

BA
DE-A1103-845700103

Replaces ~~Consolidated~~

DE-A1103-765700701

and DE-A1103-765700804

Internal Letter



Rockwell International

Date: . October 2, 1984

No: .

TO: . (Name, Organization, Internal Address)

FROM: . (Name, Organization, Internal Address, Phone)

. Those Listed

. A. J. Lucas
. 098, 055-LA34

. 3810

Subject: . Basic Agreement
DE-AM03-84SF00102

Attached for your information and files is a fully executed copy of the subject Basic Agreement which incorporates the terms and conditions for all of the projects previously performed under the -701 and -824 contracts. This Agreement replaces Contracts DE-AM03-76SF00701 and DE-AM03-76SF00824 in their entirety.

A. J. Lucas
Contract Administrator

7505A/sjv

Attachment

Those Listed:

Accounting	DB10	
J. Blake	GA42	
R. Ely	DB18	
L. Fajardo	DB14	
File	LA34	
H. Kolin	LA35	
<u>I. Kovacs</u>	<u>Original</u>	<u>E1398</u>
A. Lucas	LA34	
P. Murphy	LB21	
L. Phipps	DB10	
L. Reiche	AA89	
G. Scholtes	CA08	
S. Tucker	LA20	
L. Wheeler	LA33	

AWARD/CONTRACT		1. CERTIFIED FOR NATIONAL DEFENSE UNDER BDSA REG. 2 AND/OR DMS REG. 1	RATING	PAGE OF PAGES
2. CONTRACT (Proc. Inst. Ident.) NO. DE-AM03-84SF00102		3. EFFECTIVE DATE 9-27-84	4. REQUISITION/PURCHASE REQUEST/PROJECT NO.	
5. ISSUED BY U.S. Department of Energy San Francisco Operations Office 1333 Broadway Oakland, CA 94612		CODE MFN/DM	6. ADMINISTERED BY (If other than Item 5) CODE	

7. NAME AND ADDRESS OF CONTRACTOR (No., street, city, county, State and ZIP Code) Rocketdyne Division - Energy Programs Rockwell International Corporation 8900 De Soto Avenue Canoga Park, CA 91304 ATTN: R. A. Johnson		8. DELIVERY <input type="checkbox"/> FOB ORIGIN <input type="checkbox"/> OTHER (See below)
9. DISCOUNT FOR PROMPT PAYMENT		10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN: ITEM

CODE	FACILITY CODE
11. SHIP TO/MARK FOR CODE	12. PAYMENT WILL BE MADE BY CODE

13. THIS ACQUISITION WAS: (Check appl. box(es)) A. ADVERTISED B. NEGOTIATED PURSUANT TO: <input type="checkbox"/> 10 USC 2304(a)() <input type="checkbox"/> 41 USC 252(c)()	14. ACCOUNTING AND APPROPRIATION DATA
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15A. ITEM NO.	15B. SUPPLIES/SERVICES	15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT
This Basic Agreement shall be applicable to those contracts between the Department of Energy and Rocketdyne Division-Energy Programs, Rockwell International Corporation that specifically incorporate its provisions. Its future applicability may be discontinued upon thirty (30) days written notice by either party.					

15G. TOTAL AMOUNT OF CONTRACT \$

16. TABLE OF CONTENTS

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C	DESCRIPTION/SPECS./WORK STATEMENT		J	LIST OF ATTACHMENTS	
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CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE

17. <input checked="" type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return 2 copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)	18. <input type="checkbox"/> AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number _____ including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.
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19A. NAME AND TITLE OF SIGNER (Type or print) AUDREY J. LUCAS CONTRACT ADMINISTRATOR	20A. NAME OF CONTRACTING OFFICER KATHLEEN M. DAY
NAME OF CONTRACTOR BY <u>Audrey J. Lucas</u> (Signature of person authorized to sign)	19C. DATE SIGNED 9-27-84
20B. UNITED STATES OF AMERICA BY <u>Kathleen M. Day</u> (Signature of Contracting Officer)	20C. DATE SIGNED 10/1/84

PART II
CONTRACT CLAUSES
(DOE SET 304)

**COST-REIMBURSEMENT RESEARCH AND DEVELOPMENT
AND SUPPORT CONTRACTS**

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1. DEAR 952.202-1 DEFINITIONS (APR 1984)

(a) The term "Head of Agency" means the Secretary, Deputy Secretary or Under Secretary of the Department of Energy.

(b) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

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

(d) The term "DOE" means the Department of Energy.

2. FAR 52.203-1 OFFICIALS NOT TO BENEFIT (APR 1984)

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

3. FAR 52.203-3 GRATUITIES (APR 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative-

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended; by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) above, the Government is entitled-

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 times nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee.

(This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

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

4. FAR 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)

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

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

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

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

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

5. DEAR 952.208-70 PRINTING (APR 1984)

The contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single unit, or no more than 25,000 units in the aggregate of multiple unit, will not be deemed to be printing. A unit is defined as one sheet, size 8 1/2 by 11 inches one side only, one color. A requirement is defined as a single publication document.

(1) The term "printing" includes the following processes: composition, plate making, presswork, binding, microform publishing, or the end items pro-

duced by such processes.

(2) If fulfillment of the contract will necessitate reproduction in excess of the limits set forth above, the contractor shall notify the contracting officer in writing and obtain the contracting officer's approval prior to acquiring on DOE's behalf production, acquisition, and dissemination of printed matter. Such printing must be obtained from the Government Printing Office (GPO), a contract source designated by GPO or a Joint Committee on Printing authorized federal printing plant.

(3) Printing services not obtained in compliance with this guidance will result in the cost of such printing being disallowed.

(4) The Contractor will include in each of his subcontracts hereunder a provision substantially the same as this clause including this paragraph (4).

6. FAR 52.212-13 STOP-WORK ORDER-ALTERNATE I (APR 1984)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree.

The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either-

(1) Cancel the stop-work order; or

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

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

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

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

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

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

7. FAR 52.215-1 EXAMINATION OF RECORDS BY COMPTROLLER GENERAL (APR 1984)

(a) This clause applies if this contract exceeds \$10,000 and was entered into by negotiation.

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

(c) The Contractor agrees to include in first-tier subcontracts under this contract a clause to the effect that the Comptroller General or a duly authorized representative from the General Accounting Office shall, until 3 years after final payment under the subcontract or for any shorter period specified in FAR Subpart 4.7, have access to and the right to examine any of the subcontractor's directly pertinent books, documents, papers, or other records involving transactions related to the subcontract. "Subcontract," as used in this clause, excludes (1) purchase orders not exceeding \$10,000 and (2) subcontracts or purchase orders for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.

(d) The periods of access and examination in paragraphs (b) and (c) above for records relating to (1) appeals under the Disputes clause, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the Comptroller General or a duly authorized representative from the General Accounting Office has taken exception shall continue until such appeals, litigation, claims, or exceptions are disposed of.

8. FAR 52.215-2 AUDIT-NEGOTIATION (APR 1984)

(a) *Examination of costs.* If this is a cost-reimbursement, incentive, time and materials, labor-hour, or price-redeterminable contract, or any com-

tions, Subpart 31.2.

If the Contractor did not include facilities capital cost of money as a proposed allowable cost, it shall be deemed that the Contractor waived the right to claim it under this contract.

16. DEAR 952.216-7 ALLOWABLE COST AND PAYMENT (APR 1984)

(a) *Invoicing.* The Government shall make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with the applicable cost principles of the Federal Acquisition Regulation (FAR) and the DOE Acquisition Regulation (DEAR) in effect on the date of this contract and the terms of this contract. The applicable cost principles are:

- (i) FAR Subpart 31.2 and DEAR Subpart 931.2, if the contractor is a commercial organization;
- (ii) FAR Subpart 31.3, if the contractor is an educational institution;
- (iii) FAR Subpart 31.6, if the contractor is a state or local government or Federally recognized Indian tribal government; or
- (iv) FAR Subpart 31.7 if the contractor is a nonprofit organization.

(1) The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

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

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

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for-

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

(B) Direct labor;

(C) Direct travel;

(D) Other direct in-house costs; and

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

(iii) The amount of progress payments that have been paid to the Contractor's subcontractors under similar cost standards.

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

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

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

(c) *Small business concern.* A small business concern may be paid more often than every 2 weeks and may invoice and be paid for recorded costs for items or services purchased directly for the contract, even though the concern has not yet paid for those items or services.

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

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

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement,

and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(e) *Billing rates.* Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates-

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(f) *Quick-closeout procedures.* When the Contractor and Contracting Officer agree, the quick-closeout procedures of Subpart 42.7 of the FAR may be used.

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

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

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

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

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except-

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

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; *provided*, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

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

17. FAR 52.216-8 FIXED FEE (APR 1984)

NOTE: This clause applies to this contract only if the contract makes provision for the payment of a fixed fee.

(a) The Government shall pay the Contractor for performing this contract the fixed fee specified in the Schedule.

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

18. FAR 52.216-11 COST CONTRACT-NO FEE (APR 1984)

NOTE: This clause applies to this contract only if the contract makes no provision for the payment of a fee.

(a) The Government shall not pay the Contractor a fee for performing this contract.

(b) After payment of 80 percent of the total estimated cost shown in the Schedule, the Contracting Officer may withhold further payment of allowable cost until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed one percent of the total estimated cost shown in the Schedule or

(3) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business firms.

(f) A master subcontracting plan on a plant or division-wide basis which contains all the elements required by (d) above, except goals, may be incorporated by reference by this clause; *provided*, (1) the master plan has been approved, (2) the offeror provides copies of the approved master plan and evidence of its approval to the Contracting Officer, and (3) goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g)(1) If a commercial product is offered, the subcontracting plan required by this clause may relate to the offeror's production generally, for both commercial and noncommercial products, rather than solely to the Government contract. In these cases, the offeror shall, with the concurrence of the Contracting Officer, submit one company-wide or division-wide annual plan.

(2) The annual plan shall be reviewed for approval by the agency awarding the offeror its first prime contract requiring a subcontracting plan during the fiscal year, or by an agency satisfactory to the Contracting Officer.

(3) The approved plan shall remain in effect during the offeror's fiscal year for all of the offeror's commercial products.

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

(i) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

22. FAR 52.219-13 UTILIZATION OF WOMEN-OWNED SMALL BUSINESSES (APR 1984)

(a) "Women-owned small businesses," as used in this clause, means businesses that are at least 51 percent owned by women who are United States citizens and who also control and operate the business.

"Control," as used in this clause, means exercising the power to make policy decisions.

"Operate," as used in this clause, means being actively involved in the day-to-day management of the business.

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

(c) The Contractor agrees to use its best efforts to give women-owned small businesses the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with the efficient performance of its contract.

23. FAR 52.220-3 UTILIZATION OF LABOR SURPLUS AREA CONCERNS (APR 1984)

(a) *Applicability*. This clause is applicable if this contract exceeds the appropriate small purchase limitation in Part 13 of the Federal Acquisition Regulation.

