- _____ ARTICLE 8, Clause 7-104.29(a)
- _____ ARTICLE 8, Clause 7-104.29(b)
- _____ ARTICLE 11, Clause 7-104.42(a)
- _____ ARTICLE 11, Clause 7-104.42(b)

SECTIONS C, D, AND E

If any one of Sections C, D, or E is checked above, the following Articles/Clauses of that Section are applicable to this contract only if checked. All other Articles/Clauses of that Section do apply to this contract.

- _____ ARTICLE 1, Clause 7-104.29(a)
- _____ ARTICLE 1, Clause 7-104.29(b)
- _____ ARTICLE 3, Clause 7-104.42(a)
- _____ ARTICLE 3, Clause 7-104.42(b)

SECTION F

All Articles of Section F apply to this contract if Section F is checked above.

GENERAL PROVISIONS

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ARTICLE 1 (as required by I-707.3)

(For applicability of the following clauses see Cover Sheet to these General Provisions.)

7-104.14(a) UTILIZATION OF SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS (1980 AUG) (Modified)

(a) It is the policy of the United States that small business and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract. The term "subcontract" means any agreement (other than one involving an employer-employee relationship) to be entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for the performance of the original contract or subcontract. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to Section 3 of the

Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals," hereafter referred to as disadvantaged business, shall mean a small business concern—

(1) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(2) whose management and daily business operations are controlled by one or more of such individuals. The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans (i.e., American Indians, Eskimos, Aleuts and Native Hawaiians), Asian-Pacific Americans (i.e., U.S. citizens whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan, and other minorities, or any individuals found to be disadvantaged by the Administration pursuant to Section 8(a) of the Small Business Act.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

7-104.14(b) SUBCONTRACTING PLAN FOR SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS (NEGOTIATED) (1980 AUG) (Modified)

Approved For Release 2006/08/29 : CIA-RDP84B00049R000802160001-9

offeror will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in the plan, including the establishment of source lists of small business and small disadvantaged business concerns; and efforts to identify and award subcontracts to such small business concerns. The records shall include at least the following (these records may be maintained on a plant-wide or company-wide basis unless otherwise indicated):

(a) This provision does not apply to small business concerns.
(b) The apparent successful offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan which addresses separately subcontracting with small business concerns and small disadvantaged business concerns and which shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the contracting officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract. As a minimum, the subcontracting plan shall include—

(1) Separate percentage goals (expressed in terms of percentage of total planned subcontracting dollars) for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. For the purposes of the subcontracting plan, the Contractor shall include all subcontracts to be awarded for the specific purpose of performing this contract and may include a proportionate share of supplies and services whose costs are normally allocated as indirect or overhead costs when reasonably determined to be attributable to this contract.

(a) A statement of: (i) total dollars planned to be subcontracted; (ii) total dollars planned to be subcontracted to small business; and (iii) total dollars planned to be subcontracted to small disadvantaged business.

(b) A description of the principal supply and service areas to be subcontracted and an identification of those areas where it is planned to use (i) small business subcontractors, and (ii) small disadvantaged business subcontractors.

(c) A statement of the method used in developing proposed subcontracting goals for small business and small disadvantaged business concerns.

(d) If the offeror includes indirect and overhead costs as an element in establishing the goals in the subcontracting plan, the method used in determining the proportionate share of indirect and overhead costs incurred with (i) small business, and (ii) small disadvantaged business concerns.

(e) A statement of the method used for solicitation purposes (e.g., did the offeror use company source lists, the small business and disadvantaged small business source identification system provided by the Small Business Administration's Procurement Automated Source System, the National Minority Purchasing Council Vendor Information Service, or the services provided by the U.S. Department of Commerce Minority Business Development Agency's Research and Information Division, and the facilities of small business and disadvantaged business trade associations?).

(2) The name of an individual within the employ of the offeror who will administer the subcontracting plan of the offeror and a description of the duties of such individual;

(3) A description of the efforts the offeror will make to assure that small business and small disadvantaged business concerns will have an equitable opportunity to compete for subcontracts;

(4) Assurance that the offeror will include the clause entitled Utilization of Small Business and Small Disadvantaged Business Concerns in all subcontracts which offer further subcontracting possibilities in the United States and will require all subcontractors (except small business concerns) who receive subcontracts in excess of \$500,000 or, in the case of a contract for the construction of any public facility, \$1 million, to adopt a plan in consonance with this clause;

(5) Assurances that the offeror will submit such periodic reports and cooperate in any studies or surveys as may be required by the contracting agency in order to determine the extent of compliance by the offeror with the subcontracting plan; and

a. Small and disadvantaged business source lists, guides, and other data identifying small and small disadvantaged business vendors.

b. Organizations contacted for small and disadvantaged business sources.

c. On a contract-by-contract basis, records on all subcontract solicitations over \$100,000, indicating on each solicitation (i) whether small business was solicited and if not, why not; (ii) whether small disadvantaged business was solicited and if not, why not; and (iii) reasons for the failure of responding small businesses to receive the subcontract award.

d. Records to support such efforts as:
(i) contacts with disadvantaged and small business trade associations;
(ii) contacts with business development organizations; and
(iii) attendance at small and disadvantaged business procurement conferences and trade fairs.

e. Records to support internal activities to guide and encourage buyers such as:

(i) workshops, seminars, training programs, etc.; and
(ii) monitoring activities to evaluate compliance.

f. On a contract-by-contract basis, records to support award data submitted to the Government to include name, address, and size status of subcontractor.

(c) In order to effectively implement this plan the Contractor shall:

(1) Issue and promulgate company-wide policy statements in support of this effort, develop written procedures and work instructions, and assign specific responsibilities regarding requirements of this clause.

(2) Demonstrate continuing management interest and involvement in support of this effort through such actions as regular reviews of progress and establishment of overall corporate and divisional goals and objectives.

(3) Train and motivate contractor personnel regarding the support of small and small disadvantaged business firms.

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

(5) Provide adequate and timely consideration of the potentialities of small business and small disadvantaged business concerns in all "make-or-buy" decisions.

(6) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business firms which are referred by the contracting officer or his representative.

(d) The Contractor shall submit DD Form 11-40-1 in accordance with instructions provided on the form.

(e) The offeror understands that:

(1) An acceptable plan must, in the determination of the contracting officer, provide the maximum practicable opportunity for small business and small disadvantaged business concerns to participate in the performance of the contract.

(2) The Contracting Officer shall notify the Contractor in writing of his reasons for determining a subcontracting plan to be

unacceptable. Such notice shall be given early enough in the negotiation process to allow the Contractor sufficient time to modify the plan within the time limits prescribed.

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

(4) The failure of any contractor or subcontractor to comply in good faith with (i) the clause entitled Utilization of Small Business and Small Disadvantaged Business Concerns or (ii) an approved plan required by this Small Business and Small Disadvantaged Business Subcontracting Plan (Negotiated) provision, will be a material breach of such contract or subcontract.

(f) In the acquisition of commercial products, the offeror further understands that:

(1) If a commercial product (defined below) is offered, the required subcontracting plan may cover the company's commercial production generally, both for Government contracts and for regular commercial sales, rather than just this acquisition. In such cases, the Contractor may request approval from the Contracting Officer to submit one company-wide, or division-wide, annual plan. If such request is deemed appropriate, the offeror shall submit a proposed company-wide, or division-wide, annual plan for acceptance.

(2) Upon approval by the Contracting Officer, the plan will remain in effect for the company's entire fiscal year. During this period, Government contracts for commercial products of the affected company or division will not be required to contain individual subcontracting plans relating only to the supply or services being acquired, unless the Contracting Officer determines for a particular contract that there are unforeseen possibilities for small business and small disadvantaged business subcontracting.

(3) At least 60 days before the scheduled termination of the company or division-wide plan, the Contractor may submit to the Contracting Officer a proposed company or division-wide subcontracting plan for its commercial products for the succeeding fiscal year. If the plan would otherwise terminate prior to approval of the succeeding fiscal year's plan, it will remain in effect until the succeeding plan is accepted or rejected, but no longer than 60 days after the end of the company's fiscal year.

(4) For the purpose of this program, the term "commercial product" means a product in regular production sold in substantial quantities to the general public and/or industry at established catalog or market prices. A product which, in the opinion of the Contracting Officer, differs only insignificantly from the Contractor's commercial product may be regarded for the purpose of this clause as a commercial product.

ARTICLE 2

(For applicability of the following clauses see Cover Sheet to these General Provisions.)

7-104.20(a) UTILIZATION OF LABOR SURPLUS AREA CONCERNS (1978 JUN) (as required by DAR 1-805.3)

(a) It is the policy of the Government to award contracts to labor surplus area concerns which have agreed to perform substantially in labor surplus areas, where this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use his best efforts to place his subcontracts in accordance with this policy.

(b) In complying with paragraph (a) of this clause and with paragraph (b) of the clause of this contract entitled "Utilization of Small Business Concerns," the Contractor in placing his subcontracts shall observe the following order of preference: (1) labor surplus area

concerns which are also small business concerns, (2) other small business concerns, and (3) other labor surplus area concerns.

