

SECTION I - CONTRACT CLAUSES

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SECTION I - CONTRACT CLAUSES

I.1. CLAUSES FOR SYSTEMS DEVELOPMENT, IMPLEMENTATION AND OPERATIONS AND MAINTENANCE SERVICES (PERFORMANCE CONTRACTS)

Paragraph I.2, in its entirety, describes the clauses to be applied to the Performance Contract(s) and corresponds with CLIN Series 2000, 2100, 2200, 2300, and 2400 as presented in Section B, Supplies Services and Prices/Costs.

The following clauses are applicable to this solicitation and any resultant contract. Unless otherwise noted, all clauses bear the effective date of April 1984.

I.1.1 Cost Reimbursement Clauses

I.1.1.1 FAR 52.252-2 Clauses Incorporated By Reference(JUN 1988)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

| <u>FAR Reference</u> | <u>Title</u> | <u>Date</u> |
|----------------------|---|-------------|
| 52.202-1 | Definitions | OCT 1995 |
| 52.203-3 | Gratuities | APR 1984 |
| 52.203-5 | Covenant Against Contingent Fees | APR 1984 |
| 52.203-6 | Restrictions on Subcontractor Sales to the Government | JUL 1995 |
| 52.203-7 | Anti-Kickback Procedures | JUL 1995 |
| 52.203-8 | Cancellation, Recession, and Recovery of Funds for Illegal or Improper Activities | JAN 1997 |
| 52.203-10 | Price or Fee Adjustment for Illegal or Improper Activity | JAN 1997 |
| 52.203-12 | Limitation on Payments to Influence Certain Federal Transactions | JAN 1990 |
| 52.204-2 | Security Requirements | AUG 1996 |
| 52.204-4 | Printing/Copying Double-Sided on Recycled Paper | JUN 1996 |
| 52.209-6 | Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended or proposed for Debarment | JUL 1995 |
| 52.215-2 | Audit-Negotiation | AUG 1996 |
| 52.215-22 | Price Reduction for Defective Cost or Pricing Data | OCT 1995 |

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| <u>FAR Reference</u> | <u>Title</u> | <u>Date</u> |
|----------------------|---|-------------|
| 52.215-23 | Price Reduction for Defective Cost or Pricing Data- Modifications | OCT 1995 |
| 52.215-24 | Subcontractor Cost or Pricing Data | OCT 1995 |
| 52.215-25 | Subcontractor Cost or Pricing Data -Modifications | OCT 1995 |
| 52.215-26 | Integrity of Unit Prices | JAN 1997 |
| 52.215-27 | Termination of Defined Benefit Pension Plans | MAR 1996 |
| 52.215-30 | Facilities Capital Cost of Money | SEP 1987 |
| 52.215-33 | Order of Precedence | JAN 1986 |
| 52.215-39 | Reversion or Adjustment of Plans for Post-Retirement Benefits Other than Pensions (PRB) | MAR 1996 |
| 52.215-40 | Notification of Ownership Changes | FEB 1995 |
| 52.216-7 | Allowable Cost and Payment | MAR 1997 |
| 52.216-8*** | Fixed Fee | MAR 1997 |
| 52.216.10**** | Incentive Fee | MAR 1997 |
| 52.219-8 | Utilization of Small, Small Disadvantaged and Women- Owned Small Business Concerns | OCT 1995 |
| 52.219-9 | Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan - Alternate II (MAR 1966) | AUG 1996 |
| 52.219-14 | Limitations of Subcontracting | DEC 1996 |
| 52.219.16 | Liquidated damages - Subcontracting Plan | OCT 1995 |
| 52.222-1 | Notice to the Government of Labor Disputes | FEB 1997 |
| 52.222-2 | Payment of Overtime Premiums | JUL 1990 |
| 52.222-3 | Convict Labor | AUG 1996 |
| 52.222-4 | Contract Work Hours and Safety Standards Act -- Overtime Compensation | JUL 1995 |
| 52.222-26 | Equal Opportunity | APR 1984 |
| 52.222-28 | Equal Opportunity Preaward Clearance of Subcontracts | APR 1984 |

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| <u>FAR Reference</u> | <u>Title</u> | <u>Date</u> |
|----------------------|---|-------------|
| 52.222-35 | Affirmative Action for Special Disabled and Vietnam Era Veterans | APR 1984 |
| 52.222-36 | Affirmative Action for Handicapped Workers | APR 1984 |
| 52.222-37 | Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era | JAN 1988 |
| 52.222-41 | [Clause deleted by Amendment 0002] | |
| 52.222-49 | [Clause deleted by Amendment 0002] | |
| 52.223-2 | Clean Air and Water | APR 1984 |
| 52.223-6 | Drug-Free Workplace | JAN 1997 |
| 52.223-14 | Toxic Chemical Release Reporting | OCT 1996 |
| 52.224-1* | Privacy Act Notification | APR 1984 |
| 52.224-2* | Privacy Act | APR 1984 |
| 52.225-3 | Buy American Act -- Supplies | JAN 1994 |
| 52.225-10 | Duty-Free Entry | APR 1984 |
| 52.225-11 | Restrictions of Certain Foreign Purchases | OCT 1996 |
| 52.225-14 | Inconsistency between English Version and Translation of Contract | AUG 1989 |
| 52.226-1 | Utilization of Indian Organizations Enterprises | SEP 1996 |
| 52.227-2 | Notice and Assistance Regarding Patent and Copyright Infringement | AUG 1996 |
| 52.227-14** | Rights in Data-General | JUN 1987 |
| 52.227-17** | Rights in Data - Special Works | JUN 1987 |
| 52.227-18 | Rights in Data -- Existing Works | JUN 1987 |
| 52.228-7 | Insurance - Liability to Third Persons | MAR 1996 |
| 52.230-2 | Cost Accounting Standards | APR 1996 |
| 52.230-3 | Disclosure and Consistency of Cost Accounting Practices | APR 1996 |
| 52.230-4 | Consistency of Cost Accounting Practices | AUG 1992 |
| 52.230-6 | Administration of Cost Accounting Standards | APR 1996 |