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

(c) *Order of preference*. In complying with paragraph (b) above and with paragraph (c) of the clause of this contract entitled Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, the Contractor shall observe the following order of preference in awarding subcontracts:

(1) small business concerns that are LSA concerns,

(2) other small business concerns, and

(3) other LSA concerns.

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

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

24. FAR 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (APR 1984)

(a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract to which a labor dispute may delay the timely performance of this contract; except that each subcontract shall provide

that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the prime Contractor, as the case may be, of all relevant information concerning the dispute.

25. FAR 52.222-2 PAYMENT OF OVERTIME PREMIUMS (APR 1984)

(a) The use of overtime is authorized under this contract if the overtime premium cost does not exceed (*See Section H of this contract*). In addition to this dollar ceiling, overtime is permitted only for work-

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

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

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

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

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

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

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

(3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected contract; and

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

26. FAR 52.222-3 CONVICT LABOR (APR 1984)

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

27. FAR 52.222-26 EQUAL OPPORTUNITY (APR 1984)

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

(b) During performing this contract, the Contractor agrees as follows:

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

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

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

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

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

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

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

(9) If the OFCCP determines that the Contractor is not in compliance

the rights of applicants and employees.

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

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

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

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

31. FAR 52.223-2 CLEAN AIR AND WATER (APR 1984)

NOTE: This clause applies to this contract only if the estimated cost, together with any fee, is (a) in excess of \$100,000; (b) a facility to be used has been the subject of a conviction under the applicable portion of the Air Act (42 U.S.C. 7413 (c)(1)) or the Water Act (33 U.S.C. 1319 (c)) and is listed by EPA as a violating facility; or (c) the acquisition is not exempt under FAR 23.104.

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

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

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

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

(3) An approved implementation procedure or plan under section 111(c) or section (d) of the Air Act (42 U.S.C. 7411(c) or (d)); or

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

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

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

(1) Clean air or water standards; or

(2) A schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

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

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

(b) The Contractor agrees-

(1) To comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;

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

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

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

*2. DEAR 952.224-1 PAPERWORK REDUCTION ACT (APR 1984)

(a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answer to identical questions from 10 or more persons other than Federal employees, or information from

Federal employees which is to be used for statistical compilations of general public interest, the Federal Reports Act will apply to this contract. No plan, questionnaire, interview guide, or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).

(b) The contractor shall request the required OMB clearance from the contracting officer before expending any funds or making public contracts for the collection of data. The authority to expend funds and to proceed with the collection of data shall be in writing by the contracting officer. The contractor must plan at least 90 days for OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the contractor will be considered in accordance with the clause entitled "Excusable Delays," if such clause is applicable. If not, the period of performance may be extended pursuant to this clause if approved by the contracting officer.

33. FAR 52.228-7 INSURANCE-LIABILITY TO THIRD PERSONS (APR 1984)

(a)(1) Except as provided in subparagraph (2) immediately following, or in paragraph (h) of this clause (if the clause has a paragraph (h)), the Contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting Officer may require under this contract.

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

(3) All insurance required by this paragraph shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with insurers approved by the Contracting Officer.

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

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

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

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

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

(ii) Death or bodily injury.

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

(e) The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities)-

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

(2) For which the Contractor has failed to insure or to maintain insurance as required by the Contracting Officer; or

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

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

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

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

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

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

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

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

(3) Authorize Government representatives to settle or defend the claim and to represent the Contractor in or to take charge of any litigation, if required by the Government, when the liability is not insured or covered by bond. The

termination or other specified expenses.

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

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

(l) If the Government does not allot sufficient funds to allow completion of the work, the Contractor is entitled to a percentage of the fee specified in the Schedule equalling the percentage of completion of the work contemplated by this contract.

37. FAR 52.232-23 ASSIGNMENT OF CLAIMS (APR 1984)

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 203, 41 U.S.C. 15 (hereafter referred to as the "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

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

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

38. DEAR 952.232-71 PAYMENT DUE DATES AND INVOICE REQUIREMENTS (APR 1984)

(a) Payments pursuant to the provisions of the allowable cost and payment clause of this contract shall be due 30 calendar days unless otherwise designated in this contract after the date of actual receipt of a proper invoice or public voucher by the Government office designated in this contract for invoice receipt, provided the amounts claimed are reimbursable in accordance with other terms and conditions of the contract.

(b) Final payment of any balance of allowable costs and that part of the fee, if any, not previously paid as included in the completion invoice or voucher submitted by the contractor pursuant to the allowable cost and payment provision of this contract shall be due 30 calendar days (unless otherwise specified in this contract) after the later of the date that invoice or voucher is approved for payment by the contracting officer, or the date all the terms of this contract are complied with by the Contractor.

(c) When discounts for early payments are offered by the contractor, the discount period will be calculated from the date a proper invoice was actually received by the Government office designated for invoice receipt or the date the costs were incurred, whichever is the later.

(d) Payment will be considered to have been made on the date the Government check was dated or an electronic funds transfer payment was made.

(e) Notwithstanding any other directions pursuant to the allowable cost and payment clause of this contract, proper invoices or public vouchers shall be submitted in an original and (See Section H of this contract) copies to the Government office designated in this contract and shall include the Contractor's name and invoice date; contract number; cost amounts by elements of cost and fee amounts, if any, claimed currently; cumulative amounts of costs by element of cost and fee amounts claimed from inception of the contract through the current period; total estimated contract cost amount, fee amount, total contract amount and fee amount not subject to contract specified withholding, as appropriate; payment terms; other substantiating documentation or information required by the contract; and name (where practicable), title, phone number and complete mailing address of responsible official to whom payment may be made.

39. DEAR 952.232-73 PAYMENT METHODS (APR 1984)

(a) Payments due for amounts properly invoiced in accordance with the terms and conditions specified elsewhere in the contract shall be made either by Treasury check(s) payable to the contractor or designee or by electronic funds transfer(s) to a financial institution designated by the contractor for that purpose. The method of payment shall be determined by the Government at the time of payment in accordance with applicable Treasury Department requirements.

(b) After award but no later than fourteen (14) days before an invoice or bill is submitted for payment, the contractor shall designate a financial institution for the receipt of electronic funds transfer payments hereunder; and provide the appropriate Government representative (contracting officer or finance official as determined by the Government) with the name of the designated financial institution, financial institution's or correspondent financial institution's 9-digit American Bankers Association identifying number, telegraphic abbreviation of such financial institution, and account number at the designated financial institution to be credited with funds.

(c) In the event the contractor during the performance of this contract elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the information as specified in paragraph (b) above must be received by the appropriate Government representative thirty (30) days prior to the date such change is to become effective.

(d) The document furnishing the information required in paragraphs (b) and (c) above must be dated and contain the signature, title, and telephone number of the contractor official authorized to provide it, as well as the contractor's name and contract number.

(e) Contractor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

40. FAR 52.233-1 DISPUTES-ALTERNATE I (APR 1984)

(a) This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act).

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

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph (d)(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) For Contractor claims exceeding \$50,000, the Contractor shall submit with the claim a certification that-

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and

(iii) The amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

(3)(i) If the Contractor is an individual, the certification shall be executed by that individual.

(ii) If the Contractor is not an individual, the certification shall be executed by-

(A) A senior company official in charge at the Contractor's plant or location involved; or

(B) An officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

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

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

(g) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

41. DEAR 952.235-70 KEY PERSONNEL (APR 1984)

The personnel specified in an attachment to this contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the Contractor without the written consent of the Contracting Officer. Provided, that the Contracting Officer may ratify in writing such diversion and such ratification shall constitute the consent of the Contracting Officer required by this clause. The attachment to this contract may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

representatives who have supervision or direction of-

- (i) All or substantially all of the Contractor's business;
- (ii) All or substantially all of the Contractor's operation at any one plant, or separate location at which the contract is being performed; or
- (iii) A separate and complete major industrial operation connected with performing this contract.

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

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

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

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

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

(2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make such property available for performing this contract and there is any-

- (i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
- (ii) Withdrawal of authority to use property, if provided under any other contract or lease.

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

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

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

- (i) Issuance of the property for use in contract performance;
- (ii) Commencement of processing of the property or use in contract performance; or
- (iii) Reimbursement of the cost of the property by the Government, whichever occurs first.

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

(d) *Use of Government property.* The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) *Property administration.* (1) The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5 and the DOE Acquisition regulation Subpart 945.5, as in effect on the date of this contract, and which are hereby incorporated into this contract by reference.

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

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

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

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

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

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

(ii) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

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

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

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

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

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

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

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

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

- (i) The lost, destroyed, or damaged Government property;
- (ii) The time and origin of the loss, destruction, or damage;
- (iii) All known interests in commingled property of which the Government property is a part; and
- (iv) The insurance, if any, covering any part of or interest in such commingled property.

(6) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government.

Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph (g)(6) in accordance with paragraph (h) of this clause. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the Contractor's liability under this paragraph (g) when making any such equitable adjustment.

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

ibility of foreign currencies; or

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

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c)(1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) the Contracting Officer and (ii) the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590. Sub-contractor bills of lading shall be submitted through the Prime Contractor.

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

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

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

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

- (1) Small purchases as defined in 48 CFR 13;
- (2) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;
- (3) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and
- (4) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.

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

51. DEAR 952.247-70 FOREIGN TRAVEL (APR 1984)

(a) Foreign travel, when charged directly, shall be subject to the prior approval of the contracting officer for each separate trip regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions.

(b) Request for approval shall be submitted at least 45 days prior to the planned departure date, be on a Request for Approval of Foreign Travel form, and when applicable, include a notification of proposed Soviet-bloc travel.

52. FAR 52.249-5 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT-EDUCATIONAL AND OTHER NON-PROFIT INSTITUTIONS (APR 1984)

NOTE: This clause applies to this contract only if the contractor is an educational or nonprofit institution, and the contract makes no provision for the payment of a profit or fee.

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.
- (3) Terminate all applicable subcontracts and cancel or divert applicable commitments covering personal services that extend beyond the effective date of termination.

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

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement pro-

posals arising from the termination of subcontracts; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government any information and items that, if the contract had been completed, would have been required to be furnished, including (i) materials or equipment produced, in process, or acquired for the work terminated and (ii) completed or partially completed plans, drawings, and information.

(7) Complete performance of the work not terminated.

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

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

(c) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly but no later than 1 year from the effective date of termination unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. If the Contractor fails to submit the termination settlement proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(d) Subject to paragraph (c) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. This amount may include reasonable cancellation charges incurred by the Contractor and any reasonable loss on outstanding commitments for personal services that the Contractor is unable to cancel; *provided*, that the Contractor exercised reasonable diligence in diverting such commitments to other operations. The contract shall be amended and the Contractor paid the agreed amount.

