TERMS AND CONDITIONS
CTSER (4-91)

1. DEFINITIONS. As used throughout this subcontract, the following terms shall have the meanings set forth below:

(a) The term "Government" means the United States of America and includes DOE.

(b) The term "DOE" means the Department of Energy or any duly authorized representative thereof.

(c) The term "Company" means Martin Marietta Energy Systems, Inc., acting under Contract No. DE-AC05-84OR21400 with DOE and includes any duly authorized representative thereof.

(d) The term "Seller" means the person or organization that has entered into this subcontract with the Company.

(e) Except as otherwise provided in this subcontract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this subcontract.

2. ADMINISTRATION AND PAYMENT. It is understood and agreed that the Company is authorized to and will make payment hereunder from Government funds advanced and agreed to be advanced to it by DOE and not from its own assets; and that administration of this subcontract may be transferred from the Company to DOE or its designee, and in case of such transfer and notice thereof to the Seller the Company shall have no further responsibilities hereunder.

3. OFFICIALS NOT TO BENEFIT. No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this subcontract, or to any benefit arising from it. However, this clause does not apply to this subcontract to the extent that this subcontract is made with a corporation for the corporation's general benefit.

4. COVENANT AGAINST CONTINGENT FEES. (a) The Seller warrants that no person or agency has been employed or retained to solicit or obtain this subcontract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Company shall have the right to annul this subcontract without liability or, in its discretion, to deduct from the subcontract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by the Seller for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts or subcontracts nor holds itself out as being able to obtain any Government contracts or subcontracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by the Seller and subject to the Seller's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts or subcontracts nor holds out as being able to obtain any Government contracts or subcontracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract or subcontract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Company employee or officer to give consideration or to act regarding a Company subcontract on any basis other than the merits of the matter.

5. RESTRICTIONS ON SUBCONTRACTOR SALES TO THE COMPANY OR THE GOVERNMENT. (a) Except as provided in (b) below, the Seller shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Company or the Government of any item or process (including computer software) made or furnished by the subcontractor under this subcontract or under any follow-on production subcontract.

(b) The prohibition in (a) above does not preclude the Seller from asserting rights that are otherwise authorized by law or regulation.

(c) The Seller agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this subcontract.

6. ANTI-KICKBACK PROCEDURES. (a) Definitions. "Kickback," as used in this clause, means any money, fee commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from:

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c) (1) When the Seller has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Seller shall promptly report in writing the possible violation. Such reports shall be made to the Company and the Inspector General of DOE or the Department of Justice.

(2) The Seller shall cooperate fully with any Federal

agency investigating a possible violation described in paragraph (b) of this clause.

(3) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold, from sums owed a subcontractor under the prime contract, the amount of any kickback. The Contracting Officer may order the monies withheld under subdivision (c)(3)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(3)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(4) The Seller agrees to incorporate the substance of this clause, including this subparagraph (c)(4) in all subcontracts under this subcontract.

7. LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS. (Applicable if subcontract exceeds $100,000.) (a) Definitions. "Agency," as used in this clause, means executive agency as defined in FAR 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

(a) The awarding of any Federal contract.

(b) The making of any Federal grant.

(c) The making of any Federal loan.

(d) The entering into of any cooperative agreement.

(e) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

(a) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.

(b) A member of the uniformed services, as defined in Subsection 101(3), Title 37, United States Code.

(c) A special Government employee, as defined in Section 202, Title 18, United States Code.

(d) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, Appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Seller and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions. (1) Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions; the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees. (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of Subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities

and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub.L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by Subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) Professional and technical services. (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of:

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of Subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission, or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission, or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by Subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iii) Disclosure. (A) The Seller shall file with the Company a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if it has made or has agreed to make any payment using nonappropriated funds (to *include* profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(B) The Seller shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(C) The Seller shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding $100,000 under this subcontract.

(D) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the Company. The Company shall submit all disclosures to its Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the Seller. Each subcontractor certification shall be retained in the subcontract file of the awarding higher-tier subcontractor. The Seller's certification shall be retained by the Company.

(iv) Agreement. The Seller agrees not to make any payment prohibited by this clause.

(v) Penalties. (A) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(B) The Seller may rely without liability on the representation made by its subcontractors in the certification and disclosure form.

(vi) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically

unallowable by the requirements in this clause will not be made allowable under any other provision.

8. SECURITY. (a) Responsibility. It is the Seller's duty to safeguard all classified information, special nuclear material, and other DOE property. The Seller shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information, and protecting against sabotage, espionage, loss and theft, the classified documents and material in the Seller's possession in connection with the performance of work under this subcontract. Except as otherwise expressly provided in this subcontract, the Seller shall, upon completion or termination of this subcontract, transmit to the Company any classified matter in the possession of the Seller or any person under the Seller's control in connection with performance of this subcontract. If retention by the Seller of any classified matter is required after the completion or termination of the subcontract and such retention is approved by the Company, the Seller will complete a certificate of possession to be furnished to the Company specifying the classified matter to be retained. The certification shall identify the items and types or categories of matter retained, the conditions governing the retention of the matter, and the period of retention, if known. If the retention is approved by the Company, the security provisions of the subcontract will continue to be applicable to the matter retained. Special nuclear material will not be retained after the completion or termination of the subcontract.

(b) Regulations. The Seller agrees to conform to all security regulations and requirements of DOE.

(c) Definition of Classified Information. The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.

(d) Definition of Restricted Data. The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material, or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

(e) Definition of Formerly Restricted Data. The term "Formerly Restricted Data" means all data removed from the Restricted Data category under Section 142d. of the Atomic Energy Act of 1954, as amended.

(f) Definition of National Security Information. The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.

(g) Definition of Special Nuclear Material (SNM). SNM means: (1) Plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(h) Security Clearance of Personnel. The Seller shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.

(i) Criminal Liability. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the Seller or any person under the Seller's control in connection with work under this subcontract, may subject the Seller, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*; 18 U.S.C. 793 and 794; and Executive Order 12356.)

(j) Subcontracts and Purchase Orders. Except as otherwise authorized in writing by the Company, the Seller shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this subcontract.

9. CLASSIFICATION. In the performance of the work under this subcontract, the Seller shall ensure that an Authorized Original Classifier or Derivative Classifier shall assign classifications to all documents, material, and equipment originated or generated under the subcontract in accordance with classification regulations and guidance furnished to the Seller by the Company. Every subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material, or equipment shall include a provision to the effect that in the performance of such subcontract or purchase order, the subcontractor or supplier shall ensure that an Authorized Original Classifier or Derivative Classifier shall assign classifications to all such documents, materials, and equipment in accordance with classification regulations and guidance furnished to such subcontractor or supplier by the Seller.

10. PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT. (Applicable if subcontract exceeds $25,000.) The Government suspends or debars Contractors to protect the Government's interests. The Seller shall not enter into any subcontract equal to or in excess of $25,000 with a Contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. If the Seller intends to subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the list of Parties Excluded From Procurement Programs), a corporate officer or designee of the Seller shall notify the Company, in writing, before entering into such subcontract. The notice must include the following:

(a) The name of the subcontractor;

(b) The Seller's knowledge of the reasons for the subcontractor being on the list of Parties Excluded From Procurement Programs;

(c) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the list of Parties Excluded From Procurement Programs; and

(d) The systems and procedures the Seller has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

11. NEW MATERIAL. Unless this subcontract specifies otherwise, the supplies and components to be delivered under this subcontract shall be new (not used or reconditioned) and shall not be of such an age or so deteriorated as to impair their usefulness or safety.

12. DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS. This is a rated order certified for national defense use, and the Seller shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700).

<u>13. STOP-WORK ORDER</u>. (a) The Company may, at any time, by written order to the Seller, require the Seller to stop all, or any part, of the work called for by this subcontract for a period of 90 days after the order is delivered to the Seller, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Seller, or within any extension of that period to which the parties shall have agreed, the Company shall either:

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Termination clause of this subcontract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Seller shall resume work. The Company shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the subcontract that may be affected, and the subcontract shall be modified, in writing, accordingly, if:

(1) The stop-work order results in an increase in the time required for, or in the Seller's cost properly allocable to, the performance of any part of this subcontract; and

(2) The Seller asserts a claim for the adjustment within 30 days after the end of the period of work stoppage; *provided,* that, if the Company decides the facts justify the action, the Company may receive and act upon the claim asserted at any time before final payment under this subcontract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Company shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Company shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

<u>14. EXAMINATION OF RECORDS BY COMPTROLLER GENERAL</u>. (a) The Comptroller General of the United States or a duly authorized representative from the General Accounting Office shall, until 3 years after final payment under this subcontract or for any shorter period specified in Federal Acquisition Regulation (FAR) Subpart 4.7, Contractor Records Retention, have access to and the right to examine any of the Seller's directly pertinent books, documents, papers, or other records involving transactions related to this subcontract.

(b) The periods of access and examination in paragraph (a) above for records relating to (1) litigation or settlement of claims arising from the performance of this subcontract, or (2) costs and expenses of this subcontract to which the Comptroller General or a duly authorized representative from the General Accounting Office has taken exception shall continue until such litigation, claims, or exceptions are disposed of.

<u>15. ACCOUNTS AND RECORDS</u>. (a) The Seller shall maintain a set of accounts, records, documents, and other evidence showing and supporting all allowable costs incurred or anticipated to be incurred, revenues or other applicable credits, fixed-fee accruals, and the receipts, use, and disposition of all Government property coming into the possession of the Seller under this subcontract. The system of accounts employed by the Seller shall be satisfactory to the Company and DOE and in accordance with generally accepted accounting principles consistently applied.