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| FAR Reference | Title | Date |
|----------------------|--|-------------|
| 52.232-9 | Limitation on Withholding of Payments | APR 1984 |
| 52.232-17 | Interest | JUN 1996 |
| 52.232-18 | Availability of Funds | APR 1984 |
| 52.323-20 | Limitation of Cost | APR 1984 |
| 52.232-22 | Limitation of Funds | APR 1984 |
| 52.232-23 | Assignment of Claims | JAN 1986 |
| 52.232-33 | Mandatory Information for Electronic Funds Transfer Payment | AUG 1996 |
| 52.233-1 | Disputes | OCT 1995 |
| 52.233-3 | Protest After Award - Alternate I (JUN 1995) | AUG 1996 |
| 52.237-2 | Protection of Government Buildings, Equipment, and Vegetation | APR 1984 |
| 52.237-3 | Continuity of Services | JAN 1991 |
| 52.239-1 | Privacy and Security Safeguards | AUG 1996 |
| 52.242-1 | Notice of Intent to Disallow Costs | APR 1984 |
| 52.242-4 | Certification of Final Indirect Costs | JAN 1997 |
| 52.242-13 | Bankruptcy | JUL 1995 |
| 52.243-2 | Changes--Cost-Reimbursement --Alternative I (APR 1984) and Alternative II (APR 1984) | AUG 1987 |
| 52.244-2 | Subcontracts (Cost-Reimbursement and Letter Contracts) | FEB 1997 |
| 52.244-5 | Competition in Subcontracting | DEC 1996 |
| 52.245-1 | Property Records | APR 1984 |
| 52.245-5 | Government Property(Cost Reimbursement, Time and Material, or Labor Hour Contracts) | JAN 1986 |
| 52.245-19 | Government Property Furnished "As Is" | APR 1984 |
| 52.246-25 | Limitation of Liability-Services | FEB 1997 |
| 52.247-63 | Preference for U.S. Flag Air Carriers | JAN 1997 |
| 52.249-6 | Termination - (Cost Reimbursement) Alt IV | SEP 1996 |

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| <u>FAR Reference</u> | <u>Title</u> | <u>Date</u> |
|----------------------|---------------------------|-------------|
| 52.249-14 | Excusable Delays | APR 1984 |
| 52.251-1 | Government Supply Sources | APR 1984 |
| 52.253-1 | Computer Generated Forms | JAN 1991 |

* The specific systems of records subject to the Privacy Act and the required safeguards will be identified on individual task orders issued hereunder.

** All data right clauses will be specified on each task order issued. Unless specific data rights are established in a task order, the Government asserts unlimited use rights in any data, including computer software, developed under any task order issued under this contract.

*** To be used on Cost Plus Fixed Fee (CPFF) Orders Only

**** To be used on Cost Plus Incentive Fee Orders (CPIF) Only

Note: The Fee Clause for Cost Plus Award Fee Orders is found in Section H.

1.1.1.2 Clauses with Variable Information

1.1.1.2.1 FAR 52.216-18 Ordering (OCT 1995)

- (a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from contract award through contract expiration
- (b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.
- (c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

1.1.1.2.2 FAR 52.216-22 Indefinite Quantity (OCT 1995)

- (a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.
- (b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the

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Schedule up to and including the quantity designated in the Schedule as the maximum. The Government shall order at least the quantity of supplies or services designated in the Schedule as the minimum.

- (c) Except for any limitations on quantities in the Delivery-Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- (d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after final delivery.

I.1.1.2.3 FAR 52.217-8 Option to Extend Services (AUG 1989)

[to be exercised by contract modification prior to or up to 30 days after the expiration of the contract; provided that 30 days preliminary notice is provided to the contractor in writing]

I.1.1.2.4 FAR 52.217-9 Option to Extend the Term of the Contract (MAR 1989)

- (a) The Government may extend the term of this contract by written notice to the Contractor within thirty (30) days of expiration of the performance period; provided, that the Government shall give the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.
- (b) If the Government exercises this option, the extended contract shall be considered to include this option provision.
- (c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed five (5) years.

I.1.1.2.5 FAR 52.232-19 Availability of Funds for The Next Fiscal Year (APR 1984)

Funds are not presently available for performance under this contract beyond...TBD... The Government's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond...TBD..., until funds are made

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available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

I.1.1.2.6 FAR 52.239-1 Privacy or Security Safeguards (AUG 1996)

- (a) The Contractor shall not publish or disclose in any manner, without the Contracting Officer's written consent, the details of any safeguards either designed or developed by the Contractor under this contract or otherwise provided by the Government.
- (b) To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of Government data, the Contractor shall afford the Government access to the Contractor's facilities, installations, technical capabilities, operations, documentation, records, and databases.
- (c) If new or unanticipated threats or hazards are discovered by either the Government or the Contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party.

I.1.1.2.7 FAR 52.243-7 Notification of Changes

- (a) Definitions Contracting Officer, as used in this clause, does not include any representation of the Contracting Officer. Specifically Authorized Representative (SAR), as used in this clause, means any person the Contracting Officer has so designated by written notice (a copy of which shall be provided to the Contractor) which shall refer to this subparagraph and shall be issued to the designated representative before the SAR exercises such authority.
- (b) Notice. The primary purpose of this clause is to obtain prompt reporting of Government conduct that the Contractor considers to constitute a change to this contract. Except for changes identified as such in writing and signed by the Contracting Officer, the Contractor shall notify the Administrative Contracting Officer in writing promptly within --- (to be negotiated) calendar days from the date that the Contractor identifies any Government conduct (including actions, inactions, and written or oral communications) that the Contractor regards as a change to the contract terms and conditions. On the basis of the most accurate information available to the Contractor, 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 Government individual and Contractor official or employee involved in or knowledgeable about such conduct;
 - (3) The identification of any documents and the substance of any oral communication involve in such conduct;

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- (4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;
 - (5) The particular elements of contract performance for which the Contractor may seek an equitable adjustment under this clause, including---
 - (i) What contract 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;
 - (6) The Contractor's estimate of time by which the Government must respond to the Contractor's notice to minimize cost, delay or disruption of performance.
- (c) Continued performance. Following submission of the notice required by (b) above, the Contractor shall diligently continue performance of this contract to the maximum extent possible in accordance with its terms and conditions as construed by the Contractor, unless the notice reports a direction of the Contracting Officer or a communication from a SAR of the Contracting Officer, in either of which events the Contractor shall continue performance; provided, however, that if the Contractor regards the direction or communication as a change as described in (b) above, notice shall be given in the manner provided. All directions, communications, interpretations, orders and similar actions of the SAR shall be reduced to writing promptly and copies be furnished to the Contract to the Contracting Officer. The Contracting Officer shall promptly countermand any action which exceeds the authority of the SAR.
- (d) Government response. The Contracting Officer shall promptly, within --- (to be negotiated) calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer shall either—
- (1) Confirm that the conduct of which the Contractor 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 Contractor gave notice constitutes a change and when necessary direct the mode of further performance; or
 - (4) In the event the Contractor's notice information is inadequate to make a decision under (1), (2), or (3) above, advise the Contractor what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Government will respond.
- (e) Equitable adjustments. (1) If the Contracting Officer confirms that the Government conduct effect a change as alleged by the Contractor, and the conduct causes and increase or decrease in the Contractor's cost of , or the time required for, performance of any part of the work under this contract, whether changed or not changed by such conduct, an equitable adjustment shall be made—
- (i) In the contract price or delivery schedule or both; and

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- (ii) In such other provisions of the contract as may be affected.
- (2) The contract shall be modified in writing accordingly. In the case of drawings, designs or specifications which are defective and for which the Government is responsible, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by the Contractor in attempting to comply with the defective drawings, designs or specifications before the Contractor 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 Contracting Officer under this clause is included in the equitable adjustment, the Contracting Officer 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 Contractor's failure to provide notice or to continue performance as provided, respectively, in (b) and (c) above.