(e) The cost principles and procedures in Subpart 31.3 of the Federal Acquisition Regulation (FAR), in effect on the date of the contract, shall govern all costs claimed, agreed to, or determined under this clause; however, if the Contractor is not an educational institution, and is a nonprofit organization under Office of Management and Budget (OMB) Circular A-122, "Cost Principles for Nonprofit Organizations," July 8, 1980, those cost principles shall apply; *provided*, that if the Contractor is a nonprofit institution listed in Attachment C of OMB Circular A-122, the cost principles at FAR 31.2 for commercial organizations shall apply to such contractor.

(f) The Government may, under the terms and conditions it prescribes, make partial payments against costs incurred by the Contractor for the terminated portion of this contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(g) The Contractor has the right of appeal as provided under the Disputes clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (c) and failed to request a time extension, there is no right of appeal.

53. FAR 52.249-6 TERMINATION-COST-REIMBURSEMENT (APR 1984)

NOTE: This clause applies to this contract unless the contractor is an educational or nonprofit institution, and the contract makes no provision for the payment of a profit or fee.

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if-

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

(2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

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

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

- (1) Stop work as specified in the notice.

PATENT AND DATA SUPPLEMENT
TO PART II - CONTRACT CLAUSES DOE SET 304
(COST REIMBURSEMENT RESEARCH AND DEVELOPMENT
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55. DOE PR 9-9.102-1 AUTHORIZATION AND CONSENT
(JUN 1979)

NOTE: This clause applies to this contract only if chosen elsewhere in this contract.

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

56. DOE PR 9-9.102-2 AUTHORIZATION AND CONSENT
(JUN 1979)

NOTE: This clause applies to this contract unless the clause at DOE PR 9-9.102-2 has been chosen elsewhere in this contract.

The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including all lower-tier subcontracts).

57. DOE PR 9-9.103-3 PATENT INDEMNITY (JUN 1979)

The contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of U.S. Letters Patent (except U.S. Letters Patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) resulting from the contractor's: (a) furnishing or supplying standard parts or components which have been sold or offered for sale to public on the commercial open market; or (b) utilizing its normal practices or methods which normally are or have been used in providing goods and services in the commercial open market, in the performance of the contract; or (c) utilizing any parts, components, practices, or methods to the extent to which the contractor has secured indemnification from liability. The foregoing indemnity shall not apply unless the contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to a claimed infringement which is settled without the consent of the contractor, unless required by final decree of a court of competent jurisdiction or to an infringement resulting from addition to or change in such supplies or components furnished or construction work performed for which addition or change was made subsequent to delivery or performance by the contractor.

58. DOE PR 9-9.104 NOTICE REGARDING COPYRIGHT INFRINGEMENT AND ASSISTANCE REGARDING PATENT INFRINGEMENT (JUN 1979)

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

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

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

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

59. DOE PR 9-9.107-5(a) PATENT RIGHTS - LONG FORM
(DEC 1981)

NOTE: This clause applies to this contract unless the contractor is a domestic small business or domestic nonprofit organization at the time of award or unless the clause at DOE PR 9-9.107-6 is chosen elsewhere in this contract.

(a) Definitions.

(1) "Subject invention" means any invention or discovery of the contractor conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process, machine manufacture, design or composition of matter, or any new and useful improvement thereof or any variety of plants, whether patented or unpatented under the Patent Laws of the United States of America or any foreign country.

(2) "Contract" means any contract, grant, agreement, understanding, or other arrangement, which includes research, development, or demonstration work, and includes any assignment or substitution of parties.

(3) "States and domestic municipal governments" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and any political subdivision and agencies thereof.

(4) "Government agency" includes an executive department, independent commission, board, office, agency, administration, authority government corporation, or other Government establishment of the Executive Branch of the Government of the United States of America.

(5) "To the point of practical application" means to manufacture, in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine and under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

(6) "Patent Counsel" means the Department of Energy Patent Counsel assisting the procuring activity.

(2) For each subject invention on which a domestic patent application is filed by the contractor or inventor shall:

(i) Within 2 months after the filing of a patent application or within 2 months after submission of the invention disclosure, if the patent application has been filed previously, deliver to the Patent Counsel a copy of the application as filed including the filing date and serial number;

(ii) Within 6 months after filing the application or within 6 months after submitting the invention disclosure if the application has been filed previously, deliver to the Patent Counsel a duly executed and approved assignment to the Government, on a form specified by the Government;

(iii) Provide the Patent Counsel with the original patent grant promptly after a patent is issued on the application; and

(iv) Not less than 30 days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the Patent Counsel of any decision not to continue prosecution of the application.

(3) With respect to each subject invention in which the contractor or inventor has requested foreign patent rights, the contractor or inventor shall file a patent application on the invention in each foreign country in which such request is granted, in accordance with applicable statutes and regulations, and within one of the following periods:

(i) Eight months from the date of filing a corresponding United States application, or if such an application is not filed, six months from the date the request was granted.

(ii) Six months from the date a license is granted by the Commissioner of Patents and Trademarks to file the foreign patent application, where such filing has been prohibited by security reasons; or

(iii) Such longer periods as may be approved by the Patent Counsel for good cause shown in writing by the contractor or inventor.

(4) Subject to the license specified in paragraphs (c)(1), (2) and (3) of this clause, the contractor or inventor agrees to convey to the Government, upon request, the entire right, title, and interest in any foreign country in which the contractor or inventor fails to have a patent application filed in accordance with paragraph (d)(3) of this clause, or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the contractor or inventor shall, not less than 60 days before the expiration period for any action required by any patent office, notify the Patent Counsel of such failure or decision, and deliver to the Patent Counsel, the executed instruments necessary for the conveyance specified in this paragraph.

(e) Invention identification, disclosures, and reports.

(1) The contractor shall establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records that are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records which show that the procedures for identifying and disclosing the inventions are followed. Upon request, the contractor shall furnish the Contracting Officer a description of these procedures so that he may evaluate and determine their effectiveness.

(2) The contractor shall furnish the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) on a DOE-approved form:

(i) A written report containing full and complete technical information concerning each subject invention within 6 months after conception or first actual reduction to practice, whichever occurs first in the course of or under this contract, but in any event, prior to any sale, public use, or public disclosure of such invention known to the contractor. The report shall identify the contract and inventor and shall be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains, a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention. The report should also include any request for foreign patent rights under paragraph (c)(4) of this clause and any request to file a domestic patent application under (d)(1) of this clause. However, such request shall be made within the period set forth in paragraph (b)(2) of this clause. When an invention is reported under this paragraph (e)(2)(i), it shall be presumed to have been conceived or first actually reduced to practice in the course of or under the contract, unless the contractor contends it was not so made, in accordance with paragraph (g)(2)(ii) or this clause.

(ii) Upon request, but not more than annually, interim reports on a DOE-approved form listing subject inventions and subcontracts awarded(s) containing a Patent Rights clause for that period and certifying that:

(A) The contractor's procedures for identifying and disclosing subject inventions as required by this paragraph (e) have been followed throughout the reporting period;

(B) All subject inventions have been disclosed or that there are no such inventions; and

(C) All subcontracts containing a Patent Rights clause have been reported or that no such subcontracts have been awarded;

(iii) A final report on a DOE-approved form within three months after completion of the contract work listing all subject inventions and all subcontracts awarded containing a Patent Rights clause and certifying that:

(A) All subject inventions have been disclosed or that there were no such inventions; and

(B) All subcontracts containing a Patent Rights clause have been reported or that no such subcontracts have been awarded.

(3) The contractor shall obtain patent agreements to effectuate the provisions of this clause from all persons in its employ who perform any part of the work under this contract except nontechnical personnel, such as clerical employees and manual laborers.

(4) The contractor agrees that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause. If the contractor is to file a foreign patent application on a subject invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures until the expiration of the time period specified in paragraph (d)(1) of this clause, but in no event shall the Government or its employees be liable for any publication thereof.

(f) Publication.

It is recognized that during the course of the work under this contract, the contractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the contractor, patent approval for release or publication shall be secured from Patent Counsel prior to any such release or publication.

solely to fulfill the contractor's contract obligations to the Government in the performance of this contract).

(4) All invention disclosures, reports, instruments, and other information required to be furnished by the subcontractor to DOE, under the provisions of a Patent Rights clause in any subcontract hereunder may, in the discretion of the Contracting Officer, be furnished to the contractor for transmission to DOE

(5) The contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract containing a Patent Rights clause by identifying the subcontractor, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon the request of the Contracting Officer, the contractor shall furnish a copy of the subcontract.

(6) The contractor shall identify all subject inventions of the subcontractor of which it acquires knowledge in the performance of this contract and shall notify the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) promptly upon the identification of the inventions.

(7) It is understood that the Government is a third party beneficiary of any subcontract clause granting rights to the Government in subject inventions, and the contractor hereby assigns to the Government all rights that the contractor would have to enforce the subcontractor's obligations for the benefit of the Government with respect to subject inventions. The contractor shall not be obligated to enforce the agreements of any subcontractor hereunder relating to the obligations of the subcontractor to the Government regarding subject inventions.

(k) Background Patents.

(1) "Background Patent" means a domestic patent covering an invention or discovery which is not a subject invention and which is owned or controlled by the contractor at any time through the completion of this contract:

(i) Which the contractor, but not the Government, has the right to license to others without obligation to pay royalties thereon, and

(ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this contract.

(2) The contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive, license under any background patent for purposes of practicing a subject of this contract by or for the Government in research, development, and demonstration work only.

(3) The contractor also agrees that upon written application by DOE, it will grant to responsible parties for purposes of practicing a subject of this contract, nonexclusive licenses under any background patent on terms that are reasonable under the circumstances. If, however, the contractor believes that exclusive or partially exclusive rights are necessary to achieve expeditious commercial development or utilization, then a request may be made to DOE for DOE approval of such licensing by the contractor.

(4) Notwithstanding the foregoing paragraph (k)(3), the contractor shall not be obligated to license any background patent if the contractor demonstrates to the satisfaction of the Head of the Agency or designee that:

(i) a competitive alternative to the subject matter covered by said background patent is commercially available or readily introducible from one or more other sources; or

(ii) the contractor or its licensees are supplying the subject matter covered by said background patent in sufficient quantity and at reasonable prices to satisfy market needs, or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter.

(1) Atomic energy.

(1) No claim for pecuniary award or compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted by the contractor or its employees with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) Except as otherwise authorized in writing by the Contracting Officer, the contractor will obtain patent agreements to effectuate the provisions of paragraph (1)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(m) Limitation of rights.

Nothing contained in this patent rights clause shall be deemed to give the Government any rights with respect to any invention other than a subject invention except as set forth in the Patent Rights clause of this contract with respect to background patents and, if included, the facilities licences.

60. OMB CIRC. A-124 PATENT RIGHTS-SMALL BUSINESS TRANS. MEMO. NO.1 FIRMS OR NONPROFIT ORGANIZATIONS (APR 1984).

NOTE: This clause applies to this contract only if the contractor is a domestic small business or domestic nonprofit organization at the time of contracting.