(b) All books of account and records relating to this subcontract shall be subject to inspection and audit by the Company and DOE at all reasonable times, before and during the period of retention provided for in (d) below, and the Seller shall afford proper facilities for such inspection and audit.

(c) The Seller also agrees, with respect to any subcontracts (including lump-sum or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to conduct an audit of the costs of the subcontractor in a manner satisfactory to the Company and DOE or to have the audit conducted by the next higher tier subcontractor in a manner satisfactory to the Company and DOE except when the Company and DOE elect to waive such audit or approve other arrangements for the conduct of the audit.

(d) Except as agreed upon by the Company and the Seller, all financial and cost reports, books of account and supporting documents, and other data evidencing costs allowable and revenues and other applicable credits under this subcontract in the possession of the Seller relating to this subcontract shall be preserved by the Seller for a period of three years after final payment under this subcontract or otherwise disposed of in such manner as may be agreed upon by the Company and the Seller.

(e) The Seller shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this subcontract as the Company may from time to time require.

(f) The Seller further agrees to require the inclusion of provisions similar to those in paragraphs (a) through this paragraph (f) of this clause in all subcontracts (including lump-sum or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

<u>16. CERTIFIED COST OR PRICING DATA</u>. (a) (1) The Seller shall require under the situations described in (2) below, unless exempted under the exceptions set forth in (3) below, each subcontractor under this subcontract to submit cost or pricing data and to certify that, to the best of his knowledge and belief, such cost or pricing data are accurate, complete, and current.

(2) Except as provided in (3) below, certified cost or pricing data shall be submitted prior to (i) the award of each subcontract, the price of which is expected to exceed $100,000, and (ii) the negotiation of the price of each change or modification to a subcontract under this subcontract for which the price adjustment is expected to exceed $100,000.

(3) Certified cost or pricing data need not be furnished pursuant to this paragraph (a) where (i) the Seller has not been required to furnish cost or pricing data, or (ii) the price or price adjustment is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or the prices are set by law or regulation; and the Seller states in writing the basis for applying this exception.

(4) In submitting the cost or pricing data, the Seller's subcontractor shall use the form of certificate set forth in paragraph (b) below and shall certify that the data are accurate, complete, and current. Such certificate and data (actual or identified, as provided in the certificate prescribed below), shall be submitted by subcontractors to the next higher-tier subcontractor, or the Seller, as applicable, for retention.

(b) The certificates required by this clause shall be in the form set forth below:

SUBCONTRACTOR'S CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, cost or pricing data submitted in writing, or specifically identified in writing if actual submission of the data is impracticable (see FAR 15.804-6(d)), to ______________ in support of ______________[1] are accurate, complete, and current as of ________________[2].
(Date)

Firm ______________________________
Name ______________________________
Title ______________________________
__________________[3]
(Date of execution)

[1]Describe the proposal, quotation, request for price adjustments, or other submission involved.

[2]Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

[3]Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the subcontract price was agreed to.

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(c) For purposes of verifying that certified cost or pricing data submitted in conjunction with the negotiation of this subcontract or any subcontract change or other modification involving an amount in excess of $100,000 were accurate, complete, and current, the Company, DOE, or any of DOE's authorized representatives shall, until the expiration of 3 years from the date of final payment under this subcontract, have the right to examine those books, records, documents, papers, and other supporting data which involve transactions related to this subcontract or which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

(d) Whenever the price of any change or other modification to this subcontract is expected to exceed $100,000, the Seller agrees to furnish the Company certified cost or pricing data, using the certificate set forth in paragraph (b) above, unless the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(e) The requirement for submission by the Seller's subcontractors of certified cost or pricing data with respect to any change or other modification does not apply to any subcontract change or other modification, at any tier, where this subcontract is firm fixed-price or fixed-price with escalation, unless such change or other modification results from a change or other modification to this subcontract, nor does it apply to a subcontract change or modification, at any tier, where this subcontract is not firm fixed-price or fixed-price with escalation, unless the price for such change or other modification becomes reimbursable under this subcontract.

(f) The Seller agrees to insert paragraph (c) without change and the substance of paragraphs (a), (b), (d), (e), and (f) of this clause in each subcontract hereunder in excess of $100,000 and in each subcontract of $100,000 or less at the time of making a change or other modification thereto in excess of $100,000.

(g) If the Company determines that any price, including profit or fee, negotiated in connection with this subcontract or any cost reimbursable under this subcontract was increased by any significant sums because the Seller, or any subcontractor pursuant to this clause or any subcontract clause herein required, furnished incomplete or inaccurate cost or pricing data or data not current as certified in the Seller's certificate of current cost or pricing data, then such price or cost shall be reduced accordingly and this subcontract shall be modified in writing to reflect such reduction.

NOTE: Since this subcontract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain of the Seller's subcontracts, it is expected that the Seller may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Seller. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower-tier subcontractors.

17. ORDER OF PRECEDENCE. In the event of an inconsistency between provisions of this subcontract, the inconsistency shall be resolved by giving precedence as follows: (a) the Schedule; (b) the statement of work; (c) the terms and conditions; (d) other provisions of this subcontract, whether incorporated by reference or otherwise; and (e) the Seller's technical proposal, if incorporated in this subcontract by reference or otherwise.

18. ALLOWABLE COST AND PAYMENT. (a) Invoicing. The Company shall make payments to the Seller when requested as work progresses, but (except for small business concerns) not more often than once every two weeks, in amounts determined to be allowable by the Company in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR), as supplemented by Subpart 931.2 of the Department of Energy Acquisition Regulations (DEAR) in effect on the date of this subcontract, and the terms of this subcontract. The Seller may submit to an authorized representative of the Company, in such form and reasonable detail as the representative may require, an invoice or voucher supported by (i) a list of property acquired by the Seller the costs of which are included in the invoice or voucher amount and title to which vests in the Government under the Government Property clause of this subcontract, and (ii) a statement of the claimed allowable cost for performing this subcontract.

(b) Reimbursing Costs. (1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (2) below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only:

(i) Those recorded costs that, at the time of the request for reimbursement, the Seller has paid by cash, check, or other form of actual payment for items or services purchased directly for the subcontract;

(ii) When the Seller is not delinquent in paying costs of subcontract performance in the ordinary course of business, costs incurred, but not necessarily paid, for:

(A) Materials issued from the Seller's inventory and placed in the production process for use on the subcontract;

(B) Direct labor.

(C) Direct travel;

(D) Other direct in-house costs; and

(E) Properly allocable and allowable indirect costs, as shown in the records maintained by the Seller for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of progress payments that have

been paid to the Seller's subcontractors under similar cost standards.

(2) Seller contributions to any pension, profit sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; *provided,* that the Seller pays the contribution to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of a period shall not be included until the Seller actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Seller actually makes the payment.

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (f) below, allowable indirect costs under this subcontract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) below.

(4) Any statements in specifications or other documents incorporated in this subcontract by reference designating performance of services or furnishing of materials at the Seller's expense or at no cost to the Company shall be disregarded for purposes of cost-reimbursement under this clause.

(c) Small Business Concerns. A small business concern may be paid more often than every two weeks and may invoice and be paid for recorded costs for items or services purchased directly for the subcontract, even though the concern has not yet paid for those items or services.

(d) Final Indirect Cost Rates. (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2) The Seller shall, within 90 days after the expiration of each of its fiscal years, or by a later date approved by the Company, submit to the Company (or, if applicable, to the cognizant Contracting Officer responsible for negotiating its final indirect cost rates and, if required by agency procedures, to the cognizant audit activity) proposed final indirect cost rates for that period and supporting cost data specifying the contract and/or subcontract to which the rates apply. The proposed rates shall be based on the Seller's actual cost experience for that period. The Company (or the appropriate Government representative) and the Seller shall establish the final indirect cost rates as promptly as practical after receipt of the Seller's proposal.

(3) The Seller and the Company (or the appropriate Government representative) shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this subcontract and shall not constitute an exception to the Limitation of Cost or Limitation of Funds clause of this subcontract. The understanding is incorporated into this subcontract upon execution.

(e) Quick-Closeout Procedures. When the Seller and Company agree, the quick-closeout procedures of Subpart 42.7 of the FAR may be used.

(f) Audit. At any time or times before final payment, the Company may have the Seller's invoices or vouchers and statements of cost audited. Any payment may be (1) reduced by amounts found by the Company not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.

(g) Final Payment. (1) The Seller shall submit a completion invoice or voucher, designated as such, promptly upon completion of the work, but no later than one year (or longer, as the Company may approve in writing) from the completion date. Upon approval of that invoice or voucher, and upon the Seller's compliance with all terms of this subcontract, the Company shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Seller shall pay to the Company any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Seller or any assignee under this subcontract, to the extent that those amounts are properly allocable to costs for which the Seller has been reimbursed by the Company. Reasonable expenses incurred by the Seller for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Company. Before final payment under this subcontract, the Seller and each assignee whose assignment is in effect at the time of final payment shall execute and deliver:

(i) An assignment to the Company, in form and substance satisfactory to the Company, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Seller has been reimbursed by the Company under this subcontract; and

(ii) A release discharging the Company, the Government, their officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this subcontract, except:

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Seller to third parties arising out of the performance of this subcontract; *provided,* that the claims are not known to the Seller on the date of the execution of the release, and that the Seller gives notice of the claims in writing to the Company within six years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Seller under the patent clauses of this subcontract, excluding, however, any expenses arising from the Seller's indemnification of the Company and the Government against patent liability.

19. FIXED FEE. (a) The Company shall pay the Seller for performing this subcontract the fixed fee specified in the Schedule.

(b) Payment of the fixed fee shall be made as specified in the Schedule; *provided,* that after payment of 85 percent of the fixed fee, the Company may withhold further payment of fee until a reserve is set aside in an amount that the Company considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total fixed fee or $100,000, whichever is less.