Note: The phrases contract price and cost wherever they appear in the clause, may be appropriately modified to apply to cost reimbursement or incentive contracts, or to combinations thereof.

1.1.1.2.8 FAR 52.248-1 Value Engineering (MAR 1989)

These data, furnished under the Value Engineering clause of contract [], shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations.

1.1.1.3 Full Text Clauses

1.1.1.3.1 FAR 52.227-14 Rights In Data – General (JUN 1987)

(a) Definitions. "Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.

"Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

"Form, fit, and function data," as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional

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characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

"Limited rights," as used in this clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this clause.

"Limited rights data," as used in this clause, means data (other than computer software) that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications thereof.

"Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of such computer software.

"Restricted rights," as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

"Technical data," as used in this clause, means data (other than computer software) which are of a scientific or technical nature.

"Unlimited rights," as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of rights. (1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in--

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to--

(1)
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(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;

(ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;

(iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (c)(1) of this clause.

(c) Copyright. (1) Data first produced in the performance of this contract. Unless provided otherwise in paragraph (d) of this clause, the Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

(2) Data not first produced in the performance of this contract. The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in subparagraph (g)(3) of this clause if included in this contract or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

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(3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, publication and use of data. (1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract.

(2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(e) Unauthorized marking of data. (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the Contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be canceled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Contractor a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision

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(e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in sub-paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) This paragraph (e) does not apply if this contract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard agency subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.

(4) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by this paragraph (e) from bringing a claim under the Contract Disputes Act, including pursuant to the Disputes clause of this contract, as applicable, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) Omitted or incorrect markings. (1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor--

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also (i) permit correction at the Contractor's expense of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

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(g) Protection of limited rights data and restricted computer software. (1) When data other than that listed in subdivisions (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this contract and qualify as either limited rights data or restricted computer software, if the Contractor desires to continue protection of such data, the Contractor shall withhold such data and not furnish them to the Government under this contract. As a condition to this withholding, the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.

(2) [Reserved]

(3) [Reserved]

(h) Subcontracting. The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.

(i) Relationship to patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(End of clause)

Alternate I (JUN 1987). As prescribed in 27.409(b), substitute the following definition for "Limited Rights Data" in paragraph (a) of the clause:

"Limited rights data," as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Alternate II (JUN 1987). As prescribed in 27.409(c), insert the following subparagraph (g)(2) in the clause:

(g)(2) Notwithstanding subparagraph (g)(1) of this clause, the contract may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Contractor may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with such Notice:

LIMITED RIGHTS NOTICE (JUN 1987)

(a) These data are submitted with limited rights under Government Contract No. (and subcontract, if appropriate). These data may be reproduced and used by

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the Government with the express limitation that they will not, without written permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any; provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

--[Agencies may list additional purposes as set forth in 27.404(d)(1) or if none, so state.]

(b) This Notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

Alternate III (JUN 1987). As prescribed in 27.409(d), insert the following subparagraph (g)(3)(i) in the clause:

(g)(3)(i) Notwithstanding subparagraph (g)(1) of this clause, the contract may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Contractor may affix the following "Restricted Rights Notice" to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the Notice:

RESTRICTED RIGHTS NOTICE (JUN 1987)

(a) This computer software is submitted with restricted rights under Government Contract No. (and subcontract , if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this Notice or as otherwise expressly stated in the contract.

(b) This computer software may be--

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software are made subject to the same restricted rights;

(5) Disclosed to and reproduced for use by support service Contractors in accordance with subparagraphs (b)(1) through (4) of this clause, provided the Government makes such disclosure or reproduction subject to these restricted rights; and

(6) Used or copied for use in or transferred to a replacement computer.

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(c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE SHORT FORM (JUN 1987)

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No.
. . . (and subcontract, if appropriate) with (name of Contractor and subcontractor).

(End of notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Contractor includes the following statement with such copyright notice: "Unpublished--rights reserved under the Copyright Laws of the United States."

Alternate IV (JUN 1987). As prescribed in 27.409(e), substitute the following subparagraph (c)(1) in the clause:

(c) Copyright. (1) Data first produced in the performance of the contract. Except as otherwise specifically provided in this contract, the Contractor may establish claim to copyright subsisting in any data first produced in the performance of this contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting on its behalf, a paid up, nonexclusive, irrevocable worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government.

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Alternate V (JUN 1987). As prescribed in 27.409(f), add the following paragraph (j) to the clause:

(j) The Contractor agrees, except as may be otherwise specified in this contract for specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this contract, inspect at the Contractor's facility any data withheld pursuant to paragraph (g)(1) of this clause, for purposes of verifying the Contractor's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Contractor whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

I.1.1.3.2 FAR 52.227-17 Rights In Data--Special Works (JUN 1987)

(a) Definitions.

"Data," as used in this clause, means recorded information regardless of form or the medium on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing or management information.

"Unlimited rights," as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights. (1) The Government shall have--

(i) Unlimited rights in all data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in paragraph (c) of this clause for copyright.

(ii) The right to limit exercise of claim to copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in such data, in accordance with subparagraph (c)(1) of this clause.

(iii) The right to limit the release and use of certain data in accordance with paragraph (d) of this clause.

(2) The Contractor shall have, to the extent permission is granted in accordance with subparagraph (c)(1) of this clause, the right to establish claim to copyright subsisting in data first produced in the performance of this contract.

(c) Copyright. (1) Data first produced in the performance of this contract.

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(i) The Contractor agrees not to assert, establish, or authorize others to assert or establish, any claim to copyright subsisting in any data first produced in the performance of this contract without prior written permission of the Contracting Officer. When claim to copyright is made, the Contractor shall affix the appropriate copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to such data when delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(ii) If the Government desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in subdivision (c)(1)(i) of this clause, the Contracting Officer may direct the Contractor to establish, or authorize the establishment of, claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

(2) Data not first produced in the performance of this contract. The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contain the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause.

(d) Release and use restrictions. Except as otherwise specifically provided for in this contract, the Contractor shall not use for purposes other than the performance of this contract, nor shall the Contractor release, reproduce, distribute, or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the Contracting Officer.

(e) Indemnity. The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense thereof, and obtains the Contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction; nor do these provisions apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

(End of clause)

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I.1.1.3.3 FAR 52.232-25 Prompt Payment (Jun 1997)

Notwithstanding any other payment clause in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in section 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see subparagraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments--(1) Due date. (i) Except as indicated in subparagraph (a)(2) and paragraph (c) of this clause, the due date for making invoice payments by the designated payment office shall be the later of the following two events:

(A) The 30th day after the designated billing office has received a proper invoice from the Contractor (except as provided in subdivision (a)(1)(ii) of this clause).

(B) The 30th day after Government acceptance of supplies delivered or services performed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(ii) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date shall be the 30th day after the date of the Contractor's invoice; provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) Certain food products and other payments. (i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are--

(A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Pub. L. 98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, as close as possible to, but not later than, the 7th day after product delivery.

(B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery.

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(C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

(D) For dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.