(a) Definitions.

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code (U.S.C.).

(2) "Subject Invention" means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract.

(3) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) "Small Business Firm" means a domestic small business concern as defined at Section 2 of Public Law 85-536 (15 USC 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standard for small business concerns involved in Government procurement, contained in 13 CFR 121.3-8, and in subcontracting, contained in 13 CFR 121.3-12, will be used.

(6) "Nonprofit Organization" means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 USC 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 USC 501(a)) or any domestic nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(7) "Patent Counsel" means the Department of Energy (DOE) patent counsel assisting the DOE contracting activity.

before the expiration of the response period required by the relevant patent office.

(4) The contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by the Department of Energy. The Government has certain rights in this invention."

(5) The contractor agrees to:

(i) Provide a report prior to the close-out of the contract listing all subject inventions;

(ii) Provide notification of all subcontracts under this contract for experimental, developmental, demonstration, or research work, the identity of the patent rights clause therein, and copy of each subcontract upon request;

(iii) Provide promptly a copy of the patent application, filing date, serial number, patent number and issue date for any subject invention in any country in which the contractor has applied for a patent.

(g) Subcontracts.

(1) The contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or a domestic nonprofit organization. The subcontractor will retain all rights provided for the contractor in this clause, and the contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The contractor will include in all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work the patent rights clause of 41 CFR 9-9.107-5(a) or 9-9.107-6, as appropriate, modified to identify the parties.

(3) In the case of a subcontract at any tier, DOE, the subcontractor, and the contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause.

(h) Reporting on utilization of subject inventions.

The contractor agrees to submit on request periods reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as DOE may reasonably specify. The contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this clause. To the extent data or information supplied under this section is considered by the contractor, its licensee or assignee to be privileged and confidential and is so marked, DOE agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

(i) Preference for United States industry.

Notwithstanding any other provision of this clause, the contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the contractor or its

assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in rights.

The contractor agrees that with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in OMB Circular A-124 to require the contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that:

(1) Such action is necessary because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by federal regulations and such requirements are not reasonably satisfied by the contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special provisions for contracts with nonprofit organizations.

If the contractor is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention (provided that such assignee will be subject to the same provisions as the contractor);

(2) The contractor may not grant exclusive licenses under United States patents or patent applications in subject inventions to persons other than small business firms for a period in excess of the earlier of:

(i) Five years from first commercial sale or use of the invention; or

(ii) Eight years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance, unless on a case-by-case basis, DOE approves a longer exclusive license. If exclusive field of use licenses are granted, commercial sale or use in one field of use will not be deemed commercial sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention will not be deemed to end the exclusive period to different subsequent products covered by the invention;

(3) The contractor will share royalties collected on a subject invention with the inventor; and

(4) The balance of any royalties or income earned by the contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the

62. DOE PR 9-9.110(c) REPORTING OF ROYALTIES (JUN 1979)

If this contract is in an amount which exceeds \$10,000 and if any royalty payments are directly involved in the contract or are reflected in the contract price to the Government, the contractor agrees to report in writing to the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) during the performance of this contract and prior to its completion or final settlement, the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this contract together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit the identification of the patents or other basis on which the royalties are to be paid. The approval of DOE of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.

63. DEAR 952.227-73 ADDITIONAL TECHNICAL DATA REQUIREMENTS (APR 1984)

NOTE: This clause applies to this contract unless either the clause at DEAR 952.227-76 or the clause at DEAR 952.227-77 is chosen elsewhere in this contract.

(a) In addition to the technical data specified elsewhere in this contract to be delivered, the contracting officer may at any time during the contract performance or within one year after final payment call for the contractor to deliver any technical data first produced or specifically used in the performance of this contract, except technical data pertaining to items of standard commercial design.

(b) The provisions of the Rights in Technical Data clause included in this contract are applicable to all technical data called for under this Additional Technical Data Requirements clause. Accordingly, nothing contained in this clause shall require the contractor to actually deliver any technical data, the delivery of which is excused by paragraph (e) of the Rights in Technical Data clause.

(c) When technical data are to be delivered under this clause, the contractor will be compensated for appropriate costs for converting such data into the prescribed form for reproduction, and for delivery.

64. DEAR 952.227-75. RIGHTS IN TECHNICAL DATA - LONG FORM (APR 1984)

NOTE: This clause applies to this contract unless either the clause at DEAR 952.227-76 or the clause at DEAR 952.227-77 is chosen elsewhere in this contract.

(a) Definitions.

(1) "Technical data" means recorded information regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, or demonstration, or engineering work, or be usable or used to define a design or process, or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer software (including computer programs, computer software data bases, and computer software documentation). Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical data as used herein do not include

financial reports, cost analyses, and other information incidental to contract administration.

(2) "Proprietary data" means technical data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:

- (i) Are not generally known or available from other sources without obligation concerning their confidentiality;
- (ii) Have not been made available by the owner to others without obligation concerning its confidentiality; and
- (iii) Are not already available to the Government without obligation concerning their confidentiality.

(3) "Contract data" means technical data first produced in the performance of the contract; technical data which are specified to be delivered under the contract; technical data that may be called for under the Additional Technical Data Requirements clause of the contract, if any, or technical data actually delivered in connection with the contract.

(4) "Unlimited rights" means rights to use, duplicate, or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

(b) Allocation of rights.

(1) The Government shall have:

- (i) Unlimited rights in contract data except as otherwise provided below with respect to proprietary data;
- (ii) The right to remove, cancel, correct or ignore any marking not authorized by the terms of this contract on any technical data furnished hereunder, if in response to a written inquiry by DOE concerning the propriety of the markings, the contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case, DOE will notify the contractor of the action taken;
- (iii) No rights under this contract in any technical data which are not contract data.

(2) The contractor shall have:

- (i) The right to withhold proprietary data in accordance with the provisions of this clause; and
- (ii) The right to use for its private purposes, subject to patent, security or other provisions of this contract data it first produces in the performance of this contract, provided the data requirements of this contract have been met as of the date of the private use of such data. The contractor agrees that to the extent it receives or is given access to proprietary data or other technical, business or financial data in the form of recorded information from DOE or a DOE contractor or subcontractor, the contractor shall treat such data in accordance with any restrictive legend contained thereon, unless use is specifically authorized by prior written approval of the Contracting Officer.

(3) Nothing contained in this Rights in Technical Data clause shall imply a license to the Government under any patent or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(c) Copyrighted material.

(1) The contractor shall not, without prior written authorization of the Patent Counsel,

(i) The right to use for its private purposes, subject to patent, security or other provisions of this contract, technical data it first produces in the performance of this contract provided the data requirements of this contract have been met as of the date of the private use of such data. The contractor agrees that to the extent it receives or is given access to proprietary data or other technical, business or financial data in the form of recorded information from DOE or a DOE contractor or subcontractor, the contractor shall treat such data in accordance with any restrictive legend contained thereon, unless use is specifically authorized by prior written approval of the contracting officer.

(c) Copyrighted material.

(1) The contractor agrees to, and does hereby grant to the Government, and to its officers, agents, servants and employees acting within the scope of their duties:

(i) A royalty-free, nonexclusive, irrevocable license to reproduce, translate, publish, use, and dispose of and to authorize others to do so, all copyrightable material first produced or composed in the performance of this contract by the contractor, its employees or any individual or concern specifically employed or assigned to originate and prepare such material; and

(ii) A license as aforesaid under any and all copyrighted or copyrightable works not first produced or composed by the contractor in the performance of this contract but which are incorporated in the material furnished under the contract, provided that such license shall be only to the extent the contractor now has, or prior to completion or final settlement of the contract may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(2) The contractor agrees that it will not knowingly include any material copyrighted by others in any written or copyrightable material furnished or delivered under this contract without a license as provided for in paragraph (c)(1)(ii) hereof, or without the consent of the copyright owner, unless it obtains specific written approval of the contracting officer for the inclusion of such copyrighted material.

67. DEAR 952.227-82 RIGHTS TO PROPOSAL DATA (APR 1984)

Except for technical data contained on pages (See Section H of this contract) of the contractor's proposal dated (See Section H of this contract) which are asserted by the contractor as being proprietary data, it is agreed that, as a condition of the award of this contract, and notwithstanding the provisions of any notice appearing on the proposal, the Government shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this contract is based.

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68. (This clause is applicable if this contract involves classified information.)
DEAR 952.204-2 SECURITY (APR 1984)

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

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

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

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

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

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

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

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

(i) Criminal liability. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2100 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12356).

(j) Subcontracts and purchase orders. Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

69. (This clause is applicable if this contract involves classified information.)
DEAR 952.204-70 CLASSIFICATION (APR 1984)

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

70. (This clause is applicable to unclassified research contracts which may involve making unclassified information about nuclear technology available to certain sensitive foreign nations.)

DEAR 952.204-71 SENSITIVE FOREIGN NATIONS CONTROLS (APR 1984)

In connection with the contract activities in the performance of this contract the contractor agrees to comply with the "Sensitive Foreign Nations Controls" requirements attached to this contract, relating to those countries, which may from time to time, be identified to the contractor by written notice as sensitive foreign nations. The contractor shall have the right to terminate its performance under this contract upon at least 60 days prior written notice to the contracting officer if the contractor determines that it is unable, without substantially interfering with its policies or without adversely affecting its performance, to continue performance of the work under this contract as a result of such notification. If the contractor elects to terminate performance, the provisions of this contract regarding termination for the convenience of the Government shall apply.

- (b) The provisions of this clause shall be included in any subcontracts.

71. FAR 52.212-8 PRIORITIES, ALLOCATIONS, AND ALLOTMENTS (APR 1984)

The Contractor shall follow the provisions of Defense materials System Regulation 1 or Defense Priorities System Regulation 1 (see 32A CFR 621-662) and all other applicable regulations and orders of the Office of Industrial Resource Administration, Department of Commerce, in obtaining controlled materials and other products and materials needed to fill this order.

72. DEAR 952.212-71 PRIORITIES, ALLOCATIONS, AND ALLOTMENTS (ATOMIC ENERGY) (APR 1984)

The Contractor shall follow the provisions of Defense Material System Regulation 1 or Defense Priorities System Regulation 1 (see 15 CFR Parts 330-354) and all other applicable regulations and orders of the DMS/DPS in obtaining controlled materials and other products and materials needed to fill this order.

73. DEAR 952.212-71 PRIORITIES, ALLOCATIONS, AND ALLOTMENTS (DOMESTIC ENERGY SUPPLIES) - ALTERNATE I (APR 1984)

(a) This contract may be eligible for priorities and allocations support, as provided for by Section 101(c) of the Defense Production Act of 1950, as amended by the Energy Policy and Conservation Act (Pub. L. 94-163, 42 U.S.C. 6201 et seq.) if its purpose is to maximize domestic energy supplies. Eligibility is dependent on an executive decision on a case-by-case basis with the decision being jointly made by the Departments of Commerce and Energy.