(End of clause)

7-104.20(b) LABOR SURPLUS AREA SUBCONTRACTING PROGRAM (1978 JUN) (as required by DAR 1-805.3)

(a) The Contractor agrees to establish and conduct a program which will encourage labor surplus area concerns to compete for subcontracts within their capabilities. In this connection, the Contractor shall—

(1) Designate a liaison officer who will (i) maintain liaison with duly authorized representatives of the Government on labor surplus area matters, (ii) supervise compliance with the "Utilization of Labor Surplus Area Concerns" clause, and (iii) administer the Contractor's Labor Surplus Area Subcontracting Program;

(2) Provide adequate and timely consideration of the potentialities of labor surplus area concerns in all "make-or-buy" decisions;

(3) Assure that labor surplus area concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of labor surplus area concerns;

(4) Maintain records showing procedures which have been adopted to comply with the policies set forth in this clause; and

(5) Include the "Utilization of Labor Surplus Area Concerns," clause in subcontracts which offer substantial labor surplus area subcontracting opportunities.

(b) For subcontracting purposes, a "labor surplus area concern" is a concern that has agreed to perform substantially in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in a labor surplus area if the costs that the concern will incur on account of manufacturing or production in such areas amount to more than 50% of the price of such contract.

(c) The Contractor further agrees, with respect to any subcontract hereunder which is in excess of \$500,000 and which contains the clause entitled "Utilization of Labor Surplus Area Concerns," that he will insert provisions in the subcontract which will conform substantially to the language of this clause, including this paragraph (c), and that he will furnish the names of such subcontractors to the Contracting Officer.

ARTICLE 3

7-2003.74 SMALL DISADVANTAGED BUSINESS CONCERN (1980 AUG)

(a) The offeror represents that he () is, () is not, a small business concern owned and controlled by socially and economically disadvantaged individuals. The term "small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" means a small business concern—

(1) that is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly-owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(2) whose management and daily business operations are controlled by one or more such individuals.

(b) The offeror shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Ameri-

cans, Native Americans (i.e., American Indians, Eskimos, Aleuts, and Native Hawaiians), Asian-Pacific Americans (i.e., U.S. citizens whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan), and other minorities or any other individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act.

ARTICLE 4

7-104.49 GOVERNMENT SURPLUS (1965 JAN)

(a) In the event the bid or proposal is based on furnishing items or components which are former Government surplus property or residual inventory resulting from terminated Government contracts, a complete description of the items or components, quantity to be used, name of Government agency from which acquired, and date of acquisition shall be set forth on a separate sheet to be attached to bid or proposal. Notwithstanding any information provided in accordance with this provision, items furnished by the Contractor must comply in all respects with the specifications contained herein.

(b) Except as disclosed by the Contractor in (a) above, no property of the type described herein shall be furnished under this contract unless approved in writing by the Contracting Officer.

ARTICLE 5

7-104.3 BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM (1980 OCT) (Modified)

(a) This clause implements the Buy American Act (41 U.S.C. Section 10a-d) and the Department of Defense Balance of Payments Program by providing a preference to domestic end products over foreign end products except for certain foreign end products which meet the requirements for classification as qualifying country end products. For the purpose of this clause—

- (i) "Components" means those articles, materials, and supplies which are directly incorporated into end products.
- (ii) "Qualifying country component" means (A) an item mined, produced, or manufactured in a participating country or in an FMS/Offset arrangement country when the applicable D&F has been made waiving the Buy American Act restrictions; or (B) any item listed in a defense cooperation country agreement.
- (iii) "End products" means articles, materials, and supplies which are to be acquired for public use. As to a given contract, the end products are the items to be delivered to the Government, as specified in the contract, including supplies to be acquired by the Government for public use in connection with service contracts but excluding installation and other services to be performed after delivery.
- (iv) "Domestic end product" means (A) an unmanufactured end product which has been mined or produced in the United States, or (B) an end product manufactured in the United States if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in

in the United States and the component is of a class or kind (A) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (B) as to which the Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act (6-104.4).

- (v) "Foreign end product" means an end product other than a domestic end product.
- (vi) "Qualifying country end product" means (A) a participating country end product; (B) an FMS/Offset arrangement country end product when the applicable Determination and Findings has been made waiving the Buy American Act restrictions; or (C) a defense cooperation country agreement listed item.
- (vii) "Participating country end product" means (A) an unmanufactured end product mined or produced in a participating country, or (B) an end product manufactured in a participating country if the cost of its qualifying country components and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is, in fact, paid.
- (viii) "FMS/Offset arrangement country end product" means (A) an unmanufactured end product mined or produced in an FMS/offset arrangement country, or (B) an end product manufactured in an FMS/offset arrangement country if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is, in fact, paid. To obtain the waivers necessary to accord preferential treatment for an FMS/offset arrangement country end product, see the procedures at 6-1310.3(b)(1).
- (ix) "Defense Cooperation country end product" means an item listed in the defense cooperation country agreement and produced in that country.

(b) The contractor agrees that there will be delivered under this contract only domestic end products *unless*, in its offer, it specified delivery of foreign end products in the clause entitled Buy American Act and Balance of Payments Program Certificate. An offer certifying that a qualifying country end product will be supplied requires the contractor to supply a qualifying country end product or, at the contractor's option, a domestic end product. An offer based on supplying a nonqualifying country end product, if accepted, will permit the contractor to supply a product without regard to the requirements of this clause.

ARTICLE 6

7-103.1 DEFINITIONS (1979 MAR) (Modified)

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

(a) The term "Head of the Agency" or "Secretary" means the Secretary, the Under Secretary, any Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency; and the term "his duly authorized representative" means any person or persons or board (other than

the Contracting Officer) authorized to act for the Head of the Agency or the Secretary.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

(c) Except as otherwise provided in this contract, the term "sub-contract" includes but is not limited to purchase orders, changes and/or modifications thereto.

(d) "Contract" as used herein means this contract and/or any Task Orders issued under and subject to the provisions of this contract.

(e) "Schedule" means a Schedule attached to this contract or to a Task Order under this contract.

ARTICLE 7

7-103.12 DISPUTES (1980 JUN)

(a) This contract is subject to the Contract Disputes Act of 1978 (P.L. 95-563).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved in accordance with this clause.

(c) (1) As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a matter of right, the payment of money, adjustment, or interpretation of contract terms, or other relief, arising under or relating to this contract. However, a written demand by the Contractor seeking the payment of money in excess of \$50,000 is not a claim until certified in accordance with (d) below.

(2) A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim for the purposes of the Act. However, where such submission is subsequently disputed either as to liability or amount or not acted upon in a reasonable time, it may be converted to a claim pursuant to the Act by complying with the submission and certification requirements of this clause.

(3) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for decision. A Claim by the Government against the Contractor shall be subject to a decision by the Contracting Officer.

(d) For contractor claims of more than \$50,000, the Contractor shall submit with the claim a certification that the claim is made in good faith; the supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable. The certification shall be executed by the Contractor if an individual. When the Contractor is not an individual, the certification shall be executed by a senior company official in charge at the Contractor's plant or location involved, or by an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(e) For contractor claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For contractor-certified claims in excess of \$50,000 the Contracting Officer must decide the claim within 60 days or notify the Contractor of the date when the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) Interest on the amount found due on a contractor claim shall be paid from the date the Contracting Officer receives the claim, or from the date payment otherwise would be due, if such date is later, until the date of payment.

performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or related to the contract, and comply with any decision of the Contracting Officer.

ARTICLE 8

7-103.19 OFFICIALS NOT TO BENEFIT (1949 JUL)

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

ARTICLE 9

7-103.20 COVENANT AGAINST CONTINGENT FEES (1958 JAN)

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 10

7-104.16 GRATUITIES (1952 MAR)

(a) The Government may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found, after notice and hearing, by the Secretary or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract; *provided*, that the existence of the facts upon which the Secretary or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event this contract is terminated, as provided in paragraph (a) hereof, the Government shall be entitled

(i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor, and

(ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

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

**7-104.18 PRIORITIES, ALLOCATIONS, AND ALLOTMENTS
(1975 OCT)**

The Contractor shall follow the provisions of DMS Reg. 1 or DPS Reg. 1 and all other applicable regulations and orders of the Bureau of Domestic Commerce in obtaining controlled materials and other products and materials needed to fill this order.

ARTICLE 12**7-103.8 ASSIGNMENT OF CLAIMS (1962 FEB) (Modified)**

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S. Code 203, 41 U.S. Code 15), if this contract provides for payments aggregating \$1,000 or more, claims for monies due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payments to an assignee of any monies due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or set-off.

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

(c) Approval of the Contracting Officer must be obtained prior to making any assignment of claim under this contract.

ARTICLE 13**7-103.23 NOTICE AND ASSISTANCE REGARDING PATENT
AND COPYRIGHT INFRINGEMENT (1965 JAN)**

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

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

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

(c) This clause shall be included in all subcontracts.

7-104.6 FILING OF PATENT APPLICATIONS (1969 DEC)

(a) Before filing or causing to be filed a patent application in the United States disclosing any subject matter of this contract which subject matter is classified "Secret" or higher, the Contractor shall, citing the thirty (30) day provision below, transmit the proposed application to the Contracting Officer for determination whether, for reasons of national security, such application shall be placed under an order of secrecy or sealed in accordance with the provisions of 35 U.S.C. 181-188 or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations; and the Contractor shall observe any instructions of the Contracting Officer with respect to the manner of delivery of the patent application to the United States Patent Office for filing, but the Contractor shall not be denied the right to file such patent application. If the Contracting Officer shall not have given any such instructions within thirty (30) days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) The Contractor shall furnish to the Contracting Officer, at the time of or prior to the time when the Contractor files or causes to be filed a patent application in the United States disclosing any subject matter of this contract, which subject matter is classified "Confidential," a copy of such application for determination whether, for reasons of national security, such application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations.