(ii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(3) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in subdivisions (a)(3)(i) through (a)(3)(viii) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, edible fats or oils, and food products prepared from edible fats or oils), with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in computing any interest penalty owed the Contractor in the manner described in subparagraph (a)(5) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date. (The Contractor is encouraged to date invoices as close as possible to the date of the mailing or transmission.)

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

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(v) Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(viii) Any other information or documentation required by the contract (such as evidence of shipment).

(ix) While not required, the Contractor is strongly encouraged to assign an identification number to each invoice.

(4) Interest penalty. An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(5) Computing penalty amount. The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principal payment amount approved by the Government until the payment date of such approved principal amount; and will be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is,

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interest accrued at the end of any 30-day period will be added to the approved invoice principal payment amount and will be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(3) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivered the supplies or performed the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils).

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(C) For incorrect electronic funds transfer (EFT) information, in accordance with the EFT clause of this contract.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of

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the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(6) Prompt payment discounts. An interest penalty also shall be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated as described in subparagraph (a)(5) of this clause on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(7) Additional interest penalty.

(i) A penalty amount, calculated in accordance with subdivision (a)(7)(iii) of this clause, shall be paid in addition to the interest penalty amount if the Contractor--

(A) Is owed an interest penalty of \$1 or more;

(B) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(C) Makes a written demand to the designated payment office for additional penalty payment, in accordance with subdivision (a)(7)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.

(ii)

(A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall--

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) Demands must be postmarked on or before the 40th day after payment was made, except that--

(1) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of

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receipt by the designated payment office on or before the 40th day after payment was made; or

(2) If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.

(iii)(A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty except--

- (1) The additional penalty shall not exceed \$5,000;
- (2) The additional penalty shall never be less than \$25; and
- (3) No additional penalty is owed if the amount of the underlying interest penalty is less than \$1.

(B) If the interest penalty ceases to accrue in accordance with the limits stated in subdivision (a)(5)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in subdivision (a)(7)(iii)(A) of this clause:

(C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

(D) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) Contract financing payments--(1) Due dates for recurring financing payments. If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the [insert day as prescribed by Agency head; if not prescribed, insert 30th day] day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms

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and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(2) Due dates for other contract financing. For advance payments, loans, or other arrangements that do not involve recurring submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(3) Interest penalty not applicable. Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) Fast payment procedure due dates. If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

(End of clause)

I.1.1.3.4 JAR 2852.223-1 Use of Recovered Materials in Paper and Paper Products (MAR 1992)

(a) the Contractor is required under this contract to deliver any of the paper and paper products listed below, all such items delivered shall meet the If minimum content standards for recovered materials, post consumer recovered materials, or waste paper set forth in paragraph (b).

(1) Recovered materials are defined as waste material and by-products that have been recovered or diverted from solid waste, not including those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(2) Post consumer recovered materials are defined as waste materials recovered from retail stores, office building, homes and so forth after they passed through their end usage as a consumer item.

(3) Waste paper is defined as all items from the first two categories above in addition to forest residues, and manufacturing and other wastes.

Unless otherwise directed by the Contracting Officer, the Contractor shall use "High Grade Bleached Printing and Writing Papers" as defined in this clause to produce all progress reports, final reports, and any other products required to be delivered to the Government under this contract.

MINIMUM CONTENT STANDARDS FOR SELECTED PAPER AND PAPER PRODUCTS

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| | Minimum % Recovered Materials | Minimum % Post-consumer Recovered Materials | Minimum % Waste Paper |
|---|-------------------------------|---|-----------------------|
| NEWSPRINT | 50 | | |
| HIGH GRADE BLEACHED PRINTING AND WRITING PAPERS: | | | |
| Offset printing | 50 | | |
| Mimeo and duplicator paper | 50 | | |
| Writing (stationery) | 50 | | |
| Office paper (e.g., note pads) | 50 | | |
| Paper for high speed copiers | 50 | | |
| Envelopes | 50 | | |
| Form bond including computer paper and carbonless | 50 | | |
| Book papers | 50 | | |
| Bond paper | 50 | | |
| Ledger | 50 | | |
| Cover stock | 50 | | |
| Cotton Fiber papers | 25 | | |
| TISSUE PRODUCTS: | | | |
| Toilet tissue | 20 | | |
| Paper towels | 40 | | |
| Paper napkins | 30 | | |
| Facial tissue | 5 | | |
| Doilies | 40 | | |
| Industrial wipes | 0 | | |
| UNBLEACHED PACKAGING: | | | |
| Corrugated boxes | 35 | | |
| Fiber boxes | 35 | | |
| Brown papers (e.g. bags) | 5 | | |
| RECYCLED PAPERBOARD: | | | |

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| | Minimum % Recovered Materials | Minimum % Post consumer Recovered Materials | Minimum % Waste Paper |
|------------------------------|-------------------------------------|--|--------------------------|
| Recycled paperboard products | 80 | | |
| Pad backing | 90 | | |

1.1.2 Fixed Price Clauses

Paragraph 1.2, in its entirety, describes the clauses to be applied to the Performance Contract(s) and corresponds with CLIN Series 2000, 2100, 2200, 2300, and 2400 as presented in Section B, Supplies Services and Prices/Costs.

The following clauses are applicable to this solicitation and any resultant contract. Unless otherwise noted, all clauses bear the effective date of April 1984.

1.1.2.1 FAR 52.252-2 Clauses Incorporated By Reference (JUN 1988)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

| <u>FAR Reference</u> | <u>Title</u> | <u>Date</u> |
|----------------------|---|-------------|
| 52.202-1 | Definitions | OCT 1995 |
| 52.203-3 | Gratuities | APR 1984 |
| 52.203-5 | Covenant Against Contingent Fees | APR 1984 |
| 52.203-6 | Restrictions on Subcontractor Sales to the Government | JUL 1995 |
| 52.203-7 | Anti-Kickback Procedures | JUL 1995 |
| 52.203-8 | Cancellation, Recession, and Recovery of Funds for Illegal or Improper Activities | JAN 1997 |
| 52.203-10 | Price or Fee Adjustment for Illegal or Improper Activity | JAN 1997 |
| 52.203-12 | Limitation on Payments to Influence Certain Federal Transactions | JAN 1990 |
| 52.204-2 | Security Requirements | AUG 1996 |
| 52.204-4 | Printing/Copying Double-Sided on Recycled Paper | JUN 1996 |