(b) DOE Regulations regarding Material Allocation and Priority Performance under Contracts or Orders to Maximize Domestic Energy Supplies can be found at Part 216 of Title 10 of the Code of Federal Regulations (10 CFR Part 216).

(c) Additional guidance is provided by DOE Publication PR-0042, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule," dated August 1980, as it may from time to time be revised. Copies may be obtained by written request to:

Department of Energy
 Technical Information Center (TIC)
 Post Office Box 62
 Oak Ridge, Tennessee 37830

74. FAR 52.220-4 LABOR SURPLUS AREA SUBCONTRACTING PROGRAM (APR 1984)

(a) See the Utilization of Labor Surplus Area Concerns clause of this contract for applicable definitions.

(b) The Contractor agrees to establish and conduct a program to encourage labor surplus area (LSA) concerns to compete for subcontracts within their capabilities when the subcontracts are consistent with the efficient performance of the contract at prices no higher than obtainable elsewhere. The Contractor shall:

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

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

(3) Ensure that LSA concerns have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of offers, quantities, specifications, and delivery schedules so as to facilitate the participation of LSA concerns;

(4) Include the Utilization of Labor Surplus Area Concerns clause in subcontracts that offer substantial LSA subcontracting opportunities; and

(5) Maintain records showing (i) the procedures adopted and (ii) the Contractor's performance, to comply with this clause. The records will be kept available for review by the Government until the expiration of 1 year after the award of this contract, or for such longer period as may be required by any other clause of this contract or by applicable law or regulations.

(c) The Contractor further agrees to insert in any related subcontract that may exceed \$500,000 and that contains the Utilization of Labor Surplus Area Concerns clause, terms that conform substantially to the language of this clause, including this paragraph (c), and to notify the Contracting Officer of the names of subcontractors.

75. FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME
COMPENSATION-GENERAL (APR 1984)

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) (the Act), is subject to the following terms and all other applicable provisions and exceptions of the Act and the regulations of the Secretary of Labor.

(a) Overtime requirements. A Contractor or subcontractor shall not require or permit any laborer or mechanic to work in excess of 8 hours in any calendar day, or 40 hours in any workweek, on any part of the contract work subject to the Act; unless, the laborer or mechanic receives compensation at a rate not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day, or 40 hours in any workweek, whichever produces the greater amount of overtime.

(b) Violation, liability for unpaid wages, and liquidated damages. If the terms of paragraph (a) above are violated, the Contractor and any subcontractor responsible for the violation shall be liable to any affected employee for unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States for liquidated damages. These damages are computed for each individual laborer or mechanic at \$10 for each calendar day on which the employee was required or permitted to be employed in violation of paragraph (a) above.

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

(d) Subcontracts. The Contractor and subcontractor shall insert paragraphs (a) through (d) of this clause in all subcontracts.

(e) Records. The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). These records shall be preserved for 3 years from contract completion. The Contractor will make the records available for inspection by authorized representatives of the U.S. Department of Energy and the Department of Labor, and will permit such representatives to interview employees during working hours on the job.

76. FAR 52.222-20 WALSH-HEALEY PUBLIC CONTRACTS ACT (APR 1984)

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

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

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

77. FA 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY
DATA (APR 1984)

(a) The Contractor agrees to submit a Material Safety Data Sheet (Department of Labor Form OSH-20), as prescribed in Federal Standard No. 313A, for all hazardous materials 5 days before delivery of the material, whether or not listed in Appendix A of the Standard. This obligation applies to all materials delivered under this contract which will involve exposure to hazardous materials or items containing these materials.

(b) "Hazardous material," as used in this clause, is as defined in Federal Standard No. 313A, in effect on the date of this contract.

(c) Neither the requirements of this clause nor any act or failure to act by Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(d) The Contractor shall comply with applicable Federal, state, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(e) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate, and disclose any data to which this clause is applicable. The purposes of this right are to (i) apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials; (ii) obtain medical treatment for those affected by the material; and (iii) have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (e)(1) above, in precedence over any other clause of this contract providing for rights in data.

(3) That the Government is not precluded from using similar or identical data acquired from other sources.

(4) That the data shall not be duplicated, disclosed, or released outside the Government, in whole or in part for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this clause applies

"This is furnished under United States Government Contract No. _____ and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of _____ This legend shall be marked on any reproduction of this data."

(5) That the Contractor shall not place the legend or any other restrictive legend on any data which (i) the Contractor or any subcontractor previously delivered to the Government without limitations or (ii) should be delivered without limitations under the conditions specified in the Federal Acquisition Regulation in the clause at 52.227-18, Rights in Data.

(f) The Contractor shall insert this clause, including this paragraph (f), with appropriate changes in the designation of the parties, in subcontracts at any tier (including purchase designations or purchase orders) under this contract involving hazardous material.

*applicable contract number

78. DEAR 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATIONAL EXPOSURE RECORDS (APR 1984)

Individual occupational radiation exposure records generated in the performance of work under this contract shall be subject to inspection by DOE and shall be preserved by the Contractor until disposal is authorized by DOE or at time option of the Contractor delivered to DOE upon completion or termination of the contract. If the Contractor exercises the foregoing option, title to such records shall vest in DOE upon delivery.

79. DEAR 952.224-70 PAPERWORK REDUCTION ACT (APR 1984)

(a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answer to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public interest, the Federal Reports Act will apply to this contract. No plan, questionnaire, interview guide, or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).

(b) The contractor shall request the required OMB clearance from the contracting officer before expending any funds or making public contacts for the collection of data. The authority to expend funds and to proceed with the collection of data shall be in writing by the contracting officer. The contractor must plan at least 90 days for OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the contractor will be considered in accordance with the clause entitled "Excusable Delays," if such clause is applicable. If not, the period of performance may be extended pursuant to this clause if approved by the contracting officer.

80. FAR 52.225-3 BUY AMERICAN ACT - SUPPLIES (APR 1984)

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

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

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

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

(b) The Contractor shall deliver only domestic end products, except those-

- (1) For use outside the United States,
- (2) That the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;
- (3) For which the agency determines that domestic preference would be inconsistent with the public interest; or
- (4) For which the agency determines the cost to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954, as amended, and Subpart 25.1 of the Federal Acquisition Regulation.)

81. FAR 52.230-3 COST ACCOUNTING STANDARDS (APR 1984)

(a) Unless the Cost Accounting Standards Board (CASB) has prescribed rules or regulations exempting the Contractor or this contract from standards, rules, and regulations promulgated pursuant to 50 U.S.C. App. 2168 (Pub. L.91-379, August 15, 1970), the Contractor, in connection with this contract, shall--

(1) (National Defense Contracts Only) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by regulations of the CASB. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

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

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

(4) (i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to (3) above, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of this paragraph 4; provided, that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under (4)(i) above, negotiate an equitable adjustment as provided in the Changes clause of this contract.

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

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

(c) The Contractor shall permit any authorized representatives of the agency head, of the CASB, or of the Comptroller General of the United States to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

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

(1) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(2) Prices set by law or regulation, and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause by reason of 331.30(b) of Title 4, Code of Federal Regulations (4 CFR 331.30(b)).

Note (1): New CAS shall be applicable to both national defense and non-defense CAS-covered contracts upon award of a new national defense CAS-covered contract containing the new Standard. The award of a new nondefense CAS-covered contract shall not trigger application of new CAS.

Note (2): Subcontractors shall be required to submit their Disclosure Statements to the Contractor. However, if a subcontractor has previously submitted its Disclosure Statement to a Government Administrative Contracting Officer (ACO), it may satisfy that requirement by certifying to the Contractor the date of the Statement and the address of the ACO.

Note (3): In any case where a subcontractor determines that the Disclosure Statement information is privileged and confidential and declines to provide it to the Contractor or higher tier subcontractor, the Contractor may authorize direct submission of that subcontractor's Disclosure Statement to the same Government offices to which the Contractor was required to make submission of its Disclosure Statement. Such authorization shall in no way relieve the Contractor of liability as provided in paragraph (a)(5) of this clause. In view of the foregoing and since the contract may be subject to adjustment under this clause by reason of any failure to comply with rules, regulations, and Standards of the CASB in connection with covered subcontracts, it is expected that the Contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor. However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the Contractor and the subcontractor, provided that they do not conflict with the duties of the Contractor under its contract with the Government. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification to be submitted by its subcontractors.

Note (4): If the subcontractor is a business unit which, pursuant to 4 CFR 332 is entitled to elect modified contract coverage and to follow Standards 401 and 402, the clause at 52.230-5, "Disclosure Consistency of Cost Accounting Practices," of the Federal Acquisition Regulation shall be inserted in lieu of this clause.

Note (5): The terms defined in 4 CFR 331.20 shall have the same meanings herein. As there defined, "negotiated subcontract" means any subcontract except a firm-fixed-price subcontract made by a Contractor or subcontractor after receiving offers from at least two persons not associated with each other or with such Contractor or subcontractor, providing (1) the solicitation to all competitors is identical, (2) price is the only consideration in selecting the subcontractor from among the competitors solicited, and (3) the lowest offer received in compliance with the solicitation from among those solicited is accepted.

82. FAR 52.230-4 ADMINISTRATION OF COST ACCOUNTING STANDARDS (APR 1984)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in (a) through (f) below:

(a) Submit to the cognizant Contracting Officer a description of any accounting change, the potential impact of the change on contracts containing a CAS clause, and if not obviously immaterial, a general dollar magnitude cost impact analysis of the change which displays the potential shift of costs between CAS-covered contracts by contract type (i.e., firm-fixed-price, incentive, cost-plus-fixed-fee, etc.) and other Contractor business activity. As related to CAS-covered contracts, the analysis should display the potential impact of funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:

(1) For any change in cost accounting practices required to comply with a new CAS in accordance with paragraphs (a)(3) and (a)(4)(i) of the CAS clause, within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.

(2) For any change in cost accounting practices proposed in accordance with paragraph (a)(4)(ii) or (a)(4)(iii) of the CAS clause or with paragraph (a)(3) or (a)(5) of the Disclosure and Consistency of Cost Accounting Practices clause, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.

(3) For any failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by paragraph (a)(5) of the CAS clause or by paragraph (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause, within 60 days (or such other date as may be mutually agreed to) after the date of agreement of noncompliance by the Contractor.

(b) Submit a cost impact proposal in the form and manner specified by the cognizant Contracting Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to (a) above. If the above proposal is not submitted within the specified time, or any extension granted by the cognizant Contracting Officer, an amount not to exceed 10 percent of each payment made after that date may be withheld until such time as a proposal has been provided in the form and manner specified by the cognizant Contracting Officer.