(c) Where the subject matter of this contract is classified for reasons of security, the Contractor shall not file, or cause to be filed in any country, other than in the United States as provided in (a) and (b) of this clause, any application or registration for a patent containing any of said subject matter without first obtaining written approval of the Contracting Officer.

(d) When filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter, and shall also promptly furnish to the Contracting Officer the serial number, filing date, and name of country of any such patent application. When transmitting the application to the United States Patent Office, the Contractor shall by separate letter identify by agency and number the contract or contracts which require security classification markings to be placed on the application.

(e) The substance of this clause shall be included in all subcontracts which cover or are likely to cover classified subject matter.

ARTICLE 15**7-104.45 NEW MATERIAL (1965 JAN)**

Except as to any supplies and components which the Specification or Schedule specifically provides need not be new, the Contractor represents that the supplies and components including any former Government property identified pursuant to the "Government Surplus" clause of this contract to be provided under this contract are new (not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety). If at any time during the performance of this contract, the Contractor believes that the furnishings of supplies or components which are not new is necessary or desirable, he shall notify the Contracting Officer immediately, in writing, including the reasons therefor and proposing any consideration which will flow to the Government if authorization to use such supplies is granted.

7-104.9 RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE (1979 MAR)

(a) *Definitions.*

(1) *Technical Data* means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design type documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information and computer software documentation. *Technical data* does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.

(2) *Computer*—a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on these data, or a device that operates on analog data by performing physical process on the data.

(3) *Computer Software*—computer programs and computer data bases.

(4) *Computer Program*—a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or designed to satisfy the requirements of a particular user.

(5) *Computer Data Base*—a collection of data in a form capable of being processed and operated on by a computer.

(6) *Computer Software Documentation*—technical data, including computer listings and printouts, in human-readable form which

- (i) documents the design and details of computer software,
- (ii) explains the capabilities of the software, or
- (iii) provides operating instructions for using the software to obtain desired results from a computer.

(7) *Unlimited Rights* means rights to use, duplicate, or disclose technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(8) *Limited Rights* means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data be (a) released or disclosed in whole or in part outside the Government, (b) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software, or (c) used by a party other than the Government, except for:

- (i) emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, *provided* that the release or disclosure thereof outside the Government shall be made subject to a prohibition against further use, release or disclosure; or

(ii) release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (i) above.

(9) *Restricted Rights* apply only to computer software, and include, as a minimum, the right to:

- (i) use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;
- (ii) use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;
- (iii) copy computer programs for safekeeping (archives) or backup purposes;
- (iv) modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, any other specific rights not inconsistent therewith listed or described in this contract or described in a license or agreement made a part of this contract.

(b) *Government Rights.*

(1) *Unlimited Rights.* The Government shall have unlimited rights in:

(i) technical data and computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any other Government contract or subcontract;

(ii) computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(iii) computer data bases, prepared under a Government contract, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain;

(iv) technical data necessary to enable manufacture of end-items, components and modifications, or to enable the performance of processes, when the end-items, components, modifications or processes have been, or are being, developed under this or any other Government contract or subcontract in which experimental, developmental or research work is, or was specified as an element of contract performance, except technical data pertaining to items, components, processes, or computer software developed at private expense (but see (2)(ii) below);

(v) technical data or computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government furnished data or computer software;

(vi) technical data pertaining to end-items; components or processes, prepared or required to be delivered under this or any other Government contract or subcontract, for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit, and function" data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.);

(vii) manuals or instructional materials prepared or required to be delivered under this contract or any subcontract hereunder for installation, operation, maintenance or training purposes;

(viii) technical data or computer software which is in the public domain, or has been or is normally released or disclosed by the Contractor or subcontractor without restriction on further disclosure; and

(ix) technical data or computer software listed or described in an agreement incorporated into the schedule of this contract which the parties have predetermined, on the basis of

subparagraphs (i) through (viii) above, and agreed will be furnished with unlimited rights.

(2) *Limited Rights.* The Government shall have limited rights in:

(i) technical data, listed or described in an agreement incorporated into the Schedule of this contract, which the parties have agreed will be furnished with limited rights; and

(ii) unpublished technical data pertaining to items, components or processes developed at private expense, and unpublished computer software documentation related to computer software that is acquired with restricted rights, other than such data as may be included in the data referred to in (b)(1)(i), (v), (vi), (vii), and (viii);

provided that only the portion or portions of each piece of data to which limited rights are to be asserted pursuant to (2)(i) and (ii) above are identified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below in which is inserted:

A. the number of the prime contract under which the technical data is to be delivered,

B. the name of the Contractor and any subcontractor by whom the technical data was generated, and

C. an explanation of the method used to identify limited rights data.

LIMITED RIGHTS LEGEND

Contract No. _____

Contractor: _____

Explanation of Limited Rights Data Identification Method Used

Those portions of this technical data indicated as limited rights data shall not, without the written permission of the above Contractor, be either (a) used, released or disclosed in whole or in part outside the Government, (b) used in whole or in part by the Government for manufacture or, in the case of computer software documentation, for preparing the same or similar computer software, or (c) used by a party other than the Government, except for: (i) emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, *provided* that the release of disclosure hereof outside the Government shall be made subject to a prohibition against further use, release or disclosure; or (ii) release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (i) above. This legend, together with the indications of the portions of this data which are subject to such limitations shall be included on any reproduction hereof which includes any part of the portions subject to such limitations.

(3) *Restricted Rights.* The Government shall have restricted rights in computer software, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, *provided*, however, notwithstanding any contrary provision in any such license or agreement, the Government shall have the rights in (a)(9)(i) through (iv). Such restricted rights are of no effect unless the computer software is marked by the Contractor with the following legend:

RESTRICTED RIGHTS LEGEND

Use, duplication or disclosure is subject to restrictions stated in Contract No. _____ with _____ (Name of Contractor) _____

and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer

software. The Contractor may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth in a license or agreement made a part of this contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.

(4) No legend shall be marked on, nor shall any limitation or restriction on rights of use be asserted as to, any data or computer software which the Contractor has previously delivered to the Government without restriction. The limited or restricted rights provided for by this paragraph shall not impair the right of the Government to use similar or identical data or computer software acquired from other sources.

(c) Copyright

(1) In addition to the rights granted under the provisions of (b) above, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world, of the scope set forth below, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies or phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes. With respect to technical data and computer software in which the Government has unlimited rights, the license shall be of the same scope as the rights defined in (a)(7). With respect to technical data in which the Government has limited rights, the scope of the license is limited to the rights defined in (a)(8). With respect to computer software which the parties have agreed in accordance with (b)(3) will be furnished with restricted rights, the scope of the license is limited to such rights.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified in (c)(1).

(3) As between the Contractor and the Government, the Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under Section 201(b) of Title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also include the following statement which shall be placed thereon by the Contractor, or should the contractor fail, by the Government:

This material may be reproduced by or for the U.S. Government pursuant to the copyright license under DAR clause 7-104.9(a)(date).

(d) *Removal of Unauthorized Markings.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any technical data or computer software furnished hereunder, if:

(i) The Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the markings, or

(ii) The Contractor's response fails to substantiate, within sixty (60) days after written notice, the propriety of limited rights markings by clear and convincing evidence, or of restricted rights markings by identification of the restrictions set forth in the contract.

In either case the Government shall give written notice to the Contractor of the action taken.

(e) *Relation to Patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be

construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(f) *Limitation on Charges for Data and Computer Software.* The Contractor recognizes that the Government or a foreign government with funds derived through the Military Assistance Program or otherwise through the United States Government may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of technical data or computer software on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for data or computer software which the Government has a right to use and disclose to others, which is in the public domain, or which the Government has been given without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data or computer software. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts, or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(g) *Acquisition of Data and Computer Software from Subcontractors.*

(1) Whenever any technical data or computer software is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or the Contractor's rights in that subcontractor data or computer software which is required for the Government.

(2) Technical data required to be delivered by a subcontractor shall normally be delivered to the next higher tier Contractor. However, when there is a requirement in the prime contract for data which may be submitted with limited rights pursuant to (b)(2) above, a subcontractor may fulfill such requirement by submitting such data directly to the Government rather than through the prime Contractor.

(3) The Contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to acquire rights in technical data or computer software from their subcontractors for themselves.

ARTICLE 17

7-104.17 CONVICT LABOR (1975 OCT)

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

ARTICLE 18

7-103.16(a) CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (1971 NOV)

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-335), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

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

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

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

(d) *Subcontracts.* The Contractor shall insert paragraphs (a) through (d) of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

(e) *Records.* The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three years from the completion of the contract.

ARTICLE 19

7-103.17 WALSH—HEALEY PUBLIC CONTRACTS ACT (1958 JAN)

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

ARTICLE 20

7-103.18 EQUAL OPPORTUNITY (1978 SEP) (Modified)

(If, during any twelve (12) month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded Federal contracts and/or subcontracts which have an aggregate value in excess of \$10,000, the Contractor shall comply with (1) through (7) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.)