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| FAR Reference | Title | Date |
|---------------|---|----------|
| 52.209-6 | Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended or proposed for Debarment | JUL 1995 |
| 52.215-2 | Audit-Negotiation | AUG 1996 |
| 52.215-22 | Price Reduction for Defective Cost or Pricing Data | OCT 1995 |
| 52.215-23 | Price Reduction for Defective Cost or Pricing Data-Modifications | OCT 1995 |
| 52.215-24 | Subcontractor Cost or Pricing Data | OCT 1995 |
| 52.215-25 | Subcontractor Cost or Pricing Data -Modifications | OCT 1995 |
| 52.215-26 | Integrity of Unit Prices | JAN 1997 |
| 52.215-27 | Termination of Defined Benefit Pension Plans | MAR 1996 |
| 52.215-30 | Facilities Capital Cost of Money | SEP 1987 |
| 52.215-33 | Order of Precedence | JAN 1986 |
| 52.215-39 | Reversion or Adjustment of Plans for Post-Retirement Benefits Other than Pensions (PRB) | MAR 1996 |
| 52.215-40 | Notification of Ownership Changes | FEB 1995 |
| 52.216-16 | Incentive Price Revision - Firm Target | FEB 1997 |
| 52.216-17 | Incentive Price Revision - Successive Targets | FEB 1997 |
| 52.219-8 | Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns | OCT 1995 |
| 52.219-9 | Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan | AUG 1996 |
| 52.219-14 | Limitations of Subcontracting | DEC 1996 |
| 52.219.16 | Liquidated damages - Subcontracting Plan | OCT 1995 |
| 52.222-1 | Notice to the Government of Labor Disputes | FEB 1997 |
| 52.222-3 | Convict Labor | AUG 1996 |
| 52.222-4 | Contract Work Hours and Safety Standards Act -- Overtime Compensation | JUL 1995 |
| 52.222-26 | Equal Opportunity | APR 1984 |

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| <u>FAIR Reference</u> | <u>Title</u> | <u>Date</u> |
|-----------------------|---|-------------|
| 52.222-28 | Equal Opportunity Preaward Clearance of Subcontracts | APR 1984 |
| 52.222-35 | Affirmative Action for Special Disabled and Vietnam Era Veterans | APR 1984 |
| 52.222-36 | Affirmative Action for Handicapped Workers | APR 1984 |
| 52.222-37 | Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era | JAN 1988 |
| 52.222-41 | [Clause deleted by Amendment 0002] | |
| 52.222-43 | [Clause deleted by Amendment 0002] | |
| 52.222-49 | [Clause deleted by Amendment 0002] | |
| 52.223-2 | Clean Air and Water | APR 1984 |
| 52.223-6 | Drug-Free Workplace | JAN 1997 |
| 52.223-14 | Toxic Chemical Release Reporting | OCT 1996 |
| 52.224-1* | Privacy Act Notification | APR 1984 |
| 52.224-2* | Privacy Act | APR 1984 |
| 52.225-3 | Buy American Act -- Supplies | JAN 1994 |
| 52.225-10 | Duty-Free Entry | APR 1984 |
| 52.225-11 | Restrictions of Certain Foreign Purchases | OCT 1996 |
| 52.225-14 | Inconsistency between English Version and Translation of Contract | AUG 1989 |
| 52.226-1 | Utilization of Indian Organizations Enterprises | SEP 1996 |
| 52.227-2 | Notice and Assistance Regarding Patent and Copyright Infringement | AUG 1996 |
| 52.227-14** | Rights in Data-General | JUN 1987 |
| 52.227-17** | Rights in Data - Special Works | JUN 1987 |
| 52.227-18 | Rights in Data -- Existing Works | JUN 1987 |
| 52.228-5 | Insurance - Work on a Government Installation | JAN 1997 |
| 52.229-3 | Federal, State and Local Taxes | JAN 1991 |

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| <u>FAR Reference</u> | <u>Title</u> | <u>Date</u> |
|----------------------|---|-------------|
| 52.229-5 | Taxes - Contracts Performed in U.S. Possessions or Puerto Rico | APR 1984 |
| 52.230-2 | Cost Accounting Standards | APR 1996 |
| 52.230-3 | Disclosure and Consistency of Cost Accounting Practices | APR 1996 |
| 52.230.4 | Consistency of Cost Accounting Practices | AUG 1992 |
| 52.230-6 | Administration of Cost Accounting Standards | APR 1996 |
| 52.232-1 | Payments | APR 1984 |
| 52.232-8 | Discounts for Prompt Payments | MAY 1997 |
| 52.232-9 | Limitation on Withholding of Payments | APR 1984 |
| 52.232-16 | Progress Payments | JUL 1991 |
| 52.232-17 | Interest | JUN 1996 |
| 52.232-18 | Availability of Funds | APR 1984 |
| 52.232-23 | Assignment of Claims | JAN 1986 |
| 52.232-33 | Mandatory Information for Electronic Funds Transfer Payment | AUG 1996 |
| 52.233-1 | Disputes | OCT 1995 |
| 52.233-3 | Protest After Award - Alternate I (JUN 1995) | AUG 1996 |
| 52.237-2 | Protection of Government Buildings, Equipment, and Vegetation | APR 1984 |
| 52.237-3 | Continuity of Services | JAN 1991 |
| 52.239-1 | Privacy and Security Safeguards | AUG 1996 |
| 52.242-1 | Notice of Intent to Disallow Costs | APR 1984 |
| 52.242-13 | Bankruptcy | JUL 1995 |
| 52.243-1 | Changes-Fixed Price -- Alternative I (APR 1984) and Alternative II (APR 1984) | APR 1987 |
| 52.244-1 | Subcontracts (Fixed Price Contracts) | FEB 1995 |
| 52.244-5 | Competition in Subcontracting | DEC 1996 |
| 52.245-1 | Property Records | APR 1984 |

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| FAR Reference | Title | Date |
|---------------|---|----------|
| 52.245-2 | Government Property (Fixed Price) | DEC 1989 |
| 52.245-19 | Government Property Furnished "As Is" | APR 1984 |
| 52.246-17 | Warranty of Supplies of a Non-Complex Nature | APR 1984 |
| 52.246-20 | Warranty of Services | APR 1984 |
| 52.246-25 | Limitation of Liability-Services | FEB 1997 |
| 52.247-63 | Preference for U.S. Flag Air Carriers | JAN 1997 |
| 52.249-2 | Termination for Convenience of the Government (Fixed Price) | SEP 1996 |
| 52.249-8 | Default (Fixed Price Supply and Services) | APR 1984 |
| 52.249-14 | Excusable Delays | APR 1984 |
| 52.251-1 | Government Supply Sources | APR 1984 |
| 52.253-1 | Computer Generated Forms | JAN 1991 |

* The specific systems of records subject to the Privacy Act and the required safeguards will be identified on individual task orders issued hereunder.

** All data right clauses will be specified on each task order issued. Unless specific data rights are established in a task order, the Government asserts unlimited use rights in any data, including computer software, developed under any task order issued under this contract.

1.1.2.2 Clauses with Variable Information

1.1.2.2.1 FAR 52.216-18 Ordering (OCT 1995)

- (a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from contract award through contract expiration
- (b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.
- (a) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

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I.1.2.2.2 FAR 52.216-22 Indefinite Quantity (OCT 1995)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the maximum. The Government shall order at least the quantity of supplies or services designated in the Schedule as the minimum.

(c) Except for any limitations on quantities in the Delivery-Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after final delivery.