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

(d) For all subcontracts subject either to the CAS clause or to the Disclosure ~~and Consistency of Cost Accounting Practices clause~~

(1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used); and

(2) Include the substance of this clause in all negotiated subcontracts. In addition, within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administration office cognizant of the subcontractor's facility:

- (i) Subcontractor's name and subcontract number.
- (ii) Dollar amount and date of award.
- (iii) Name of Contractor making the award.
- (iv) Any changes the subcontractor has made or proposes to make to accounting practices that affect prime contracts or subcontracts containing the CAS clause or Disclosure and Consistency of Cost Accounting Practices clause, unless these changes have already been reported. If award of the subcontract results in making one or more CAS effective for the first time, this fact shall also be reported.

(e) Notify the Contracting Officer in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contract's price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or the prime contract appropriately.

(f) For subcontracts containing the CAS clause, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

83. FAR 52.232-9 LIMITATION ON WITHHOLDING OF PAYMENTS (APR 1984)

If more than one clause or Schedule term of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or Schedule term at that time; provided that this limitation shall not apply to-

- (a) Withholdings pursuant to any clause relating to wages or hours of employees;
- (b) Withholdings not specifically provided for by this contract;
- (c) The recovery of overpayments; and
- (d) Any other withholding for which the Contracting Officer determines that this limitation is inappropriate.

84. (This clause is applicable only if specified else where in this contract.)
DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY (APR 1984)

(a) This clause is incorporated into this contract pursuant to the authority contained in subsection 170(d) of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)

(1) The definitions set out in the Act shall apply to this article.

(2) The term "contract location" means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any Contractor-owned or controlled facility, installation, or site at which the Contractor is engaged in the performance of contractual activity under this contract.

(3) The term "extraordinary nuclear occurrence" means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in Subpart E of 10 CFR 140.

(b) Except as hereafter permitted or required in writing by DOE, the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability. DOE may at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover public liability, arising out of or in connection with the contractual activity, provided that the costs of such financial protection will be reimbursed to the Contractor by DOE.

(c) (1) To the extent that the Contractor and other persons indemnified are not compensated by any financial protection, permitted or required by DOE or the Nuclear Regulatory Commission (NRC), DOE will indemnify the Contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (2) of this paragraph (c); and (ii) the reasonable costs of investigating and settling claims and defending suits for damage for such public liability, provided that DOE's liability, excluding such reasonable costs, under all indemnity agreements entered into by DOE under section 170 of the Act, including this contract, shall not exceed \$500 million in the aggregate for each nuclear incident occurring within the United States or \$100 million in the aggregate for each nuclear incident occurring outside the United States irrespective of the number of persons indemnified in connection with this contract.

(2) The public liability referred to in paragraph (c)(1) of this section is public liability which (i) arises out of or in connection with the contract-activity; and (ii) arises out of or results from:

(A) A nuclear incident which takes place at a contract location; or

(B) A nuclear incident which takes place at any other location and arises out of or in the course of the performance of contractual activity under this contract by the Contractor's employees, individual consultants, borrowed personnel or other persons for the consequence of whose acts or omissions the Contractor is liable, provided that such incident is not covered by any other indemnity agreement entered into by DOE or the NRC pursuant to section 170 of the Act; or

(C) A nuclear incident which arises out of or in the course of transportation of source, special nuclear, or by-product materials to or from a contract location, provided such incident is not covered by any indemnity agreement entered into by DOE with the transporting carrier, or with a carrier's organization acting for the benefit of the transporting carrier, or with a licensee of NRC, pursuant to section 170 of the Act; or

(D) A nuclear incident which involves items (such as equipment, material, facilities, or design or other data) produced or delivered under this contract, provided such incident is not covered by any other indemnity agreement entered into by DOE or NRC pursuant to section 170 of the Act.

(d) In the event of an extraordinary nuclear occurrence which:

(1) Arises out of or results from or occurs in the course of the construction, possession, or operation of a production or utilization facility, or

(2) Arises out of or results from or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility, or

(3) During the course of the contract activity, arises out of or results from the possession, operation, or use by the contractor or a subcontractor of a device utilizing special nuclear material or by-product material. DOE and the Contractor on behalf of itself and other persons indemnified, insofar as their interests appear, each agrees to waive:

(i) Any issue or defense as to the conduct of the claimant or fault of persons indemnified, including, but not limited to:

(A) Negligence;

(B) Contributory negligence;

(C) Assumption of risk; or

(D) Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God.

As used herein, "conduct of the claimant" includes conduct of persons through whom the claimant derives its cause of action;

(ii) Any issue or defense as to charitable or governmental immunity;

(iii) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof, but in no event more than 20 years after the date of the nuclear incident. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

(e) The waivers set forth in paragraph (d) of this article:

(1) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(2) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

(3) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefore are either payable or required to be provided under any workmen's compensation or occupational disease law;

(4) Shall not apply to any claim for punitive or exemplary damages, provided, with respect to any claim for wrongful death under any State law which provides for damages only punitive in nature, this exclusion does not apply to the extent that the claimant has sustained actual damages, measured by the pecuniary injuries resulting from such death but not to exceed the maximum amount otherwise recoverable under such law;

(5) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

(6) Shall be effective only with respect to those obligations set forth in this agreement and in insurance policies, contracts, or other proof of financial protection; and

(7) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (i) the limit of liability provisions under subsection 170e of the Atomic Energy Act of 1954, as amended, and (ii) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

(f) The Contractor shall give immediate written notice to DOE of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (c)(2). Except as otherwise directed by DOE, the Contractor shall furnish promptly to DOE, copies of all pertinent papers received by the Contractor or filed with respect to such actions or claims. When DOE shall determine that the Government will probably be required to make indemnity payments under the provisions of (c) above, DOE shall have the right to, and shall collaborate with, the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right (1) to require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder, and (2) to appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(g) The indemnity provided by this article shall not apply to public liability arising out of, or in connection with, any activity that is performed at a licensed facility, and that is covered by a Nuclear Regulatory Commission indemnity agreement authorized by section 170 of the Act.

(h) The obligations of DOE under this article shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the Contractor, or by the completion, termination or expiration of this contract.

(i) The parties to this contract enter into this article upon the condition that this clause may be amended at any time by the mutual written agreement of DOE and the Contractor, and that such amendment may, by its express terms, provide that it will apply to any nuclear incidents which occur thereafter.

(j) The provisions of this article shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including "Disputes," provided, however, that the following clauses of this contract: "Covenant Against Contingent Fees;" "Officials Not to Benefit;" "Examination of Records;" and any clauses later added to this contract which under applicable Federal law, including statutes, executive orders and regulations, are required to be included in agreements of the type contained in this clause, shall apply to this clause.

85. FAR 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 1984)

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be "Government-furnished property," as distinguished from "Government property." The provisions of the clause entitled "Government Property," except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

86. DEAR 970.5204-2 SAFETY AND HEALTH (GOVERNMENT OWNED OR LEASED) (APR 1984)

(Applicable to work to be performed at a government-owned or leased facility where DOE has elected to assert its statutory authority to enforce occupational safety and health standards applicable to the working conditions of Contractor and subcontractor employees.)

The contractor shall take all reasonable precautions in the performance of the work under this contract to protect the safety and health of employees and of members of the public and shall comply with all applicable safety and health regulations and requirements (including reporting requirements) of DOE. The contracting officer shall notify the contractor, in writing, of any noncompliance with the provisions of the clause and the corrective action to be taken.

After receipt of such notice, the contractor shall immediately take corrective action. The contractor shall submit management program and implementation plan to the contracting officer for review and approval within 30 days after the date of award of this contract. In the event that the contractor fails to comply with said regulations or requirements of DOE, the contracting officer may, without prejudice to any other legal or contractual rights of DOE, issue an order stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of the contracting officer. The contractor shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, such work stoppage.

87. DEAR 970.5204-25 WORKMANSHIP AND MATERIALS (APR 1984)

(a) Grade of workmanship and materials. Unless otherwise directed by the contracting officer or expressly provided for by specifications issued under this contract:

- (1) All workmanship be first class; and
- (2) All articles, equipment and materials incorporated in the work to be:
 - (i) New and of the most suitable grade of their respective kinds for the purpose;

- (ii) In accordance with any applicable drawings and specifications; and
- (iii) Installed to the satisfaction and with the approval of the contracting officer.

Where equipment, materials, or articles are referred to in the specifications as "equal to" any particular standard, the contracting officer shall decide the question of equality.

(b) Samples and test results. If the contracting officer so requires, the contractor shall submit for approval samples of or test results on any materials proposed to be incorporated in the work before making any commitment for the purchase of such materials.

88. DEAR 970.5204-29 PERMITS OR LICENSES (APR 1984)

Except otherwise directed by the contracting officer, the contractor shall procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under this contract is performed.

89. SOURCE AND SPECIAL NUCLEAR MATERIALS

The Contractor shall comply with all applicable rules, regulations, and requirements of the DOE and of other Federal agencies relating to the possession, use, and transfer of source or special nuclear material and with all instructions and directives of the Contracting Officer relating to such materials furnished for use in the performance of work under this contract including instructions and directives relating to health and safety, accountability, and security. Unless ~~otherwise expressly authorized in writing by the Contracting Officer, source and~~ special nuclear material furnished under this contract shall be used solely for the performance of work under this contract and shall in any event be "Government Property" within the meaning and intent of the contract Clause entitled "Government Property" and subject thereto.

90. TECHNICAL DIRECTION AND SURVEILLANCE

(a) The work to be performed by the Contractor under this contract is subject to the surveillance and written technical direction of a "Contracting Officer's Technical Representative (COTR)" who shall be specifically appointed by the Contracting Officer in writing. Technical direction is defined as a directive to the Contractor within the requirements of the Scope of Work of the contract, which approves approaches, solutions, designs, or refinements; defines or

otherwise completes the general description of work; and otherwise furnishes technical guidance to the Contractor. The COTR shall monitor the Contractor's performance with respect to compliance with the requirements of the Scope of Work, period of performance and cost. Technical direction includes the process of conducting inquiries or transmitting information or advice by the COTR, regarding matters within the requirements of the Scope of Work. Technical direction and surveillance shall not impose tasks or requirements upon the Contractor additional to or different from the general requirements stated in the Scope of Work of the contract. The technical direction to be valid:

- (1) Must be issued in writing;
- (2) Shall not commit the Government to any adjustment of the estimated cost and fee or other terms and conditions.
- (3) Must be directed to the contractor's designated technical representative with a copy to the contractor's designated contract administrator.

(b) In the event any Government technical direction is interpreted by the Contractor to fall within the Clause entitled, "Changes - Cost-Reimbursement - Alternate V," (hereafter, "Changes"), the Contractor shall not implement such direction, but shall notify the Contracting Officer in writing of such interpretation within ten (10) working days after the Contractor's receipt of such direction. Such notice shall include the reasons upon which the Contractor bases its belief that the technical direction falls within the purview of the "Changes" clause.