20. ACQUISITION OF REAL PROPERTY. (a) Notwithstanding any other provision of this subcontract, the prior approval of the Company shall be obtained when, in performance of this subcontract, the Seller acquires or proposes to acquire use of real property by:

(1) Purchase, on the Government's behalf or in the Seller's own name, with title eventually vesting in the Government.

(2) Lease, and the Company will reimburse the total cost of the lease as an allowable cost under this subcontract.

(3) Acquisition of temporary interest through easement, license, or permit, and the Company funds the entire cost of the temporary interest.

(b) Justification of and execution of any real property acquisitions shall be in accordance and compliance with directions

provided by the Company.

(c) The substance of this clause, including this paragraph (c), shall be included in any subcontract occasioned by this subcontract under which property described in paragraph (a) of this clause shall be acquired.

21. UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS. (a) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems.

(b) The Seller hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this subcontract. The Seller further agrees to cooperate in any studies or surveys as may be conducted by the Small Business Administration, DOE, or the Company that may be necessary to determine the extent of the Seller's compliance with this clause.

(c) As used in this subcontract, 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" shall mean a small business concern--

(1) Which is at least 51 percent unconditionally 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 unconditionally 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. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities, which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian organization, and which meets the requirements of 13 CFR 124. The Seller shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, 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. The Seller shall presume that socially and economically disadvantaged entities also include Indian tribes and Native Hawaiian organizations.

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

22. UTILIZATION OF LABOR SURPLUS AREA CONCERNS. (a) Applicability. This clause is applicable if this subcontract exceeds the appropriate small purchase limitation in Part 13 of the Federal Acquisition Regulation.

(b) Policy. It is the policy of the Government to award contracts to concerns that agree to perform substantially in labor surplus areas (LSAs) when this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Seller agrees to use its best efforts to place subcontracts in accordance with this policy.

(c) Order of Preference. In complying with paragraph (b) above and with paragraph (c) of the clause of this subcontract entitled Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, the Seller shall observe the following order of preference in awarding subcontracts: (1) small business concerns that are LSA concerns, (2) other small business concerns, and (3) other LSA concerns.

(d) Definitions. "Labor surplus area," as used in this clause, means a geographical area identified by the Department of Labor in accordance with 20 CFR 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

"Labor surplus area concern," as used in this clause, means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

23. NOTICE OF LABOR DISPUTES. (a) Whenever the Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this subcontract, the Seller shall immediately give notice thereof, including all relevant information with respect thereto, to the Company.

(b) The Seller 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 subcontract; 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 Seller, as the case may be, of all relevant information with respect to such disputes.

24. PAYMENT FOR OVERTIME PREMIUMS. (a) The use of overtime is authorized under this subcontract if the overtime premium cost does not exceed the amount specified in the Schedule. In addition to this dollar ceiling, overtime is permitted only for work:

(1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment. or occasional production bottlenecks of a sporadic nature;

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

(3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or

(4) That will result in lower overall costs to the Company.

(b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for subcontract completion and shall:

(1) Identify the work unit; e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the Company to evaluate the necessity for the overtime;

(2) Demonstrate the effect that denial of the request will have on the subcontract delivery or performance schedule;

(3) Identify the extent to which approval of overtime would

affect the performance or payments in connection with other Government contracts or subcontracts, together with identification of each affected contract or subcontract; and

(4) Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

25. CONVICT LABOR. The Seller agrees not to employ any person undergoing sentence of imprisonment in performing this subcontract except as provided by 18 U.S.C. 4082(c)(2) and Executive Order 11755, December 29, 1973.

26. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT--OVERTIME COMPENSATION. (a) Overtime Requirements. No Seller or subcontractor contracting for any part of the subcontract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Seller and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Seller and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) Withholding for Unpaid Wages and Liquidated Damages. The Company shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Seller or subcontractor under any such subcontract with the Company, or any other Federal contract with the Seller, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the Seller, such sums as may be determined to be necessary to satisfy any liabilities of such Seller or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) Payrolls and Basic Records. (1) The Seller or subcontractor shall maintain payrolls and basic payroll records during the course of subcontract work and shall preserve them for a period of 3 years from the completion of the subcontract for all laborers and mechanics working on the subcontract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Seller or subcontractor for inspection, copying, or transcription by authorized representatives of the Company, DOE, or the Department of Labor. The Seller or subcontractor shall permit such representatives to interview employees during working hours on the job.

(e) Subcontracts. The Seller or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Seller shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

27. WALSH-HEALEY PUBLIC CONTRACTS ACT. If this subcontract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount that exceeds or may exceed $10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:

(a) All representations and stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These representations and stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

(b) All employees whose work relates to this subcontract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

28. EQUAL OPPORTUNITY. (a) If, during any 12-month period (including the 12 months preceding the award of this subcontract), the Seller has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of $10,000, the Seller shall comply with subparagraphs (b)(1) through (11) below. Upon request, the Seller shall provide information necessary to determine the applicability of this clause.

(b) During the performance of this subcontract, the Seller agrees as follows:

(1) The Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(2) The Seller 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, 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.

(3) The Seller shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Company that explain this clause.

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

(5) The Seller will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Company, advising the said labor union or workers' representative of the Seller's commitments under this clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Seller will comply with all provisions of Executive

Order No. 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Seller will furnish all information and reports required by Executive Order No. 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

(8) The Seller will permit access to its books, records, and accounts by the Company, DOE, or the Office of Federal Contract Compliance Programs (OFCCP) for purposes of investigation to ascertain the Seller's compliance with the applicable rules, regulations, and orders.

(9) If the OFCCP determines that the Seller is not in compliance with this clause or with any rule, regulation, or order of the Secretary of Labor, this subcontract may be canceled, terminated, or suspended in whole or in part, and the Seller may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Seller as provided in Executive Order 11246, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(10) The Seller will include the provisions of paragraphs (b)(1) through (11) in every subcontract or purchase order that is not exempted by rules, regulations, or orders of the Secretary of Labor issued under Executive Order No. 11246, as amended, so that these provisions will be binding upon each subcontractor or vendor.

(11) The Seller will take such action with respect to any subcontract or purchase order as DOE may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance: Provided, however, That if the Seller becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Seller may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this subcontract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

29. EQUAL OPPORTUNITY PREAWARD CLEARANCE OF SUBCONTRACTS. Notwithstanding the clause of this subcontract entitled "Subcontracts," the Seller shall not enter into a subcontract for an estimated or actual amount of $1 million or more without obtaining in writing from the Company a clearance that the proposed subcontractor is in compliance with equal opportunity requirements and therefore is eligible for award.

30. NOTIFICATION OF VISA DENIAL. It is a violation of Executive Order 11246, as amended, for the Seller to refuse to employ any applicant or not to assign any person hired in the United States, on the basis that the individual's race, color, religion, sex, or national origin is not compatible with the policies of the country where the work is to be performed or for whom the work will be performed (41 CFR 60-1.10). The Seller agrees to notify the Department of State, Washington, DC, Attention: Director, Bureau of Politico-Military Affairs, and the Director, Office of Federal Contract Compliance Programs, when it has knowledge of any employee or potential employee being denied an entry visa to a country in which the Seller is required to perform this subcontract, and it believes the denial is attributable to the race, color, religion, sex, or national origin of the employee or potential employee.

31. AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS. (a) Definitions. "Appropriate office of the State employment service system," as used in this clause means the local office of the Federal-State national system of public employment offices assigned to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

"Openings that the Seller proposes to fill from within its own organization," as used in this clause, means employment openings for which no one outside the Seller's organization (including any affiliates, subsidiaries, and the parent companies) will be considered and includes any openings that the Seller proposes to fill from regularly established "recall" lists.

"Openings that the Seller proposes to fill under a customary and traditional employer-union hiring arrangement," as used in this clause, means employment openings that the Seller proposes to fill from union halls, under their customary and traditional employer-union hiring relationship.

"Suitable employment openings," as used in this clause:

(1) Includes, but is not limited to, openings that occur in jobs categorized as:

(i) Production and nonproduction;
(ii) Plant and office;
(iii) Laborers and mechanics;
(iv) Supervisory and nonsupervisory;
(v) Technical; and
(vi) Executive, administrative, and professional positions compensated on a salary basis of less than $25,000 a year; and

(2) Includes full-time employment, temporary employment of over 3 days, and part-time employment, but not openings that the Seller proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement, nor openings in an educational institution that are restricted to students of that institution.

(b) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Seller shall not discriminate against the individual because the individual is a special disabled or Vietnam Era veteran. The Seller agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their disability or veterans' status in all employment practices such as:

(i) Employment;
(ii) Upgrading;
(iii) Demotion or transfer;
(iv) Recruitment;
(v) Advertising;
(vi) Layoff or termination;
(vii) Rates of pay or other forms of compensation; and
(viii) Selection for training, including apprenticeship.

(2) The Seller agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing Openings. (1) The Seller agrees to list all suitable employment openings existing at subcontract award or occurring during subcontract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Seller facility, including one not connected with performing this subcontract. An independent corporate affiliate is exempt from this requirement.

(2) 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.

(3) The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Seller from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Seller becomes contractually bound to the listing terms of this clause, it shall advise the State 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 Seller is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Seller may advise the State system when it is no longer bound by this clause.

(5) Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations when (i) the Government's needs cannot reasonably be supplied, (ii) listing would be contrary to national security, or (iii) the requirement of listing would not be in the Government's interest.

(d) Applicability. (1) This clause does not apply to the listing of employment openings which occur and are filled outside the 50 states, the District of Columbia, Puerto Rico, Guam, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(2) The terms of paragraph (c) above of this clause do not apply to openings that the Seller proposes to fill from within its own organization or under 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 its own organization or employer-union arrangement for that opening.