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

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

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

(4) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the provisions of Paragraph (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance. *Provided*, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(8) Notwithstanding any provision relating to disclosure of records, such access will not be granted to this contract or to related

records which might tend to reveal sponsor identity if the association of the sponsor with this contract is classified, without prior written approval of the contracting officer.

ARTICLE 21

7-1903.41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (1979 SEP)

(a) *Service Contracts in Excess of \$2,500.* The following clause shall apply if this contract is in excess of \$2,500, and its principal purpose is to furnish services in the United States (see (p)(8) of the clause below) through use of service employees and it is not otherwise exempted by the provisions of the Service Contract Act of 1965, as amended, the clause below, and Part 10 of Section XII of the DAR.

SERVICE CONTRACT ACT OF 1965, AS AMENDED (1979 SEP)

This contract, to the extent that it is of the character to which the Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq.) (hereafter referred to as the "Act"), applies, is subject to the following provisions of the Act and to the regulations of the Secretary of Labor thereunder (29 CFR Part 4).

(a) *Compensation.* Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid no less than the minimum monetary wage and shall be furnished fringe benefits determined by the Secretary of Labor or the Secretary's authorized representative, as specified in any attachment to this contract. If there is such an attachment, any class of service employee which is not listed therein, but which is to be employed under this contract, shall be classified by the Contractor so as to provide a reasonable relationship between such classifications and those listed in the attachment and shall be paid such monetary wages and furnished such fringe benefits as are determined by agreement of the interested parties, who shall be deemed to be the contracting agency, the Contractor, and the employees who will perform on the contract or their representatives. If the interested parties do not agree on a classification or reclassification which is, in fact, conformable, the contracting officer shall submit the question, together with recommendation, to the Administrator of the Wage and Hour Division, Employment Standards Administration, of the Department of Labor for final determination. Failure to pay such employees the compensation agreed upon by the interested parties or finally determined by the Administrator or the Administrator's authorized representative shall be a violation of this contract. No employee engaged in performing work on this contract shall be paid, in any event, less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(b) *Obligation to Furnish Fringe Benefits.* The Contractor or subcontractor can only discharge the obligation to furnish fringe benefits specified in the attachment or conformed thereto either by (i) furnishing any equivalent combinations of fringe benefits, or (ii) making equivalent or differential payments in cash pursuant to the applicable rules set forth in subparts B and C of 29 CFR Part 4.

(c) *Adjustment of Compensation.* If, as authorized pursuant to section 4(d) of the Act, the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and no less than once every 2 years, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration, Department of Labor, as provided in the Act.

(d) *Minimum Wage.* In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any employees performing work under this contract (regardless of whether they are service employ-

ees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Nothing in this provision shall relieve the Contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(e) *Successorship.* If this contract succeeds a contract subject to the Act, under which substantially the same services were furnished and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, then in the absence of a minimum wage attachment for this contract neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work less than the wages and fringe benefits provided for in such collective bargaining agreements, to which such employee would be entitled if employed under the predecessor contract, including accrued prospective wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1.c(b) apply or unless the Secretary of Labor or the Secretary's representative (i) determines that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arms-length negotiations, or (ii) after a hearing, as provided in 29 CFR 4.10, finds that the wages and fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality.

(f) *Notification to Employee.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post a notice of such wages and benefits in a prominent and accessible place at the worksite, using such poster as may be provided by the Department of Labor.

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

(h) *Records.* The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, records containing the information specified below for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Administrator of the Wage and Hour Division, Employment Standards Administration, Department of Labor.

- (1) Employee's name and address.
- (2) Employee's work classification or classifications, rate or rates of monetary wages and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation.
- (3) Employee's daily and weekly hours worked.
- (4) Any deductions, rebates, or refunds from employee's total daily or weekly compensation.
- (5) A list of monetary wages and fringe benefits for those classes of service employees not included in the minimum wage attachment to this contract, but for which such wage rates or fringe benefits have been determined by the Administrator or the Administrator's authorized representative, pursuant to the labor standards in paragraph (a) of this clause. A copy of the report required by paragraph (m) of this clause shall be deemed to be such a list.

(i) *Withholding of Payments and Termination of Contract.* The Contracting Officer shall withhold or cause to be withheld

from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as the Contracting Officer, or as appropriate officer of the Labor Department, decides may be necessary to pay underpaid employees. Additionally, any failure to comply with the requirements of this clause relating to the Act may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(j) *Subcontractors.* The Contractor agrees to insert this clause relating to the Act in all subcontracts. The term "Contractor," as used in this clause, in any subcontract shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

(k) *Service Employee.* As used in this clause, relating to the Act, the term "service employee" means any person employed in connection with a contract entered into by the United States and not exempted under section 7 of the Act (41 U.S.C. 356), whether negotiated or advertised, the principal purpose of which is to furnish services in the United States (other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR Part 541 and in any subsequent revisions of these regulations); and shall include all such persons, regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(l) *Federal Wage Board (Blue Collar) and General Schedule (White Collar) Wages and Fringe Benefits Applicable to Service Employee Classifications.* Classes of service employees expected to be employed under this contract with the Government would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C. 5341 and 5332 and, if so employed, would be paid the rates of wages and fringe benefits stated in the solicitation for this contract.

(m) *Contractor's Report.* If there is a wage determination attachment to this contract and one or more classes of service employees that are not listed thereon are to be employed under the contract, the Contractor shall report to the Contracting Officer the monetary wages to be paid and the fringe benefits to be provided each such class of service employee. This report shall be made promptly, as soon as such compensation has been determined, as provided in paragraph (a) of this clause.

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

(o) *Regulation Incorporated by Reference.* All interpretations of the Act expressed in subpart C of 29 CFR Part 4 are hereby incorporated by reference in this contract.

(p) *Exemptions and Limitations.* This clause shall not apply to the following:

- (1) Any contract of the United States or District of Columbia for construction, alteration, and/or repair, including painting or decorating of public buildings or public works.

(2) Any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act (49 Stat. 2036);

(3) Any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line, or oil or gas pipeline where published tariff rates are in effect, or where such carriage is subject to rates covered by section 22 of the Interstate Commerce Act;

(4) Any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934;

(5) Any contract for public utility services, including electric light and power, water, steam, and gas;

(6) Any employment contract providing for direct services to a Federal agency by an individual or individuals; and

(7) Any contract with the Post Office Department, the principal purpose of which is the operation of postal contract stations;

(8) Any services to be furnished outside the United States. For geographic purposes, the "United States" is defined in section 8(d) of the Act to include any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, the Outer Continental Shelf Lands, as defined in Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, Johnston Island, and Canton Island. It does not include any other territory under the jurisdiction of the United States or any U.S. base or possession within a foreign country.

(9) Any of the following contracts exempted from all provisions of the Act, pursuant to section 4(b) of the Act, which exemptions the Secretary of Labor, prior to amendment of such section by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(i) Contracts entered into by the United States with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly scheduled runs of trains, airplanes, buses, and vessels over regularly established routes and accounts for an insubstantial portion of the revenue therefrom; and

(ii) Any contract entered by the U.S. Postal Service with an individual owner-operator for mail service where it is not contemplated at the time the contract is made that such owner-operator will hire any service employee to perform the services under the contract except for short periods of vacation time or for unexpected contingencies or emergency situations such as illness or accident.

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

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

(ii) The administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped

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

(iii) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.

(2) An employee engaged in an occupation in which the employee customarily and regularly receives more than \$20 a month in tips may have the amount of such tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with the regulations in 29 CFR Part 531: *Provided, however*, that the amount of such credit not exceed one half of the minimum rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Note: This paragraph may not be operable where section 4(c) of the Act applies.

(End of clause)

(b) *Service Contracts Not in Excess of \$2,500.* The following clause is included if this contract is not in excess of \$2,500 and has as its principal purpose the furnishing of services through the use of service employees, except those transactions identified in paragraph (p) of the clause in (a) above.

SERVICE CONTRACT ACT OF 1965, AS AMENDED (1979 SEP)

Except to the extent that an exemption, variation, or tolerance would apply, pursuant to 29 CFR 4.6, if this were a contract in excess of \$2,500, the Contractor and any subcontractor hereunder shall pay all employees engaged in performing work on the contract no less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. All regulations and interpretations of the Service Contract Act of 1965, as amended, expressed in 29 CFR Part 4, are hereby incorporated by reference in this contract.

(End of clause)

ARTICLE 22

7-104.39 INTEREST (1972 MAY)

Notwithstanding any other provision of this contract, unless paid within 30 days all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code) shall bear interest from the date due until paid and shall be subject to adjustments as provided by Part 6 of Appendix E of the Armed Services Procurement Regulation, as in effect on the date of this contract. The interest rate per annum shall be the interest rate in effect which has been established by the Secretary of the Treasury pursuant to Public Law 92-641; 85 Stat. 97 for the Renegotiation Board, as of the date the amount becomes due as herein provided. Amounts shall be due upon the earliest one of:

(i) the date fixed pursuant to this contract;

(ii) the date of the first written demand for payment, consistent with this contract, including demand consequent upon default termination;

(iii) the date of transmittal by the Government to the Contractor of a proposed supplemental agreement to confirm completed negotiations fixing the amount; or

(iv) if this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of re-

fund payable in connection with a pricing proposal or in connection with a negotiated pricing agreement not confirmed by contract supplement.

ARTICLE 29

7-104.76 F.O.B. DESTINATION—EVIDENCE OF SHIPMENT (1968 JUN)

If this contract is awarded on an f.o.b. destination basis and if transportation is accomplished by:

(i) common carrier, the Contractor agrees to furnish in support of his invoice, a copy of the signed commercial bill of lading indicating the carrier's receipt of the supplies covered by the invoice for transportation to the destination specified in the contract;

(ii) parcel post, the Contractor agrees to furnish a certificate of mailing with his invoice; and

(iii) other than common carrier or parcel post, the Contractor agrees to attach to his invoice a receipted copy of the appropriate delivery document showing receipt at the destination specified in the contract.

ARTICLE 23 (RESERVED)

ARTICLE 24

Non-Publicity: It is a specific condition of the agreement that the Contractor shall not use or allow to be used any aspect of this agreement for publicity or advertisement purposes. The Contractor may request a waiver of the foregoing but shall not deviate therefrom unless so authorized in writing by the Contracting Officer.

ARTICLE 25

Standard Price: The price for any standard commercial equipment hereunder is not in excess of that charged by the Contractor to the public or other Government activities for like equipment, quantities and conditions.

ARTICLE 26

Inspection: Unless specified otherwise in this contractual document, inspection during the course of the performance of the work hereunder may be made by technical representative(s) of the Contracting Officer. In any event, final inspection and acceptance shall be at consignee destination.

ARTICLE 27

Late Delivery: In the event the Contractor encounters difficulty in meeting performance requirements, or when he anticipates difficulty in complying with the contract delivery schedule or date, he shall immediately notify the Contracting Officer in writing giving pertinent details; provided, however, that this data shall be informational only in character and that this provision shall not be construed as a waiver by the Government of any delivery schedule or date for any rights or remedies provided by law or under this contract.

ARTICLE 28

7-104.71 F.O.B. DESTINATION (1969 APR)

Supplies shall be delivered to the destination consignee's wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the Contractor. The Government shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved prior to the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of the Government acting in its contractual capacity. If rail carrier is used, supplies will be delivered to the specified unloading platform of the consignee. If motor carrier (including "piggy-back") is used, supplies will be delivered to truck tailgate at the unloading platform of the consignee. If the Contractor uses rail carrier or freight forwarder for less than carload shipments, he shall assure that the carrier will furnish tailgate delivery if transfer to truck is required to complete delivery to consignee.

ARTICLE 30

Personal Delivery: In the event any item under this contract is personally delivered to the Contracting Officer's Technical Representative (COTR), the Contractor must obtain from the COTR a signed receipt, in duplicate. One copy of the receipt must be attached to any invoice submitted for payment for such item(s). Failure to do so will result in suspension of payment, since the Disbursing Officer is prohibited from making payment without evidence of delivery.

ARTICLE 31

Packing and Packaging: Packing and packaging shall be in accordance with standard commercial practice for domestic shipment, as set forth in the Uniform Freight Classification for commercial practice, to assure arrival at destination in serviceable condition. Exterior of the container(s) shall bear the item numbers, and (consignee) address, order/contract number and consignor address.

ARTICLE 32

Manuals for Production-Type Items: The Contractor shall furnish with each production-type item and each standard commercial type item deliverable hereunder, a manual or other data necessary for the user to satisfactorily inspect, operate and maintain the equipment.

ARTICLE 33

Shipping Instruction: If not specified in the contract, names of consignees of all supplies or equipment to be delivered by the Contractor hereunder will be furnished to the Contractor in writing by the Contracting Officer at a later date. Request therefor shall be made to the Contracting Officer not later than thirty (30) days prior to the date on which any of the articles are ready for shipment.

ARTICLE 34

Protected Shipment: In the event any material or items which may be concerned hereunder are, or may later become SECRET or CONFIDENTIAL and when the size or weight of such material or items classified SECRET or CONFIDENTIAL makes shipment

by registered mail impracticable, commercial shipment should be made as directed by the Contracting Officer. The material must be securely crated and banded and prior to shipment the Contractor shall advise the Contracting Officer of

- (1) the date the material will be shipped,
- (2) the approximate date of arrival, and
- (3) the approximate weight, size, and number of cartons.

Bulk shipments of **TOP SECRET** material shall be made only in accordance with specific instructions which will be furnished the Contractor by the Contracting Officer upon notification that the material is ready for shipment.

ARTICLE 35

Identification and Marking of Shipments:

I. General:

It is an express condition of this contract that the Contractor will make no reference of any nature to the purchaser in connection with the shipment of materials or the shipping documents pertaining to this contract. This includes, but it is not limited to the items being furnished, instruction books, blueprints, manuals, packing lists, instruction plates or identification plates. Neither shall there be any reference to the purchaser on or in any shipping container, shipping documents or billing documents.

II. Bills of Lading:

The Bill of Lading shall show the consignee as cited on Schedule "A" of the contract.

III. Exterior Markings:

A. No stenciling shall be applied to the shipping container except for the following:

- (1) Weight, dimensions, and cubic content of container.
- (2) Caution markings for handling purposes, such as: "DELICATE INSTRUMENT," "THIS SIDE UP," "FRAGILE," and "CENTER OF BALANCE" (on large items), etc.

B. The Consignee address as given above in paragraph II shall be marked on a shipping tag or label that shall be securely fixed on the container by use of a waterproof adhesive or stapled to the container. Such markings shall be protected by a coat of transparent water-repellant material.

C. Container Numbering

(1) Each exterior container shall bear a number relative to the total number of containers in the shipment, e.g., PKG. 1 of 5.

(2) Set marking—where an equipment item constitutes a set, and is packed and shipped unassembled in two or more separate pieces, each container shall be marked with the set or assembly number, the number of the container relative to the number of containers comprising the complete set, and the total number of containers in the particular set or assembly, together with a brief description of the component part contained therein. Thus, a box containing a control panel which is the third container of a group of four making up set number two would require the following special set markings: Set No. 2, Package 3 of 4, Control Panel.

(3) Container numbering shall not be stenciled on the containers but shall be applied by tag or label as described in paragraph III B.

IV. Interior Markings:

A. No markings shall be applied on any interior packaging material or container that would identify the purchaser.

B. Each primary wrapper, envelope, bag, folding carton or other packaging material, enclosing each assembly, part or group of similar parts shall be marked or labeled so that it may be readily identified against the packing list. Each sec-

ondary and all other overwrap material shall be marked as to the contents enclosed in the package. The markings shall include the following:

- (1) One of the following headings:
 - a. Part of basic unit (removed to facilitate packing)
 - b. Operating Spare Parts
 - c. Base Spare Parts
 - d. Tools
 - e. Service Equipment
 - f. Other category indicated in the contract.
- (2) Brief nomenclature
- (3) Quantity

Items that are not enclosed in a wrapper or carton shall be identified with a tag that includes the above information.

V. Packing Lists:

A master packing list shall accompany each shipment or be forwarded under separate cover so that it reaches the consignee prior to the receipt of the shipment. The master packing list shall include:

- (1) Name and address of consignor
- (2) Name and address of consignee as in paragraph II above
- (3) Contract or Purchase Order Number
- (4) Government Bill of Lading Number covering the shipment, if any
- (5) Items being shipped shall be listed as required under one or more of the headings listed in paragraph IV B (1) above
- (6) Stock and item number
- (7) Nomenclature of item
- (8) Quantity of each item
- (9) Location of each item by container number and set number when applicable
- (10) Any data specifically required to be included on the packing list, by the terms of the contract.

VI. Unassembled Items:

A. Identification of connection components. When it is necessary to remove components to facilitate packing, all connecting wires, conduits, leads and other objects disconnected shall be tagged in such a manner so as to readily identify lines of the various components.

B. Shipping bolts, collars, etc. All objects that are attached to assemblies for packing purposes that require removal before the item can be put in operation, shall be labelled accordingly in a conspicuous manner.

ARTICLE 36

Disclosure of Foreign Interest in United States Domestic Concern:

(a) The Contractor warrants that it has fully disclosed to the Contracting Officer all information known to the Contractor pertaining to the existence of any foreign interest in or control of the Contractor. The Contractor further covenants to make such information promptly known to the Contracting Officer should such information be subsequently acquired at any time prior to the final settlement of this contract.

(b) For purposes of this Article, the following definitions shall be deemed to be conclusive:

(1) "foreign"—in the case of a natural person, one who is a citizen of any country other than the United States. In the case of any other entity, one whose principal place of business, or principal source of income, or actual control is in or exerted from any country other than the United States.

(2) "interest"—beneficial or legal ownership of 5 percent or more of the common stock of the Contractor by one or more foreign persons or entities, or beneficial or legal foreign

ownership of any debt or debt security of the Contractor whose owner or possessor is entitled (prior to default) to any right of inspection of the Contractor's books or to exercise any control or limitation over the Contractor's business.

(3) "control"—membership on the board of directors or as an officer of the Contractor of any foreign citizen, or of any other person who represents in any capacity any foreign entity.

(c) The Contractor shall, in any case in which it believes that foreign influence exists or is being sought to be obtained over its affairs promptly notify the Contracting Officer of all of the pertinent facts, even if such influence is not exerted to the degree specified above.

(d) The Contractor hereby agrees that acquisition of a foreign interest in, control of, or influence over, the Contractor may be a basis for termination of this Contract. If such a condition is created through no act of omission or commission of the Contractor, the termination shall be for the convenience of the Government. However, if the acquisition of foreign influence, interest, or control has been brought about by any act of omission or commission on the part of the Contractor, and the Contract is terminated, said actions of omission or commission shall be deemed to be an act of default and the remedies of the parties determined accordingly.

(e) Breach of any of the warranties, covenants and undertakings of this provision may be regarded as a total breach of the Contract and no implied waiver of this term may be created by any action or inaction on the part of the Contracting Officer.

ARTICLE 37

7-104.22 EQUAL OPPORTUNITY PRE-AWARD CLEARANCE OF SUBCONTRACTS (1971 OCT)

Notwithstanding the clause of this contract entitled "Subcontracts," the Contractor shall not enter into a first-tier subcontract for an estimated or actual amount of \$1,000,000 or more without obtaining in writing from the Contracting Officer a clearance that the proposed subcontractor is in compliance with equal opportunity requirements and therefore is eligible for award.

ARTICLE 38

7-203.35 NOTICE OF INTENT TO DISALLOW OR NOT RECOGNIZE COSTS (1978 AUG)

(Applicable if the contract is a cost-reimbursement type or a flexibly priced type)

(a) Notwithstanding any other provision of this contract, the Contracting Officer may, at any time, issue to the Contractor a written notice of intent to disallow or not recognize costs. This notice will indicate the Contracting Officer's intent to take exception to specified costs being incurred, or planned for incurrence, which he has determined not to be allowable in accordance with the terms of this contract.

(b) The Contractor may, within sixty (60) days of receipt of such notification, submit a written response to the Contracting Officer, together with justification therefor, against the proposed cost exception.

(c) In the event the Contractor does not file any such written response within the sixty (60) day period in (b) above, the notice shall serve as the Contracting Officer's final decision under the provisions of the clause herein entitled "Disputes."

(d) The Contracting Officer shall, within sixty (60) days of receipt of any written response, either withdraw in writing the notification or issue a final decision thereon under the provisions of the clause herein entitled "Disputes."

(e) Failure to issue a notice pursuant to this clause shall not alter the Government's rights with respect to exception to incurred costs.

ARTICLE 39

7-104.52 UTILIZATION OF WOMEN-OWNED BUSINESS CONCERNS (OVER \$10,000) (1980 AUG)

(Applicable to contracts over \$10,000 except (i) those contracts which are performed entirely outside the U.S.A. as defined in DAR 1-708, and (ii) those which are for services personal in nature.)

(a) It is the policy of the United States Government that women-owned businesses shall have the maximum practicable opportunity to participate in the performance of contracts awarded by any Federal agency.

(b) The Contractor agrees to use its best efforts to carry out this policy in the award of subcontracts to the fullest extent consistent with the efficient performance of this contract. As used in this contract, a "women-owned business" concern means a business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business and that is a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management.

(c) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as women-owned business concerns.

ARTICLE 40

7-103.27 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (1976 JUL)

(This clause applies to every contract as defined in DAR 1.201.4 for \$10,000 or more.)

(a) The Contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(b) The Contractor agrees that all suitable employment openings of the Contractor which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the Contractor other than the one wherein the contract is being performed but excluding those of independently operated corporate affiliates, shall be listed at an appropriate local office of the State employment service system wherein the opening occurs. The Contractor further agrees to provide such reports to such local office regarding employment openings and hires as may be required. State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service, but are not required to provide those reports set forth in paragraphs (d) and (e).

(c) Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the Contractor from any requirements in Executive Orders or regulations regarding nondiscrimination in employment.

(d) The reports required by paragraph (b) of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the Contractor has more than one hiring location in a State, with the central office of that State employment service. Such reports shall indicate for each hiring location (i) the number of individuals hired during the reporting period, (ii) the number of nondisabled veterans of the Vietnam era hired, (iii) the number of disabled veterans of the Vietnam era hired, and (iv) the total number of disabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 U.S.C. 1787. The Contractor shall submit a report within thirty (30) days after the end of each reporting period wherein any performance is made on this contract identifying data for each hiring location. The Contractor shall maintain at each hiring location copies of the reports submitted until the expiration of one year after final payment under the contract, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the Contracting Officer or of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment and placement.

(e) Whenever the Contractor becomes contractually bound to the listing provisions of this clause, it shall advise the employment service system in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these provisions and has so advised the State system, there is no need to advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(f) This clause does not apply to the listing of employment openings which occur and are filled outside of the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(g) The provisions of paragraph (b), (c), (d) and (e) of this clause do not apply to openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer-union arrangement for that opening.

(h) As used in this clause:

(i) "All suitable employment openings" includes, but is not limited to, openings which occur in the following job categories: production and nonproduction; plant and office; laborers and mechanics; supervisory and nonsupervisory; technical; and executive, administrative, and professional openings as are compensated on a salary basis of less than \$25,000 per year. This term includes full-time employment, temporary employment of more than three (3) days duration, and part-time employment. It does not include openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement nor openings in an educational institution which are restricted to students of that institution. Under the most compelling circumstances an employment opening may not be suitable for listing, including such situations where the needs of the Government cannot reasonably be otherwise supplied, where listing would be contrary to national security, or

where the requirement of listing would otherwise not be for the best interest of the Government.

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

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

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

(i) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Vietnam Era Veteran's Readjustment Assistance Act, hereinafter referred to as the "Act" (38 U.S.C. 2012).

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

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

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

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

ARTICLE 41

(For applicability of the following clauses see Cover Sheet to these General Provisions.)

7-104.83(a)(1) COST ACCOUNTING STANDARDS (1978 MAY) (Modified)

(a) Unless the Cost Accounting Standards Board has prescribed rules or regulations exempting the Contractor or this contract from standards, rules, and regulations promulgated pursuant to 50 U.S.C. App. 2165 (Public Law 91-379, August 15, 1970), the contractor, in connection with this contract shall:

(1) By submission of a Disclosure Statement, disclose in writing his cost accounting practices as required by regulations of the Cost

Accounting Standards Board. The required disclosures must be made prior to contract award unless the Contracting Officer provides a written notice to the Contractor authorizing post-award submission in accordance with regulations of the Cost Accounting Standards Board. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain this Cost Accounting Standards clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement will be protected and will not be released outside the Government.

(2) Follow consistently the cost accounting practices disclosed pursuant to (1) above in accumulating and reporting contract performance cost data concerning this contract. If any change in disclosed practices is made for purposes of any contract or subcontract subject to Cost Accounting Standards Board requirements, the change must be applied prospectively to this contract, and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) below, as appropriate.

(3) Comply with all Cost Accounting Standards in effect on the date of award of this contract or if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any Cost Accounting Standard which hereafter becomes applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(A) Agree to an equitable adjustment as provided in the changes clause of this contract if the contract cost is affected by a change which, pursuant to (3) above, the contractor is required to make to his established cost accounting practices whether such practices are covered by a Disclosure Statement or not.

(B) Negotiate with the contracting officer to determine the terms and conditions under which a change may be made to either a disclosed cost accounting practice or an established cost accounting practice, other than a change made under other provisions of this subparagraph (4): *Provided*, that no agreement may be made under this provision that will increase costs paid by the United States.

(C) When the parties agree to a change to either a disclosed cost accounting practice or an established cost accounting practice, other than a change under (4)(A) above, negotiate an equitable adjustment as provided in the changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if he or a subcontractor fails to comply with an applicable Cost Accounting Standard or to follow any practice disclosed pursuant to subparagraphs (a)(1) and (a)(2) above and such failure results in any increased cost paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the rate determined by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT. 97, or seven percent (7%) per annum, whichever is less, from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable Cost Accounting Standard, rule, or regulation of the Cost Accounting Standards Board and as to any cost adjustment demanded by the United States, such failure to agree shall be a dispute concerning a question of fact within the meaning of the disputes clause of this contract.

(c) The Contractor shall permit any authorized representatives of the head of the agency, of the Cost Accounting Standards Board,

or of the Comptroller General of the United States to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause, provided, such access will not be granted to this contract or to related records which might tend to reveal sponsor identity if the association of the sponsor with this contract is classified, without prior written approval of the Contracting Officer.

(d) The Contractor shall include in all negotiated subcontracts which he enters into the substance of this clause except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, including the obligation to comply with all Cost Accounting Standards in effect on the date of award of the subcontract or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed certificate of current cost or pricing data. This requirement shall apply only to negotiated subcontracts in excess of \$100,000 where the price negotiated is not based on:

(i) established catalog or market prices of commercial items sold in substantial quantities to the general public, or

(ii) prices set by law or regulation and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to accept the Cost Accounting Standards clause by reason of Section 331.30(b) of Title 4 Code of Federal Regulations (4 CFR 331.30(b)).

NOTE: (1) Subcontractors shall be required to submit their Disclosure Statements to the Contractor. However, if a subcontractor has previously submitted his Disclosure Statement to a Government Administrative Contracting Officer (ACO) he may satisfy that requirement by certifying to the Contractor the date of such Statement and the address of the ACO.

NOTE: (2) In any case where a subcontractor determines that the Disclosure Statement information is privileged and confidential and declines to provide it to his Contractor or higher tier subcontractor the Contractor may authorize direct submission of that subcontractor's Disclosure Statement to the same Government offices to which the Contractor was required to make submission of his Disclosure Statement. Such authorization shall in no way relieve the Contractor of liability as provided in paragraph (a)(5) of this clause. In view of the foregoing and since the contract may be subject to adjustment under this clause by reason of any failure to comply with rules, regulations, and Standards of the Cost Accounting Standards Board in connection with covered subcontracts, it is expected that the Contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor. However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the Contractor and the subcontractor, provided that they do not conflict with the duties of the Contractor under its contract with the Government. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification to be submitted by his subcontractors.

NOTE: (3) If the subcontractor is a business unit which, pursuant to 4 CFR 332 is entitled to elect modified contract coverage and to follow Standards 401 and 402 only, the clause entitled "Disclosure and Consistency of Cost Accounting Practices" set forth in DAR 7-104.83(a)(2) shall be inserted in lieu of this clause, provided, that subparagraph (c) of the inserted clause shall be modified so as to read the same as subparagraph (c) of this clause.

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

the lowest offer received in compliance with the solicitation from among those solicited is accepted."

7-104.83(b) ADMINISTRATION OF COST ACCOUNTING STANDARDS (1978 MAY) (Modified)

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

(a) Submit to the cognizant Contracting Officer a description of the accounting change and the general dollar magnitude of the change to reflect the sum of all increases and the sum of all decreases for all contracts containing the Cost Accounting Standards clause (7-104.83(a)(1)) or the Disclosure and Consistency of Cost Accounting Practices clause (7-104.83(a)(2)):

(i) for any change in cost accounting practices required to comply with a new cost accounting standard in accordance with paragraph (a)(3) and (a)(4)(A) of the clause entitled "Cost Accounting Standards" within sixty (60) days (or such other date as may be mutually agreed to) after award of a contract requiring such change;

(ii) for any change to cost accounting practices proposed in accordance with paragraph (a)(4)(B) or (a)(4)(C) of the clause entitled "Cost Accounting Standards" or with paragraph (a)(3) or (a)(5) of the clause entitled "Disclosure and Consistency of Cost Accounting Practices" not less than sixty (60) days (or such other date as may be mutually agreed to) prior to the effective date of the proposed change; or

(iii) for any failure to comply with an applicable Cost Accounting Standard or to follow a disclosed practice as contemplated by paragraph (a)(5) of the clause entitled "Cost Accounting Standards" or with paragraph (a)(4) of the clause entitled "Disclosure and Consistency of Cost Accounting Practices" within sixty (60) days (or such other date as may be mutually agreed to) after the date of agreement of such non-compliance by the Contractor.

(b) Submit a cost impact proposal in the form and manner specified by the cognizant Contracting Officer within sixty (60) days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to (a)(i), (ii), or (iii) above.

(c) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with paragraphs (a)(4) and (a)(5) of the clause entitled "Cost Accounting Standards" or with paragraphs (a)(3), (a)(4), and (a)(5) of the clause entitled "Disclosure and Consistency of Cost Accounting Practices."

(d) When the subcontract is subject to either the clause entitled "Cost Accounting Standards" or the clause entitled "Disclosure and Consistency of Cost Accounting Practices" so state in the body of the subcontract and/or in the letter of award. Self-deleting clauses shall not be used.

(e) Include the substance of this clause in all negotiated subcontracts containing either the clause entitled "Cost Accounting Standards" or the clause entitled "Disclosure and Consistency of Cost Accounting Practices." In addition within thirty (30) days after award of such subcontract submit the following information to the Contractor's cognizant Contract Administration Office for transmittal to the Contracting Officer:

(1) Subcontractor's name and subcontract number.

(2) Dollar amount and date of award.

(3) Name of Contractor making the award.

(4) A statement as to whether the subcontractor has made or proposes to make any changes to accounting practices that affect prime contracts or subcontracts containing the Cost Accounting Standards clause or Disclosure and Consistency of Cost Accounting Practices clause because of the award of this subcontract unless such changes have already been reported.

If award of the subcontract results in making a Cost Accounting Standard(s) effective for the first time, this shall also be reported.

(f) For negotiated subcontracts containing the clause entitled "Cost Accounting Standards," require the subcontractor to comply with all Standards in effect on the date of final agreement on price as shown on the subcontractor's signed certificate of current cost or pricing data or date of award whichever is earlier.

(g) In the event an adjustment is required to be made to any subcontract hereunder, notify the Contracting Officer in writing of such adjustment and agree to an adjustment in the price or estimated cost and fee of this contract, as appropriate, based upon the adjustment established under the subcontract. Such notice shall be given within thirty (30) days after receipt of the proposed subcontract adjustment, or such other date as may be mutually agreed to, and shall include a proposal for adjustment to such higher tier subcontract or prime contract as appropriate.

(h) When either the Cost Accounting Standards clause or the Disclosure and Consistency of Cost Accounting Practices clause and this clause are included in subcontracts, the term "Contracting Officer" shall be suitably altered to identify the purchaser.

ARTICLE 42.

7-103.15 RHODESIA AND CERTAIN COMMUNIST AREAS (1977 SEP)

(a) Unless he first obtains the written approval of the Contracting Officer, the Contractor shall not acquire for use in the performance of this contract:

(i) any supplies or services originating from sources within Rhodesia and the communist areas of North Korea, Vietnam, or Cuba;

(ii) any supplies, however processed, which are or were located in or transported from or through North Korea, Vietnam, or Cuba; or

(iii) ferrochromium or steel mill products in their basic shapes and forms which contain more than three percent (3%) chromium if they are produced outside of the United States and contain Rhodesian chromium.

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

ARTICLE 43

7-104.41 AUDIT (1978 AUG) (Modified)

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

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

(c) Cost or Pricing Data. If the contractor submitted cost or pricing data in connection with the pricing of this contract or any change or modification thereto, unless such pricing was based on

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

(d) Reports. If the contractor is required to furnish Contractor Cost Data Reports (CCDR), Contract Fund Status Reports (CFSR), or Cost Performance Reports (CPR), the contracting officer or his representatives shall have the right to examine books, records, other documents, and supporting materials, for the purpose of evaluating (i) the effectiveness of the contractor's policies and procedures to produce data compatible with the objectives of these reports, and (ii) the data reported.

(e) Availability. The materials described in (b), (c), and (d) above shall be made available at the office of the contractor, at all reasonable times, for inspection, audit, or reproduction, until the expiration of three (3) years from the date of final payment under this contract or such lesser time specified in Appendix M of the Defense Acquisition Regulation, and for such longer period, if any, as is required by applicable statute, or by other clauses of this contract, or by (1) and (2) below:

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

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

(f) The contractor shall insert a clause containing all the provisions of this clause, including this paragraph (f), in all subcontracts exceeding \$10,000 hereunder, except altered as necessary for proper identification of the contracting parties and the contracting officer under the Government prime contract.

ARTICLE 44

Telephone Security

(Applicable only if the Schedule of the contract specifies a Security Classification.)

The Contractor shall bring to the attention of all of its employees who are granted access to classified information pertinent to this contract the fact that telephones are not a secure means of transmitting classified information. Hostile governments are known to have a capability of monitoring telephone conversations, especially those transmitted via microwave (assume all). Your employees and/or consultants accordingly may not discuss classified information by telephone either with the Sponsor or others. This clause should be included in any classified subcontracts issued under this basic contract.

ARTICLE 45

7-103.29 CLEAN AIR AND WATER (1975 OCT)

(Applicable only if the contract exceeds \$100,000, or the Contracting Officer has determined that orders under an indefinite

quantity contract in any one year will exceed \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-5(c)(1)) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA, or the contract is not otherwise exempt.)

(a) The Contractor agrees as follows:

(i) to comply with all the requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 1857, et seq., as amended by Public Law 91-604) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251, as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of this contract;

(ii) that no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date this contract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing;

(iii) to use his best efforts to comply with clean air standards and clean water standards at the facilities in which the contract is being performed; and

(iv) to insert the substance of the provisions of this clause in any nonexempt subcontract, including this paragraph (iv).

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

(1) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Public Law 91-604).

(2) The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).

(3) The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1857c-5(d)), an approved implementation procedure or plan under section 111(c) or section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d)), or an approved implementation procedure under section 112 J of the Air Act (42 U.S.C. 1857c-7(d)).

(4) The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by a local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

(5) The term "compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an air or water pollution control agency in accordance with the requirement of the Air Act or Water Act and regulations issued pursuant thereto.

(6) The term "facility" means any building, plant, installation, structure, mine, vessel, or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, to be utilized in the performance of a contract or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

(7) The term "nonexempt contract or subcontract" means a contract or subcontract of more than \$100,000 which is not otherwise exempted pursuant to the EPA regulations implementing the Air Act and Water Act (40 CFR 15.5), as further implemented in ASPR 1-2302.4 or in FPR 1-1.2302-4 (whichever is applicable) and the procedures of the Department awarding the contract.

ARTICLE 46

7-103.25 AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (1976 MAY)

(This clause applies to every contract, as defined in DAR 1-201.4, for \$2,500 or more.)