I.1.2.2.3 FAR 52.217-8 Option to Extend Services (AUG 1989)

[to be exercised by contract modification prior to or up to 30 days after the expiration of the contract; provided that 30 days preliminary notice is provided to the contractor in writing]

I.1.2.2.4 FAR 52.217-9 Option to Extend the Term of the Contract (MAR 1989)

(a) The Government may extend the term of this contract by written notice to the Contractor within thirty (30) days of expiration of the performance period; provided, that the Government shall give the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option provision.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed five (5) years.

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I.1.2.2.5 FAR 52.232-19 Availability of Funds for The Next Fiscal Year (APR 1984)

Funds are not presently available for performance under this contract beyond...TBD... The Government's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond...TBD..., until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

I.1.2.2.6 FAR 52.239-1 Privacy or Security Safeguards (AUG 1996)

- (a) The Contractor shall not publish or disclose in any manner, without the Contracting Officer's written consent, the details of any safeguards either designed or developed by the Contractor under this contract or otherwise provided by the Government.
- (b) To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of Government data, the Contractor shall afford the Government access to the Contractor's facilities, installations, technical capabilities, operations, documentation, records, and databases.
- (c) If new or unanticipated threats or hazards are discovered by either the Government or the Contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party.

I.1.2.2.7 FAR 52.243-7 Notification of Changes

- (a) Definitions Contracting Officer, as used in this clause, does not include any representation of the Contracting Officer. Specifically Authorized Representative (SAR), as used in this clause, means any person the Contracting Officer has so designated by written notice (a copy of which shall be provided to the Contractor) which shall refer to this subparagraph and shall be issued to the designated representative before the SAR exercises such authority.
- (b) Notice. The primary purpose of this clause is to obtain prompt reporting of Government conduct that the Contractor considers to constitute a change to this contract. Except for changes identified as such in writing and signed by the Contracting Officer, the Contractor shall notify the Administrative Contracting Officer in writing promptly within --- (to be negotiated) calendar days from the date that the Contractor identifies any Government conduct (including actions, inactions, and written or oral communications) that the Contractor regards as a change to the contract terms and conditions. On the basis of the most accurate information available to the Contractor, the notice shall state.
 - (1) The date, nature, and circumstances of the conduct regarded as a change;

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- (2) The name, function, and activity of each Government individual and Contractor official or employee involved in or knowledgeable about such conduct;
 - (3) The identification of any documents and the substance of any oral communication involve 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 contract performance for which the Contractor may seek an equitable adjustment under this clause, including---
 - (i) What contract 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;
 - (6) The Contractor's estimate of time by which the Government must respond to the Contractor's notice to minimize cost, delay or disruption of performance.
- (c) Continued performance. Following submission of the notice required by (b) above, the Contractor shall diligently continue performance of this contract to the maximum extent possible in accordance with its terms and conditions as construed by the Contractor, unless the notice reports a direction of the Contracting Officer or a communication from a SAR of the Contracting Officer, in either of which events the Contractor shall continue performance; provided, however, that if the Contractor regards the direction or communication as a change as described in (b) above, notice shall be given in the manner provided. All directions, communications, interpretations, orders and similar actions of the SAR shall be reduced to writing promptly and copies be furnished to the Contract to the Contracting Officer. The Contracting Officer shall promptly countermand any action which exceeds the authority of the SAR.
- (d) Government response. The Contracting Officer shall promptly, within --- (to be negotiated) calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer shall either—
- (1) Confirm that the conduct of which the Contractor 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 Contractor gave notice constitutes a change and when necessary direct the mode of further performance; or
 - (4) In the event the Contractor's notice information is inadequate to make a decision under (1), (2), or (3) above, advise the Contractor what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Government will respond.
- (e) Equitable adjustments. (1) If the Contracting Officer confirms that the Government conduct effect a change as alleged by the Contractor, and the conduct causes and

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increase or decrease in the Contractor's cost of , or the time required for, performance of any part of the work under this contract, whether changed or not changed by such conduct, an equitable adjustment shall be made—

(i) In the contract price or delivery schedule or both; and

(ii) In such other provisions of the contract as may be affected.

(2) The contract shall be modified in writing accordingly. In the case of drawings, designs or specifications which are defective and for which the Government is responsible, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by the Contractor in attempting to comply with the defective drawings, designs or specifications before the Contractor 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 Contracting Officer under this clause is included in the equitable adjustment, the Contracting Officer 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 Contractor's failure to provide notice or to continue performance as provided, respectively, in (b) and (c) above.

Note: The phrases contract price and cost wherever they appear in the clause, may be appropriately modified to apply to cost reimbursement or incentive contracts, or to combinations thereof.

1.1.2.2.8 FAR 52.248-1 Value Engineering (MAR 1989)

These data, furnished under the Value Engineering clause of contract [], shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations.

1.1.2.3 Full Text Clauses

1.1.2.3.1 FAR 52.216-16 Incentive Price Revision-Firm Target (FEB 1997)

(To be used on Fixed Price Incentive Firm (FPIF) Orders Only.)

(a) General. The supplies or services identified in the Schedule as Items [Contracting Officer insert Schedule line item numbers] are subject to price revision in accordance with this clause; provided, that in no event shall the total final price of these items exceed the ceiling price of dollars (\$.....). Any supplies or services that are to be (1) ordered separately under, or otherwise added to, this contract and (2) subject to price revision in

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accordance with the terms of this clause shall be identified as such in a modification to this contract.

(b) Definition. "Costs," as used in this clause, means allowable costs in accordance with Part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) Data submission. (1) Within [Contracting Officer insert number of days] days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services specified by item number in paragraph (a) above, the Contractor shall submit on Standard Form 1411 or in any other form on which the parties agree--

- (i) A detailed statement of all costs incurred up to the end of that month in performing all work under the items;
- (ii) An estimate of costs of further performance, if any, that may be necessary to complete performance of all work under the items;
- (iii) A list of all residual inventory and an estimate of its value; and
- (iv) Any other relevant data that the Contracting Officer may reasonably require.

(2) If the Contractor fails to submit the data required by subparagraph (1) above within the time specified and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(d) Price revision. Upon the Contracting Officer's receipt of the data required by paragraph (c) above, the Contracting Officer and the Contractor shall promptly establish the total final price of the items specified in (a) above by applying to final negotiated cost an adjustment for profit or loss, as follows:

- (1) On the basis of the information required by paragraph (c) above, together with any other pertinent information, the parties shall negotiate the total final cost incurred or to be incurred for supplies delivered (or services performed) and accepted by the Government and which are subject to price revision under this clause.
- (2) The total final price shall be established by applying to the total final negotiated cost an adjustment for profit or loss, as follows:
 - (i) If the total final negotiated cost is equal to the total target cost, the adjustment is the total target profit.
 - (ii) If the total final negotiated cost is greater than the total target cost, the adjustment is the total target profit, less[Contracting Officer

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insert percent] percent of the amount by which the total final negotiated cost exceeds the total target cost.

(iii) If the final negotiated cost is less than the total target cost, the adjustment is the total target profit plus..... [Contracting Officer insert percent] percent of the amount by which the total final negotiated cost is less than the total target cost.