(e) Postings. (1) The Seller agrees to post employment notices stating (i) the Seller's obligation under the law to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Company.

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

(f) Noncompliance. If the Seller does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) Subcontracts. The Seller shall include the terms of this clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Seller shall act as specified by the Director to enforce the terms, including action for noncompliance.

32. EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA. (a) The Seller shall report at least annually, as required by the Secretary of Labor, on:

(1) The number of special disabled veterans and the number of veterans of the Vietnam era in the work force of the Seller by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of special disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

(c) Reports shall be submitted no later than March 31 of each year beginning March 31, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. The Seller may select an ending date: (1) As of the end of any pay period during the period January through March 1st of the year the report is due, or (2) as of December 31, if the Seller has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. The Seller, if subject to the reporting requirements at 38 U.S.C. 2012(d) shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 2012 to identify themselves to the Seller. The invitation shall state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 2012.

(f) Subcontracts. The Seller shall include the terms of this clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

33. AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS. (a) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Seller shall not discriminate against any employee or applicant because of physical or mental handicap. The Seller agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as:

(i) Employment;
(ii) Upgrading;
(iii) Demotion or transfer;
(iv) Recruitment;
(v) Advertising;
(vi) Layoff or termination;
(vii) Rates of pay or other forms of compensation; and
(viii) Selection for training, including apprenticeship.

(2) The Seller agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings. (1) The Seller agrees to post employment notices stating (i) the Seller's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped individuals and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Company.

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

(c) Noncompliance. If the Seller does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Subcontracts. The Seller shall include the terms of this clause in every subcontract or purchase order in excess of $2,500 unless exempted by rules, regulations, or orders of the Secretary. The Seller shall act as specified by the Director to enforce the terms, including action for noncompliance.

34. CLEAN AIR AND WATER. (Applicable only if this subcontract exceeds $100,000, or the Company has determined that orders under an indefinite quantity subcontract in any one year will exceed $100,000, or a facility to be used has been the subject of a conviction under the applicable portion of the Air Act (42 USC 7413(c)(1)) or the Water Act (33 USC 1319(c)) and is listed by EPA, or the subcontract is not otherwise exempt.)

(a) "Air Act," as used in this clause, means the Clean Air Act (42 U.S.C. 7401 et seq.).

"Clean air standards," as used in this clause, means:

(1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;

(2) An applicable implementation plan as described in Section 110(d) of the Air Act (42 U.S.C. 7410(d));

(3) An approved implementation plan as described in Section 111(c) or Section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or

(4) An approved implementation procedure under Section 112(d) of the Air Act (42 U.S.C. 7412(d)).

"Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under 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 local government to ensure compliance with pretreatment regulations as required by Section 307 of the Water Act (33 U.S.C. 1317).

"Compliance," as used in this clause, means compliance with:

(1) Clean air or water standards; or

(2) 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 under the requirements of the Air Act or Water Act and related regulations.

"Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by the Seller or a subcontractor, used in the performance of this subcontract or a subcontract hereunder. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the Environmental Protection Agency determines that independent facilities are collocated in one geographical area.

"Water Act," as used in this clause, means Clean Water Act (33 U.S.C. 1251, et seq.).

(b) The Seller agrees:

(1) To comply with the requirements of Section 114 of the Clean Air Act (42 U.S.C. 7414) and Section 308 of the Clean Water Act (33 U.S.C. 1318) 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, and all regulations and guidelines issued to implement those acts before the award of this subcontract;

(2) That no portion of the work required by this subcontract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this subcontract was awarded unless and until the EPA eliminates the name of the facility from the listing;

(3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the subcontract is being performed; and

(4) To insert the substance of this clause, including this subparagraph (b)(4), into any nonexempt subcontract.

35. BUY AMERICAN ACT. (a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic end products.

"Components," as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

"Domestic end product," as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (b)(2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic. On acquisitions above $25,000 in value, components of Canadian origin are treated as domestic.

"End products," as used in this clause, means those articles, materials, and supplies to be acquired for public use under this subcontract.

(b) The Seller shall deliver only domestic end products, except those:

(1) For use outside the United States;

(2) That the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(3) For which DOE determines that domestic preference would be inconsistent with the public interest; or

(4) For which DOE determines the cost to be unreasonable (see Section 25.105 of the Federal Acquisition Regulation).

(The foregoing requirements are administered in accordance with Executive Order 10582, dated December 17, 1954, as amended, and Subpart 25.1 of the Federal Acquisition Regulation.)

36. RESTRICTIONS ON CONTRACTING WITH SANCTIONED PERSONS. (a) Definitions. (1) "Component part" means any article which is not usable for its intended functions without being imbedded or integrated into any other product and which, if used in production of a finished product, would be substantially transformed in that process.

(2) "Finished product" means any article which is usable for its intended function without being imbedded in, or integrated into, any other product. It does not include an article produced by a person, other than a sanctioned person, that contains parts or components of the sanctioned person if the parts or components have been substantially transformed during production of the finished product.

(3) "Sanctioned person" means a company or other foreign person upon whom prohibitions have been imposed.

(4) "Substantially transformed," when referring to a component part or finished product, means that the part or product has been subjected to a substantial manufacturing or processing operation by which the part or product is converted or combined into a new and different article of commerce having a new name, character, and use.

(b) General. Section 2443 of the Multilateral Export Control Enhancement Amendments Act (Pub. L. 100-418) and Executive Order 12661, effective December 28, 1988, impose, for a period of three years, with certain exceptions, a prohibition on contracting with, or procuring (including rental and lease/purchase) directly or indirectly the products or services of (1) Toshiba Machine Company, (2) Kongsberg Trading Company, (3) Toshiba Corporation, or (4) Kongsberg Vaapenfabrikk. The Act and Executive Order also prohibit, for the same three-year period, the importation into the United States of all products produced by Toshiba Machine Company and Kongsberg Trading Company. These prohibitions also apply to subsidiaries, successor entities or joint ventures of Toshiba Machine Company or Kongsberg Trading Company.

(c) Restriction. Unless listed by the Seller in its offer, or unless one of the exceptions in paragraph (d) of this clause applies, the Seller agrees that no products or services delivered to the Company under this subcontract will be products or services of a sanctioned person.

(d) Exceptions. The restrictions do not apply:

(1) To finished products of nonsanctioned persons containing components of a sanctioned person if these components have been substantially transformed during the manufacture of the finished product.

(2) To products or services of a sanctioned person, provided:

(i) The products are designed to the specifications of a nonsanctioned person marketed under the trademark, brand, or name of the nonsanctioned person;

(ii) The business relationship between the nonsanctioned person and the sanctioned person clearly existed prior to June 30, 1987; and

(iii) The nonsanctioned person is not directly or indirectly owned by a sanctioned person.

(3) If a determination has been made in accordance with FAR 25.1003(a) or (b).

(e) Award. Award of any subcontract resulting from this solicitation will not affect the Seller's obligation to comply with importation regulations of the Secretary of the Treasury.

37. AUTHORIZATION AND CONSENT. The Government hereby gives its authorization and consent (without prejudice to any rights of indemnification) for all use and manufacture, in the performance of this subcontract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any invention described in and covered by a patent of the United States (a) embodied in the structure or composition of any article the delivery of which is accepted by the Company under this subcontract or (b) utilized in the machinery, tools or methods the use of which necessarily results from compliance by the Seller or the using subcontractor with (1) specifications or written provisions now or hereafter forming a part of this subcontract, or (2) specific written instructions given by the Company directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clauses, if any, included in this subcontract or any subcontract hereunder (including all lower-tier subcontracts), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

38. PATENT INDEMNITY. If the amount of this subcontract is in excess of $10,000, the Seller shall indemnify the Company and the Government and their officers, agents, and employees against liability, including costs, for infringement of any United States Letters Patent (except U.S. Letters Patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) arising out of the manufacture or delivery of supplies or out of construction, alteration, modification, or repair of real property (hereinabove referred to as "construction work") under this subcontract, or out of the use or disposal by or for the account of the Government of such supplies or construction work. The foregoing indemnity shall not apply unless the Seller shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to: (a) an infringement resulting from compliance with specific written instructions of the Company directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the subcontract not normally used by the Seller; (b) an infringement resulting from addition to or change in, such supplies or components furnished or construction work performed which addition or change was made subsequent to delivery or performance by the Seller; or (c) a claimed infringement which is settled without the consent of the Seller, unless required by final decree of a court of competent jurisdiction.

39. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT. (The provisions of this clause shall be applicable only if the amount of this subcontract exceeds $10,000.)

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

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

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

40. REPORTING OF ROYALTIES. If this subcontract is in an amount which exceeds $10,000 and if any royalty payments are directly involved in the subcontract or are reflected in the subcontract price to the Company, the Seller agrees to report in writing to the Company during the performance of this subcontract and prior to its completion or final settlement the amount of any

royalties or other payments paid or to be paid by it directly to others in connection with the performance of this subcontract together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit the identification of the patents or other basis on which the royalties are to be paid. The approval of the Company of any individual payments or royalties shall not estop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.

41. INSURANCE--LIABILITY TO THIRD PERSONS. (a) (1) Except as provided in subparagraph (2) immediately following, or in paragraph (h) of this clause (if the clause has a paragraph (h)), the Seller shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Company may require under this subcontract.

(2) The Seller may, with the approval of the Company, maintain a self-insurance program; *provided,* that, with respect to workers' compensation, the Seller is qualified pursuant to statutory authority.

(3) All insurance required by this paragraph shall be in a form and for those periods as the Company may require or approve, with insurers approved by the Company, and in the following amounts:

Type	Amount
Workers' Compensation	As required by applicable federal and state workers' compensation and occupational disease statutes.
Employers' Liability	$100,000 minimum.
Comprehensive General	Bodily injury liability of at least Liability $500,000 per occurrence.
Comprehensive Automobile Liability	Minimum of $200,000 per person and $500,000 per occurrence for bodily injury and $20,000 per occurrence for property damage.

(b) The Seller agrees to submit for the Company's approval, to the extent and in the manner required by the Company, any other insurance that is maintained by the Seller in connection with the performance of this subcontract and for which the Seller seeks reimbursement.

(c) Except as provided in paragraph (h) of this clause (if the clause has a paragraph (h)), the Seller shall be reimbursed:

(1) For that portion (i) of the reasonable cost of insurance allocable to this subcontract and (ii) required or approved under this clause; and

(2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this subcontract. These liabilities must arise out of the performance of this subcontract, whether or not caused by the negligence of the Seller or of the Seller's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by the Company. These liabilities are for:

(i) Loss of or damage to property (other than property owned, occupied, or used by the Seller, rented to the Seller, or in the care, custody, or control of the Seller); or

(ii) Death or bodily injury.

(d) The Company's liability under paragraph (c) of this clause is subject to the availability from DOE of appropriated funds at the time a contingency occurs. Nothing in this subcontract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(e) The Seller shall not be reimbursed for liabilities (and expenses incidental to such liabilities):

(1) For which the Seller is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the subcontract;

(2) For which the Seller has failed to insure or to maintain insurance as required by the Company; or

(3) That result from willful misconduct or lack of good faith on the part of any of the Seller's directors, officers, managers, superintendents, or other representatives who have supervision or direction of:

(i) All or substantially all of the Seller's business;

(ii) All or substantially all of the Seller's operations at any one plant or separate location in which this subcontract is being performed; or

(iii) A separate and complete major industrial operation in connection with the performance of this subcontract.

(f) The provisions of paragraph (e) of this clause shall not restrict the right of the Seller to be reimbursed for the cost of insurance maintained by the Seller in connection with the performance of this subcontract, other than insurance required in accordance with this clause; *provided,* that such cost is allowable under the Allowable Cost and Payment clause of this subcontract.

(g) If any suit or action is filed or any claim is made against the Seller, the cost and expense of which may be reimbursable to the Seller under this subcontract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Seller shall:

(1) Immediately notify the Company and promptly furnish copies of all pertinent papers received;

(2) Authorize Company and Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and

(3) Authorize Company and Government representatives to settle or defend the claim and to represent the Seller in or to take charge of any litigation, if required by the Government, when the liability is not insured or covered by bond. The Seller may, at its own expense, be associated with the Company and Government representatives in any such claim or litigation.

42. STATE AND LOCAL TAXES. (a) The Seller agrees to notify the Company, which in turn will notify DOE, of any State or local tax, fee, or charge levied or purported to be levied on or collected from the Seller with respect to the subcontract work, any transaction thereunder, or property in the custody or control of the Seller and constituting an allowable item of cost if due and payable, but which the Seller has reason to believe, or the Company or DOE has advised the Seller, is or may be inapplicable or invalid; and the Seller further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by the Company with the approval of DOE. Any State or local tax, fee, or charge paid with the approval of the Company and DOE or on the basis of advice from the Company with the concurrence of DOE that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.

(b) The Seller agrees to take such action as may be required or approved by the Company with the concurrence of DOE to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by the Company with the concurrence of DOE to seek recovery of any payments made, including assignment to the Government or its designee of all rights to an abatement or refund thereof, and granting permission for the Government to join with the Seller in any proceedings for the recovery thereof or to sue for recovery in the name of the Seller. If the Company with the approval of DOE directs the Seller to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the Seller for a tax, fee, or charge it has refrained from paying in accordance with this clause, the procedures and requirements of the clause entitled "Litigation and Claims" shall apply and the costs and expenses incurred by the Seller shall be allowable items of cost, as provided in this subcontract, together with the amount of any judgment rendered against the Seller.

(c) The Company and the Government shall save the Seller harmless from penalties and interest incurred through compliance with this clause. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Government.

43. STATE OF NEW MEXICO GROSS RECEIPTS AND COMPENSATING TAX. (Applicable if this subcontract is for "services," as defined in Federal Acquisition Regulation 29.401-6(a), to be performed in whole or in part within the State of New Mexico.)

(a) Within thirty (30) days after award of this subcontract, the Seller shall advise the State of New Mexico of this subcontract by registering with the State of New Mexico, Taxation and Revenue Department, Revenue Division, pursuant to the Tax Administration Act of the State of New Mexico and shall identify the subcontract number.

(b) The Seller shall pay the New Mexico gross receipts taxes, pursuant to the Gross Receipts and Compensating Tax Act of New Mexico, assessed against the subcontract fee and costs paid for performance of this subcontract, or of any part or portion thereof, within the State of New Mexico. The allowability of any gross receipts taxes or local option taxes lawfully paid to the State of New Mexico by the Seller or its subcontractors will be determined in accordance with the Allowable Cost and Payment clause of this subcontract except as provided in paragraph (d) of this clause.

(c) The Seller shall submit applications for Nontaxable Transaction Certificates, Form CSR-3C, to the State of New Mexico Taxation and Revenue Department, Revenue Division, P. O. Box 630, Santa Fe, New Mexico 87509. When the Type 15 Nontaxable Transaction Certificate is issued by the Revenue Division, the Seller shall use these certificates strictly in accordance with this subcontract, and the agreement between DOE and the New Mexico Taxation and Revenue Department.

(d) The Seller shall provide Type 15 Nontaxable Transaction Certificates to each vendor in New Mexico selling tangible personal property to the Seller for use in the performance of this subcontract. Failure to provide a Type 15 Nontaxable Transaction Certificate to vendors will result in the vendor's liability for the gross receipt taxes and those taxes, which are then passed on to the Seller, shall not be reimbursable as an allowable cost by the Company.

(e) The Seller shall pay the New Mexico compensating user tax for any tangible personal property which is purchased pursuant to a Nontaxable Transaction Certificate if such property is not used for Federal purposes.

(f) Out-of-state purchase of tangible personal property by the Seller which would be otherwise subject to compensation tax shall be governed by the principles of this clause. Accordingly, compensating tax shall be due from the Seller only if such property is not used for Federal purposes.

(g) DOE may receive information regarding the Seller from the Revenue Division of the New Mexico Taxation and Revenue Department and, at the discretion of DOE, may participate in any matters or proceedings pertaining to this clause or the above-mentioned Agreement. This shall not preclude the Seller from having its own representative nor does it obligate DOE to represent the Seller.

(h) The Seller agrees to insert the substance of this clause, including this paragraph (h), in each subcontract which meets the criteria in 29.401-6(b)(1) through (3) of the Federal Acquisition Regulation, 48 CFR Part 29.

(i) Paragraphs (a) through (h) of this clause shall be null and void should the Agreement referred to in paragraph (c) of this clause be terminated; provided, however, that such termination shall not nullify obligations already incurred prior to the date of termination.

44. LITIGATION AND CLAIMS. (a) Initiation of Litigation. The Seller shall, upon the request of the Company with the approval of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this subcontract. The Seller shall proceed with such litigation in good faith and as directed from time to time by the Company with the approval of DOE.

(b) Defense and Settlement of Claims. The Seller shall give the Company immediate notice in writing (1) of any action, including any proceeding before an administrative agency, filed against the Seller arising out of the performance of this subcontract, and (2) of any claim against the Seller, the cost and expense of which is allowable under the clause entitled "Allowable Costs." Except as otherwise directed by the Company, in writing, the Seller shall furnish immediately to the Company copies of all pertinent papers received by the Seller with respect to such action or claim. To the extent not in conflict with any applicable policy of insurance, the Seller may with the Company's and the Government's approval settle any such action or claim, shall effect at the Company's and the Government's request an assignment and subrogation in favor of the Government of all the Seller's rights and claims (except those against the Government) arising out of any such action or claim against the Seller, and if required by the Company, shall authorize representatives of the Government to settle or defend any such action or claim and to represent the Seller in, or to take charge of, any action. If the settlement or defense of an action or claim against the Seller is undertaken by the Government, the Seller shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the Seller is not covered by a policy of insurance, the Seller shall, with the approval of the Company and the Government, proceed with the defense of the action in good faith and in such event the defense of the action shall be at the expense of the Company, Provided, however, That the Company shall not be liable for such expense to the extent that it would have been compensated for by insurance which was required by law or by the written direction of the Company, but which the Seller failed to secure through its own fault or negligence.

45. INTEREST. (a) Notwithstanding any other clause of this subcontract, all amounts that become payable by the Seller to the Company under this subcontract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear

simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this subcontract.

(2) The date of the first written demand for payment consistent with this subcontract, including any demand resulting from a default termination.

(3) The date the Company transmits to the Seller a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this subcontract provides for revision of prices, the date of written notice to the Seller stating the amount of refund payment in connection with a pricing proposal or a negotiated pricing agreement not confirmed by subcontract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this subcontract.

46. LIMITATION OF COST. (Applicable only if the Schedule indicates that this subcontract is fully funded.) (a) The parties estimate that performance of this subcontract, exclusive of any fee, will not cost the Company more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing subcontract, the Company's share of the estimated cost specified in the Schedule. The Seller agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this subcontract within the estimated cost, which, if this is a cost-sharing subcontract, includes both the Company's and the Seller's share of the cost.

(b) The Seller shall notify the Company in writing whenever it has reason to believe that:

(1) The costs the Seller expects to incur under this subcontract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule; or

(2) The total cost for the performance of this subcontract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

(c) As part of the notification, the Seller shall provide the Company a revised estimate of the total cost of performing this subcontract.