The Contractor's costs associated with such technical direction if otherwise allowable shall be allowable for work performed prior to the time of notification to the Contracting Officer required above.

(c) (1) If, after reviewing the information presented pursuant to paragraph (b) above, the Contracting Officer is of the opinion that such direction is within the purview of the "Changes" clause and considers such change desirable, a unilateral direction will be issued to the Contractor to proceed pursuant to the authority granted to the Contracting Officer under the clause. If it is considered that such direction is technical direction authorized by this clause, the Contractor will be directed to proceed with the implementation of such technical direction.

(2) In the event the Contracting Officer determines that it is necessary to avoid a delay in performance of the contract, the Contracting Officer may, in writing, direct the Contractor to proceed with the implementation of the technical direction pending review of the information submitted under paragraph (b) above. Should the Contracting Officer later determine that a direction under the "Changes" clause is appropriate, the written decision issued hereunder shall constitute the required direction.

(d) Failure of the Contractor and the Contracting Officer to agree on whether any government direction is technical direction or a change within the purview of the "Changes" clause shall be a dispute concerning a question of fact within the meaning of the Clause entitled "Disputes - Alternate I."

(e) The only persons authorized to give technical direction to the Contractor under a contract are the Contracting Officer and any COTR who may be appointed by the Contracting Officer as contemplated by paragraph (a) above.

91. QUALITY ASSURANCE

The contractor shall establish, implement, and maintain a quality assurance program capable of fulfilling the requirements of ANSI/ASME NQA-1 "Quality Assurance Program Requirements for Nuclear Facilities" version in effect as of the contract effective date, unless otherwise specified in individual contracts. The extent to which NQA-1 applies is dependent upon the nature and scope of work to be performed, and the relative importance of the items or services being produced, as determined by the contractor and subject to review and disapproval by SAN, or as otherwise specified in individual contracts.

The quality program, including procedures, processes, and products shall be documented and subject to review by SAN. The quality program is subject to disapproval whenever the contractor's program does not accomplish its objectives. SAN, at its option, may furnish written notice of the acceptability of the contractor's quality assurance program.

All supplies and services under the contract, whether manufactured or performed within the controlled facility or at any other source, shall be controlled at all points necessary to assure conformance with contractual requirements. The contractor is totally responsible for all supplies and services provided by him or him or his sub-contractors. Government inspection shall not replace contractor inspection, or otherwise relieve the contractor of his responsibility to furnish an acceptable product.

92. SUBCONTRACTS (APR 1984)

(a) Prior to the placement of subcontracts and in accordance with the clause of Section I entitled "FAR 52.244-2 Subcontracts Under Cost-Reimbursement and Letter Contracts (APR 1984)", the Contractor shall insure that:

(1) They contain all of the clauses of this contract (altered when necessary for proper identification of the contracting parties) which contain a requirement for such inclusion in applicable subcontracts; and

(2) Any applicable subcontractor Certificate of Current Cost or Pricing Data (see FAR 15.804-2) and subcontractor Representations and Certifications are obtained: and

(3) Any required prior notice and description of the subcontract is given to the Contracting Officer and any required consent is received. Except as may be expressly set forth therein, any consent by the Contracting Officer to the placement of subcontracts shall not be construed to constitute approval of the subcontractor or any subcontract terms or conditions, determination of the allowability of any cost, revision of this contract or any of the respective obligations of the parties thereunder, or creation of any subcontractor privity of contract with Government.

(b) The Contractor shall also obtain and furnish to the Contracting Officer either an Organizational Conflicts of Interest (OCI) Disclosure Statement or Representation form in accordance with DEAR 909.570-7 "Organizational Conflicts of Interest Disclosure or Representation" for all subcontractors to be utilized under this contract. No work shall be performed by the subcontractor until the Contracting Officer has cleared the subcontractor for OCI.

(c) The following subcontractors have been cleared by the Contracting Officer for OCI:

NONE

93. CONSULTANT AGREEMENTS (APR 1984)

(a) All consultant agreements entered into by the Contractor, where the costs thereof are to be allowable under this contract, must have the prior written consent of the Contracting Officer.

(b) The Contractor's request for consent shall contain at least the following:

(1) A copy of the terms and conditions fo the proposed agreement.

(2) Information concerning the need for and selection of such consultant services and the reasonableness of the fees to be paid, including but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by such consultant to others for performing consulting services of a similar nature.

(3) A copy of either an Organizational Conflicts of Interest (OCI) Disclosure Statement or a Representation Form in accordance with DEAR 909.570-7 "Organizational Conflicts of Interest Disclosure or Representation" for all consultants to be utilized under this contract prior to their performing any effort under this contract. No effort shall be performed until the Contracting Officer has cleared the consultant for OCI.

(c) The following consultants have been cleared by the Contracting Officer for OCI:

NONE

94. AUTOMATED DATA PROCESSING EQUIPMENT (ADPE) USAGE

Requirements for ADPE which were not included in the Contractor's original proposal may not be acquired (leased or purchased) without the prior written consent of the Contracting Officer. Whenever Contracting Officer written consent is required, the Contractor will furnish to the Contracting Officer information concerning the need for and selection of such ADPE, the specific make(s) and model(s), and the lease vs. purchase determination.

95. AUTOMATED DATA PROCESSING EQUIPMENT (ADPE) LEASING

(a) If the Contractor leases ADPE equipment for use under this contract the Contractor shall include a provision in the rental contract stating that the Government shall have the unilateral right to exercise any purchase option under the rental contract between the Contractor and the ADPE equipment vendor and to realize any other benefits earned through rental payments.

(b) The Contractor shall furnish a copy of the rental contract to the Contracting Officer.

96. UNIFORM CONTRACT REPORTING

The Contractor shall prepare and submit the plans and reports indicated or the attached Form DOE 537 (10/80), Reporting Requirements Checklist, to the addresses indicated in the attachment to the form. Preparation of the specified plans and reports shall be in accordance with the "DOE Uniform Reporting System for Contractors."

The level of detail the Contractor must provide in the plans and reports shall be commensurate with the scope and complexity of the task and the reporting categories delineated in Block 4, Special Instruction, Form DOE 537, or in a particular contract clause. The Contractor shall be responsible for levying appropriate reporting requirements on any subcontractors in such a manner to ensure that data submitted is responsive to DOE requirements. If subcontractors are involved, the prime Contractor plans and reports submissions shall be structured in such a manner to permit clear identification of the subcontractor's cost and manpower inputs. Plans and reports submitted in compliance with the clause are in addition to any other reporting requirements of this contract. Other reporting requirements specified in the contract should also conform to the above standards.

97. (This clause applies if this contract requires the contractor to have access to classified information or a significant quantity of special nuclear material.)

DEAR 952.204-74 FOREIGN OWNERSHIP, CONTROL OR INFLUENCE OVER CONTRACTOR

(a) For purposes of this clause, a foreign interest is defined as any of the following:

- (1) A foreign government or foreign government agency;
- (2) Any form of business enterprise organized under the laws of any country other than the United States or its possessions;
- (3) Any form of business enterprise organized or incorporated under the laws of the U.S., or State or other jurisdiction within the U.S., which is owned, controlled, or influenced by a foreign government, agency, firm, corporation or person; or
- (4) Any person who is not a U.S. citizen.

(b) Foreign ownership, control, or influence (FOCI) means the situation where the degree of ownership, control, or influence over a contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information, special nuclear material as defined in 10 CFR Part 710, may result.

(c) For purposes of this clause, subcontractor means any subcontractor at any tier and the term "contracting officer" shall mean DOE contracting officer. When this clause is included in a subcontract, the term "contractor" shall mean subcontractor and the term "contract " shall mean subcontract.

(d) The contractor shall immediately provide the contracting officer written notice of any changes in the extent and nature of FOCI over the contractor which would effect the answers to the questions presented in DEAR 952.204-73. Further, notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the contracting officer.

(e) In those cases where a contractor has changes involving FOCI, the DOE must determine where the changes will pose an undue risk to the common defense and security. In making this determination, the contracting officer shall consider proposals made by the contractor to avoid or mitigate foreign influences.

(f) If the contracting officer at any time determines that the contractor is, or is potentially, subject to FOCI, the contractor shall comply with such instructions as the contracting officer shall provide in writing to safeguard any classified information or significant quantity of special nuclear material.

(g) The contractor agrees to insert terms that conform substantially to the language of this clause including this paragraph (g) in all subcontracts under this contract that will require access to classified information or a significant quantity of special nuclear material. Additionally, the contractor shall require such subcontractors to submit a completed certification required in DEAR 952.204-73 prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the contracting officer.

(h) Information submitted by the contractor or any affected subcontractor as required pursuant to this clause shall be treated by DOE to the extent permitted by law, as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.

(i) The requirements of this clause are in addition to the requirement that a contractor obtain and retain the security clearances required by the contract. This clause shall not operate as a limitation on DOE's rights, including its rights to terminate this contract.

(j) The contracting officer may terminate this contract for default either if the contractor fails to meet obligations imposed by this clause, e.g., provide the information required by this clause, comply with the contracting officer's instructions about safeguarding classified information, or make this clause applicable to subcontractors, or if, in the contracting officer's judgment, the contractor creates an FOCI situation in order to avoid performance or a termination for default. The contracting officer may terminate this contract for convenience if the contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

98. FAR 52.252-4 ALTERATIONS IN CONTRACT (APR 1984)

Portions of this contract are altered as follows:

- (a) The following corrections are made to Clause 8, FAR 52.215-2, AUDIT-NEGOTIATION (APR 1984):
 - (1) Paragraph (a), line 3 - insert a dash (-) after "maintain"
 - (2) Paragraph (a), line 5 - insert a dash (-) after "audit"
 - (3) Paragraph (b), line 5 - change "or" to "other"
 - (4) Paragraph (b), line 9 - change "perm" to "permit"
 - (5) Paragraph (b), line 9 - insert "or" after "cost"
- (b) Clause 11, FAR 52.215-23, PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS (APR 1984), is deleted.
- (c) Clause 13, FAR 52.215-25, SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS (APR 1984), is deleted.
- (d) The following corrections are made to Clause 16, DEAR 952.216-7, ALLOWABLE COST AND PAYMENT (APR 1984):
 - (1) Paragraph (a), line 5 - delete "and" and substitute "as supplemented by Subpart 931.2 of the Department of Energy Acquisition Regulations (DEAR)" after the acronym "(FAR)".
 - (2) Paragraph (c), line 1 - change "concern" in paragraph title to "concerns".
 - (3) Paragraph (d), line 1 - change "reates" in paragraph title to "rates".
- (e) The note at the beginning of Clause 17, FAR 52.216-8, FIXED FEE (APR 1984), is deleted.
- (f) Clause 18, FAR 52.216-11, COST CONTRACT - NO FEE (APR 1984), is deleted.
- (g) The citation and title of Clause 32 are corrected to read: DEAR 952.224-70, PAPERWORK REDUCTION ACT (APR 1984).
- (h) Clause 41, DEAR 952.235-70, KEY PERSONNEL (APR 1984), is deleted.

(Note: This paragraph (g) is applicable if the contractor is withholding proprietary data under paragraph (e) of this clause.)

DEAR 952.227-75 ALTERNATE I - ADDITIONAL PARAGRAPH (g), LIMITED RIGHTS (APR 1984)

Paragraph (g) is hereby added to the clause entitled "Rights in Technical Data - Long Form."

(g) Limited rights in proprietary data. Except as may be otherwise specified in this contract as technical data which are not subject to this paragraph, the Contractor shall, upon written request from the Contracting Officer at any time prior to three years after final payment under this contract, promptly deliver to the Government any "proprietary data" withheld pursuant to paragraph (e) of the Rights in Technical Data clause of this contract. The following legend and no other is authorized to be affixed on any "proprietary data" delivered pursuant to this provision; provided the "proprietary data" meets the conditions for initial withholding under paragraph (e) of the Rights in Technical Data clause. The Government will thereafter treat the "proprietary data" in accordance with such legend.

Limited Rights Legend (APR 1984)

This technical data contains "proprietary data," furnished under "Contract No. _____" with the U.S. Department of Energy (and Purchase Order No. _____ if applicable) which may be duplicated and used by the Government with the express limitations that the "proprietary data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use maybe made solely for the following purposes:

(a) This "proprietary data" may be disclosed for evaluation purposes under the restriction that the "proprietary data" be retained in confidence and not further disclosed;

(b) This "proprietary data" may be disclosed to other contractors participating in the Government's program of which this contract is a part, for information or use in connection with the work performed under their contracts and under the restriction that the "proprietary data" be retained in confidence and not be further disclosed; or

(c) This "proprietary data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "proprietary data" be retained in confidence and not be further disclosed.

This legend shall be marked on any reproduction of this data in whole or in part.

(Note: This paragraph (h) is applicable if the contractor is withholding proprietary data under paragraph (e) of this clause.)

DEAR 952.227-75. ALTERNATE II - ADDITIONAL PARAGRAPH (h), CONTRACTOR LICENSING (APR 1984)

(h) Contractor licensing. Except as may be otherwise specified in this contract as technical data not subject to this paragraph, the Contractor agrees that upon written application by DOE, it will grant to the Government and responsible third parties, for purpose of practicing a subject of this contract, a nonexclusive license in any contract data which are proprietary data, on terms and conditions reasonable under the circumstances including appropriate provisions for confidentiality; provided, however, the Contractor shall not be obligated to license any such data if the Contractor demonstrates to the satisfaction of the Head of the Agency or designee that:

(1) Such data are not essential to the manufacture or practice of hardware designed or fabricated, or processes developed, under this contract;

(2) Such data, in the form of results obtained by their use, have a commercially competitive alternative available or readily introducible from one or more other sources;

(3) Such data, in the form of result obtained by their use, are being supplied by the Contractor or its licensees in sufficient quantity and at reasonable prices to satisfy market needs, or the Contractor or its licensees have taken effective steps or within a reasonable time are expected to take effective steps to so supply such data in the form of results obtained by their use; or

(4) Such data, in the form of results obtained by their use, can be furnished by another firm skilled in the art of manufacturing items or performing processes of the same general type and character necessary to achieve the contract results.

(r) Clause 65, DEAR 952.227-76, RIGHTS IN DATA - SPECIAL WORKS (JUN 1979), is deleted.

(s) Clause 66, DEAR 952.227-77, RIGHTS IN TECHNICAL DATA - SHORT FORM (JUN 1979), is deleted.

(t) Clause 67, DEAR 952.227-82, RIGHTS TO PROPOSAL DATA (APR 1984), is deleted.

(u) Clause 57, DOE PR 9-9.103-3, PATENT INDEMNITY (JUN 1979), is deleted.

(v) Clause 39, DEAR 952.232-73, PAYMENT METHODS (APR 1984), paragraph (a) is revised to read as follows:

(a) Payments due for amounts properly invoiced in accordance with the terms and conditions specified elsewhere in the contract shall be made, determined by the Government, either (1) by treasury check(s) payable to the contractor or designee; (2) by electronic funds transfer(s) to a financial institution designated by the contractor for that purpose; or (3) by a modified letter of credit procedure. Funds paid under MLOC procedure shall be deposited only in a special bank account or account established under the "Agreement for Special Bank Account," which is attached hereto, and incorporated herein as Attachment II. If a MLOC procedure is utilized:

- 1) The contractor and bank shall agree upon a minimum non-interest bearing time deposit, if required, designated as one of the special accounts described in Attachment II. The amount of desposit should be sufficient to compensate the bank for services rendered during the period of the bank agreement.
- 2) Any claim by the bank arising as a result of implementing the provisions of the Special Bank Agreement not recoverable by the non-interest bearing deposit shall be the responsibility of the contractor and shall not constitute an allowable cost.

ATTACHMENT I SENSITIVE FOREIGN NATIONS CONTROLS

The Contractor shall comply with the requirements of DOE Order 1240.2, Alien Visits and Assignments, and DOE Order 1430.2, Implementation of the Acquisition and Technical Information Management Program in accordance with Clause 70, DEAR 952.204-71 Sensitive Foreign Nations Controls (APR 1984).

All liquid Metal Fast Breeder Reactor Reports shall contain the following statement:

"APPLIED TECHNOLOGY

Any further distribution by any holder of this document or of the data therein to third parties representing foreign interests, foreign governments, foreign companies and foreign subsidiaries or foreign divisions of U.S. companies should be coordinated with the Deputy Assistant Secretary for Breeder Reactor Programs, Department of Energy."

The following listing of sensitive foreign nations may be changed from time to time by separate letter:

Communist/Communist-Controlled Countries:

Afghanistan	Mongolia
Albania	North Korea
Bulgaria	People's Republic of China
Cuba	Poland
Czechoslovakia	Romania
Democratic Kampuchea (Cambodia)	Union of Soviet Socialist
German Democratic Republic	Republics (including Estonia, Latvia
Hungary	and Lithuania)
Laos	Vietnam

SPECIAL BANK ACCOUNT AGREEMENT

This Agreement entered into this _____ day of _____, 19__ between the UNITED STATES OF AMERICA (hereinafter called the "Government"), represented herein by the UNITED STATES DEPARTMENT OF ENERGY (hereinafter referred to as the "DOE"), and _____ (hereinafter called the _____), a corporation under the laws of the State of California, and _____ (hereinafter called the "Bank"), a banking corporation organized under the laws of the State of California, located at. _____.

RECITALS

- a. Under date of _____, the Department of Energy and the Contractor amended Contract No. _____ to provide for the making of payments of Government funds to the Contractor under Modified Letter of Credit (MLOC) procedures. A copy of the MLOC provisions has been furnished to the Bank.
- b. The Department of Energy requires that the amounts paid to the Contractor under said MLOC provisions shall be deposited in a Special Bank Account with a bank designated by the Treasury Department as a depository and financial agent of the Government (Section 10 of the Act of June 11, 1942 - 56 Stat. 356; 12 USC 265), separate from any of the Contractor's general or other funds; and, the Bank being such a bank, the parties are agreeable to depositing said amounts with the Bank.
- c. This Special Bank Account shall be designated:

COVENANTS

In consideration of the foregoing, and for other good and valuable considerations, it is agreed that:

1. The Contract shall maintain with Bank two special accounts under this Agreement for funds under said contract - a non-interest bearing time account if required to be designated "Rockwell International Corp." Time Account, and a checking account to be designated "Rockwell International Corp." - Revolving Fund".

- a. Said time account shall carry a minimum deposit balance to be determined between the bank and the Contractor during the term of this Agreement, subject to adjustment on any anniversary date hereof by mutual agreement of the parties.
 - b. Said revolving account shall be a zero balance account. All checks received drawn against this account shall be paid to Contractor by Bank, and be reimbursed by presentation of a payment voucher to the Federal Reserve Bank under the DOE Letter of Credit to restore the account to zero balance.
 - c. Detailed written procedures to implement the Agreement and to cover the handling of said special accounts, checks, and related documents, shall be developed by the representatives of the Bank and the Treasurer of Energy Systems Group, Rockwell International Corporation.
2. The Bank will be bound by the provisions of said contract or contracts relating to the deposit and withdrawal of funds in the above Special Bank Account but shall not be responsible for the application of funds properly withdrawn from said account. After receipt by the Bank of written directions from the Contracting Officer, or from the duly authorized representative of the Contracting Officer, or the Manager of the San Francisco Operations Office of the Department of Energy, the Bank shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions.
 3. The Government, or its authorized representatives, shall have access to the books and records maintained by the Bank with respect to such Special Bank Account at all reasonable time and for all reasonable purposes including, without limitation, the inspection or copying of such books and records and any and all memoranda, checks, correspondence, or documents appertaining thereto. Except as agreed upon by the Government and the Bank, all books and records pertaining to the Special Bank Account in the possession of the Bank relating to the Special Bank Account agreement shall be preserved by the Bank for a period of three (3) years after final payment under the contract to which the Special Bank Account agreement pertains or otherwise disposed of in such manner as may be agreed upon by the Government and the Bank.

4. In the event of the service of any writ of attachment levy of execution, or commencement of garnishing proceedings with respect to the Special Bank Account, the Bank will promptly notify the Manager, San Francisco Operation Office, United States Department of Energy.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

By _____

Title _____

Date _____

I, _____, certify that I am the _____ of the "Contractor" herein, that on behalf of the said Contractor was then _____ of said Contractor and that said contract was duly signed for and on behalf of said Contractor pursuant to authority granted by them and is within the scope of their powers.

By _____

Title _____

Date _____

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

CORPORATE SEAL

THE UNITED STATES OF AMERICA

By _____

Title _____

Date _____

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

2. AMENDMENT/MODIFICATION NO. M001		3. EFFECTIVE DATE See blk 16c	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
6. ISSUED BY U.S. Department of Energy San Francisco Operations Office 1333 Broadway Oakland, CA 94612		CODE FS	7. ADMINISTERED BY (If other than Item 6) CODE	

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) Rocketdyne Division - Energy Programs Rockwell International Corporation 6633 Canoga Avenue Canoga Park, CA 91304 Attn: A. Lucas		(d)	9A. AMENDMENT OF SOLICITATION NO.
CODE			9B. DATED (SEE ITEM 11)
FACILITY CODE		X	10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AM03-84SF00102
			10B. DATED (SEE ITEM 13) 9/27/84

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:
 (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

<input type="checkbox"/>	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
X	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

The number of this Basic Agreement is changed from DE-AM03-84SF00102 to DE-AA03-84SF00102.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Fred Sass	
15B. CONTRACTOR/OFFEROR <i>J. T. Hoffman</i> (Signature of person authorized to sign)	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA BY <i>Fred Sass</i> (Signature of Contracting Officer)	16C. DATE SIGNED 4/18/85