(e) Contract modification. The total final price of the items specified in paragraph (a) above shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer. This price shall not be subject to revision, notwithstanding any changes in the cost of performing the contract, except to the extent that--

(1) The parties may agree in writing, before the determination of total final price, to exclude specific elements of cost from this price and to a procedure for subsequent disposition of those elements; and

(2) Adjustments or credits are explicitly permitted or required by this or any other clause in this contract.

(f) Adjusting billing prices.

(1) Pending execution of the contract modification (see paragraph (e) above), the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the target prices shown in this contract.

(2) If at any time it appears from information provided by the contractor under subparagraph (g)(2) below that the then-current billing prices will be substantially greater than the estimated final prices, the parties shall negotiate a reduction in the billing prices. Similarly, the parties may negotiate an increase in billing prices by any or all of the difference between the target prices and the ceiling price, upon the Contractor's submission of factual data showing that final cost under this contract will be substantially greater than the target cost.

(3) Any billing price adjustment shall be reflected in a contract modification and shall not affect the determination of the total final price under paragraph (d) above. After the contract modification establishing the total final price is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price, and any resulting additional payments, refunds, or credits shall be made promptly.

(g) Quarterly limitation on payments statement. This paragraph (g) shall apply until final price revision under this contract has been completed.

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- (1) Within 45 days after the end of each quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing--
- (i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;
 - (ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;
 - (iii) The portion of the total target profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (g)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established-- increased or decreased in accordance with subparagraph (d)(2) above, when the amount stated under subdivision (ii), immediately above, differs from the aggregate target costs of the supplies or services; and
 - (iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).
- (2) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (1)(iv) above exceeds the sum due the Contractor, as computed in accordance with subdivisions (1)(i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the Contractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reductions in refunds.
- (3) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the

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Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

- (h) Subcontracts. No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.
- (i) Disagreements. If the Contractor and the Contracting Officer fail to agree upon the total final price within 60 days (or within such other period as the Contracting Officer may specify) after the date on which the data required by paragraph (c) above are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause.
- (j) Termination. If this contract is terminated before the total final price is established, prices of supplies or services subject to price revision shall be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies and services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.
- (k) Equitable adjustment under other clauses. If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment shall be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit, or both. If the adjustment is made after the total final price is established, only the total final price shall be adjusted.
- (l) Exclusion from target price and total final price. If any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, then neither any target price nor the total final price includes or will include any amount for that purpose.
- (m) Separate reimbursement. If any clause of this contract expressly provides that the cost of performance of an obligation shall be at Government expense, that expense shall not be included in any target price or in the total final price, but shall be reimbursed separately.
- (n) Taxes. As used in the Federal, State, and Local Taxes clause or in any other clause that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term "contract price" includes the total target price or, if it has been established, the total final price. When any of these clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the Contractor to pay or bear the burden of certain taxes or duties, the increase or decrease shall be made in the total target price or, if it has been established, in the total final price, so that it will not affect the Contractor's profit or loss on this contract.

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(End of clause)

Alternate I (APR 1984). As prescribed in 16.406(a), add the following paragraph (o) to the basic clause:

- (o) Provisioning and options. Parts, other supplies, or services that are to be furnished under this contract on the basis of a provisioning document or Government option shall be subject to price revision in accordance with this clause. Any prices established for these parts, other supplies, or services under a provisioning document or Government option shall be treated as target prices. Target cost and profit covering these parts, other supplies, or services may be established separately, in the aggregate, or in any combination, as the parties may agree.

I.1.2.3.2 FAR 52.216-17 Incentive Price Revision-Successive Targets (FEB 1997)

(To be used on Fixed Price Incentive Successive (FPIS) Orders Only.)

- (a) General. The supplies or services identified in the Schedule as Items [Contracting Officer insert line item numbers] are subject to price revision in accordance with this clause; provided, that in no event shall the total final price of these items exceed the ceiling price of dollars (\$.....). The prices of these items shown in the Schedule are the initial target prices, which include an initial target profit of[Contracting Officer insert percent] percent of the initial target cost. Any supplies or services that are to be (1) ordered separately under, or otherwise added to, this contract and (2) subject to price revision in accordance with this clause shall be identified as such in a modification to this contract.
- (b) Definition. "Costs," as used in this clause, means allowable costs in accordance with Part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.
- (c) Submitting data for establishing the firm fixed price or a final profit adjustment formula. (1) Within[Contracting Officer insert number of days] days after the end of the month in which the Contractor has completed ...[see Note 1], the Contractor shall submit the following data:
- (i) A proposed firm fixed price or total firm target price for supplies delivered and to be delivered and services performed and to be performed.
 - (ii) A detailed statement of all costs incurred in the performance of this contract through the end of the month specified above, on Standard Form 1411 (or in any other form on which the parties may agree), with sufficient supporting data to disclose unit costs and cost trends for--
 - (A) Supplies delivered and services performed; and
 - (B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary).

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- (iii) An estimate of costs of all supplies delivered and to be delivered and all services performed and to be performed under this contract, using the statement of costs incurred plus an estimate of costs to complete performance, on Standard Form 1411 (or in any other form on which the parties may agree), together with--
 - (A) Sufficient data to support the accuracy and reliability of the estimate; and
 - (B) An explanation of the differences between this estimate and the original estimate used to establish the initial target prices.
- (2) The Contractor shall also submit, to the extent that it becomes available before negotiations establishing the total firm price are concluded--
 - (i) Supplemental statements of costs incurred after the end of the month specified in subparagraph (1) above for--
 - (A) Supplies delivered and services performed; and
 - (B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary); and
 - (ii) Any other relevant data that the Contracting Officer may reasonably require.
- (3) If the Contractor fails to submit the data required by subparagraphs (1) and (2) above within the time specified and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.
- (d) Establishing firm fixed price or final profit adjustment formula. Upon the Contracting Officer's receipt of the data required by paragraph (c) above the Contracting Officer and the Contractor shall promptly establish either a firm fixed price or a profit adjustment formula for determining final profit, as follows:
 - (1) The parties shall negotiate a total firm target cost, based upon the data submitted under paragraph (c) above.
 - (2) If the total firm target cost is more than the total initial target cost, the total initial target profit shall be decreased. If the total firm target cost is less than the total initial target cost, the total initial target profit shall be increased. The initial target profit shall be increased or decreased by percent [see Note 2] of the difference between the total initial target cost and the total firm target cost. The resulting amount shall be the total firm target profit; provided, that in no event shall the total firm

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target profit be less than percent or more than percent
[Contracting Officer insert percents] of the total initial target cost.