(d) Except as required by other provisions of this subcontract, specifically citing and stated to be an exception to this clause:

(1) The Company is not obligated to reimburse the Seller for costs incurred in excess of (i) the estimated cost specified in the Schedule or, (ii) if this is a cost-sharing subcontract, the estimated cost to the Company specified in the Schedule; and

(2) The Seller is not obligated to continue performance under this subcontract (including actions under the Termination clause of this subcontract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the Company (i) notifies the Seller in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this subcontract. If this is a cost-sharing subcontract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(e) No notice, communication, or representation in any form other than that specified in subparagraph (d)(2) above, or from any person other than the Company's Subcontract Administrator, shall affect this subcontract's estimated cost to the Company. In the absence of the specified notice, the Company is not obligated to reimburse the Seller for any costs in excess of the estimated cost, or, if this is a cost-sharing subcontract, for any costs in excess of the estimated cost to the Company specified in the Schedule, whether those excess costs were incurred during the course of the subcontract or as a result of termination.

(f) If the estimated cost specified in the Schedule is increased, any costs the Seller incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the Company issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

(g) Change orders shall not be considered an authorization to exceed the estimated cost to the Company specified in the Schedule, unless they contain a statement increasing the estimated cost.

(h) If this subcontract is terminated or the estimated cost is not increased, the Company and the Seller shall negotiate an equitable distribution of all property produced or purchased under the subcontract, based upon the share of costs incurred by each.

47. LIMITATION OF FUNDS. (Applicable only if the Schedule indicates that this subcontract is to be incrementally funded.) (a) The parties estimate that performance of this subcontract will not cost the Company more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing subcontract, the Company's share of the estimated cost specified in the Schedule. The Seller agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this subcontract within the estimated cost, which, if this is a cost-sharing subcontract, includes both the Company's and the Seller's share of the cost.

(b) The Schedule specifies the amount currently available for payment by the Company and allotted to this subcontract, the items covered, the Company's share of the cost if this is a cost-sharing subcontract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the Company will allot additional funds incrementally to the subcontract up to the full estimated cost to the Company specified in the Schedule, exclusive of any fee. The Seller agrees to perform, or have performed, work on the subcontract up to the point at which the total amount paid and payable by the Company under the subcontract approximates but does not exceed the total amount actually allotted by the Company to the subcontract.

(c) The Seller shall notify the Company in writing whenever it has reason to believe that the costs it expects to incur under this subcontract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the subcontract by the Company or, (2) if this is a cost-sharing subcontract, the amount then allotted to the subcontract by the Company plus the Seller's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

(d) Sixty days before the end of the period specified in the Schedule, the Seller shall notify the Company in writing of the estimated amount of additional funds, if any, required to continue timely performance under the subcontract or for any further period specified in the Schedule or otherwise agreed upon, and when the funds will be required.

(e) If, after notification, additional funds are not allotted by the end of the period specified in the Schedule or another agreed-upon date, upon the Seller's written request the Company will terminate this subcontract on that date in accordance with the provisions of

the Termination clause of this subcontract. If the Seller estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Company may terminate this subcontract on that later date.

(f) Except as required by other provisions of this subcontract, specifically citing and stated to be an exception to this clause:

(1) The Company is not obligated to reimburse the Seller for costs incurred in excess of the total amount allotted by the Company to this subcontract; and

(2) The Seller is not obligated to continue performance under this subcontract (including actions under the Termination clause of this subcontract) or otherwise incur costs in excess of (i) the amount then allotted to the subcontract by the Company or, (ii) if this is a cost-sharing subcontract, the amount then allotted by the Company to the subcontract plus the Seller's corresponding share, until the Company notifies the Seller in writing that the amount allotted by the Company has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Company to this subcontract.

(g) The estimated cost shall be increased to the extent that (1) the amount allotted by the Company or, (2) if this is a cost-sharing subcontract, the amount then allotted by the Company to the subcontract plus the Seller's corresponding share, exceeds the estimated cost specified in the Schedule. If this is a cost-sharing subcontract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(h) No notice, communication, or representation in any form other that specified in subparagraph (f)(2) above, or from any person other than the Company's subcontract administrator, shall affect the amount allotted by the Company to this subcontract. In the absence of the specified notice, the Company is not obligated to reimburse the Seller for any costs in excess of the total amount allotted by the Company to this subcontract, whether incurred during the course of the subcontract or as a result of termination.

(i) When and to the extent that the amount allotted by the Company to the subcontract is increased, any costs the Seller incurs before the increase that are in excess of (1) the amount previously allotted by the Company or, (2) if this is a cost-sharing subcontract, the amount previously allotted by the Company to the subcontract plus the Seller's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the Company issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

(j) Change orders shall not be considered an authorization to exceed the amount allotted by the Company specified in the Schedule, unless they contain a statement increasing the amount allotted.

(k) Nothing in this clause shall affect the right of the Company to terminate this subcontract. If this subcontract is terminated, the Company and the Seller shall negotiate an equitable distribution of all property produced or purchased under the subcontract, based upon the share of costs incurred by each.

(l) If the Company does not allot sufficient funds to allow completion of the work, the Seller is entitled to a percentage of the fee specified in the Schedule equaling the percentage of completion of the work contemplated by this subcontract.

<u>48. ASSIGNMENT OF CLAIMS</u>. (a) The Seller, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this subcontract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence. Unless otherwise stated in this subcontract, payments to an assignee of any amounts due or to become due under this subcontract shall not, to the extent specified in the Act, be subject to reduction or setoff.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this subcontract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this subcontract.

(c) The Seller shall not furnish or disclose to any assignee under this subcontract any classified document (including this subcontract) or information related to work under this subcontract until the Company authorizes such action in writing.

<u>49. ASSIGNMENT</u>. Neither this subcontract nor any interest therein nor claim thereunder shall be assigned or transferred by the Seller except as expressly authorized in writing by the Company.

<u>50. PROTEST AFTER AWARD</u>. (a) Upon receipt of a notice of protest (as defined in 33.101 of the FAR), the Company may, by written order to the Seller, direct the Seller to stop performance of the work called for by this subcontract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Company shall either:

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this subcontract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Seller shall resume work. The Company shall make an equitable adjustment in the delivery schedule or subcontract price, or both, and the subcontract shall be modified, in writing, accordingly, if:

(1) The stop-work order results in an increase in the time required for, or in the Seller's cost properly allocable to, the performance of any part of this subcontract; and

(2) The Seller requests an adjustment within 30 days after the end of the period of work stoppage; *provided,* that if the Company decides the facts justify the action, the Company may receive and act upon the request at any time before final payment under this subcontract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Company shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Company shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Company's rights to terminate this subcontract at any time are not affected by action taken under this clause.

<u>51. KEY PERSONNEL</u>. The persons, if any, specified in the Schedule of this subcontract as "key personnel" are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified persons to other programs, the Seller shall notify the Company reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to

permit evaluation of the impact on the program. No diversion shall be made without the consent of the Company; Provided, that the Company may ratify in writing such diversion and such ratification shall constitute the consent of the Company required by this clause. The list of key personnel may be amended from time to time during the course of this subcontract to either add or delete personnel, as appropriate.

52. PERMITS AND LICENSES. Except as otherwise directed by the Company, the Seller shall procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under this subcontract is performed.

53. CHANGES. (a) The Company may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (i.e., hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(4) Drawings, designs, or specifications when any supplies to be furnished are to be specially manufactured for the Company in accordance with the drawings, designs, or specifications.

(5) Method of shipment or packing of supplies.

(6) Place of delivery.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this subcontract, whether or not changed by the order, or otherwise affects any other terms and conditions of this subcontract, the Company shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the subcontract accordingly.

(c) The Seller must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Company decides that the facts justify it, the Company may receive and act upon a proposal submitted before final payment of the subcontract.

(d) Nothing in this clause shall excuse the Seller from proceeding with the subcontract as changed.

(e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of this subcontract and, if this subcontract is incrementally funded, the funds allotted for the performance of this subcontract, shall not be increased or considered to be increased except by specific written modification of the subcontract indicating the new subcontract estimated cost and, if this subcontract is incrementally funded, the new amount allotted to the subcontract. Until this modification is made, the Seller shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of this subcontract.

54. NOTIFICATION OF CHANGES. (a) Notice. The primary purpose of this clause is to obtain prompt reporting of Company conduct that the Seller considers to constitute a change to this subcontract. Except for changes identified as such in writing and signed by Company Purchasing Division personnel, the Seller shall notify the Subcontract Administrator in writing, within five calendar days from the date that the Seller identifies any Company conduct (including actions, inactions, and written or oral communications) that the Seller regards as a change to the subcontract. On the basis of the most accurate information available to the Seller, the notice shall state:

(1) The date, nature, and circumstances of the conduct regarded as a change;

(2) The name, function, and activity of each Company and Seller employee involved in or knowledgeable about such conduct;

(3) The identification of any documents and the substance of any oral communication involved in such conduct;

(4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;

(5) The particular elements of subcontract performance for which the Seller may seek an equitable adjustment under this clause, including:

(i) What subcontract line items have been or may be affected by the alleged change;

(ii) What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;

(iii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;

(iv) What adjustments to subcontract price, delivery schedule, and other provisions affected by the alleged change are estimated; and

(6) The Seller's estimate of the time by which the Company must respond to the Seller's notice to minimize cost, delay, or disruption of performance.

(b) Continued Performance. Following submission of the notice required by (a) above, the Seller shall diligently continue performance of this subcontract to the maximum extent possible in accordance with its provisions as construed by the Seller.

(c) Company Response. The Subcontract Administrator shall, within 15 calendar days after receipt of notice, respond to the notice in writing. In responding, the Subcontract Administrator shall either:

(1) Confirm that the conduct of which the Seller gave notice constitutes a change and when necessary direct the mode of further performance;

(2) Countermand any communication regarded as a change;

(3) Deny that the conduct of which the Seller gave notice constitutes a change and when necessary direct the mode of further performance; or

(4) In the event the Seller's notice information is inadequate to make a decision under (1), (2), or (3) above, advise the Seller what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Company will respond.

(d) Equitable Adjustments. (1) If the Subcontract Administrator confirms that Company conduct effected a change as alleged by the Seller, and the conduct causes an increase or decrease in the Seller's cost of, or the time required for, performance of any part of the work under this subcontract, whether changed or not changed by such conduct, an equitable adjustment shall be made;

(i) In the estimated cost, delivery or completion schedule, or both;

(ii) In the amount of any fee; and

(iii) In such other provisions of the subcontract as may be affected.

(2) The subcontract shall be modified in writing accordingly. In the case of drawings, designs, or specifications which are defective and for which the Company is responsible, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by the Seller in attempting to comply

with the defective drawings, designs, or specifications before the Seller identified, or reasonably should have identified, such defect. When the cost of property made obsolete or excess as a result of a change confirmed by the Subcontract Administrator under this clause is included in the equitable adjustment, the Company shall have the right to prescribe the manner of disposition of the property. The equitable adjustment shall not include increased costs or time extensions for delay resulting from the Seller's failure to provide notice or to continue performance as provided in (a) and (b) above.

55. MODIFICATIONS. Any changes, alterations, or modifications to this subcontract must be made by an instrument in writing and to be binding on the Company must be executed by a duly authorized employee of the Company's Purchasing Division.

56. SUBCONTRACTS. (a) "Subcontract," as used in this clause, includes but is not limited to purchase orders, and changes and modifications to purchase orders. The Seller shall notify the Company reasonably in advance of entering into any subcontract if:

(1) The proposed subcontract is of the cost-reimbursement, time-and-materials, or labor-hour type;

(2) The proposed subcontract is fixed-price and exceeds either $25,000 or 5 percent of the total estimated cost of this subcontract;

(3) The proposed subcontract has experimental, developmental, or research work as one of its purposes; or

(4) The proposed subcontract provides for the fabrication, purchase, rental, installation, or other acquisition of special test equipment valued in excess of $10,000 or of any items of facilities.

(b) (1) In the case of a proposed subcontract that (i) is of the cost-reimbursement, time-and-materials, or labor-hour type and is estimated to exceed $10,000, including any fee, (ii) is proposed to exceed $100,000, or (iii) is one of a number of subcontracts with a single subcontractor, under this subcontract, for the same or related supplies or services that, in the aggregate, are expected to exceed $100,000, the advance notification required by paragraph (a) above shall include the information specified in subparagraph (2) below.

(2) (i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained.

(iv) The proposed subcontract price and the Seller's cost or price analysis.

(v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other provisions of this subcontract.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this subcontract.

(vii) A negotiation memorandum reflecting:

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason cost or pricing data were or were not required;

(D) The extent, if any, to which the Seller did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Seller and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Seller's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(c) The Seller shall obtain the Company's written consent before placing any subcontract for which advance notification is required under paragraph (a) above. However, the Company may ratify in writing any such subcontract. Ratification shall constitute the consent of the Company.

(d) If the Seller has an approved purchasing system and the subcontract is within the scope of such approval, the Seller may enter into the subcontracts described in subparagraphs (a)(1) and (a)(2) above without the consent of the Company, unless this subcontract is for the acquisition of major systems, subsystems, or their components.

(e) Even if the Seller's purchasing system has been approved, the Seller shall obtain the Company's written consent before placing subcontracts that have been selected for special surveillance and identified in the Schedule of this subcontract.

(f) Unless the consent or approval specifically provides otherwise, neither consent by the Company to any subcontract nor approval of the Seller's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the allowability of any cost under this subcontract, or (3) to relieve the Seller of any responsibility for performing this subcontract.

(g) No subcontract placed under this subcontract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in paragraph 15.903(d) of the Federal Acquisition Regulation (FAR).

(h) The Seller shall give the Company immediate written notice of any action or suit filed and prompt notice of any claim made against the Seller by any subcontractor or vendor that, in the opinion of the Seller, may result in litigation related in any way to this subcontract, with respect to which the Seller may be entitled to reimbursement from the Company.

(i) (1) The Seller shall insert in each price redetermination or incentive price revision subcontract under this subcontract the substance of the paragraph "Quarterly limitation on payments statement" of the clause at 52.216-5, Price Redetermination--Prospective; 52.216-6, Price Redetermination--Retroactive; 52.216-16, Incentive Price Revision--Firm Target; or 52.216-17, Incentive Price Revision--Successive Targets, as appropriate, modified in accordance with the paragraph entitled "Subcontracts" of that clause.

(2) Additionally, the Seller shall include in each cost-reimbursement subcontract under this subcontract a requirement that the subcontractor insert the substance of the appropriate modified subparagraph referred to in subparagraph (1) above in each lower-tier price redetermination or incentive price revision subcontract under that subcontract.

(j) To facilitate small business participation in subcontracting, the Seller agrees to provide progress payments on subcontracts under this subcontract that are fixed-price subcontracts with small business concerns in conformity with the standards for customary progress payments stated in FAR 32.502-1 and 32.504(f) as in

effect on the date of this subcontract. The Seller further agrees that the need for such progress payments will not be considered a handicap or adverse factor in the award of subcontracts.

(k) The Company reserves the right to review the Seller's purchasing system as set forth in FAR Subpart 44.3.

57. COMPETITION IN SUBCONTRACTING. The Seller shall select subcontractors (including suppliers) on a competitive basis to the maximum practicable extent consistent with the objectives and requirements of this subcontract.

58. GOVERNMENT PROPERTY. (a) Government-Furnished Property. (1) The term "Seller's managerial personnel," as used in paragraph (g) of this clause, means any of the Seller's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of:

(i) All or substantially all of the Seller's business;

(ii) All or substantially all of the Seller's operation at any one plant, or separate location at which this subcontract is being performed; or

(iii) A separate and complete major industrial operation connected with performing this subcontract.

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

(3) The delivery or performance dates for this subcontract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Seller at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Seller to meet the subcontract's delivery or performance dates.

(4) If Government-furnished property is received by the Seller in a condition not suitable for the intended use, the Seller shall, upon receipt, notify the Company, detailing the facts, and, as directed by the Company and at Company expense, either effect repairs or modification or return or otherwise dispose of the property. After completing the directed action and upon written request of the Seller, the Company shall make an equitable adjustment as provided in paragraph (h) of this clause.

(5) If Government-furnished property is not delivered to the Seller by the required time or times, the Company shall, upon the Seller's timely written request, make a determination of the delay, if any, caused the Seller and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) Changes in Government-Furnished Property. (1) The Company may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this subcontract or (ii) substitute other Government-furnished property for the property to be provided by the Company or to be acquired by the Seller for the Government under this subcontract. The Seller shall promptly take such action as the Company may direct regarding the removal, shipment, or disposal of the property covered by this notice.

(2) Upon the Seller's written request, the Company shall make an equitable adjustment to the subcontract in accordance with paragraph (h) of this clause, if the Company has agreed in the Schedule to make such property available for performing this subcontract and there is any:

(i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or

(ii) Withdrawal of authority to use property, if provided under any other contract or lease.

(c) Title. (1) The Government shall retain title to all Government-furnished property.

(2) Title to all property purchased by the Seller for which the Seller is entitled to be reimbursed as a direct item of cost under this subcontract shall pass to and vest in the Government upon the vendor's delivery of such property.

(3) Title to all other property, the cost of which is reimbursable to the Seller, shall pass to and vest in the Government upon:

(i) Issuance of the property for use in subcontract performance;

(ii) Commencement of processing of the property or use in subcontract performance; or

(iii) Reimbursement of the cost of the property by the Company, whichever occurs first.

(4) All Government-furnished property and all property acquired by the Seller, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(d) Use of Government Property. The Government property shall be used only for performing this subcontract, unless otherwise provided in this subcontract or approved by the Company.

(e) Property Administration. (1) The Seller shall be responsible and accountable for all Government property provided under the subcontract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5 and DOE Acquisition Regulation Subpart 945.5, as in effect on the date of this subcontract.

(2) The Seller shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound business practice and the applicable provisions of FAR Subpart 45.5 and DOE Acquisition Regulation Subpart 945.5.

(3) If damage occurs to Government property, the risk of which has been assumed by the Company under this subcontract, the Company shall replace the items or the Seller shall make such repairs as the Company directs. However, if the Seller cannot effect such repairs within the time required, the Seller shall dispose of the property as directed by the Company. When any property for which the Company is responsible is replaced or repaired, the Company shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(f) Access. The Government, the Company, and all their designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) Limited Risk of Loss. (1) The Seller shall not be liable for loss or destruction of, or damage to, the Government property provided under this subcontract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs (2) and (3) below.

(2) The Seller shall be responsible for loss or destruction of, or damage to, the Government property provided under this subcontract (including expenses incidental to such loss, destruction, or damage):

(i) That results from a risk expressly required to be insured under this subcontract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) That results from a risk that is in fact covered by

insurance or for which the Seller is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(iii) For which the Seller is otherwise responsible under the express terms of this subcontract;

(iv) That results from willful misconduct or lack of good faith on the part of the Seller's managerial personnel; or

(v) That results from a failure on the part of the Seller, due to willful misconduct or lack of good faith on the part of the Seller's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.

(3) (i) If the Seller fails to act as provided by subdivision (g)(2)(v) above, after being notified (by certified mail addressed to one of the Seller's managerial personnel) of the Government's or Company's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Seller's managerial personnel.

(ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Seller can establish by clear and convincing evidence that such loss, destruction, or damage:

(A) Did not result from the Seller's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by the Seller.

(4) If the Seller transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Seller for loss or destruction of, or damage to, the property as set forth above. However, the Seller shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Company, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of this subcontract.

(5) Upon loss or destruction of, or damage to, Government property provided under this subcontract, the Seller shall so notify the Company and shall communicate with the loss and salvage organization, if any, designated by the Company. With the assistance of any such organization, the Seller shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Company a statement of:

(i) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(6) The Seller shall repair, renovate, and take such other action with respect to damaged Government property as the Company directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Seller's) that separation is impractical, the Seller may, with the approval of and subject to any conditions imposed by the Company, sell such property for the account of the Company. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Seller shall be entitled to an equitable adjustment in the subcontract price for the expenditures made in performing the obligations under this subparagraph (g)(6) in accordance with paragraph (h) of this clause. However, the Company may directly reimburse the loss and salvage organization for any of their charges. The Company shall give due regard to the Seller's liability under this paragraph (g) when making any such equitable adjustment.

(7) The Seller shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Company may have expressly required the Seller to carry such insurance under another provision of this subcontract.

(8) In the event the Seller is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Seller shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the Company, as directed by the Company.

(9) The Seller shall do nothing to prejudice the Company's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Company, the Seller shall, at the Company's expense, furnish to the Company and the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Company or Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Seller shall enforce for the benefit of the Company the liability of the subcontractor for such loss, destruction, or damage.

(h) Equitable Adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected subcontract provision in accordance with the procedures of the Changes clause. When appropriate, the Company may initiate an equitable adjustment in favor of the Company. The right to an equitable adjustment shall be the Seller's exclusive remedy. The Company shall not be liable to suit for breach of contract for:

(1) Any delay in delivery of Government-furnished property;

(2) Delivery of Government-furnished property in a condition not suitable for its intended use;

(3) A decrease in or substitution of Government-furnished property; or

(4) Failure to repair or replace Government property for which the Company is responsible.

(i) Final Accounting and Disposition of Government Property. Upon completing this subcontract, or at such earlier dates as may be fixed by the Company, the Seller shall submit, in a form acceptable to the Company, inventory schedules covering all items of Government property not consumed in performing this subcontract or delivered to the Company. The Seller shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Company. The net proceeds of any such disposal shall be credited to the cost of the work covered by this subcontract or paid to the Company as directed by the Company. The foregoing provisions shall apply to scrap from Government property; *provided,* however, that the Company may authorize or direct the Seller to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings,

and remnants, and to dispose of such scrap in accordance with the Seller's normal practice and account for it as a part of general overhead or other reimbursable costs in accordance with the Seller's established accounting procedures.

(j) Abandonment and Restoration of Seller Premises. Unless otherwise provided herein, the Company:

(1) May abandon any Government property in place, at which time all obligations of the Company regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Seller's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or subcontract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) Communications. All communications under this clause shall be in writing.

59. INSPECTION. (a) Definition. "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.

(b) The Seller shall provide and maintain an inspection system acceptable to the Company covering the services under this subcontract. Complete records of all inspection work performed by the Seller shall be maintained and made available to the Company during subcontract performance and for as long afterwards as the subcontract requires.

(c) The Company has the right to inspect and test all services called for by the subcontract, to the extent practicable at all places and times during the term of the subcontract. The Company shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If any of the services performed do not conform with subcontract requirements, the Company may require the Seller to perform the services again in conformity with subcontract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Company may (1) require the Seller to take necessary action to ensure that future performance conforms to subcontract requirements and (2) reduce any fee payable under the subcontract to reflect the reduced value of the services performed.

(e) If the Seller fails to promptly perform the services again or take action necessary to ensure future performance in conformity with subcontract requirements, the Company may (1) by contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances or (2) terminate the subcontract for default.

60. FOREIGN TRAVEL. (a) Foreign travel, when charged directly, shall be subject to the prior approval of DOE for each separate trip. Foreign travel is defined as any travel outside the United States and its territories and possessions and Canada.

(b) Requests for approval shall be submitted at least 45 days prior to the planned departure date, be on DOE "Request for Approval of Foreign Travel" forms (which are available from the Company), and, when applicable, include notifications of proposed Soviet-bloc travel.

61. PREFERENCE FOR U.S.-FLAG AIR CARRIERS. (a) "International air transportation," as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States," as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

"U.S.-flag air carrier," as used in this clause, means an air carrier holding a certificate under Section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371).

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) The Seller agrees, in performing work under this subcontract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

(d) In the event that the Seller selects a carrier other than a U.S.-flag air carrier for international air transportation, the Seller shall include a certification on vouchers involving such transportation essentially as follows:

CERTIFICATION OF UNAVAILABILITY OF
U.S.-FLAG AIR CARRIERS

I hereby certify that international air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see Section 47.403 of the Federal Acquisition Regulation): [*State reasons*]:_____________________

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(End of certification)

(e) The Seller shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase order under this subcontract that may involve international air transportation.

62. PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS. (a) The Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are:

(1) Acquired for a U.S. Government agency account;

(2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;

(3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or

(4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Seller shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this subcontract (computed separately for dry bulk carriers,

dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c) (1) The Seller shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) the Company and (ii) the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590.

(2) The Seller shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

(A) Sponsoring U.S. Government agency.
(B) Name of vessel.
(C) Vessel flag of registry.
(D) Date of loading.
(E) Port of loading.
(F) Port of final discharge.
(G) Description of commodity.
(H) Gross weight in pounds and cubic feet if available.
(I) Total ocean freight revenue in U.S. dollars.

(d) Except for small purchases as described in 48 CFR 13, the Seller shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this subcontract.

(e) The requirement in paragraph (a) does not apply to:

(1) Small purchases as defined in 48 CFR 13;

(2) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;

(3) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and

(4) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, Phone: 202-426-4610.

63. TERMINATION. (a) The Company may terminate performance of work under this subcontract in whole or, from time to time, in part, if:

(1) The Company determines that a termination is in the Government's interest; or

(2) The Seller defaults in performing this subcontract and fails to cure the default within ten days (unless extended by the Company) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The Company shall terminate by delivering to the Seller a Notice of Termination specifying whether termination is for default of the Seller or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Seller was not in default or that the Seller's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Seller as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

(c) After receipt of a Notice of Termination, and except as directed by the Company, the Seller shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of this subcontract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Company, as directed by the Company, all right, title, and interest of the Seller under the subcontracts terminated, in which case the Company shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Company, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this subcontract; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Company, deliver to the Company (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, (ii) the completed or partially completed plans, drawings, information, and other property that, if this subcontract had been completed, would be required to be furnished to the Company, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this subcontract, the cost of which the Seller has been or will be reimbursed under this subcontract.

(7) Complete performance of the work not terminated.

(8) Take any such action that may be necessary, or that the Company may direct, for the protection and preservation of the property related to this subcontract that is in the possession of the Seller and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Company, any property of the types referred to in subparagraph (6) above; *provided, however,* that the Seller (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Company. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Company under this subcontract, credited to the price or cost of the work, or paid in any other manner directed by the Company.

(d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Seller may submit to the Company a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Company. The Seller may request the Company to remove those items or enter into an agreement for their storage. Within 15 days, the Company will accept the items and remove them or enter into a storage agreement. The Company may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Seller shall submit a termination settlement proposal to the Company in the form and with the certification prescribed by the Company. The Seller shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by the Company upon written request of the Seller within this one-year period. However, if the Company determines that the facts justify it, a termination settlement proposal may be received and acted on after one year or any extension. If the Seller fails to submit the

proposal within the time allowed, the Company may determine, on the basis of information available, the amount, if any, due the Seller because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) above, the Seller and the Company may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The subcontract shall be amended, and the Seller paid the agreed amount.

(g) If the Seller and the Company fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Company shall determine, on the basis of information available, the amount, if any, due the Seller, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this subcontract, not previously paid, for the performance of this subcontract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Company; however, the Seller shall discontinue these costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of this subcontract if not included in subparagraph (1) above.

(3) The reasonable costs of settlement of the work terminated, including:

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Seller's termination settlement proposal may be included.

(4) A portion of the fee payable under this subcontract, determined as follows:

(i) If the subcontract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under this subcontract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.

(ii) If the subcontract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Company is to the total number of articles (or amount of services) of a like kind required by the subcontract.

(5) If the settlement includes only fee, it will be determined under subparagraph (g)(4) above.

(h) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this subcontract, shall govern all costs claimed, agreed to, or determined under this clause.

(i) In arriving at the amount due the Seller under this clause, there shall be deducted:

(1) All unliquidated advance or other payments to the Seller, under the terminated portion of this subcontract;

(2) Any claim which the Company has against the Seller under this subcontract; and

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Seller or sold under this clause and not recovered by or credited to the Company.

(j) The Seller and Company must agree to any equitable adjustment in fee for the continued portion of the subcontract when there is a partial termination. The Company shall amend the subcontract to reflect the agreement.

(k) (1) The Company may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Seller for the terminated portion of the subcontract, if the Company believes the total of these payments will not exceed the amount to which the Seller will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Seller shall repay the excess to the Company upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Seller to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Seller's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Company because of the circumstances.

(l) The provisions of this clause relating to fee are inapplicable if this subcontract does not include a fee.

64. EXCUSABLE DELAYS. (a) Except for defaults of subcontractors at any tier, the Seller shall not be in default because of any failure to perform this subcontract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Seller. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) strike embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Seller. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Seller and subcontractor, and without the fault or negligence of either, the Seller shall not be deemed to be in default, unless:

(1) The subcontracted supplies or services were obtainable from other sources;

(2) The Company ordered the Seller in writing to purchase these supplies or services from the other source; and

(3) The Seller failed to comply reasonably with this order.

(c) Upon request of the Seller, the Company shall ascertain the facts and extent of the failure. If the Company determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Company under the termination clause of this subcontract.