(a) The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon either physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

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

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

(d) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

(e) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

(f) The contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

ARTICLE 47

7-104.4 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (1958 SEP)

(a) Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely

performance of this contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

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

ARTICLE 48

Authority of Sponsor's Employees: The Contracting Officer is the only employee of the Sponsor authorized to enter into contracts, amendments, or to direct changes pursuant to the "Changes" clause or other clauses hereunder permitting equitable adjustment affecting the contract price. Consequently, the Contracting Officer is the only employee of the Sponsor who is authorized to commit government funds pertaining to the execution of this contract. Unless otherwise specified herein, no other employee of the Sponsor has the authority to initiate a course of action affecting the price of this contract. Should any action by an employee of the Sponsor other than the Contracting Officer imply a commitment on the part of the government which would affect the price of this contract, the contractor must notify the Contracting Officer and receive his approval prior to proceeding. Otherwise, the Contractor proceeds at his own risk.

ARTICLE 49

WAIVER OF REQUIREMENTS OF GENERAL PROVISIONS

Notwithstanding the requirements of any of the General Provisions of the contract to the contrary, whensoever the contractor, in performance of the work under this contract shall find that the requirements of any of the clauses of the General Provisions are in conflict with security instructions issued to the contractor by the contracting officer or by his duly authorized representative for security matters, the contractor shall call the attention of the contracting officer to such conflict and the contracting officer or his duly authorized representative for security matters shall (i) modify or rescind such security requirements, or (ii) the contracting officer shall issue to the contractor a waiver of compliance with the requirements of the General Provisions conflicting with such security requirements. Any waiver of compliance with the General Provisions of this contract issued by the contracting officer or any subcontract issued hereunder by the contractor shall be deemed to constitute approval of waiver of any clauses of the General Provisions in conflict with the stipulations of such subcontract.

ARTICLE 50

7-105.1 ALTERATIONS IN CONTRACT (1949 JUL)

The following alterations have been made in the provisions of this contract.

Att. 3

SECRECY AGREEMENT

1. I, _____, understand that I may be the recipient of information and intelligence that concern the present and future security of the United States and belong to the United States. This information and intelligence, together with the methods of collecting and handling it, are classified according to security standards set by the U.S. Government. I have read and understand the provisions of the espionage laws (sections 793, 794, and 798 of Title 18, United States Code) concerning the disclosure of information relating to the national defense and I am familiar with the penalties provided for the violation thereof.
2. I agree that I will never divulge, publish, or reveal either by word, conduct, or any other means such information or intelligence unless specifically authorized to do so by an authorized representative of the U.S. Government.
3. I understand that this agreement will remain binding upon me even after the termination of my relationship with the U.S. Government.
4. Further, I am aware that any violation of this agreement could result in the withdrawal of my approval for access to this project.
5. I understand that travel into, over, or through any Communist controlled country may constitute a security risk. I, therefore, agree to advise the sponsoring activity of any such travel so that I may receive its security advice and guidance concerning such travel.
6. I am aware that any classified information that I or my organization may possess, compile, or acquire as a result of the contemplated or existing relationship with the U.S. Government may affect the national defense of the United States. I am also aware of and accept the fact that I have a personal and individual responsibility for the protection of all such information in my possession no matter how acquired.

SIGNATURE - DATE

ORGANIZATION

WITNESS:

SIGNATURE - DATE

THIS AGREEMENT, entered into this _____ day of _____, 19____, by
and between an activity of THE UNITED STATES OF AMERICA (hereinafter called the Government) and _____

_____ (hereinafter called the Contractor), with its place of business at _____,
in the city of _____, state of _____.

WITNESSETH THAT:

WHEREAS, the Government has in the past purchased or may in the future purchase supplies or services required and necessary to the national defense of the United States from contractors or subcontractors thereof or may invite bids or request quotations on proposed contracts for the purchase of supplies or services which are required and necessary to the national defense of the United States; and

WHEREAS, it is essential that certain security measures be taken by the Contractor prior to and after his being accorded access to classified information; and

WHEREAS, the parties desire to define and set forth the precautions and specific safeguards to be taken by the Contractor and the Government in order to preserve and maintain the security of the United States through the prevention of improper disclosure of classified information derived from matters affecting the national defense, sabotage, or any other act detrimental to the security of the United States:

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises herein contained, the parties hereto agree as follows:

SECTION I—SECURITY CONTROLS

A. The Contractor agrees to provide and maintain a system of security controls within its or his own organization in accordance with the requirements of the Standard Security Procedures for Contractor, hereinafter SSPC (1 May 1979), attached hereto or separately provided and made a part of this agreement; subject, however, (1) to any revisions of the SSPC required by the demands of national security as determined by the Government, notice of which has been furnished to the Contractor, and (2) to mutual agreements entered into by the parties in order to adapt the SSPC to the Contractor's business and necessary procedures thereunder. In order to place in effect such security controls, the Contractor further agrees to prepare, when requested by the Government representatives, a security plan and procedure for its or his own use, such plans and procedures to be consistent with the SSPC. In the event of any inconsistency between the Contractor's plan and procedures and the SSPC as the same may be revised, the SSPC shall control. In addition to the provisions of the SSPC, the Contractor agrees to implement and comply with those other special security instructions and procedures stipulated by the Government when the protection of compartmented information is involved.

B. The Contractor shall appoint a senior official as the Contractor security officer for the proposed contracts. He shall be responsible for taking whatever actions are necessary within the company to enable the Contractor to discharge its security responsibilities under this agreement and any contract that may be awarded to it.

C. The Contractor shall not disclose to any person, including any employee or officer of the Contractor, classified information received or developed under this agreement or any subsequent contract unless authorized to do so by a Government contracting officer or his representative. The Contractor shall submit to the Government contracting officer or his representative the name of, and relevant biographic information concerning, any officer or employee who will need access to classified information in connection with the Contractor's activities under this agreement and any subsequent contract. Further, the Contractor shall neither photograph nor reproduce classified documents or materials involved under this agreement or any subsequent contract, nor permit anyone to do so unless authorized by the Government contracting officer or his representative.

D. All classified documents, drawings, specifications, models, and other materials shall be returned by the Contractor to the Government contracting officer upon demand or within three months after work under any contract has been completed by the Contractor (whichever is earlier), unless retention of such material has been authorized by the Government contracting officer. The method of returning such classified materials shall be in accordance with the security requirements issued by the Government contracting officer.

E. The Contractor shall promptly advise the Government contracting officer of the names of the officers, directors, or key personnel of the company, or any subsequent change thereof, and certify as to the extent of any foreign interest or control known to it or him by completion of DD Form 441s entitled, "Certificate Pertaining to Foreign Matters." The Contractor shall, in any case in which it or he believes that foreign influence exists or is being sought to be obtained over its or his affairs, promptly notify the Government contracting officer of all the pertinent facts, even if such influence is not exerted to the degree specified above.

F. The Contractor agrees that it or he shall determine that any subcontractor, bidder, individual, or organization proposed by it or him for the furnishing of supplies or services which will involve access to classified information in its or his custody has executed a Government security agreement which is still in effect prior to being accorded access to such classified information.

SECTION II—INSPECTION

Designated representatives of the Government responsible for inspection pertaining to industrial plant security shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the Contractor in complying with the requirements of the terms and conditions of the SSPC and any compartmented information security requirement. Should the Government, through its authorized representative, determine that the Contractor's security methods, procedures, or facilities do not comply with such requirements, it or he shall submit a written notice to the Contractor advising him of the deficiencies.

SECTION III—MODIFICATION

Modification of this agreement (as distinguished from the SSPC, which may be modified in accordance with SECTION I of this agreement) may be made only by written agreement of the parties hereto.

SECTION IV—TERMINATION

This agreement shall remain in effect until terminated through the giving of thirty days' written notice to the other party of intention to terminate; PROVIDED, however, notwithstanding any such termination, the terms and conditions of this agreement shall continue in effect so long as the Contractor has classified information in his or its possession or under his or its control.

SECTION V—PRIOR SECURITY AGREEMENTS

As of the date hereof, this agreement replaces and succeeds any and all prior secrecy or security agreements, understandings, and representations with respect to the subject matter included herein, entered into between the Contractor and the Government; PROVIDED, that the term "secrecy or security agreements, understandings, and representations" shall not include agreements, understandings, and representations contained in any prior contract for Release 2006/08/29 : CIA-RDP84B00049R000802160001-9

SECTION VI—SECURITY COSTS

This agreement is approved for release on 06/08/29 by CIA-RDP84B00049R000802160001-9. Contractor arising out of this agreement or instructions issued hereunder. It is recognized, however, that the parties may provide in other written contracts for security costs which may be properly chargeable thereto.

SECTION VII—SEVERABILITY

Each provision of this agreement is severable. If a court should find any provision of this agreement to be unenforceable, all other provisions of this agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year indicated below:

THE UNITED STATES OF AMERICA:

BY: _____
(Authorized representative
of the U.S. Government)

DATE: _____

CONTRACTOR:

BY: _____
(Authorized representative
of the Contractor)

DATE: _____

WITNESS:

BY: _____

(Firm)

(Title)

(Address)

Note: In case of corporation, witnesses not required but certificate below must be completed. Type or print names under all signatures.

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 agreement and the certificate.

CERTIFICATE

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

(Signature)

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