- (3) If the total firm target cost plus the total firm target profit represent a reasonable price for performing that part of the contract subject to price revision under this clause, the parties may agree on a firm fixed price, which shall be evidenced by a contract modification signed by the Contractor and the Contracting Officer.
- (4) Failure of the parties to agree to a firm fixed price shall not constitute a dispute under the Disputes clause. If agreement is not reached, or if establishment of a firm fixed price is inappropriate, the Contractor and the Contracting Officer shall establish a profit adjustment formula under which the total final price shall be established by applying to the total final negotiated cost an adjustment for profit or loss, determined as follows:
- (i) If the total final negotiated cost is equal to the total firm target cost, the adjustment is the total firm target profit.
 - (ii) If the total final negotiated cost is greater than the total firm target cost, the adjustment is the total firm target profit, lesspercent of the amount by which the total final negotiated cost exceeds the total firm target cost.
 - (iii) If the total final negotiated cost is less than the total firm target cost, the adjustment is the total firm target profit, pluspercent of the amount by which the total final negotiated cost is less than the total firm target cost.
 - (iv) The total firm target cost, total firm target profit, and the profit adjustment formula for determining final profit shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer.
- (e) Submitting data for final price revision. Unless a firm fixed price has been established in accordance with paragraph (d) above within[Contracting Officer insert number of days] days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services specified by item number in paragraph (a) above, the Contractor shall submit on Standard Form 1411 (or in any other form on which the parties agree)--
- (1) A detailed statement of all costs incurred up to the end of that month in performing all work under the items;
 - (2) An estimate of costs of further performance, if any, that may be necessary to complete performance of all work under the items;

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- (3) A list of all residual inventory and an estimate of its value; and
- (4) Any other relevant data that the Contracting Officer may reasonably require.
- (f) Final price revision. Unless a firm fixed price has been agreed to in accordance with paragraph (d) above, the Contractor and the Contracting Officer shall, promptly after submission of the data required by paragraph (e) above, establish the total final price, as follows:
 - (1) On the basis of the information required by paragraph (e) above, together with any other pertinent information, the parties shall negotiate the total final cost incurred or to be incurred for the supplies delivered (or services performed) and accepted by the Government and which are subject to price revision under this clause.
 - (2) The total final price shall be established by applying to the total final negotiated cost an adjustment for final profit or loss determined as agreed upon under subparagraph (d)(4) above.
- (g) Contract modification. The total final price of the items specified in paragraph (a) above shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer. This price shall not be subject to revision, notwithstanding any changes in the cost of performing the contract, except to the extent that--
 - (1) The parties may agree in writing, before the determination of total final price, to exclude specific elements of cost from this price and to a procedure for subsequent disposition of these elements; and
 - (2) Adjustments or credits are explicitly permitted or required by this or any other clause in this contract.
- (h) Adjustment of billing prices.
 - (1) Pending execution of the contract modification (see paragraph (e) above), the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the initial target prices shown in this contract until firm target prices are established under paragraph (d) above. When established, the firm target prices shall be used as the billing prices.
 - (2) If at any time it appears from information provided by the contractor under subparagraph (i)(1) below that the then-current billing prices will be substantially greater than the estimated final prices, the parties shall negotiate a reduction in the billing prices. Similarly, the parties may negotiate an increase in billing prices by any or all of the difference between the target prices and the ceiling price, upon the Contractor's

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submission of factual data showing that the final cost under this contract will be substantially greater than the target cost.

- (3) Any adjustment of billing prices shall be reflected in a contract modification and shall not affect the determination of any price under paragraph (d) or (f) above. After the contract modification establishing the total final price is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price, and any resulting additional payments, refunds, or credits shall be made promptly.
- (i) Quarterly limitation on payments statement. This paragraph (i) shall apply until a firm fixed price or a total final price is established under subparagraph (d)(3) or (f)(2).
- (1) Within 45 days after the end of each quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing--
- (i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;
 - (ii) The total cost (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;
 - (iii) The portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (i)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established--increased or decreased in accordance with subparagraph (d)(4) above when the amount stated under subdivision (ii), immediately above, differs from the aggregate firm target costs of the supplies or services; and
 - (iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

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- (2) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (1)(iv) above exceeds the sum due the Contractor, as computed in accordance with subdivisions (1)(i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the Contractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reductions in refunds.
- (3) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.
- (j) Subcontracts. No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.
- (k) Disagreements. If the Contractor and the Contracting Officer fail to agree upon (1) a total firm target cost and a final profit adjustment formula or (2) a total final price, within 60 days (or within such other period as the Contracting Officer may specify) after the date on which the data required in paragraphs (c) and (e) above are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause.
- (l) Termination. If this contract is terminated before the total final price is established, prices of supplies or services subject to price revision shall be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies or services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.
- (m) Equitable adjustments under other clauses. If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment shall be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit, or both. If the adjustment is made after the total final price is established, only the total final price shall be adjusted.

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- (n) Exclusion from target price and total final price. If any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, then neither any target price nor the total final price includes or will include any amount for that purpose.
- (o) Separate reimbursement. If any clause of this contract expressly provides that the cost of performance of an obligation shall be at Government expense, that expense shall not be included in any target price or in the total final price, but shall be reimbursed separately.
- (p) Taxes. As used in the Federal, State, and Local Taxes clause or in any other clause that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term "contract price" includes the total target price or, if it has been established, the total final price. When any of these clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the Contractor to pay or bear the burden of certain taxes or duties, the increase or decrease shall be made in the total target price or, if it has been established, in the total final price, so that it will not affect the Contractor's profit or loss on this contract.

(End of clause)

NOTES:

- (1) The degree of completion may be based on a percentage of contract performance or any other reasonable basis.
- (2) The language may be changed to describe a negotiated adjustment pattern under which the extent of adjustment is not the same for all levels of cost variation.

Alternate I (APR 1984). As prescribed in 16.406(b), add the following paragraph (q) to the basic clause:

- (q) Provisioning and options. Parts, other supplies, or services that are to be furnished under this contract on the basis of a provisioning document or Government option shall be subject to price revision in accordance with this clause. Any prices established for these parts, other supplies, or services under a provisioning document or Government option shall be treated as initial target prices, or target prices as agreed upon and stipulated in the pricing document supporting the provisioning or added items. Initial or firm target costs and profits and final prices covering these parts, other supplies, or services may be established separately, in the aggregate, or in any combination, as the parties may agree.

I.1.2.3.3 Award Fee.

(The Award Fee Clause to be used on Fixed Price Award Fee (FPAF) Orders is located in Section H.)

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1.1.2.3.4 FAR 52.227-14 Rights In Data – General (JUN 1987)

(a) Definitions. "Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.

"Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

"Form, fit, and function data," as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

"Limited rights," as used in this clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this clause.

"Limited rights data," as used in this clause, means data (other than computer software) that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications thereof.

"Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of such computer software.

"Restricted rights," as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

"Technical data," as used in this clause, means data (other than computer software) which are of a scientific or technical nature.

"Unlimited rights," as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of rights. (1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in--

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- (i) Data first produced in the performance of this contract;
 - (ii) Form, fit, and function data delivered under this contract;
 - (iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and
 - (iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.
- (2) The Contractor shall have the right to--
- (i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;
 - (ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;
 - (iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and
 - (iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (c)(1) of this clause.
- (c) Copyright. (1) Data first produced in the performance of this contract. Unless provided otherwise in paragraph (d) of this clause, the Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted