



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

April 29, 1980

Gentlemen:

Subject: Request for Proposal No. RS- RES-80-189
Entitled: Seismic Qualification of Nuclear Plant Mechanical and
Electrical Equipment

The U. S. Nuclear Regulatory Commission (NRC) is soliciting proposals for the project entitled above. The full scope of work anticipated is as set forth in that part of the Request for Proposal entitled, "CONTRACT SCHEDULE - STATEMENT OF WORK."

It is our intention by this solicitation to secure the best qualified organization available to perform this project, cost and other factors considered.

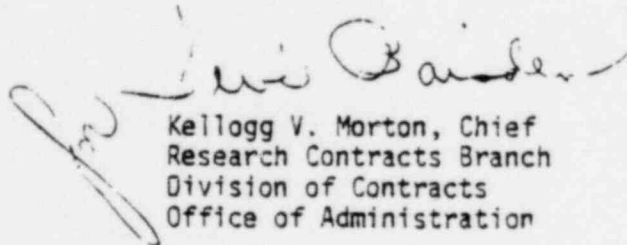
If you desire to respond, your proposal should address the proposal content requirements set forth in the body of the solicitation. All proposals will be evaluated against the evaluation criteria shown in Part II. For your convenience, an "RFP Summary" has been provided as Enclosure A. Instructions for completing and submitting your proposal are provided in Enclosure B.

Should you determine that you do not wish to submit an offer, a "NO-OFFER RESPONSE FORM" is provided as Enclosure C.

The solicitation package is included as Enclosure D.

If you have any questions concerning the requirements of this solicitation, please contact Mr. Levi Baisden at (301) 427-4065 (collect calls will not be accepted).

Sincerely,


Kellogg V. Morton, Chief
Research Contracts Branch
Division of Contracts
Office of Administration

Enclosures:

- A. RFP Summary
- B. Proposal Submission Instructions
- C. NO-OFFER RESPONSE FORM
- D. Solicitation Package (Standard Form 33 with Attachments)

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THIS DOCUMENT CONTAINS
POOR QUALITY PAGES

RFP SUMMARY

The following summary provides a general description of this requirement. Further detailed information is furnished in the applicable sections of the RFP.

RFP NO.: RS-RES-80-189

RFP TITLE: Seismic Qualification of Nuclear Plant Mechanical and Electrical Equipment

BRIEF STATEMENT OF WORK:

The development of recommendations for seismic criteria and methods to determine the seismic qualification of nuclear plant mechanical and electrical equipment.

RFP RESTRICTIONS:

- Unrestricted
- Mandatory Small Business and Small Disadvantaged Business Subcontracting Provision
- Set-Aside
 - Total Small Business - Labor Surplus Area Set-Aside
 - Total Small Business Set-Aside
 - Partial Small Business Set-Aside

ISSUE DATE: April 29, 1980

CLOSING DATE/TIME: May 29, 1980 - 3:00 PM

ESTIMATED LEVEL OF EFFORT: 4.5 man-years

PERIOD OF PERFORMANCE: Thirty-six (36) months

PROPOSAL ACCEPTANCE PERIOD: Ninety (90) days

ANTICIPATED AWARD DATE: September, 1980

TYPE OF CONTRACT ANTICIPATED: Cost Plus Fixed Fee

Note: Tasks may be awarded on a combined basis or for each task individually.

SECURITY REQUIREMENTS: None

PRE-PROPOSAL CONFERENCE: None

TELEGRAPHIC RESPONSES ARE NOT AUTHORIZED.

ENCLOSURE A

PROPOSAL SUBMISSION INSTRUCTIONS

The following instructions are provided as a summary guide to assist the offeror in the submission of a proposal but they do not supersede those instructions contained in the solicitation package. The instructions contained throughout the "solicitation package" (Enclosure D to the cover letter) shall govern in all instances where a contradiction exists.

DOCUMENTS REQUIRED IN PROPOSAL

- Three (3) original signed copies of the solicitation package, i.e., Standard Form 33 with attachments.
- One (1) original and six (6) copies each of the Technical and Cost Proposals.

OFFEROR "FILL-INS"

- Offeror must complete Block Nos. 16, 17, 18, 19, and 20 of the SF-33 along with completion of all representations and certifications contained on pages 2 through 13 of the solicitation package.
- Part IV, "Proposal Summary and Data Sheet" is to be completed by offeror.
- It is requested that the "Optional Form 60" provided in Part IV be used in submission of the Cost Proposal.

NOTE: The offer must set forth full, accurate, and complete information as required by this solicitation (including attachments). The penalty for making false statements is prescribed in 18 U.S.C. 1001.

TRANSMITTING OFFEROR'S PROPOSAL

- All offers should be addressed as indicated in Block 7 of the Standard Form 33.
- The envelope used in submitting your proposal must be plainly marked with the solicitation number, the time, and date set forth in the solicitation document (Block 9 of the Standard Form 33) and the following notation: "Mail Room - Do Not Open."
- Hand-carried solicitations - Hand-carried offers should be addressed as indicated in Block 7 of the Standard Form 33 and delivered to:

U. S. Nuclear Regulatory Commission
Division of Contracts
Research Contracts Branch
Room 304
7915 Eastern Avenue
Silver Spring, MD 20910

DO NOT HAND DELIVER TO BUILDING SECURITY GUARDS. PHONE X-74365 AT THE GUARD DESK.

Telegraphic proposals are not authorized, and if submitted, such proposals shall be rejected.

ENCLOSURE B

NO-OFFER RESPONSE FORM

RFP NO.: RS-RES-80-189

TITLE: Seismic Qualification of Nuclear Plant Mechanical and Electrical
Equipment

Please review the enclosed RFP. If you do not desire to submit a proposal,
complete the section below, fold this sheet as indicated on the reverse,
staple, affix postage, and mail back to the NRC.

Gentlemen:

Please be advised that we do not desire to submit a proposal for the above RFP.

We desire do not desire to be retained on the NRC Contractor Bidders
Mailing List.

We desire to be placed on the NRC Contractor Bidders Mailing List.

Name of Organization:

Authorized Signature:

Typed Name and Title:

Date:

ENCLOSURE C

Staple Here

Affix
Postage
here

U.S. Nuclear Regulatory Commission
Office of Administration
Division of Contracts
Washington, D.C. 20555
ATTN: Levi Baisden

Fold

Fold

Fold

Fold

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*Please note that in order to reduce printing costs, only one copy of this document is included with this solicitation. Please retain it for your files since any contract awarded as a result of this solicitation will also contain this document by reference.

ENCLOSURE D

PART I

SOLICITATION, OFFER AND AWARD		3. CERTIFIED MAIL NATIONAL OFFER UNDER OPS REG. 1 AND/OR OMB REG. 1 RATING:	4. PAGE OF 1 30
1. CONTRACT (Proc. Reg. 101-11) NO.	2. SOLICITATION NO. RS-RES-80-189 <input type="checkbox"/> ADVERTISED OFFER <input checked="" type="checkbox"/> RESTRICTED OFFER	5. DATE ISSUED 4/29/80	6. REQUISITION/PURCHASE REQUEST NO.
7. ISSUED BY U. S. Nuclear Regulatory Commission Division of Contracts Washington, D.C. 20555		8. ADDRESS OFFER TO (if other than above)	

In advertisement procurement "offer" and "offeror" shall be construed to mean "bid" and "bidder"

SOLICITATION

9. Sealed offers in three (3) original copies for furnishing the supplies or services in the Schedule will be received at the place specified in block 8, or if handwritten, in the depository located in Room 304, 7915 Eastern Avenue until 3:00 PM local time May 29, 1980
Silver Spring, MD 20910 (Hours) (Date)

If this is an advertised solicitation, offers will be publicly opened at this time.

CAUTION - LATE OFFERS: See pars. 7 and 8 of Solicitation Instructions and Conditions.

(Telegraphic responses are not authorized)

All offers are subject to the following:

- The Solicitation Instructions and Conditions, SF 33-A, January 1978 edition which is attached or incorporated herein by reference.
- The General Provisions, SF 32, _____ edition, which is attached or incorporated herein by reference.
- The Schedule included herein and/or attached hereto.
- Such other provisions, representations, certifications, and specifications as are attached or incorporated herein by reference. (Attachments are listed in schedule.)

FOR INFORMATION CALL (Name & telephone no.) (No collect calls) ☎

Mr. Levi Baisden (301) 427-4365

SCHEDULE

10 ITEM NO	11 SUPPLIES SERVICES	12 QUANTITY	13 UNIT	14 UNIT PRICE	15 AMOUNT
SEE PART III OF THIS SOLICITATION PACKAGE					

See continuation of schedule on page 4

OFFER (pages 2 and 3 must also be fully completed by offeror)

In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days (90 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

16. DISCOUNT FOR PROMPT PAYMENT (See par. 8, SF 33-A)

10 CALENDAR DAYS 20 CALENDAR DAYS 30 CALENDAR DAYS _____ CALENDAR DAYS

17. OFFEROR	CODE	FACILITY CODE	18 NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)
NAME AND ADDRESS (Street, city, county, State and ZIP code)			19 SIGNATURE
AREA CODE AND TELEPHONE NO ☎			20 OFFER DATE
<input type="checkbox"/> Check if residence address is different from above - enter such address in Schedule			

* See below

AWARD (To be completed by Government)

21 ACCEPTED AS TO ITEMS NUMBERED	22 AMOUNT	23 ACCOUNTING AND APPROPRIATION DATA	
24 SUBMIT INVOICES (if copies unless otherwise specified) TO ADDRESS SHOWN IN BLOCK _____		25 NEGOTIATED PURSUANT TO	26 U.S.C. 2501(a) 10
28 ADMINISTERED BY (if other than block 7)	CODE	27 PAYMENT WILL BE MADE BY	CODE
28 NAME OF CONTRACTING OFFICER (Type or print)		29 UNITED STATES OF AMERICA	30 AWARD DATE
		BY (Signature of contracting officer)	

Award will be made on this form, or on Standard Form 28, or by other official written notice

* PRINCIPAL PLACE OF PERFORMANCE:

POOR ORIGINAL

REPRESENTATIONS, CERTIFICATIONS AND ACKNOWLEDGMENTS

REPRESENTATIONS (Check or complete all applicable boxes or blocks.)

The offeror represents as part of his offer that:

1. SMALL BUSINESS (See par. 14 on SF 33-A.)

He is is not, a small business concern. If offeror is a small business concern and is not the manufacturer of the supplies offered, he also represents that all supplies to be furnished hereunder will, will not, be manufactured or produced by a small business concern in the United States, its possessions, or Puerto Rico.

2. MINORITY BUSINESS ENTERPRISE

He is, is not, a minority business enterprise. A minority business enterprise is defined as a "business, at least 50 percent of which is owned by minority group members or, in case of publicly owned businesses, at least 51 percent of the stock of which is owned by minority group members." For the purpose of this definition, minority group members are Negroes, Spanish-speaking American persons, American-Orientals, American-Indians, American Eskimos, and American-Aleuts.

3. REGULAR DEALER - MANUFACTURER (Applicable only to supply contracts exceeding \$10,000.)

He is a regular dealer in manufacturer of, the supplies offered.

4. CONTINGENT FEE (See par. 15 on SF 33-A.)

(a) He has, has not, employed or retained any company or persons (other than a full-time bona fide employee working solely for the offeror) to solicit or secure this contract, and (b) he has, has not, paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the offeror) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer. (Interpretation of the representation, including the term "bona fide employee," see Code of Federal Regulations, Title 41, Subpart 1-1.5.)

5. TYPE OF BUSINESS ORGANIZATION

He operates as an individual, a partnership, a nonprofit organization, a corporation, incorporated under the laws of the State of _____.

6. AFFILIATION AND IDENTIFYING DATA (Applicable only to advertised solicitations.)

Each offeror shall complete (a) and (b) if applicable, and (c) below:

(a) He is, is not, owned or controlled by a parent company. (See par. 16 on SF 33-A.)

(b) If the offeror is owned or controlled by a parent company, he shall enter in the blocks below the name and main office address of the parent company:

NAME OF PARENT COMPANY
AND MAIN OFFICE ADDRESS
(include ZIP code)

EMPLOYER'S IDENTIFICATION NUMBER-SEE PAR. 17 ON SF 33-A

OFFEROR'S E.O. NO.

PARENT COMPANY'S E.O. NO.

7. EQUAL OPPORTUNITY

(a) He has, has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause herein or the clause originally contained in section 301 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114, that he has, has not, filed all required compliance reports, and that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained prior to subcontract awards. (The above representation need not be submitted in connection with contracts or subcontracts which are exempt from the equal opportunity clause.)

(b) The bidder (or offeror) represents that (1) he has developed and has on file, has not developed and does not have on file, at each establishment affirmative action programs as required by the rules and regulations of the Secretary of Labor (41 CFR 60.1 and 60.2) or (2) he has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor. (The above representation shall be completed by each bidder (or offeror) whose bid (offer) is \$50,000 or more and who has 50 or more employees.)

CERTIFICATIONS (Check or complete all applicable boxes or blocks.)

1. BUY AMERICAN CERTIFICATE

The offeror certifies as part of his offer, that: each end product, except the end products listed below, is a domestic end product (as defined in the clause entitled "Buy American Act"), and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

EXCLUDED END PRODUCTS:

COUNTRY OF ORIGIN:

POOR ORIGINAL

2. **CLEAN AIR AND WATER** (Applicable if the bid or offer exceeds \$100,000, or the contracting officer has determined that orders under an indefinite quantity contract in any year will exceed \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-3(c)(1)) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA or is not otherwise exempt.)

The bidder or offeror certifies as follows:

(a) Any facility to be utilized in the performance of this proposed contract has, has not, been listed on the Environmental Protection Agency List of Violating Facilities.

(b) He will promptly notify the contracting officer, prior to award, of the receipt of any communication from the Director, Office of Federal Activities, Environmental Protection Agency, indicating that any facility which he proposes to use for the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities.

(c) He will include substantially this certification, including this paragraph (c), in every nonexempt subcontract.

3. **CERTIFICATION OF INDEPENDENT PRICE DETERMINATION** (See par. 18 on SF 33-A)

(a) By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:

(1) The prices in this offer have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor.

(2) Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening in the case of an advertised procurement or prior to award in the case of a negotiated procurement, directly or indirectly to any other offeror or to any competitor; and

(3) No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit an offer for that purpose of restricting competition.

(b) Each person signing this offer certifies that:

(1) He is the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein and that he has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3), above, or

(2) (i) He is not the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein but that he has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated and will not participate, in any action contrary to (a)(1) through (a)(3) above, and as their agent does hereby so certify; and (ii) he has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above.

4. **CERTIFICATION OF NONSEGREGATED FACILITIES** (Applicable to (1) contracts, (2) subcontracts, and (3) agreements with applicants who are themselves performing federally assisted construction contracts, exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause.)

By the submission of this bid, the bidder, offeror, applicant, or subcontractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The bidder, offeror, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin, because of habit, local custom, or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that he will retain such certifications in his files; and that he will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to prospective subcontractors of requirement for certifications of nonsegregated facilities.

A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). NOTE: The penalty for making false offers is prescribed in 18 U.S.C. 1001.

Continued on Page 4

	AMENDMENT NO	DATE	AMENDMENT NO	DATE
ACKNOWLEDGMENT OF AMENDMENTS The offeror acknowledges receipt of amendments to the Solicitation for offers and related documents numbered and dated as follows:				

NOTE: Offers must set forth full, accurate and complete information as required by this Solicitation (including attachments). The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

PART I

Representations, Certifications, and Acknowledgments - Continued SF-33 (Page 3)

5. WOMAN-OWNED BUSINESS

Concern is is not a woman-owned business. The business is publicly owned, a joint stock association, or a business trust yes no. The business is certified not certified.

A woman-owned business is a business which is, at least, 51 percent owned, controlled, and operated by a woman or women. Controlled is defined as exercising the power to make policy decisions. Operated is defined as actively involved in the day-to-day management.

For the purposes of this definition, businesses which are publicly owned, joint stock associations, and business trusts are exempted. Exempted businesses may voluntarily represent that they are or are not, woman-owned if this information is available.

6. NON-DISCRIMINATION BECAUSE OF AGE CERTIFICATION (1-12.1001)

The offeror hereby certifies as follows:

- (a) In the performance of Federal contracts, he and his subcontractors shall not in connection with the employment, advancement, or discharge of employees or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational retirement plan, or statutory requirement, and
- (b) That contractors and subcontractors, or persons acting on their behalf, shall not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for such employment unless the specified maximum age limit is based on a bona fide occupational qualification, retirement plan, or statutory requirement.

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7. CONTRACTOR ORGANIZATIONAL CONFLICTS OF INTEREST

I represent to the best of my knowledge and belief that:

The award to _____ of a contract or the modification of an existing contract does or does not involve situations or relationships of the type set forth in 41 CFR paragraph 20-1.5403(b)(1).

If the representation as completed indicates that situations or relationships of the type set forth in 41 CFR 20-1.5403(b)(1) are involved or the Contracting Officer otherwise determines that potential organizational conflicts exist, the offeror shall provide a statement in writing which describes in a concise manner all relevant factors bearing on his representation to the Contracting Officer. If the Contracting Officer determines that organizational conflicts exist, the following actions may be taken:

- (a) impose appropriate conditions which avoid such conflicts,
- (b) disqualify the offeror, or
- (c) determine that it is otherwise in the best interest of the United States to seek award of the contract under the waiver provisions of § 20-1.5411.

The refusal to provide the representation required by §20-1.5404(b) or upon request of the Contracting Officer the facts required by §20-1.5404(c), shall result in disqualification of the offeror for award. The nondisclosure or misrepresentation of any relevant interest may also result in the disqualification of the offeror for awards; or if such nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated. The offeror may also be disqualified from subsequent related NRC contracts and be subject to such other remedial actions provided by law or the resulting contract.

The offeror may, because of actual or potential organizational conflicts of interest, propose to exclude specific kinds or work from the statements of work contained in an RFP unless the RFP specifically prohibits such exclusion. Any such proposed exclusion by an offeror will be considered by the NRC in the evaluation of proposals. If the NRC considers the proposed excluded work to be an essential or integral part of the required work and its exclusion would work to the detriment of the competitive posture of the other offerors, the proposal must be rejected as unacceptable.

The offeror's failure to execute the representation required herein with respect to invitation for bids will be considered to be a minor informality, and the offeror will be permitted to correct the omission.

Any contract resulting from a solicitation requirement shall include general clauses (41 CFR 20-1.5404-1) prohibiting contractors from engaging in relationships which may give rise to an actual or apparent conflict of interest. Note: NRC Contractor Organizational Conflicts of Interest (41 CFR Part 20) is included in Part IV as Attachment No. 1.

8. COST ACCOUNTING STANDARDS (Applicable only to negotiated contracts exceeding \$100,000 except when: see Federal Procurement Regulation, Temporary Regulation 44 dated March 31, 1981).

It has been determined by the Contracting Officer or his duly authorized representative that this requirement is not in support of the national defense pursuant to 4 CFR 331.20(b).

A. COST ACCOUNTING STANDARDS ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE

If the offeror is eligible to use the modified provisions of 4 CFR 332, and elects to do so, he shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 4 CFR 331.30(b)(2), and certifies that he is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because (i) during his cost accounting period immediately preceding the period in which this proposal was submitted, he received less than \$10 million in awards of CAS covered national defense prime contracts and subcontracts, and (ii) the sum of such awards equaled less than 10 percent of his total sales during that cost accounting period. The offeror further certifies that if his status changes prior to an award resulting from this proposal, he will advise the Contracting Officer immediately.

CAUTION: Offerors may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a contract of \$10 million or more or if, during their current cost accounting period, they have been awarded a single CAS-covered national defense prime contract or subcontract of \$10 million or more.

B. COST ACCOUNTING STANDARDS CERTIFICATION - NONDEFENSE APPLICABILITY

Any negotiated contract in excess of \$100,000 resulting from this solicitation shall be subject to the requirements of the clauses entitled Cost Accounting Standards - Nondefense Contract (FPR §1-3.1204-2(a)) and Administration of Cost Accounting Standards (FPR §1-3.1204-1(b)) if it is awarded to a contractor's business unit that is performing a national defense contract or subcontract which is subject to cost accounting standards pursuant to 4 CFR 331 at the time of award, except contracts which are otherwise exempt (see FPR §1-3.1203-2(a) and (c)(4)). Otherwise, an award resulting from this solicitation shall be subject to the requirements of the clauses entitled Consistency of Cost Accounting Practices - Nondefense Contract (FPR §1-3.1204-2(b)) and Administration of Cost Accounting Standards (FPR §1-3.1204-1(b)) if the award is (i) the first negotiated contract over \$500,000 in the event the award is a contractor's business unit that is not performing under any CAS-covered national defense or nondefense contract or subcontract, or (ii) a negotiated contract over \$100,000 in the event the award is to a contractor's business unit that is performing under any CAS-covered national defense or nondefense contract or subcontract, except contracts which are otherwise exempt (see FPR §1-3.1203-2(a) and (c)(4)). This solicitation notice is not applicable to small business concerns.

Certificate of CAS Applicability

The offeror hereby certifies that:

- A. It is currently performing a negotiated national defense contract or subcontract that contains a Cost Accounting Standards clause (4 CFR 331), and it is currently required to accept that clause in any new negotiated national defense contracts it receives that are subject to cost accounting standards.
- B. It is currently performing a negotiated national defense or nondefense contract or subcontract that contains a cost accounting standards clause required by 4 CFR 331 or 332 or by FPR Subpart 1-3.12, but it is not required to accept the 4 CFR 331 clause in new negotiated national defense contracts or subcontracts which it receives that are subject to cost accounting standards.
- C. It is not performing any CAS-covered national defense or nondefense contract or subcontract. The offeror further certifies that it will immediately notify the Contracting Officer in writing in the event that it is awarded any negotiated national defense or nondefense contract or subcontract containing any cost accounting standards clause subsequent to the date of this certificate but prior to the date of the award of a contract resulting from this solicitation.
- D. It is an educational institution receiving contract awards subject to FPR Subpart 1-51.3 (FMC 73-8, OMB Circular A-21).
- E. It is a State or local government receiving contract awards subject to FPR Subpart 1-15.7 (FMC 74-4, OMB Circular A-87).
- F. It is a hospital.

NOTE: Certain firm fixed price negotiated nondefense contracts awarded on the basis of price competition may be determined by the Contracting Officer (at the time of award) to be exempt from cost accounting standards (FPR 1-3.120302(c)(4)(iv)).

Additional Certification - CAS Applicable Offerors

- G. The offeror, subject to cost accounting standards but not certifying under D, E, or F above, further certifies that practices used in estimating costs in pricing this proposal are consistent with the practices discussed in the Disclosure Statement(s) where they have been submitted pursuant to CASB regulations (4 CFR 351).

Data Required - CAS Covered Offerors

The offeror certifying under A or B above but not under D, E, or F above, is required to furnish the name, address (including agency or department component); and telephone number of the cognizant Contracting Officer administering the offeror's CAS-covered contracts. If A above is checked, the offeror will also identify those currently effective cost accounting standards, if any, which upon award of the next negotiated national defense contract or subcontract, will become effective upon the offeror.

Name of CO: _____
Address: _____
Telephone No.: _____
Standards not yet applicable: _____

1. DEFINITIONS.

As used herein:

- (a) The term "solicitation" means Invitation for Bids (IFB) where the procurement is advertised, and Request for Proposal (RFP) where the procurement is negotiated.
- (b) The term "offer" means bid where the procurement is advertised, and proposal where the procurement is negotiated.
- (c) For purposes of this solicitation and Block 2 of Standard Form 33, the term "advertised" includes Small Business Restricted Advertising and other types of restricted advertising.

2. PREPARATION OF OFFERS.

- (a) Offerors are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at offeror's risk.
- (b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the solicitation and print or type his name on the Schedule and each Continuation Sheet thereof on which he makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent are to be accompanied by evidence of his authority unless such evidence has been previously furnished to the issuing office.
- (c) Unit price for each unit offered shall be shown and such price shall include packing unless otherwise specified. A total shall be entered in the Amount column of the Schedule for each item offered. In case of discrepancy between a unit price and extended price, the unit price will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.
- (d) Offers for supplies or services other than those specified will not be considered unless authorized by the solicitation.
- (e) Offeror must state a definite time for delivery of supplies or for performance of services unless otherwise specified in the solicitation.
- (f) Time, if stated as a number of days, will include Saturdays, Sundays and holidays.
- (g) Code boxes are for Government use only.

3. EXPLANATION TO OFFERORS. Any explanation desired by an offeror regarding the meaning or interpretation of the solicitation, drawings, specifications, etc., must be requested in writing and with sufficient time allowed for a reply to reach offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished to all prospective offerors as an amendment of the solicitation, if such information is necessary to offerors in submitting offers on the solicitation or if the lack of such information would be prejudicial to uninformed offerors.

4. ACKNOWLEDGMENT OF AMENDMENTS TO SOLICITATIONS.

Receipt of an amendment to a solicitation by an offeror must be acknowledged (a) by signing and returning the amendment, (b) on page three of Standard Form 33, or (c) by letter or telegram. Such acknowledgment must be received prior to the hour and date specified for receipt of offers.

5. SUBMISSION OF OFFERS.

- (a) Offers and modifications thereof shall be enclosed in sealed envelopes and addressed to the office specified in the solicitation. The offeror shall show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror on the face of the envelope.
- (b) Telegraphic offers will not be considered, unless authorized by the solicitation; however, offers may be modified or withdrawn by written or telegraphic notice, provided such notice is received prior to the hour and date specified for receipt. (However, see paragraphs 7 and 8.)
- (c) Samples of items, when required, must be submitted within the time specified, and unless otherwise specified by the Government, at no expense to the Government. If not destroyed by testing, samples will be returned at offeror's request and expense, unless otherwise specified by the solicitation.

6. FAILURE TO SUBMIT OFFER. If no offer is to be submitted, do not return the solicitation unless otherwise specified. A letter or postcard shall be sent to the issuing office advising whether future solicitations for the type of supplies or services covered by this solicitation are desired. Failure of the recipient to offer, or to notify the issuing office that future solicitations are desired, may result in removal of the name of such recipient from the mailing list for the type of supplies or services covered by the solicitation.

7. LATE BIDS, MODIFICATIONS OF BIDS, OR WITHDRAWAL OF BIDS.

- (a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and either:
 - (1) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of bids (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 14th or earlier); or
 - (2) It was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation.
 - (b) Any modification or withdrawal of a bid is subject to the same conditions as in (a), above. A bid may also be withdrawn in person by a bidder or his authorized representative, provided his identity is made known and he signs a receipt for the bid, but only if the withdrawal is made prior to the exact time set for receipt of bids.
 - (c) The only acceptable evidence to establish:
 - (1) The date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. Postal Service postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. If neither postmark shows a legible date, the bid, modification, or withdrawal shall be deemed to have been mailed late. (The term "postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. Postal Service. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye "postmark" on both the receipt and the envelope or wrapper.)
 - (2) The time of receipt at the Government installation is the time-date stamp of such installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.
 - (d) Notwithstanding (a) and (b) of this provision, a late modification of an otherwise successful bid which makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.
- Note: The term "telegram" includes mailgrams.

8. LATE PROPOSALS, MODIFICATIONS OF PROPOSALS, AND WITHDRAWALS OF PROPOSALS.

- (a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made, and:
 - (1) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th or earlier);
 - (2) It was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or
 - (3) It is the only proposal received.
- (b) Any modification of a proposal, except a modification resulting from the Contracting Officer's request for "best and final" offer, is subject to the same conditions as in (a)(1) and (a)(2) of this provision.
- (c) A modification resulting from the Contracting Officer's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Government after receipt at the Government installation.
- (d) The only acceptable evidence to establish:
 - (1) The date of mailing of a late proposal or modification sent either by registered or certified mail is the U.S. Postal Service postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. If neither postmark shows a legible date, the proposal or modification shall be deemed to have been mailed late. (The term "postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. Postal Service. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye "postmark" on both the receipt and the envelope or wrapper.)
 - (2) The time of receipt at the Government installation is the time-date stamp of such installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.

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(e) Notwithstanding (a), (b), and (c), of this provision, a late modification of an otherwise successful proposal which makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(f) Proposals may be withdrawn by written or telegraphic notice received at any time prior to award. Proposals may be withdrawn in person by an offeror or his authorized representative, provided his identity is made known and he signs a receipt for the proposal prior to award.

Note: The term "telegram" includes mailgrams.

Note: The alternate late proposals, modifications of proposals and withdrawals of proposals provision prescribed by 41 CFR 1-3.802-2(b) shall be used in lieu of provision 8, if specified by the contract.

9. DISCOUNTS.

(a) Notwithstanding the fact that a blank is provided for a ten (10) day discount, prompt payment discounts offered for payment within less than twenty (20) calendar days will not be considered in evaluating offers for award, unless otherwise specified in the solicitation. However, offered discounts of less than 20 days will be taken if payment is made within the discount period, even though not considered in the evaluation of offers.

(b) In connection with any discount offered, time will be computed from date of delivery of the supplies to carrier when delivery and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when delivery and acceptance are at either of those points, or from the date correct invoice or voucher is received in the office specified by the Government, if the latter date is later than date of delivery. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Government check.

10. AWARD OF CONTRACT.

(a) The contract will be awarded to that responsible offeror whose offer conforming to the solicitation offers the most advantageous to the Government, price and other factors considered.

(b) The Government reserves the right to reject any or all offers and to waive informalities and minor irregularities in offers received.

(c) The Government may accept any item or group of items of any offer, unless the offeror qualifies his offer by specific limitations. UNLESS OTHERWISE PROVIDED IN THE SCHEDULE, OFFERS MAY BE SUBMITTED FOR ANY QUANTITIES LESS THAN THOSE SPECIFIED; AND THE GOVERNMENT RESERVES THE RIGHT TO MAKE AN AWARD ON ANY ITEM FOR A QUANTITY LESS THAN THE QUANTITY OFFERED AT THE UNIT PRICES OFFERED UNLESS THE OFFEROR SPECIFIES OTHERWISE IN HIS OFFER.

(d) A written award (or Acceptance of Offer) mailed (or otherwise furnished) to the successful offeror within the time for acceptance specified in the offer shall be deemed to result in a binding contract without further action by either party.

The following paragraphs (e) through (h) apply only to negotiated solicitations:

(e) The Government may accept within the time specified therein, any offer (or part thereof, as provided in (c) above), whether or not there are negotiations subsequent to its receipt, unless the offer is withdrawn by written notice received by the Government prior to award. If subsequent negotiations are conducted, they shall not constitute a rejection or counter offer on the part of the Government.

(f) The right is reserved to accept other than the lowest offer and to reject any or all offers.

(g) The Government may award a contract, based on initial offers received, without discussion of such offers. Accordingly, each initial offer should be submitted on the most favorable terms from a price and technical standpoint which the offeror can submit to the Government.

(h) Any financial data submitted with any offer hereunder or any representation concerning facilities or financing will not form a part of any resulting contract; provided, however, that if the resulting contract contains a clause providing for price reduction for defective cost or pricing data, the contract price will be subject to reduction if cost or pricing data furnished hereunder is incomplete, inaccurate, or not current.

11. GOVERNMENT-FURNISHED PROPERTY. No material, labor, or facilities will be furnished by the Government unless otherwise provided for in the solicitation.

12. LABOR INFORMATION. General information regarding the requirements of the Walsh-Healey Public Contracts Act (41 U.S.C.

35-45), the Contract Work Hours Standards Act (40 U.S.C. 327-330), and the Service Contract Act of 1965 (41 U.S.C. 351-357) may be obtained from the Department of Labor, Washington, D.C. 20210, or from any regional office of that agency. Requests for information should include the solicitation number, the name and address of the issuing agency, and a description of the supplies or services.

13. SELLER'S INVOICES. Invoices shall be prepared and submitted in quadruplicate (one copy shall be marked "original") unless otherwise specified. Invoices shall contain the following information: Contract and order number (if any), item numbers, description of supplies or services, sizes, quantities, unit prices, and extended totals. Bill of lading number and weight of shipment will be shown for shipments made on Government bills of lading.

14. SMALL BUSINESS CONCERN. A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is submitting offers on Government contracts, and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the Small Business Administration (see Code of Federal Regulations, Title 13, Part 121, as amended, which contains detailed industry definitions and related procedures.)

15. CONTINGENT FEE. If the offeror, by checking the appropriate box provided therefor, has represented that he has employed or retained a company or person (other than a full-time bona fide employee working solely for the offeror) to solicit or secure this contract, or that he has paid or agreed to pay any fee, commission, percentage, or brokerage fee to any company or person contingent upon or resulting from the award of this contract, he shall furnish, in duplicate, a complete Standard Form 119, Contractor's Statement of Contingent or Other Fees. If offeror has previously furnished a completed Standard Form 119 to the office issuing this solicitation, he may accompany his offer with a signed statement (a) indicating when such completed form was previously furnished, (b) identifying by number the previous solicitation or contract, if any, in connection with which such form was submitted, and (c) representing that the statement in such form is applicable to this offer.

16. PARENT COMPANY. A parent company for the purpose of this offer is a company which either owns or controls the activities and basic business policies of the offeror. To own another company means the parent company must own at least a majority (more than 50 percent) of the voting rights in that company. To control another company, such ownership is not required; if another company is able to formulate, determine, or veto basic business policy decisions of the offeror, such other company is considered the parent company of the offeror. This control may be exercised through the use of dominant minority voting rights, use of proxy voting, contractual arrangements, or otherwise.

17. EMPLOYER'S IDENTIFICATION NUMBER. (Applicable only to advertised solicitations.) The offeror shall insert in the applicable space on the offer form, if he has no parent company, his own Employer's Identification Number (E.I. No.) (Federal Social Security Number used on Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941), or, if he has a parent company, the Employer's Identification Number of his parent company.

18. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION.

(a) This certification on the offer form is not applicable to a foreign offeror submitting an offer for a contract which requires performance or delivery outside the United States, its possessions, and Puerto Rico.

(b) An offer will not be considered for award where (a) (1), (a) (3), or (b) of the certification has been deleted or modified. Where (a) (2) of the certification has been deleted or modified, the offer will not be considered for award unless the offeror furnishes with the offer a signed statement which sets forth in detail the circumstances of the disclosure and the head of the agency, or his designee determines that such disclosure was not made for the purpose of restricting competition.

19. ORDER OF PRECEDENCE. In the event of an inconsistency between provisions of this solicitation, the inconsistency shall be resolved by giving precedence in the following order: (a) the Schedule, (b) Solicitation Instructions and Conditions, (c) General Provisions, and other provisions of the contract, whether incorporated by reference or otherwise, and (e) the specifications.

[The contract will be awarded to that responsible offeror whose offer conforming to the solicitation offers the most advantageous to the Government, price and other factors considered.]

[19. ORDER OF PRECEDENCE. In the event of an inconsistency between provisions of this solicitation, the inconsistency shall be resolved by giving precedence in the following order: (a) the Schedule, (b) Solicitation Instructions and Conditions, (c) General Provisions, and other provisions of the contract, whether incorporated by reference or otherwise, and (e) the specifications.]

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Paragraph 10 (a) on page 2 of the SF-33A is hereby deleted. Paragraph No. 19 on page 2 of the SF-33A is hereby deleted in its entirety.

B. ADDITIONS TO STANDARD FORM 33-A

1. LEVEL OF EFFORT

The NRC's estimate of the total of scientific, technical, and clerical effort for this project is approximately 4.5 man-years. This information is advisory and is not to be considered as the sole basis for the development of your staffing plans. You must detail how you intend to accomplish each objective covered herein.

2. TYPE OF CONTRACT

It is contemplated that a cost-plus-fixed-fee contract will be awarded; however, the Government reserves the right to negotiate and award whatever type contract is determined to be most appropriate. In addition to the special provisions of this request for proposal, any resultant contract shall include the general provisions applicable to the selected offeror's organization and type contract awarded. Any additional clauses required by Public Law, Executive Order, or procurement regulations in effect at the time of execution of the proposed contract will be included.

3. PERIOD OF PERFORMANCE/SCHEDULE

The Government estimates that the work hereunder including preparation and submission of the final report, shall be completed within thirty-six (36) months.

4. ACCEPTANCE PERIOD

Because of the time required by the Government to evaluate proposals adequately, offerors are requested to specify a proposal acceptance period of not less than 90 days.

5. ANTICIPATED AWARD DATE

It is anticipated that an award under this solicitation shall be made by September, 1980.

6. COST OF PROPOSAL PREPARATION

This solicitation does not commit the Government to pay any cost for the preparation and submission of a proposal or for necessary studies or designs for the preparation thereof; or to procure or contract for the articles or services shown under Part III herein.

7. INDIVIDUAL(S) AUTHORIZED TO NEGOTIATE

The prospective offeror will list the name(s) and telephone number(s) of the person(s) authorized to conduct negotiations on the "Proposal Summary and Data Sheet" (see Attachment No. 4) which is to be submitted with each proposal.

Offerors are cautioned that the person signing the proposal must have the authority to commit the offeror.

8. PROPOSAL SUMMARY AND DATA SHEET (See Attachment No. 4)

A completed "Proposal Summary and Data Sheet" shall be submitted with each copy of the proposal.

9. RFP IDENTIFICATION

Mailing envelopes should be marked with the RFP number, the RFP closing date, and the notation: "DO NOT OPEN IN MAIL ROOM." Also, include the RFP number in your cover letter and on each page of your proposal.

10. AWARD OF CONTRACT *

The Government reserves the right, without qualification, to accept or reject any or all proposals, to negotiate with any and all offerors regardless of the terms of the original proposal, and to request additional clarifying information either through written information or through conference with the offerors. All offerors are notified that award may be made without discussion of proposals and, therefore, proposals should be submitted initially on the most favorable terms, from a cost and technical standpoint.

11. AWARD NOTIFICATION

All offerors will be notified of their selection or nonselection as soon as possible. Formal notification of nonselection will not be made until a contract has been awarded.

It is also brought to your attention that the Contracting Officer is the only individual who can legally commit the Government (i.e., the NRC) to expenditure of public funds in connection with this procurement. This means that unless provided in a contract document or specifically authorized by the Contracting Officer, NRC technical personnel cannot issue contract modifications, give informal contractual commitments or otherwise bind, commit, or obligate the NRC contractually. Informal contractual commitments include such actions as:

- a. encouraging a potential contractor to incur costs prior to receiving a contract,
- b. requesting or requiring a contractor to make changes under a contract without formal contract modifications,
- c. encouraging a contractor to incur costs under a cost-reimbursable contract in excess of those costs contractually allowable, and

*Note: Tasks may be awarded on a combined basis or for each task individually.

- d. committing the Government to a course of action with regard to a potential contract, contract change, claim, or dispute.

12. DISPOSITION OF PROPOSALS

After award of contract, two (2) copies of each unsuccessful proposal will be retained by NRC's Division of Contracts and unless return of proposals is requested by the offeror upon submission of proposal, all other copies will be destroyed. This notification should appear in any cover letter accompanying the proposal.

13. NOTICE OF PROPRIETARY INFORMATION

- a. Notice of Proprietary Information - Offerors are advised that those portions of the Proposal which are considered to be proprietary shall be so identified. In the event the offeror fails to indicate on the title page and each sheet of the proposal what portions of the proposal are proprietary, the NPC assumes no liability for disclosure or use of unmarked technical data and may use or disclose such data for any purpose. The clause set forth in paragraphs b. and c., below, should be utilized by the offeror in marking his proposal.

- b. Use and Disclosure of Data - Freedom of Information Act Requests

"This data shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than to evaluate the proposal; provided that if a contract is awarded to this offeror as a result of or in connection with the submission of this data, the Government shall have the right to duplicate, use or disclose the data to the extent provided in the contract. This restriction does not limit the Government's right to use information contained in the data if it is obtainable from another source without restriction. The data subject to this restriction is contained in sheets _____ . Our failure to mark the proposal with a Legend or otherwise identify and restrict the disclosure and use of data in the proposal shall be interpreted by the NRC as an acknowledgment that the contents of the Technical Proposal may be released, disseminated, or otherwise disclosed by the NPC pursuant to a Freedom of Information Act request."

- c. Moreover, each sheet for which the offeror desires to restrict disclosure shall be marked with the following legend:

"Use or disclosure of proposal data is subject to the restriction on the title page of this proposal. I claim that information contained herein is proprietary and shall not be disclosed by the NRC in accordance with Exemption 4 of the Freedom of Information Act."

14. PROPOSAL PRESENTATION AND FORMAT

- a. Proposals will be typewritten or reproduced on letter-size paper and will be legible in all required copies. Unnecessarily elaborate brochures or other presentations beyond that sufficient to present a complete and effective proposal are not desired and may be construed as an indication of the offeror's lack of cost consciousness. Elaborate art works, expensive paper and binding, expensive visual and other presentation aids are neither necessary nor desired. Legibility, clarity, and completeness are important.
- b. Proposals in response to this Request for Proposal shall be submitted in the following three (3) separate and distinct parts:
 - (1) Three (3) original signed copies of this solicitation package. All applicable sections must be completed by the offeror.
 - (2) One (1) original and six (6) copies of the "Cost Proposal" shall be submitted in accordance with the guidelines set forth in the paragraph below entitled, "Business Management Requirements."
 - (3) One (1) original and six (6) copies of the "Technical Proposal" shall be submitted in accordance with the guidelines set forth in the paragraph below entitled, "Technical Proposal Content."

Each of the parts shall be separate and complete in itself so that evaluation of one may be accomplished independently of evaluation of the other. All documents submitted shall have a cover page with the identifying RFP title, the solicitation number, and name of the offeror.

NOTE: If your records are currently under audit cognizance of a Government audit agency, the address and telephone number of that office should be furnished on the "Proposal Summary and Data Sheet." One (1) copy of the solicitation package, Technical Proposal, and Cost Proposal shall be submitted by the offeror to the cognizant audit agency concurrent with the submittal of the proposal to the NRC.

15. BUSINESS MANAGEMENT REQUIREMENTS

a. Cost Proposal

The offeror should utilize the Optional Form 60, Contract Pricing Proposal (Research and Development), in submitting the Cost Proposal. Offerors may, however, submit the necessary information in a different format where the offeror's accounting system makes use of the form impractical, or when required for a more effective and efficient presentation of cost information. In either instance, the information furnished shall include pertinent details sufficient to show the elements of cost upon which the total cost is predicated.

Cost will be evaluated on reasonableness, validity, and reliability.

The "Cost Proposal" must include, but is not limited to, the following:

- Material - A detailed listing of items including the quantity, basis of cost estimate, unit cost and sources of cost.
- Labor - The basis for the estimated hours broken down by category and task, and the source of labor rates. Level of effort data shall be expressed in man-hours.
- Indirect Cost - The source and basis of determination of all indirect costs.
- Travel - The breakdown of all travel by trips, segregating all transportation and per diem costs. Copy of the official Government approval of the offeror's travel policy, if granted, or in lieu thereof, a copy of the offeror's travel policy.

NOTE: In the absence of a Government approved contractor travel policy, the prevailing Federal Travel Regulation rates and the clause entitled, "Travel Reimbursement" in Part III shall apply.
- Other - The offeror's fiscal accounting period (Fiscal Year) and the name, address, and the telephone number of the offeror's cognizant Government audit agency.

b. Management

The management aspects shall include, but not be limited to, the following and any data pertinent thereto:

- (1) Project scheduling and contingency planning demonstrating a logical progression and integration of the tasks to insure completion within the performance period and without program slippage.
- (2) Management organizational structure delineating areas of responsibility and authority under the proposed effort. Describe the relationship of the project organization to corporate management and to subcontractors, if any. Discuss the functions and authorities of the project manager.
- (3) Procedures to periodically review in-house organizational functions, program reviews and controls and subsequent coordination with the NRC.

(4) Management controls expected to be utilized to preclude a contract cost growth.

c. Manpower Availability

Describe the source of personnel required for performance of each task and not presently employed by the offeror. If any of the personnel are under commitment, describe the terms of the commitment(s). Note specifically the personnel that will be on board subject to a contract award.

d. Consultants

Explain the need for consultant services. List proposed consultants if known by name. For each list show (1) nature of services, (2) fee rate, and (3) total consultant fee and any other allowable related costs which may be involved, such as travel and per diem. Such fees may not be paid to employees of the contractor or to employees of the U. S. Government.

e. Subcontractors

If the offeror plans to subcontract any of the work to be performed, list proposed subcontractors if known by name. Provide a detailed breakdown of specific work to be subcontracted and the approximate cost involved.

f. Labor Surplus Area Program Requirements

In keeping with the Federal Labor Surplus Area Program, the offeror is required to provide information on the general economic conditions of the area in which subcontractors are located, exact location of subcontractors (state, city, county), and the unemployment rate for the area, if known.

g. Additional Facilities or Property

In the event the offeror contemplates acquiring additional facilities or property in the performance of this work, such facilities or property shall be separately identified.

h. Other Contractual Commitments

The offeror shall list any commitments with other organizations, governmental or private, and indicate whether these commitments will or will not interfere with the completion of work and services contemplated under this proposal.

16. TECHNICAL PROPOSAL CONTENT

The Technical Proposal shall not contain any reference to cost. Resource information such as data concerning labor hours, and categories, materials, subcontracts, travel, computer time, etc., shall be included in the Technical Proposal so that the offeror's understanding of the scope of work may be evaluated.

The offeror shall submit with the Technical Proposal full and complete information in the order set forth below to permit the Government to make a thorough evaluation and a sound determination that the proposed approach will have a reasonable likelihood of meeting the requirements and objectives of this procurement in accordance with the evaluation criteria set forth in this Part II under the paragraph entitled, "Evaluation of Proposals."

Statements which paraphrase the scope of work without communicating the specific innovation proposed by the offeror or statements to the effect that the offeror's understanding can or will comply with the scope of work may be construed as an indication of the offeror's lack of understanding of the scope of work and objectives.

The Technical Proposal shall set forth as a minimum the following:

- a. statement and discussion of the requirements of the Scope of Work as understood by the offeror;
- b. offeror's explanation of the technical approaches and a detailed outline of the proposed program for executing the requirements and achieving the objectives;
- c. statement and discussion of anticipated major difficulties and problem areas, together with potential or recommended approaches for their resolution;
- d. statement of any interpretations, qualifications, or assumptions made by the offeror;
- e. statement of the extent of which the proposed approach can be expected to exceed the requirements in the Scope of Work;
- f. a detailed description of the tasks to be performed, important milestones to be reached, and end products to be derived;
- g. statement of the general background, experience, and qualifications of the offeror, with special mention of related efforts;
- h. statement of personnel who will be assigned direct work on the project; Resumes should be provided which clearly present the qualifications relative to this particular effort. Special mention should be made to the relevant experience of key personnel. The number of man-hours, budgeted by task, for each individual must be specified; and
- i. explanation of the project staff organization and the project management plan, including a discussion of the measures to be taken to ensure a quality product.

17. EVALUATION OF PROPOSALS

- a. Award will be made to the offeror presenting the best overall proposal which is technically acceptable and most advantageous to the Government, with consideration being given to the areas presented below in the Technical Evaluation Criteria and the proposed costs.
- b. A cost analysis will be performed on each cost proposal. Cost is less important than the aggregate of the Technical Evaluation Criteria. However, to be selected for an award, the proposed cost must be realistic and reasonable.
- c. Technical proposals will be evaluated in accordance with the following weighted factors, listed in the order of their relative importance.

Weights
(Based on 100 Points)

(1) Firm Qualifications

50

Three areas will be considered as part of the overall qualification of the offeror to execute the contract:

- (a) Prior Firm Experience (20 Points) - The prior experience of the offeror will be assessed on the basis of evidence of competent and successful experience in research of a similar nature. This will include (i) the degree to which past experience is related to the present proposal in terms of methodological, subject area, and technique requirements; (ii) the breadth of experience in terms of years of involvement and the number and scope of research projects completed; and (iii) the quality of work performed, assessed by discussions with and reports from references.
- (b) Key Personnel (20 Points) - An evaluation will be made of key individuals proposed for the research project, including the management personnel assigned and the key technical personnel. In addition to personal skill assessment, the contribution of the individuals to projects discussed under prior firm experience will be considered.
- (c) In-Place Technical Support (10 Points) - An evaluation will be made to determine the extent to which the bidder has in-house services and personnel with the breadth of skills disciplines required for this contract.

(2) Problem and Technical Approach

40

Evaluation of the technical aspects of the proposal will address:

- (a) Understanding of the Problem (15 Points) - Offerors will be evaluated on the basis of their understanding of procedures for seismic design of nuclear power plants as well as their understanding of the phenomena described in the Scope of Work.
- (b) Methodological Development (15 Points) - The overall methodology of the research proposal will be evaluated according to the criteria of objectivity, completeness, feasibility, and clarity.
- (c) Task Design (10 Points) - The integrity of the research proposal will be evaluated by considering the design of individual work tasks and their integration.

(3) Management Plan

10

- (a) Project Scheduling (5 Points) - Offerors should demonstrate their ability to meet the required schedule and complete the research program.
- (b) Personnel Allocation (5 Points) - The allocation of both management and technical personnel should demonstrate adequate man-loading and appropriateness of the selected personnel skills on a task-by-task basis.

PART III
CONTRACT SCHEDULE

ARTICLE I - STATEMENT OF WORK

A. INTRODUCTION

The Nuclear Regulatory Commission has identified a need to develop recommendations for seismic criteria and methods to determine the seismic qualification of nuclear plant mechanical and electrical equipment. Of particular interest is the development of changes in the current criteria and methods to better qualify the operability of components in a seismic environment.

B. BACKGROUND

Seismic qualification of mechanical and electrical components used in nuclear power plants is required to assure the ability of the components to function during and after a postulated seismic occurrence. The current criteria and methods for this qualification are outlined in the USNRC Standard Review Plan (SRP) Section 3.9.2, "Dynamic Testing and Analysis of Mechanical Systems and Components" (Ref. 1)*, Section 3.10, "Seismic Qualifications of Category I Instrumentation and Electrical Equipment" (Ref. 2), and the USNRC Regulatory Guide 1.100, "Seismic Qualification of Electric Equipment for Nuclear Power Plants," Revision 1, August 1977 (Ref. 3). These reports are available in the USNRC Public Document Room (PDR), 1717 H Street, Washington, D.C., 20555, (202) 634-1380. Referenced in the Regulatory Guide are IEEE Std. 344-1975 (Ref. 4) and IEEE Std. 323-1974 (Ref. 5).

Seismic qualification criteria and methods have undergone rapid development over the years. The methods for demonstrating component operability have changed significantly. The questions for today are:

1. How adequate are these methods for determining the operability of safety-related components?
2. How do they compare with the current seismic criteria?
3. What are the recommendations for changes in the current criteria and methods to better qualify the operability of components in a seismic environment?

C. CONTRACT OBJECTIVES

The first objective of this program is to evaluate past and present test and analytical methods of seismically qualifying the operability of mechanical and electrical nuclear power plant components. The second objective is to correlate these methods with respect to the current seismic qualification criteria, judge their severity in qualifying the operability of various

*The numbers in parentheses indicate references in list provided in Table I.

types of components, and make recommendations to improve the criteria and methods of seismically qualifying electrical and mechanical components. The third objective of this program is the recommendation of appropriate guidelines on analysis and testing techniques for seismic qualification that can simulate the influence of component aging, and degradation due to environmental effects not adequately simulated during seismic qualification testing. The fourth objective is to establish a procedure of extracting component fragility data from existing qualification methods.

D. SCOPE OF TECHNICAL WORK

The contractor shall furnish all personnel, materials, equipment, facilities and services necessary to perform, and shall therewith perform the technical tasks delineated below. Table I presents a list of pertinent background documents, some of which may be acquired in person or by written request through the NRC Public Document Room, Washington, D.C., 20555, (202) 634-1380. (Note: Requests to the NRC Public Document Room for any of the documents listed above must clearly identify the specific document and the RFP number "RS-RES-80-189.")

The effort shall be accomplished in four tasks which include: 1) evaluation of methods for seismic qualification components, 2) correlation of seismic qualification methods, 3) recommendations regarding seismic qualification criteria and methods, and 4) extraction of component fragility data. The tasks shall be performed sequentially within a period of thirty-four (34) months.

E. DELINEATION OF CONTRACTOR TASKS

Task 1 - Evaluation of Methods for Seismic Qualification of Components

The contractor shall identify and evaluate past and present methods used to qualify the operability of safety-related nuclear power plant mechanical and electrical components (such as, those shown in Table II), used in a seismic and plant operational environment. The final choice of components will be made by the contractor and approved by the NRC.

The contractor shall identify anomalies, shortcomings, and risk of component damage associated with the identified methods of seismic qualification in these evaluations. The contractor shall also evaluate the influence of component aging and environmental degradation effects considered in the methods.

The contractor shall evaluate the kinds of spectra, the extent of combined spectra, and the extent of cross coupling used in equipment qualification. The effects of vibratory frequencies higher than 33 HZ used to evaluate some equipment qualifications shall also be evaluated. This evaluation shall include a listing of the assumptions made in developing and applying the spectra. The kinds of response data obtained for each selected method, including the measured or calculated component response, shall be evaluated for usefulness and accuracy in judging component operability over the range of input variables and spectra.

The contractor shall study the effects of various multiple frequency inputs, where applicable, to determine which wave form is the best simulation of earthquake excitation, as far as the specific equipment qualification is concerned. The criteria to determine the best simulation shall be established by the contractor and approved by the NRC. The particular multiple frequency cases to be studied in the program shall be composed of (1) a series of sine beats without pause; (2) a series of sine beats with pauses of 0.1, 0.5, and 1.0 seconds; (3) pure random (white noise); (4) power spectral density (including the correlation or comparison with the response spectra method); and (5) complex wave forms to be chosen by the contractor and approved by the NRC.

The cases where single frequency sine beat test response spectrum envelop the required response spectrum shall be compared with multifrequency sine beat test response spectra enveloping the required response spectrum.

The possible anomalies methods identified shall be compared with that criteria in existence at the time of the method development. The degree of exceedance and noncompliance that the method will produce relative to the criteria specification shall be identified and quantified. All conclusions drawn in this task shall be substantiated by evidence such as, contractor tests, analysis, past test data, or other methods of demonstration.

Task 2 - Correlation of Seismic Qualification Methods

The contractor shall develop a procedure to correlate method advantages, disadvantages, and possible anomalies. This development should acknowledge that capabilities of the various methods used to determine the operability of mechanical and electrical components vary considerably. The procedure shall contain a routine to estimate the analytical or test damage severity that would be incurred in specific mechanical and electrical components by the seismic qualification methods evaluated in Task 1. The procedure shall be capable of determining what additional analysis or testing must be performed on a component seismically qualified by one method, satisfying one criterion, to satisfy the requirements of other criteria.

The procedure shall be used to correlate the various component qualification methods utilizing the various response spectrum established in Task 1. The estimated damage severity incurred by each qualification method on the component types listed in Task 1 shall be determined and evaluated.

All conclusions drawn in this task shall be substantiated by evidence such as, contractor tests, analysis, past test data, or other methods of demonstration.

Task 3 - Recommendations Regarding Seismic Qualification Criteria and Methods

The contractor shall make recommendations on potential improvements in the criteria and methods currently being used in the seismic qualification of mechanical and electrical components based on the findings in Tasks 1 and 2. These recommendations shall include, but not be limited to: (1) the elimination of inconsistencies, anomalies, and shortcomings in current analytical and test seismic qualification methods, (2) the choice and degree of coupling of shock spectra to best be used in seismic qualification methods, (3) the possible need, and the process to alleviate conservatism in damage severities induced by seismic qualification methods, and (4) the guidelines for including component aging and environmental degradation effects in seismic qualification methods.

All conclusions drawn in this task shall be substantiated by evidence such as, contractor tests, analysis, past test data, or other methods of demonstration.

Task 4 - Extraction of Component Fragility Data

The contractor shall examine the seismic qualification methods identified in Task 1 to determine if fragility data for component types can be extracted either directly or indirectly from these methods. If component fragility data can be extracted either directly or indirectly, the general procedures necessary to perform this extraction, including possible recommended additional component testing or analysis, shall be developed by the contractor.

E. REPORTS, DOCUMENTATION, AND OTHER DELIVERABLE END ITEMS

The technical reports listed below are to be documented, produced and disseminated in accordance with NRC Manual Chapter 3202, which is part of this contract.

Specific Report Requirements

1. Monthly letter progress reports, in five (5) copies to the Contracting Officer's Project Officer (PO) and one (1) copy to the Contracting Officer, shall be due by the 15th day of each month and shall include as a minimum:
 - a. A technical report of progress describing findings to date, problems incurred and solutions proposed, and plans for the ensuing month.
 - b. A report of costs incurred to date as follows;

- Direct Labor Costs
- Travel Expenses
- Overhead
- Additional Costs
- Forecasts for Contract Completion

2. Quarterly Reports - The contractor shall furnish five (5) copies of a quarterly progress report (in contractor format) to the Project Officer concerning each three month period beginning with the effective date of the contract, and submitted within fifteen (15) days after the close of the period. The report shall detail work performed during the period and shall enable the reviewers and other readers to grasp the main ideas and findings.
3. Summary Reports - The contractor shall furnish one (1) reproducible and ten (10) copies of draft reports to the Project Officer which summarize the findings and conclusions of each of the four tasks. The draft reports will be provided in accordance with the task outlines (1) to (4) above, within three (3) months after completion of each task.

NRC staff and the contractor shall meet within thirty (30) days of the date each draft report is received for the purpose of reviewing the subject document. The contractor shall incorporate mutually agreed upon review comments in the final summary report which shall be delivered one (1) reproducible and ten (10) copies to NRC within sixty (60) days of the review meeting.

4. The final technical report shall be submitted in draft form (six (6) copies to the Project Officer) one month after completion of Task 4. The final report shall include:
 - a. a summary of all four tasks individually;
 - b. an appendix including the data base from which the findings and results were established; and
 - c. an executive summary of all technical work accomplished under the contract.

The report in final form shall be submitted in one (1) reproducible and five (5) copies to the Project Officer and one (1) copy to the Contracting Officer four weeks following issuance of the draft report.

5. Briefings

The contractor shall also present five (5) one-day briefings in Bethesda, Maryland for the purpose of reviewing progress to date, projected future contract work activities, and NRC comments on submittal material. These briefings shall involve the contractor's principal investigators, NRC technical staff assigned to this contract, and others to be designated at NRC's discretion. The briefings will be arranged at the convenience of NRC, but will occur within thirty (30) days after NRC's receipt of the draft texts of the summary reports.

Table I

List of Reference Documents

- *1. U.S. NRC Standard Review Plan, Section 3.9.2, "Dynamic Testing and Analysis of Mechanical Systems and Components," USNRC NUREG 75/087, November 24, 1975.
- *2. U.S. NRC Standard Review Plan, Section 3.10, "Seismic Qualification of Category I Instrumentation and Electrical Equipment," Revision 1, USNRC NUREG 75/087.
- *3. U.S. NRC Regulatory Guide 1.100, "Seismic Qualification of Electrical Equipment for Nuclear Power Plants," Revision 1, August 1977.
4. IEEE Std. 344-1975, "IEEE Recommended Practices for Seismic Qualification of Class IE Equipment for Nuclear Power Generating Stations," January 31, 1975. Institute of Electrical and Electronics Engineers.
5. IEEE Std. 323-1974, "IEEE Standard for Qualifying Class IE Equipment for Nuclear Power Generating Stations," 1974, Institute of Electrical and Electronics Engineers.

*Note: Requests to the NRC Public Document Room for these documents must identify the specific document, and reference this RFP (RS-RES-80-192).

TABLE II

Mechanical and Electrical Components

<u>Component</u>	<u>Type</u>	<u>Size</u>	<u>Comment</u>
Valves	Motor Operated Air Operated	All	-With Accessories -Vintage Before 1971 -Vintage After 1971
Pumps	High Pressure Residual Heat Removal Component Cooling Auxiliary Feedwater Auxiliary Salt Water		-Representative Pumps Required for Safe Shutdown of Plant
Electrical Equipment	Commonly Used Cabinets and Racks with Equipment	At Least Three Different Sizes of Each	Representative Kinds of Equipment to be Considered - Relays - Limit Switches - Circuit Breakers - Pressure Switches - Switch Gear - Converters - Power Supplies - Motor Control Center Equipment - Commonly Used Sensors
Heat Exchangers			Various Analytical Methods

ARTICLE II - PERIOD OF PERFORMANCE

The performance of work described in ARTICLE I hereof shall commence as of the effective date of this contract and shall continue to completion thereof, estimated to occur within * months after said contract is effective.

ARTICLE III - CONSIDERATION AND PAYMENT

A. Estimated Cost, Fixed Fee and Obligation

1. It is estimated that the total cost to the Government for full performance of this contract will be \$ * , of which the sum of \$ * represents the estimated reimbursable costs, and of which \$ * represents the fixed fee.
2. Total funds currently available for payment* and allotted to this contract are \$ * , of which \$ * represents the estimated reimbursable costs, and of which \$ * represents the fixed fee.
3. It is estimated that the amount currently allotted will cover performance of Phase 1 which is scheduled to be completed * months from the effective date of the contract.

B. Payment

The Government shall render payment to the contractor in approximately thirty (30) days after submission of proper and correct invoices or vouchers.

Additional provisions relating to payment are contained in Clause 5.1-3 of the General Provisions hereto.

ARTICLE IV - OVERHEAD/GENERAL AND ADMINISTRATIVE RATES

- A. Pending the establishment of final overhead rates which shall be negotiated based on audit of actual costs, the contractor shall be reimbursed for allowable indirect costs hereunder at the provisional rate of * percent of *
- B. Pending the establishment of final general and administrative rates which shall be negotiated based on audit of actual costs, the contractor shall be reimbursed for allowable indirect costs hereunder at the provisional rate of * percent of *
- C. Notwithstanding A. and B. of this Article, said provisional overhead and G&A rates may be adjusted as appropriate during the term of the contract upon the acceptance of such revised rates by the Contracting Officer.

*To be incorporated into any resultant contract.

ARTICLE V - PRIVATE USE AND PROTECTION OF UNCLASSIFIED GOVERNMENT INFORMATION

- A. Except as specifically authorized by this contract, or as otherwise approved by the Contracting Officer, records or other information, documents and material furnished by the Commission to the contractor in the performance of this contract, or information developed by the contractor in the course of the work hereunder, shall be used only in connection with the work performed under this contract. The contractor shall, upon completion or termination of this contract, transmit to the Commission all records or other information, documents and material, and any copies thereof, furnished by the Commission to the contractor or developed by the contractor in the performance of this contract.
- B. The contractor shall be responsible for safeguarding from unauthorized disclosure any information or other documents and material exempt from public disclosure by the Commission's regulations and made available to the contractor in connection with the performance of work under this contract. The contractor agrees to conform to all regulations, requirements, and directions of the Commission with respect to such material.
- C. The contractor's duties under this clause shall not be construed to limit or affect in any way the contractor's obligation to conform to all security regulations and requirements of the Commission pertaining to classified information and material.

ARTICLE VI - KEY PERSONNEL

Pursuant to this ARTICLE (Key Personnel), the following individuals are considered to be essential to the successful performance of the work hereunder and shall not be replaced without the prior approval of the Contracting Officer. In such event, the contractor agrees to substitute persons possessing substantially equal abilities and qualifications satisfactory to the Contracting Officer.

*

ARTICLE VII - TECHNICAL DIRECTION AND AUTHORIZED REPRESENTATIVE

* is hereby designated as the Contracting Officer's Project Officer (PO) for technical aspects of this contract. The PO is not authorized to approve or request any action which results in or could result in an increase in contract cost; or terminate, settle any claim or dispute arising under the contract, or issue any unilateral directive whatever.

The PO is responsible for: (1) monitoring the contractor's technical progress, including the surveillance and assessment of performance, and recommending to the Contracting Officer changes in requirements; (2) interpreting scope of work; (3) performing technical evaluation as required; (4) performing technical inspections and acceptances required by this contract; and (5) assisting the contractor in the resolution of technical problems encountered during performance. Within the purview of this authority, the PO is authorized to review all costs requested for reimbursement by contractors and submit recommendations for approval, disapproval, or suspension for supplies/services required under the contract. The Contracting Officer is responsible for directing or negotiating any changes in terms, conditions, or amounts cited in the contract.

*To be incorporated into any resultant contract.

For guidance from the PO to the contractor to be valid, it must: (1) be consistent with the description of work set forth in this contract; (2) not constitute new assignment of work or change to the expressed terms, conditions, or specifications incorporated into this contract; (3) not constitute a basis for an extension to the period of performance or contract delivery schedule; and, as stated above, (4) not constitute a basis for any increase in the contract cost.

ARTICLE VIII - TRAVEL REIMBURSEMENT

The contractor will be reimbursed for the following reasonable domestic travel costs incurred directly and specifically in the performance of this contract and accepted by the Contracting Officer:

1. Per diem shall be reimbursed at a daily rate not to exceed \$ *
The per diem amount is comprised of lodging expense plus \$ * for meals and miscellaneous expense.
2. The cost of travel by privately owned automobile shall be reimbursed at the rate of * per mile.
3. The cost of travel by rented automobile shall be reimbursed on a reasonable actual expense basis.
4. All common carrier travel reimbursable hereunder shall be via economy class rates when available. If not available, reimbursement vouchers will be annotated that economy class accommodations were not available. First-class air travel is not authorized.
5. Receipts are required for common carrier transportation, lodging, and miscellaneous items in excess of \$ *
6. If foreign travel is required in the performance of this contract, General Provision Clause 3.5, "Preference for U. S. Flag Air Carriers," applies.

All foreign travel must be approved in advance by the Commission on NRC Form 445.

Additional guidance is furnished by FPR 1-1.323-3.

*To be incorporated into any resultant contract.

ARTICLE IX - GENERAL PROVISIONS/ALTERATIONS

This contract is subject to the attached provisions of Appendix A, General Provisions, entitled "Cost Type Research and Development Contracts With Commercial Organizations," dated 2/6/80.

NOTE: AVAILABILITY OF TEXT OF CLAUSES - The complete text of clauses, incorporated by reference, is available, for a nominal fee, in the publication entitled "Code of Federal Regulations - 41 CFR 1-1.000, Chapter 1 to 2, Federal Procurement Regulations (Chapter 1)" which may be obtained from the Superintendent of Documents, U. S. Government Printing Office, Washington, D.C. 20402. Copies of the complete text of specific clauses are available from the Nuclear Regulatory Commission, Division of Contracts, Washington, D.C. 20555 and will be furnished upon request.

PART IV

Attachments

1. NRC Contractor Organizational Conflicts of Interest (41 CFR Part 20)
2. NRC Organization Chart
3. Optional Form 60 - Contract Pricing Proposal
4. Proposal Summary and Data Sheet
5. General Provisions - Appendix A - Cost Type Research and Development Contracts With Commercial Organizations (2/6/80)
6. NRC Manual Chapter 3202

ATTACHMENT 1

PART 20-1 -- GENERAL

Subpart 20-1.54--Contractor Organizational Conflicts of Interest

Sec.	
20-1.5401	Scope and policy.
20-1.5402	Definitions.
20-1.5403	Criteria for recognizing contractor organizational conflicts of interest.
20-1.5404	Representation.
20-1.5405	Contract clauses.
20-1.5405-1	General contract clause.
20-1.5405-2	Special contract provisions.
20-1.5406	Evaluation, findings, and contract award..
20-1.5407	Conflicts identified after award.
20-1.5408	(Reserved)
20-1.5409	(Reserved)
20-1.5410	Subcontractors.
20-1.5411	Waiver.
20-1.5412	Remedies.

AUTHORITY: Sec. 8, Pub. L. 95-601, adding Sec. 170A to Pub. L. 83-703, 68 Stat. 919, as amended (42 U.S.C. ch. 14)

§20-1.5401 Scope and Policy

(a) It is the policy of the U.S. Nuclear Regulatory Commission (NRC) to avoid, eliminate or neutralize contractor organizational conflicts of interest. The NRC achieves this objective by requiring all prospective contractors to submit information describing relationships, if any, with organizations or persons (including those regulated by NRC) which may give rise to actual or potential conflicts of interest in the event of contract award.

(b) Contractor conflict of interest determinations cannot be made automatically or routinely; the application of sound judgment on virtually a case-by-case basis is necessary if the policy is to be applied so as to satisfy the overall public interest. It is not possible to prescribe in advance a specific method or set of criteria which would serve to identify and resolve all of the contractor conflict of interest situations which might arise; however, examples are provided in these regulations to guide application of the policy. NRC contracting and program officials must be alert to other situations which may warrant application of this policy guidance. The ultimate test is: Might the contractor, if awarded the contract, be placed in a position where its judgment may be biased, or where it may have an unfair competitive advantage?

(c) The conflict of interest rule contained in this subpart applies to contractors and offerors only. Individuals or firms who have other relationships with NRC (e.g., parties to a licensing proceeding) are not covered by this regulation. This rule does not apply to the acquisition of consulting services through the personnel appointment process, NRC

agreements with other government agencies, international organizations, or state, local or foreign governments; separate procedures for avoiding conflicts of interest will be employed in such agreements, as appropriate.

§20-1.5402 Definitions

(a) "Organizational conflicts of interest" means that a relationship exists whereby a contractor or prospective contractor has present or planned interests related to the work to be performed under an NRC contract which: (1) May diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, or (2) may result in its being given an unfair competitive advantage.

(b) "Research" means any scientific or technical work involving theoretical analysis, exploration, or experimentation.

(c) "Evaluation activities" means any effort involving the appraisal of a technology, process, product, or policy.

(d) "Technical consulting and management support services" means internal assistance to a component of the NRC in the formulation or administration of its programs, projects, or policies which normally require the contractor to be given access to information which has not been made available to the public or proprietary information. Such services typically include assistance in the preparation of program plans; and preparation of preliminary designs, specifications, or statements of work.

(e) "Contract" means any contract, agreement, or other arrangement with the NRC except as provided in Section 20-1.5401(c).

(f) "Contractor" means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, affiliates thereof, or their successors in interest, including their chief executives, directors, key personnel (identified in the contract), proposed consultants or subcontractors, which is a party to a contract with the NRC.

(g) "Affiliates" means business concerns which are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both (41 CFR §1-1.606-1(e)).

(h) "Subcontractor" means any subcontractor of any tier which performs work under a contract with the NRC except subcontracts for supplies and subcontracts in amounts of \$10,000 or less.

(i) "Prospective contractor" or "offeror" means any person, firm, unincorporated association, joint venture, partnership, corporation, or affiliates thereof, including its chief executive, directors, key personnel (identified in the proposal), proposed consultants, or subcontractors, submitting a bid or proposal, solicited or unsolicited, to the NRC to obtain a contract.

(j) "Potential conflict of interest" means that a factual situation exists that suggests (indicates) that an actual conflict of interest may arise from award of a proposed contract. The term "potential conflict of interest" is used to signify those situations which merit investigation prior to contract award in order to ascertain whether award would give rise to an actual conflict or which must be reported to the contracting officer for investigation if they arise during contract performance.

§ 20-1.5403 Criteria for recognizing contractor organizational conflicts of interest

(a) General. Two questions will be asked in determining whether actual or potential organizational conflicts of interest exist: (1) Are there conflicting roles which might bias a contractor's judgment in relation to its work for the NRC? (2) May the contractor be given an unfair competitive advantage based on the performance of the contract? The ultimate determination by NRC as to whether organizational conflicts of interest exist will be made in light of common sense and good business judgment based upon the relevant facts disclosed and the work to be performed. While it is difficult to identify and to prescribe in advance a specific method for avoiding all of the various situations or relationships which might involve potential organizational conflicts of interest, NRC personnel will pay particular attention to proposed contractual requirements which call for the rendering of advice, consultation or evaluation activities, or similar activities that lay direct groundwork for the NRC's decisions on regulatory activities, future procurements, and research programs.

(b) Situations or relationships which may give rise to organizational conflicts of interest. (1) The offeror or contractor shall disclose information concerning relationships which may give rise to organizational conflicts of interest under the following circumstances:

(i) Where the offeror or contractor provides advice and recommendations to the NRC in a technical area in which it is also providing consulting assistance in the same area to any organization regulated by the NRC.

(ii) Where the offeror or contractor provides advice to the NRC on the same or similar matter in which it is also providing assistance to any organization regulated by the NRC.

(iii) Where the offeror or contractor evaluates its own products or services, or the products or services of another entity where the offeror or contractor has been substantially involved in their development or marketing.

(iv) Where the award of a contract would otherwise result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC or may otherwise result in an unfair competitive advantage for the offeror or contractor.

(2) The contracting officer may request specific information from an offeror or contractor or may require special contract provisions such as provided in §20-1.5405-2 in the following circumstances:

(i) Where the offeror or contractor prepares specifications which are to be used in competitive procurements of products or services covered by such specifications.

(ii) Where the offeror or contractor prepares plans for specific approaches or methodologies that are to be incorporated into competitive procurements using such approaches or methodologies.

(iii) Where the offeror or contractor is granted access to information not available to the public concerning NRC plans, policies, or programs which could form the basis for a later procurement action.

(iv) Where the offeror or contractor is granted access to proprietary information of its competitors.

(v) Where the award of a contract might otherwise result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC or may otherwise result in an unfair competitive advantage for the offeror or contractor.

(c) Policy application guidance. The following examples are illustrative only and are not intended to identify and resolve all contractor organizational conflict of interest situations. (1) Example. The XYZ Corp., in response to a request for proposal (RFP), proposes to undertake certain analyses of a reactor component as called for in the RFP. The XYZ Corp. is one of several companies considered to be technically well qualified. In response to the inquiry in the RFP, the XYZ Corp. advises that it is currently performing similar analyses for the reactor manufacturer.

Guidance. An NRC contract for that particular work normally would not be awarded to the XYZ Corp. because it would be placed in a position in which its judgment could be biased in relationship to its work for NRC. Since there are other well-qualified companies available, there would be no reason for considering a waiver of the policy.

(2) Example. The ABC Corp., in response to a RFP, proposes to perform certain analyses of a reactor component which are unique to one type of advanced reactor. As is the case with other technically qualified companies responding to the RFP, the ABC Corp. is performing various projects for several different utility clients. None of the ABC Corp. projects have any relationship to the work called for in the RFP. Based on the NRC evaluation, the ABC Corp. is considered to be the best qualified company to perform the work outlined in the RFP.

Guidance. An NRC contract normally could be awarded to the ABC Corp. because no conflict of interest exists which would motivate bias with respect to the work. An appropriate clause would be included in the contract to preclude the ABC Corp. from subsequently contracting for work during the performance of the NRC contract with the private sector which could create a conflict. For example, ABC Corp. would be precluded from the performance of similar work for the company developing the advanced reactor mentioned in the example.

(3) Example. As a result of operating problems in a certain type of commercial nuclear facility, it is imperative that NRC secure specific data on various operational aspects of that type of plant so as to assure adequate safety protection of the public. Only one manufacturer has extensive experience with that type of plant. Consequently, that company is the only one with whom NRC can contract which can develop and conduct the testing programs required to obtain the data in reasonable time. That company has a definite interest in any NRC decisions that might result from the data produced because those decisions affect the reactor's design and thus the company's costs.

Guidance. This situation would place the manufacturer in a role in which its judgment could be biased in relationship to its work for NRC. Since the nature of the work required is vitally important in terms of NRC's responsibilities and no reasonable alternative exists, a waiver of the policy may be warranted. Any such waiver shall be fully documented and coordinated in accordance with the waiver provisions of this policy with particular attention to the establishment of protective mechanisms to guard against bias.

(4) Example. The ABC Co. submits a proposal for a new system for evaluating a specific reactor component's performance for the purpose of developing standards that are important to the NRC program. The ABC Co. has advised NRC that it intends to sell the new system to industry once its practicability has been demonstrated. Other companies in this business are using older systems for evaluation of the specific reactor component.

Guidance. A contract could be awarded to the ABC Co. provided that the contract stipulates that no information produced under the contract will be used in the contractor's private activities unless such information has been reported to NRC. Information which is reported to NRC by contractors will normally be disseminated by NRC to others so as to preclude an unfair competitive advantage that might otherwise accrue. When NRC furnishes information to the contractor for the performance of contract work, it shall not be used in the contractor's private activities unless such information is generally available to others. Further, the contract will stipulate that the contractor will inform the NRC contracting officer of all situations in which the information developed under the contract is proposed to be used.

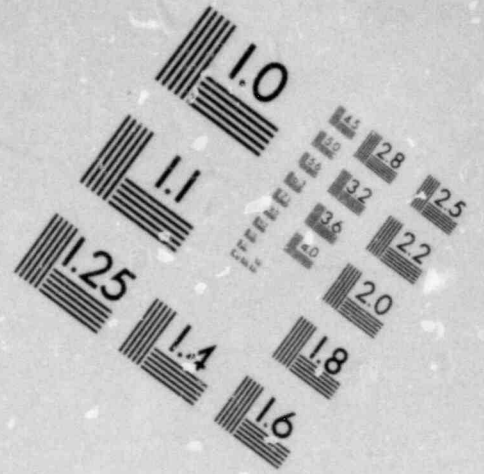
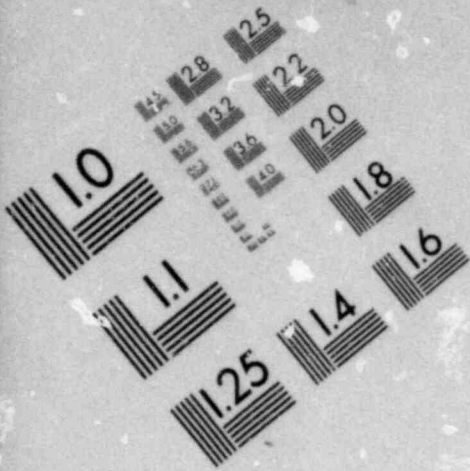
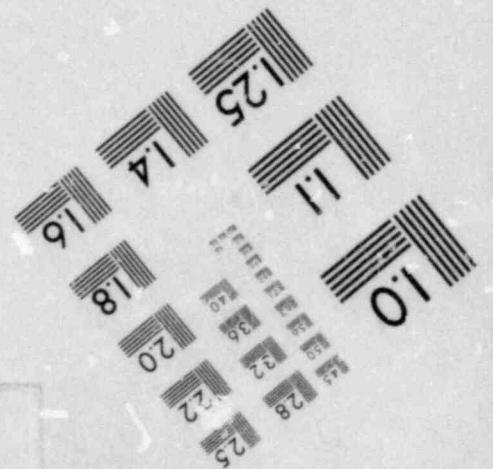
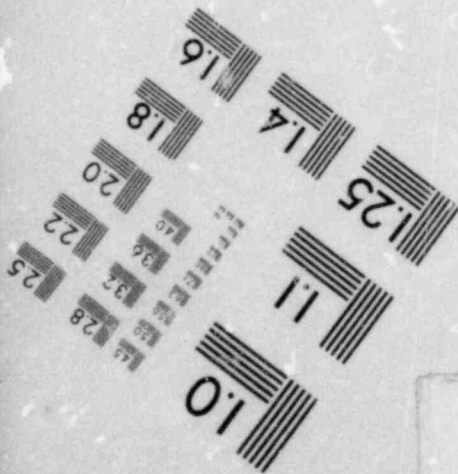
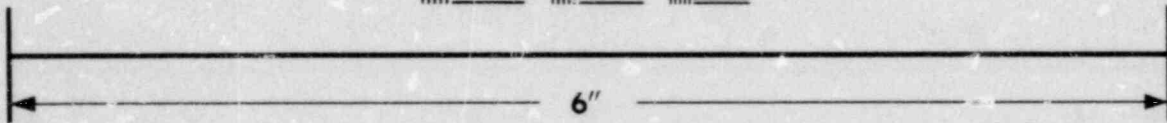
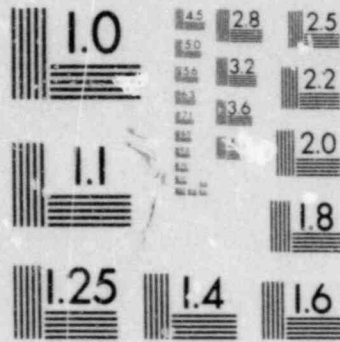
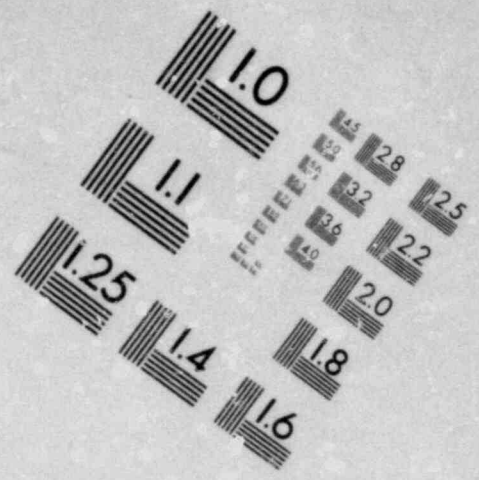
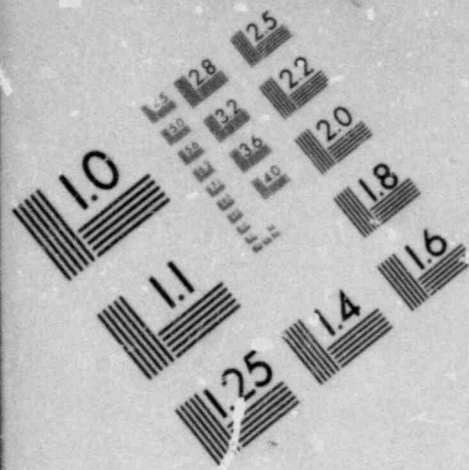
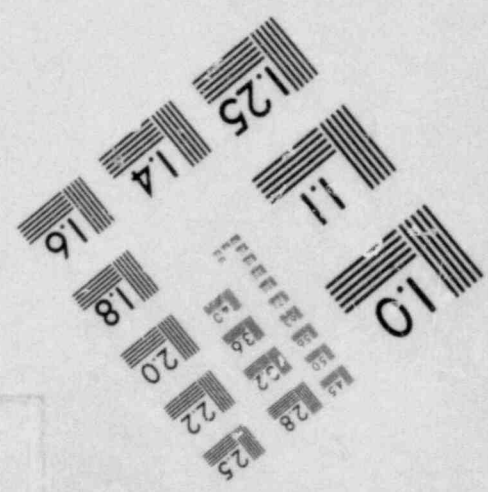
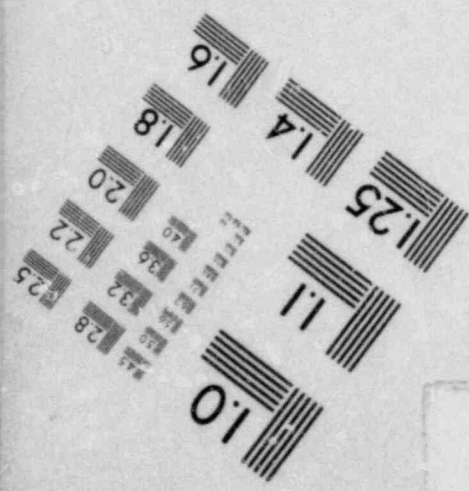
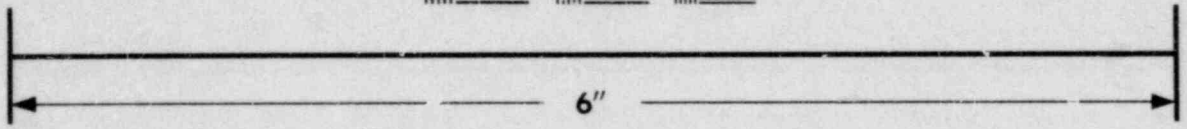
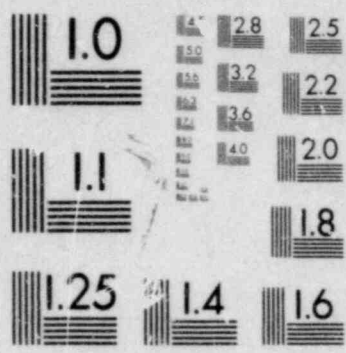


IMAGE EVALUATION
TEST TARGET (MT-3)





**IMAGE EVALUATION
TEST TARGET (MT-3)**



(5) Example. The ABC Corp., in response to a RFP proposes to assemble a map showing certain seismological features of the Appalachian fold belt. In accordance with the representation in the RFP and §20-1.5403(b)(1)(i), ABC Corp. informs the NRC that it is presently doing seismological studies for several utilities in the Eastern United States but none of the sites are within the geographic area contemplated by the NRC study.

Guidance. The contracting officer would normally conclude that award of a contract would not place ABC Corp. in a conflicting role where its judgment might be biased. The work for others clause of §20-1.5405-1(c) would preclude ABC Corp. from accepting work during the term of the NRC contract which could create a conflict of interest.

(d) Other considerations. (1) The fact that the NRC can identify and later avoid, eliminate, or neutralize any potential organizational conflicts arising from the performance of a contract is not relevant to a determination of the existence of such conflicts prior to the award of a contract.

(2) It is not relevant that the contractor has the professional reputation of being able to resist temptations which arise from organizational conflicts of interest, or that a follow-on procurement is not involved, or that a contract is awarded on a competitive or a sole source basis.

§20-1.5404 Representation

(a) The following procedures are designed to assist the NRC contracting officer in determining whether situations or relationships exist which may constitute organizational conflicts of interest with respect to a particular offeror or contractor.

(b) Representation procedure. The following organizational conflicts of interest representation provision shall be included in all solicitations and unsolicited proposals for: (1) Evaluation services or activities; (2) technical consulting and management support services; (3) research; and (4) other contractual situations where special organizational conflicts of interest provisions are noted in the solicitation and would be included in the resulting contract. This representation requirement shall also apply to all modifications for additional effort under the contract except those issued under the "changes" clause. Where, however, a statement of the type required by the organizational conflicts of interest representation provision has previously been submitted with regard to the contract being modified, only an updating of such statement shall be required.

ORGANIZATIONAL CONFLICTS OF INTEREST REPRESENTATION

I represent to the best of my knowledge and belief that:

The award to _____ of a contract or the modification of an existing contract does () or does not () involve situations or relationships of the type set forth in 41 CFR § 20-1.5403(b)(1).

(c) Instructions to offerors. The following shall be included in all NRC solicitations: (1) If the representation as completed indicates that situations or relationships of the type set forth in 41 CFR § 20-1.5403(b)(1) are involved, or the contracting officer otherwise determines that potential organizational conflicts exist, the offeror shall provide a statement in writing which describes in a concise manner all relevant facts bearing on his representation to the contracting officer. If the contracting officer determines that organizational conflicts exist, the following actions may be taken: (i) Impose appropriate conditions which avoid such conflicts, (ii) disqualify the offeror, or (iii) determine that it is otherwise in the best interest of the United States to seek award of the contract under the waiver provisions of § 20-1.5411.

(2) The refusal to provide the representation required by § 20-1.5404(b) or upon request of the contracting officer the facts required by § 20-1.5404(c), shall result in disqualification of the offeror for award. The nondisclosure or misrepresentation of any relevant interest may also result in the disqualification of the offeror for award; or if such nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated. The offeror may also be disqualified from subsequent related NRC contracts and be subject to such other remedial actions provided by law or the resulting contract.

(d) The offeror may, because of actual or potential organizational conflicts of interest, propose to exclude specific kinds of work from the statements of work contained in a RFP unless the RFP specifically prohibits such exclusion. Any such proposed exclusion by an offeror will be considered by the NRC in the evaluation of proposals. If the NRC considers the proposed excluded work to be an essential or integral part of the required work and its exclusion would work to the detriment of the competitive posture of the other offerors, the proposal must be rejected as unacceptable.

(e) The offeror's failure to execute the representation required by subsection (b) above with respect to invitation for bids will be considered to be a minor informality, and the offeror will be permitted to correct the omission.

§ 20-1.5405 Contract clauses

§ 20-1.5405-1 General contract clause

All contracts of the types set forth in § 20-1.5404(b) shall include the following clauses:

(a) Purpose. The primary purpose of this clause is to aid in ensuring that the contractor: (1) Is not placed in a conflicting role because of current or planned interest (financial, contractual, organizational, or otherwise) which relate to the work under this contract, and (2) does not obtain an unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the contractor as defined in 41 CFR § 20-1.5402(f) in the activities covered by this clause.

(c) Work for others. Notwithstanding any other provision of this contract, during the term of this contract, the contractor agrees to forego entering into consulting or other contractual arrangements with any firm or organization, the result of which may give rise to a conflict of interest with respect to the work being performed under this contract. The contractor shall ensure that all employees who are employed full time under this contract and employees designated as key personnel, if any, under this contract abide by the provision of this clause. If the contractor believes with respect to itself or any such employee that any proposed consultant or other contractual arrangement with any firm or organization may involve a potential conflict of interest, the contractor shall obtain the written approval of the contracting officer prior to execution of such contractual arrangement.

(d) Disclosure after award. (1) The contractor warrants that to the best of its knowledge and belief and except as otherwise set forth in this contract, it does not have any organizational conflicts of interest, as defined in 41 CFR § 20-1.5402(a).

(2) The contractor agrees that if after award it discovers organizational conflicts of interest with respect to this contract, it shall make an immediate and full disclosure in writing to the contracting officer. This statement shall include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. The NRC may, however, terminate the contract for convenience if it deems such termination to be in the best interests of the government.

(e) Access to and use of information. (1) If the contractor in the performance of this contract obtains access to information, such as NRC plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (Pub. L. 93-579), or data which has not been released to the public, the contractor agrees not to: (i) Use such information for any private purpose until the information has been released to the public; (ii) compete for work for the Commission based

on such information for a period of six (6) months after either the completion of this contract or the release of such information to the public, whichever is first, (iii) submit an unsolicited proposal to the government based on such information until one year after the release of such information to the public, or (iv) release the information without prior written approval by the contracting officer unless such information has previously been released to the public by the NRC.

(2) In addition, the contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (Pub. L. 93-579), or other confidential or privileged technical, business, or financial information under this contract, the contractor shall treat such information in accordance with restrictions placed on use of the information.

(3) The contractor shall have, subject to patent and security provisions of this contract, the right to use technical data it produces under this contract for private purposes provided that all requirements of this contract have been met.

(f) Subcontracts. Except as provided in 41 CFR §20-1.5402(h), the contractor shall include this clause, including this paragraph, in subcontracts of any tier. The terms "contract," "contractor," and "contracting officer," shall be appropriately modified to preserve the government's rights.

(g) Remedies. For breach of any of the above proscriptions or for intentional nondisclosure or misrepresentation of any relevant interest required to be disclosed concerning this contract or for such erroneous representations as necessarily imply bad faith, the government may terminate the contract for default, disqualify the contractor from subsequent contractual efforts, and pursue other remedies as may be permitted by law or this contract.

(h) Waiver. A request for waiver under this clause shall be directed in writing through the contracting officer to the Executive Director for Operations (EDO) in accordance with the procedures outlined in §20-1.5411.

§ 20-1.5405-2 Special contract provisions.

(a) If it is determined from the nature of the proposed contract that organizational conflicts of interest exist, the contracting officer may determine that such conflict can be avoided or after obtaining a waiver in accordance with §20-1.5411, neutralized through the use of an appropriate special contract provision. If appropriate, the offeror may negotiate the terms and conditions of these clauses, including the extent and time period of any such restriction. These provisions include but are not limited to:

(1) Hardware exclusion clauses which prohibit the acceptance of production contracts following a related nonproduction contract previously performed by the contractor;

(2) Software exclusion clauses;

(3) Clauses which require the contractor (and certain of his key personnel) to avoid certain organizational conflicts of interest; and

(4) Clauses which provide for protection of confidential data and guard against its unauthorized use.

(b) The following additional contract clause may be included as section (i) in the clause set forth in § 20-1.5405-1 when it is determined that award of a follow-on contract would constitute an organizational conflict of interest.

(i) Follow-on effort. (1) The contractor shall be ineligible to participate in NRC contracts, subcontracts, or proposals therefor (solicited or unsolicited) which stem directly from the contractor's performance of work under this contract. Furthermore, unless so directed in writing by the contracting officer, the contractor shall not perform any technical consulting or management support services work or evaluation activities under this contract on any of its products or services or the products or services of another firm if the contractor has been substantially involved in the development or marketing of such products or services.

(2) If the contractor under this contract prepares a complete or essentially complete statement of work or specifications, the contractor shall be ineligible to perform or participate in the initial contractual effort which is based on such statement of work or specifications. The contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the contracting officer, in which case the restriction in this subparagraph shall not apply.

(3) Nothing in this paragraph shall preclude the contractor from offering or selling its standard commercial items to the government.

§ 20-1.5406 Evaluation, findings, and contract award

The contracting officer will evaluate all relevant facts submitted by an offeror pursuant to the representation requirements of § 20-1.5404(b) and other relevant information. After evaluating this information against the criteria of § 20-1.5403, a finding will be made by the contracting officer whether organizational conflicts of interest exist with respect to a particular offeror. If it has been determined that conflicts of interest exist, then the contracting officer shall either:

(a) Disqualify the offeror from award,

(b) Avoid or eliminate such conflicts by appropriate measures; or

(c) Award the contract under the waiver provision of § 20-1.5411.

§ 20-1.5407 Conflicts identified after award.

If potential organizational conflicts of interest are identified after award with respect to a particular contractor, the contracting officer determines that such conflicts do, in fact, exist and that it would not be in the best interests of the government to terminate the contract as provided in the clauses required by § 20-1.5405, the contracting officer will take every reasonable action to avoid, eliminate, or, after obtaining a waiver in accordance with § 20-1.5411, neutralize the effects of the identified conflict.

§ 20-1.5408 (Reserved)

§ 20-1.5409 (Reserved)

§ 20-1.5410 Subcontracts

The contracting officer shall require offerors and contractors to submit a representation statement in accordance with § 20-1.5404(b) from subcontractors and consultants. The contracting officer shall require the contractor to include contract clauses in accordance with § 20-1.5405 in consultant agreements or subcontracts involving performance of work under a prime contract covered by this subsection.

§ 20-1.5411 Waiver

In the first instance, determination with respect to the need to seek a waiver for specific contract awards shall be made by the contracting officer with the advice and concurrence of the program office director and the Office of Executive Legal Director. Upon the recommendation of the contracting officer, and after consultation with the Office of the General Counsel, the EDO may waive the policy in specific cases if he determines that it is in the best interest of the United States to do so.

Such action shall be strictly limited to those situations in which:

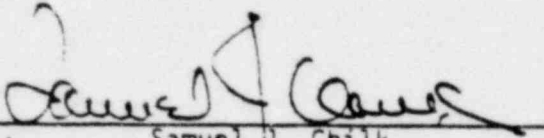
- (1) The work to be performed under contract is vital to the NRC program;
- (2) the work cannot be satisfactorily performed except by a contractor whose interests give rise to a question of conflict of interest; and (3) contractual and/or technical review and supervision methods can be employed by NRC to neutralize the conflict. For any such waivers, the justification and approval documents shall be placed in the Public Document Room.

§20-1.5412 Remedies

In addition to such other remedies as may be permitted by law or contract for a breach of the restrictions in this subpart or for any intentional misrepresentation or intentional nondisclosure of any relevant interest required to be provided for this section, the NRC may debar the contractor from subsequent NRC contracts.

Dated at Washington, D.C. this 27th day of March 1979.

For the Nuclear Regulatory Commission

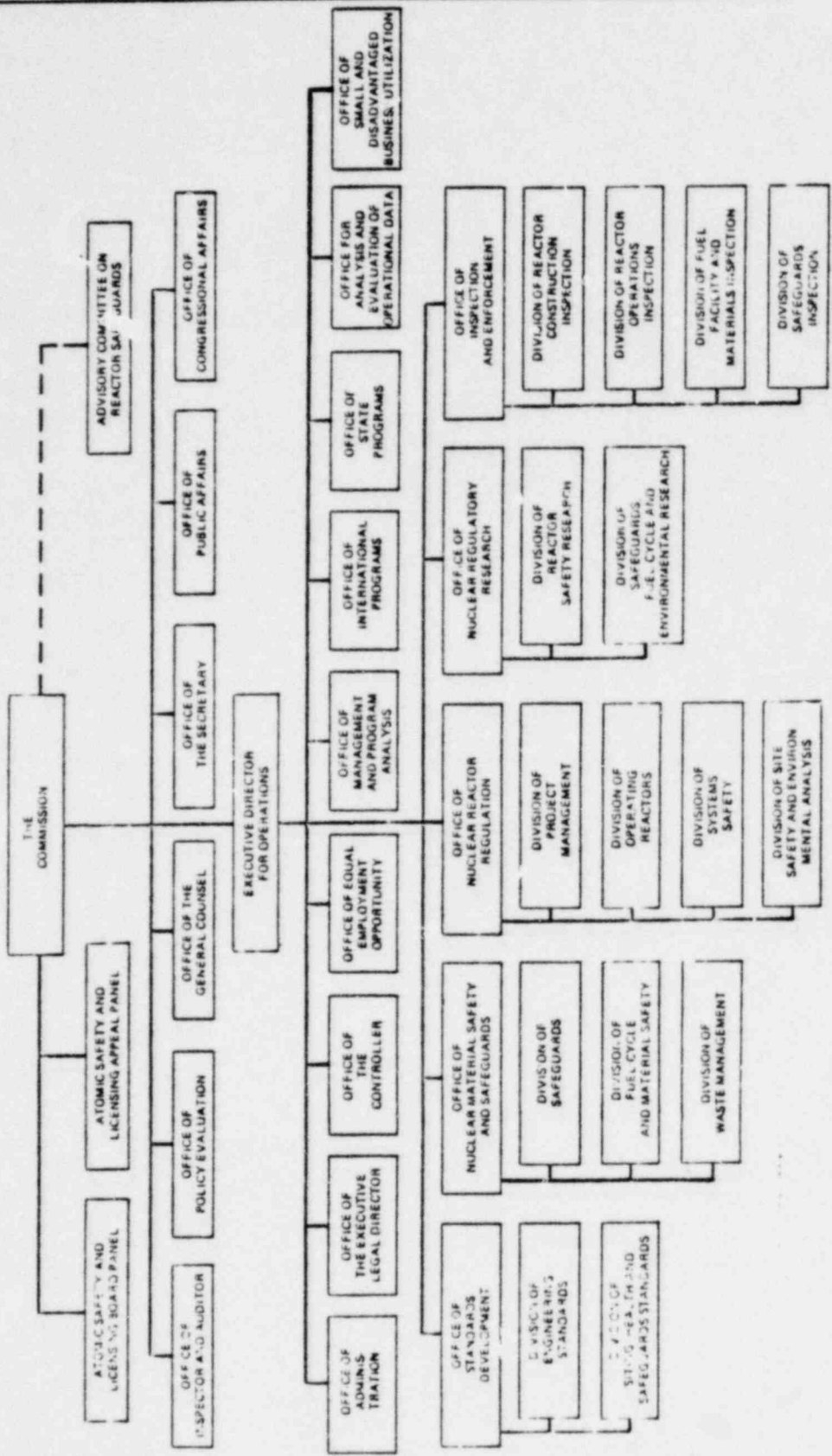


Samuel D. Chilk
Secretary of the Commission

U.S. NUCLEAR REGULATORY COMMISSION

NRC Form 30
1/78

ORGANIZATION CHART



REGION I PHILADELPHIA
 REGION II ATLANTA
 REGION III CHICAGO
 REGION IV DALLAS
 REGION V SAN FRANCISCO

POOR ORIGINAL

ATTACHMENT 3

CONTRACT PRICING PROPOSAL (RESEARCH AND DEVELOPMENT)		Office of Management and Budget Approval No. 29-RO184	
This form is for use when (i) submission of cost or pricing data (see FPR 1-5.867-3) is required and (ii) substitution for the Optional Form 29 is authorized by the contracting officer.		PAGE NO.	NO. OF PAGES
NAME OF OFFEROR		SUPPLIES AND/OR SERVICES TO BE FURNISHED	
HOME OFFICE ADDRESS			
DIVISION(S) AND LOCATION(S) WHERE WORK IS TO BE PERFORMED		TOTAL AMOUNT OF PROPOSAL \$	GOV'T SOLICITATION NO.
DETAIL DESCRIPTION OF COST ELEMENTS			
1. DIRECT MATERIAL (Itemize)	EST COST (\$)	TOTAL EST COST	REFER- ENCE
a. PURCHASED PARTS			
b. SUBCONTRACTED ITEMS			
c. OTHER—(1) RAW MATERIAL			
(2) TOUR STANDARD COMMERCIAL ITEMS			
(3) INTERDIVISIONAL TRANSFERS (At other than cost)			
TOTAL DIRECT MATERIAL			
2. MATERIAL OVERHEAD (Rate % of \$ base =)			
3. DIRECT LABOR (Specify)	ESTIMATED HOURS	RATE/ HOUR	EST COST (\$)
TOTAL DIRECT LABOR			
4. LABOR OVERHEAD (Specify Department or Cost Center)*	O.H. RATE	x BASE =	EST COST (\$)
TOTAL LABOR OVERHEAD			
5. SPECIAL TESTING (Including field work at Government installations)			EST COST (\$)
TOTAL SPECIAL TESTING			
6. SPECIAL EQUIPMENT (If direct charge) (Itemize on Exhibit A)			
7. TRAVEL (If direct charge) (Give details on attached Schedule)			EST COST (\$)
a. TRANSPORTATION			
b. PER DIEM OR SUBSISTENCE			
TOTAL TRAVEL			
8. CONSULTANTS (Identify—purpose—cost)			EST COST (\$)
TOTAL CONSULTANTS			
9. OTHER DIRECT COSTS (Itemize on Exhibit A)			
TOTAL DIRECT COST AND OVERHEAD			
11. GENERAL AND ADMINISTRATIVE EXPENSE (Rate % of cost element Yes)			
12. ROYALTIES			
TOTAL ESTIMATED COST			
14. FEE OR PROFIT			
TOTAL ESTIMATED COST AND FEE OR PROFIT			

OPTIONAL FORM 29
October 1971
General Services Administration
FPR 1-5.867-3
1060-101

POOR ORIGINAL

INSTRUCTIONS TO OFFERORS

1. The purpose of this form is to provide a standard format by which the offeror submits to the Government a summary of incurred and estimated costs (and attached supporting information) suitable for detailed review and analysis. Prior to the award of a contract resulting from this proposal the offeror shall, under the conditions stated in FPR 1-3.807-3 be required to submit a Certificate of Current Cost or Pricing Data (See FPR 1-3.807-3(h) and 1-3.807-4).

2. In addition to the specific information required by this form, the offeror is expected, in good faith, to incorporate in and submit with this form any additional data, supporting schedules, or substantiation which are reasonably required for the conduct of an appropriate review and analysis in the light of the specific facts of this procurement. For effective negotiations, it is essential that there be a clear understanding of:

- a. The existing, verifiable data.
- b. The judgmental factors applied in projecting from known data to the estimate, and
- c. The contingencies used by the offeror in his proposed price.

In short, the offeror's estimating process itself needs to be disclosed.

3. When attachment of supporting cost or pricing data to this form is impracticable, the data will be described (with schedules as appropriate), and made available to the contracting officer or his representative upon request.

4. The formats for the "Cost Elements" and the "Proposed Contract Estimate" are not intended as rigid requirements. These may be presented in different format with the prior approval of the Contracting Officer if required for more effective and efficient presentation. In all other respects this form will be completed and submitted without change.

5. By submission of this proposal the offeror grants to the Contracting Officer, or his authorized representative, the right to examine, for the purpose of verifying the cost or pricing data submitted, those books, records, documents and other supporting data which will permit adequate evaluation of such cost or pricing data, along with the computations and projections used therein. This right may be exercised in connection with any negotiations prior to contract award.

FOOTNOTES

1. Enter in this column those necessary and reasonable costs which in the judgment of the offeror will properly be incurred in the efficient performance of the contract. When any of the costs in this column have already been incurred (e.g., on a letter contract or change order), describe them on an attached supporting schedule. Identify all sales and transfers between your plants, divisions, or organizations under a common control, which are included at other than the lower of cost to the original transferee or current market price.

2. When space in addition to that available in Exhibit A is required, attach separate pages as necessary and identify in this "Reference" column the attachment in which the information supporting the specific cost element may be found. No standard format is prescribed; however, the cost or pricing data must be accurate, complete and current, and the judgment factors used in projecting from the data to the estimates must be stated in sufficient detail to enable the Contracting Officer to evaluate the proposal. For example, provide the basis used for pricing materials (such as by vendor quotations, shop estimates, or invoice prices; the reason for use of overhead rates which depart significantly from experienced rates (reduced volume, a planned major re-arrangement, etc.); or justification for an increase in labor rates (anticipated wage and salary increases, etc.). Identify and explain any contingencies which are included in the proposed price, such as anticipated costs of rejects and defective work, or anticipated technical difficulties.

3. Indicate the rates used and provide an appropriate explanation. Where agreement has been reached with Government representatives on the use of forward pricing rates, describe the nature of the agreement. Provide the method of computation and application of your overhead expense, including cost breakdown and showing trends and budgetary data as necessary to provide a basis for evaluation of the reasonableness of proposed rates.

4. If the total cost entered here is in excess of \$250, provide on a separate page the following information on each separate item of royalty or license fee: name and address of licensor; date of license agreement; patent numbers, patent application serial numbers, or other basis on which the royalty is payable; brief description, including any part or model numbers of each contract item or component on which the royalty is payable; percentage or dollar rate of royalty per unit; unit price of contract item; number of units; and total dollar amount of royalties. In addition, if specifically requested by the contracting officer, a copy of the current license agreement and identification of applicable claims of specific patents shall be provided.

5. Provide a list of principal items within each category indicating known or anticipated source, quantity, unit price, competition obtained, and basis of establishing source and reasonableness of cost.

CONTINUATION OF EXHIBIT A—SUPPORTING SCHEDULE AND REPLIES TO QUESTIONS II AND V

POOR ORIGINAL

Attachment 4

PROPOSAL SUMMARY AND DATA SHEET

RFP NO.

Official Name and Address of Offeror

PLACE OF PERFORMANCE (City, Country, and State)

TOTAL ESTIMATED TIME REQUIRED TO COMPLETE THE PROJECT	TOTAL ESTIMATED COSTS	1ST YEAR (Detailed budget required)	4TH YEAR
		2ND YEAR	5TH YEAR
		3RD YEAR	

TYPE OF CONTRACT PROPOSED

- COST REIMBURSEMENT
 COST-SHARING
 COST-PLUS-FIXED FEE
 FIXED PRICE
 OTHER

NAME OF INDIVIDUAL(S) AUTHORIZED TO EXECUTE AND SIGN CONTRACTS	TITLE	TELEPHONE NUMBER

NAME OF INDIVIDUAL(S) AUTHORIZED TO EXECUTE AND SIGN CONTRACTS	TITLE	TELEPHONE NUMBER

NUMBER OF EMPLOYEES CURRENTLY EMPLOYED DOLLAR VOLUME OF BUSINESS PER ANNUM

Acceptance Period - The offeror agrees to allow _____ days from the date of this proposal for acceptance thereof by the Government (90 days, if not otherwise specified).

NAME AND ADDRESS OF COGNIZANT GOVERNMENT AUDIT AGENCY

Project Director	TELEPHONE NUMBER	ESTIMATED HOURS WEEKLY
Cis-Project Directors	TELEPHONE NUMBER	ESTIMATED HOURS WEEKLY

PROPOSAL SUMMARY AND DATA SHEET

RFP NO.

Acknowledgment of Amendments - The offeror acknowledges receipt of amendments to the RFP as follows:

Amendment Number	Date	Signature

Subcontractor Information - Furnish name and location of organization, description of services, basis for selection, responsible person employed by subcontractor and cost information.

TECHNICAL PROPOSAL SUMMARY (Attach to this Proposal Summary Data Sheet)

- A. METHODS - (List or summarize the chronological milestones to be reached through the year, upon which further work is based. Outline the basic experimental approaches to be taken to reach these milestones.)
- B. RATIONAL - (Indicate the underlying principles and concepts relevant to this work which would justify taking the proposed approach to meeting the stated objectives of this RFP.)
- C. FACILITIES - (Indicate briefly the quantity and quality of space to be made available for this project.)
- D. OTHER - (Include brief statements of experience and accomplishments of principal investigator and other professional personnel which are germane to the effort proposed. Do not reference technical proposal or curriculum vitae, but abstract the most pertinent information.)

GENERAL PROVISIONS

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DEVELOPMENT CONTRACTS WITH COMMERCIAL ORGANIZATIONS

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- 1.2 Assignment
- 1.3 Assignment of Claims
- 1.4 Officials Not to Benefit
- 1.5 Standards of Work
- 1.6 Notice Regarding Late Delivery
- 1.7 Covenant Against Contingent Fees
- 1.8 Interest
- 1.9 Disputes
- 1.10 Notice to the Government of Labor Disputes
- 1.11 Audit
- 1.12 Examination of Records by Comptroller General
- 1.13 Order of Precedence
- 1.14 Stop Work Order
- 1.15 Contractor Organizational Conflicts of Interest - Definitions
- 1.16 Contractor Organizational Conflicts of Interest - General Contract Clause
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- 1.18 Private Use of Contract Information and Data
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APPENDIX A
U.S. NUCLEAR REGULATORY COMMISSION
GENERAL PROVISIONS FOR COST-TYPE RESEARCH AND
DEVELOPMENT CONTRACTS WITH COMMERCIAL
ORGANIZATIONS

Numerical references which follow the names of the provisions and commence with the number 1 are to the Federal Procurement Regulations, Title 41, Code of Federal Regulations.

GENERAL NO. 1.0

1.1 Definitions (1-7.102-1)

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

(a) The term, "head of the agency" or "Secretary" as used herein means the Secretary, the Under Secretary, and Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the head of the agency or the secretary.

(b) The term "Commission" means the United States Nuclear Regulatory Commission or any duly authorized representative thereof, including the Contracting Officer except for the purpose of deciding an appeal under the article entitled "Disputes."

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

(d) Except as otherwise provided in this contract, the term "subcontracts" includes purchase orders under this contract.

1.2 Assignment

Except as stated in Provision No. 1.3, neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the contractor except as expressly authorized in writing by the Contracting Officer.

1.3 Assignment of Claims (1-30.703)

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating \$1,000 or more, claims for moneys due or to become due

the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payments to an assignee of any moneys due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or setoff. (The preceding sentence applies only if this contract is made in time of war or national emergency as defined in said Act and is with the Department of Defense, the General Services Administration, the Energy Research and Development Administration (The Energy Research and Development Administration is now the Department of Energy), the National Aeronautics and Space Administration, the Federal Aviation Administration, or any other department or agency of the United States designated by the President pursuant to Clause 4 of the proviso of section 1 of the Assignment of Claims Act of 1940, as amended by the Act of May 15, 1951, 65 Stat. 41).

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

1.4 Officials Not to Benefit (1-7.102-17)

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

1.5 Standards of Work (1-7.302-3)

The Contractor agrees that the performance of work and services pursuant to the requirements of this contract shall conform to high professional standards.

1.6 Notice Regarding Late Delivery (1-7.204-4)

In the event the Contractor encounters difficulty in meeting the performance requirements, or anticipates difficulty in complying with the contract delivery schedule or date, the Contractor shall immediately notify the Contracting Officer thereof in writing, giving pertinent details, including the date by which it expects to complete performance or make delivery: Provided, however, that this data shall be informational only in character and that receipt thereof shall not be construed as a waiver by the Government of any contract delivery schedule or date, or any rights or remedies provided by law or under this contract.

1.7 Covenant Against Contingent Fees (1-1.503)

(a) Warranty - Termination or deduction for breach.

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

(b) Subcontracts and purchase orders.

Unless otherwise authorized by the Contracting Officer in writing, the contractor shall cause provisions similar to the foregoing to be inserted in all subcontracts and purchase orders entered into under this contract.

1.8 Interest (1-7.203-15)

Notwithstanding any other provision of this contract, unless paid within 30 days, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code) shall bear interest at the rate determined by the Secretary of the Treasury pursuant to Public Law 92-41, 85 Stat. 97. Amounts shall be due upon the earliest of (a) the date fixed pursuant to this contract; (b) the date of the first written demand for payment, consistent with this contract, including demand consequent upon default termination; (c) the date of transmittal by the Government to the Contractor of a proposed supplemental agreement to confirm completed negotiations fixing the amount; or (d) if this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or in connection with a negotiated pricing agreement not confirmed by contract supplement.

1.9 Disputes (1-7.102-12)

(a) This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C 601 et seq.). If a dispute arises relating to the contract, the contractor may submit a claim to the Contracting Officer who shall issue a written decision on the dispute in the manner specified in FPR 1-1.318.

(b) "Claim" means:

- (1) A written request submitted to the Contracting Officer;
- (2) For payment of money, adjustment of contract terms, or other relief;

(3) Which is in dispute or remains unresolved after a reasonable time for its review and disposition by the Government; and

(4) For which a Contracting Officer's decision is demanded.

(c) In the case of disputed requests or amendments to such requests for payment exceeding \$50,000, or with any amendment causing the total request in dispute to exceed \$50,000, the Contractor shall certify, at the time of submission as a claim, as follows:

I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief; and that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable.

(Contractor's Name) _____
(Title) _____

(d) The Government shall pay the contractor interest:

(1) On the amount found due on claims submitted under this clause;

(2) At the rates fixed by the Secretary of the Treasury, under the Renegotiation Act, Pub. L. 92-41;

(3) From the date the Contracting Officer receives the claim, until the Government makes payment.

(e) The decision of the Contracting Officer shall be final and conclusive and not subject to review by any forum, tribunal, or Government agency unless an appeal or action is timely commenced within the times specified by the Contract Disputes Act of 1978.

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

1.10 Notice to the Government of Labor Disputes (1-7.203-3)

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

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

the Prime Contractor, as the case may be, of all relevant information with respect to such disputes.

1.11 Audit (1-3.814-2)

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

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

(c) Cost or pricing data. If the Contractor submitted cost or pricing data in connection with the pricing of this contract or any change or modification thereto, unless such pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the Contracting Officer or his representatives who are employees of the United States Government shall have the right to examine all books, records, documents and other data of the Contractor related to the negotiation, pricing or performance of such contract, change or modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. Additionally, in the case of pricing any change or modification exceeding \$100,000 to formally advertised contracts, the Comptroller General of the United States or his representatives who are employees of the United States Government shall have such rights. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

(d) Availability. The materials described in (b) and (c) above, shall be made available at the office of the Contractor, at all reasonable times, for inspection, audit or reproduction, until the expiration of 3 years from the date of final payment under this contract or such lesser time specified in Part 1-20 of the Federal Procurement Regulations (41 CFR Part 1-20) and for such longer period, if any, as is required by applicable statute, or by other clauses of this contract, or by (1) and (2) below:

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

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

(e) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts hereunder except altered as necessary for proper identification of the contracting parties and the Contracting Officer under the Government prime contract.

(f) Reports. The Contractor shall furnish such progress reports and schedules, financial and cost reports and other reports concerning the work under this contract as the contracting officer may from time to time require.

1.12 Examination of Records by Comptroller General (1-7.103-3)

(a) This clause is applicable if the amount of this contract exceeds \$10,000 and was entered into by means of negotiation, including small business restricted advertising, but is not applicable if this contract was entered into by means of formal advertising.

(b) The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under this contract or such lesser time specified in either Appendix M of the Armed Services Procurement Regulation or the Federal Procurement Regulations Part 1-20, as appropriate, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

(c) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under the subcontract or such lesser time specified in either Appendix M of the Armed Services Procurement Regulation or the Federal Procurement Regulations Part 1-20, as appropriate, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding \$2,500 and (2) subcontractors or purchase orders for public utility services at rates established for uniform applicability to the general public.

(d) The periods of access and examination described in (b) and (c), above, for records which relate to (1) appeals under the "Disputes" clause of this contract, (2) litigation or the settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

1.13 Order of Precedence

In the event of an inconsistency between provisions of this contract, the inconsistency shall be resolved by given precedence in the following order: (a) the Schedule; (b) the Statement of Work; (c) the General Provisions; (d) other provisions of the contract, whether incorporated by reference or otherwise; and (e) the contractor's technical proposal, if incorporated in the contract by reference or otherwise.

1.14 Stop Work Order

(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 ninety (90) days after the order is delivered to the Contractor, and for any further period at which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith 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 ninety (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 Contractor Officer shall either:

(i) cancel the stop work order, or

(ii) terminate the work covered by such order as provided in the "Default" or the "Termination for Convenience" 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. An equitable adjustment shall be made in the delivery schedule, the estimated cost, the fee, or a combination thereof, and the contract shall be modified in writing accordingly, if:

(i) 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

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

(c) If a stop work order is not cancelled and the work covered by such order is terminated for the convenience of the Government, the reasonable costs resulting from the stop work order shall be allowed in arriving at the termination settlement.

(d) If a stop work order is not cancelled and the work covered by such order is terminated for default, the reasonable costs resulting from the stop work order shall be allowed by equitable adjustment or otherwise.

1.15 Contractor Organizational Conflicts of Interest - Definitions (41 CFR 20-1.5402)

(a) "Organizational conflicts of interest" means that a relationship exists whereby a contractor or prospective contractor has present or planned interests related to the work to be performed under an NRC contract which:

- (1) May diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, or
- (2) may result in its being given an unfair competitive advantage.

(b) "Research" means any scientific or technical work involving theoretical analysis, exploration, or experimentation.

(c) "Evaluation activities" means any effort involving the appraisal of a technology, process, product, or policy.

(d) "Technical consulting and management support services" means internal assistance to a component of the NRC in the formulation or administration of its programs, projects, or policies which normally require the contractor to be given access to information which has not been made available to the public or proprietary information. Such services typically include assistance in the preparation of program plans; and preparation of preliminary designs, specifications, or statements of work.

(e) "Contract" means any contract, agreement, or other arrangement with the NRC except as provided in § 20-1.5401(c).

(f) "Contractor" means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, affiliates thereof, or their successors in interest, including their chief executives, directors, key personnel (identified in the contract), proposed consultants or subcontractors, which is a party to a contract with the NRC.

(g) "Affiliates" means business concerns which are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both (41 CFR 1-1.606-1(e)).

(h) "Subcontractor" means any subcontractor of any tier which performs work under a contract with the NRC except subcontracts for supplies and subcontracts in amount of \$10,000 or less.

(i) "Prospective contractor" or "offeror" means any person, firm, unincorporated association, joint venture, partnership, corporation, or affiliates thereof, including its chief executive, directors, key personnel (identified in the proposal), proposed consultants, or subcontractors, submitting a bid or proposal, solicited or unsolicited, to the NRC to obtain a contract.

(j) "Potential conflict of interest" means that a factual situation exists that suggests (indicates) that an actual conflict of interest may arise from award of a proposed contract. The term "potential conflict of interest" is used to signify those situations which merit investigation prior to contract award in order to ascertain whether award would give rise to an actual conflict or which must be reported to the contracting officer for investigation if they arise during contract performance.

1.16 Contractor Organizational Conflicts of Interest - General Contract
Clause - (41 CFR 20-1.5405-1)

(a) Purpose. The primary purpose of this clause is to aid in ensuring that the contractor: (1) Is not placed on a conflicting role because of current or planned interest (financial, contractual, organizational, or otherwise) which relate to the work under this contract, and (2) does not obtain an unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the contractor as defined in 41 CFR §20-1.5402(f) in the activities covered by this clause.

(c) Work for Others. Notwithstanding any other provision of this contract, during the term of this contract, the contractor agrees to forgo entering into consulting or other contractual arrangements with any firm or organization, the result of which may give rise to a conflict of interest with respect to the work being performed under this contract. The contractor shall ensure that all employees who are employed full time under this contract and employees designated as key personnel; if any, under this contract abide by the provision of this clause. If the contractor believes with respect to itself or any such employee that any proposed consultant or other contractual arrangement with any firm or organization may involve a potential conflict of interest, the contractor shall obtain the written approval of the contracting officer prior to execution of such contractual arrangement.

(d) Disclosure after award

(1) The contractor warrants that to the best of its knowledge and belief and except as otherwise set forth in this contract, it does not have any organizational conflicts of interest, as defined in 41 CFR 20-1.5402(a).

(2) The contractor agrees that if after award it discovers organizational conflicts of interest with respect to this contract, it shall make an immediate and full disclosure in writing to the contracting officer. This statement shall include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. The NRC may, however, terminate the contract for convenience if it deems such termination to be in the best interests of the government.

(e) Access to and use of information.

(1) If the contractor in the performance of this contract obtains access to information, such as NRC plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (Pub. L. 93-579), or data which has not been released to the public, the contractor agrees not to:

(i) Use such information for any private purpose until the information has been released to the public;

(ii) compete for work for the Commission based on such information for a period of six (6) months after either the completion of this contract or the release of such information to the public, whichever is first,

(iii) submit an unsolicited proposal to the government based on such information until one year after the release of such information to the public, or

(iv) release the information without prior written approval by the contracting officer unless such information has previously been released to the public by the NRC.

(2) In addition, the contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (Pub. L. 93-579), or other confidential or privileged technical, business, or financial information under this contract, the contractor shall treat such information in accordance with restrictions placed on use of the information.

(3) The contractor shall have, subject to patent and security provisions of this contract, the right to use technical data it produces under this contract for private purposes provided that all requirements of this contract have been met.

(i) Subcontracts. Except as provided in 41 CFR 20-1.5402(h), the contractor shall include this clause, including this paragraph, in subcontracts of any tier. The terms "contract," "contractor," and "contracting officer," shall be appropriately modified to preserve the government's rights.

(g) Remedies. For breach of any of the above proscriptions or for intentional nondisclosure or misrepresentation of any relevant interest required to be disclosed concerning this contract or for such erroneous representations as necessarily imply bad faith, the government may terminate the contract for default, disqualify the contractor from subsequent contractual efforts, and pursue other remedies as may be permitted by law or this contract.

(h) Waiver. A request for waiver under this clause shall be directed in writing through the contracting officer to the Executive Director for Operations (EDO) in accordance with the procedures outlined in §20-1.5411.

1.17 Dissemination of Contract Information

The contractor shall not publish, permit to be published, or disseminate to the public any information, oral or written, concerning the work performed

under this contract without the prior written consent of the Contracting Officer. Two copies of any information proposed to be published or disseminated shall be submitted to the Contracting Officer. Failure to comply with this clause shall be grounds for termination of this contract.

1.18 Private Use of Contract Information and Data

Except as otherwise specifically authorized by Provision No. 1.17, publication of contract work of this contract, or as otherwise approved by the Contracting Officer, information and other data developed or acquired by or furnished the contractor in the performance of this contract, shall be used only in connection with the work under this contract.

1.19 Drawings, Designs, and Specifications

All drawings, sketches, designs, design data, specifications, notebooks, technical and scientific data, and all photographs, negatives, reports, findings, recommendations, data and memoranda of every description relating thereto, as well as all copies of the foregoing relating to the work or any part thereto, shall be subject to inspection by the Commission at all reasonable times (for which inspection the proper facilities shall be afforded the Commission by the contractor and its subcontractors), shall be the property of the Government and may be used by the Government for any purpose whatsoever without any claim on the part of the contractor and its subcontractors and vendors for additional compensation and shall, subject to the right of the contractor to retain a copy of said material for its own use, be delivered to the Government, or otherwise disposed of by the contractor either as the Contracting Officer may from time to time direct during the progress of the work or in any event as the Contracting Officer shall direct upon completion or termination of this contract. The contractor's right of retention and use shall be subject to the security, patent, and use of information provisions, if any, of this contract.

1.20 Proprietary Data and Confidential Information

In connection with the performance of the work under this contract, the contractor may be furnished, or may develop or acquire, proprietary data (trade secrets) or confidential or privileged technical, business, or financial information, including Commission plans, policies, reports, financial plans, internal data protected by the Privacy Act of 1974 (P.L. 93-579), or other information which has not been released to the public or has been determined by the Commission to be otherwise exempt from disclosure to the public. Contractor agrees to hold such information in confidence and not to directly or indirectly duplicate, disseminate, or disclose such information in whole or in part to any other person or organization except as may be necessary to perform the work under this contract. Contractor agrees to return such information to the Commission or otherwise dispose of it either as the Contracting Officer may from time to time direct during the progress of the work or in any event as the Contracting Officer shall direct upon completion or termination of this contract. Failure to comply with this clause shall be grounds for termination of this contract.

1.21 Privacy Act Notification (1-1.327-5(b))

This procurement action requires the contractor to do one or more of the following: design, develop, or operate a system of records on individuals to accomplish an agency function in accordance with the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

1.22 Privacy Act (1-1.327-5(c))

(a) The contractor agrees:

(1) To comply with the Privacy Act of 1974 and the rules and regulations issued pursuant to the Act in the design, development, or operation of any system of records on individuals in order to accomplish an agency function when the contract specifically identifies

(i) the system or systems of records and

(ii) the work to be performed by the contractor in terms of any one or combination of the following: (a) design, (b) development, or (c) operation;

(2) to include the solicitation notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation when the statement of work in the proposed subcontract requires the design, development, or operation of a system of records on individuals to accomplish an agency function; and

(3) to include this clause, including this paragraph (3), in all subcontracts awarded pursuant to this contract which require the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved where the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency where the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act when the contract is for the operation of a system of records on individuals to accomplish an agency function, the contractor and any employee of the contractor is considered to be an employee of the agency.

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

(1) "Operation of a system of records" means performance of any of the activities associated with maintaining the system of records including the collection, use, and dissemination of records.

(2) "Record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited

to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(3) "System of records" on individuals means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

PERFORMANCE PROVISIONS NO. 2.0

2.1 Permits

Except as 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.

2.2 Safety, Health, and Fire Protection

The contractor shall take all reasonable precautions in the performance of the work under this contract to protect the health and safety of employees and of members of the public and to minimize danger from all hazards to life and property and shall comply with all health, safety, and fire protection regulations and requirements (including reporting requirements) of the Commission and the Department of Labor. In the event that the contractor fails to comply with said regulations or requirements, the Contracting Officer may, without prejudice to any other legal or contractual rights of the Commission, issue an order stopping all or any part of the work; thereafter, a start order for resumption of 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.

2.3 Key Personnel (1-7.304-6)

The personnel specified in 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.

2.4 Security

(a) Contractor's duty to safeguard Restricted Data, Formerly Restricted Data, and other classified information. The contractor shall, in accordance with the Commission's security regulations and requirements, be responsible for safeguarding Restricted Data, Formerly Restricted Data, and other 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 the Commission 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 the Commission specifying the classified matter to be retained. The certification shall identify the items and types or categories of matter retained, the conditions governing the retention of the matter and their 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.

(b) Regulations. The contractor agrees to conform to all security regulations and requirements of the Commission.

(c) Definition of Restricted Data. The term "Restricted Data," as used in this clause, 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.

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

(e) Security Clearance Personnel. The contractor shall not permit any individual to have access to Restricted Data, Formerly Restricted Data, or other classified information, except in accordance with the Atomic Energy Act of 1954, as amended, and the Commission's regulations or requirements applicable to the particular type or category of classified information to which access is required.

(f) Criminal Liabilities. It is understood that disclosure of Restricted Data, Formerly Restricted Data, or other classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any Restricted Data, Formerly Restricted Data, or any other classified matter 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. 2011 et seq.; 18 U.S.C. 793 and 794; and Executive Order 11652.)

(g) 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.

(h) In performing the contract work, the contractor shall assign classifications to all documents, material, and equipment originated or generated by the contractor in accordance with classification guidance by the Commission. Every subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material, or equipment shall provide that the subcontractor or supplier shall assign classifications to all such documents, material, and equipment in accordance with classification guidance furnished by the contractor.

2.5 Subcontracts (1-7.402-8)

(a) The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract which (1) is cost-reimbursement type, time and materials, or labor-hour, or (2) is fixed-price type and exceeds in dollar amount either \$25,000 or 5 percent of the total estimated cost of this contract, or (3) provides for the fabrication, purchase, rental, installation or other acquisition of special test equipment having a value in excess of \$1,000 or of any items of industrial facilities, or (4) has experimental, developmental or research work as one of its purposes.

(b) In the case of a proposed subcontract which is (1) cost-reimbursement type, time and materials, or labor-hour which would involve an estimated amount in excess of \$10,000, including any fee, (2) is proposed to exceed \$100,000, or (3) is one of a number of subcontracts under this contract with a single subcontractor for the same or related supplies or services which, in the aggregate are expected to exceed \$100,000, the advance notification required by (a), above, shall include:

(1) A description of the supplies or services to be called for by the subcontract;

(2) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained;

(3) The proposed subcontract price, together with the Contractor's cost or price analysis thereof;

(4) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data when such data and certificate are required by other provisions of this contract to be obtained from the subcontractor;

(5) Identification of the type of subcontract to be used;

(6) A memorandum of negotiations which sets forth the principal elements of the subcontract price negotiations. A copy of this memorandum shall be retained in the Contractor's file for the use of Government reviewing authorities. The memorandum shall be in sufficient detail to reflect the most significant considerations controlling the establishment of initial or revised prices. The memorandum should include an explanation of why cost or pricing data was, or was not required, and, if it was not required in the case of any price negotiation in excess of \$100,000, a statement of the basis for determining that the price resulted from or was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. If cost or pricing data was submitted and a certificate of cost or pricing data was required, the memorandum shall reflect the extent to which reliance was not placed upon the factual cost or pricing data submitted and the extent to which this data was not used by the Contractor in determining the total price objective and in negotiating the final price. The memorandum shall also reflect the extent to which it was recognized in the negotiation that any cost or pricing data submitted by the subcontractor was not accurate, complete, or current; the action taken by the Contractor and the subcontractor as a result; and the effect, if any, of such defective data on the total price negotiated. Where the total price negotiated differs significantly from the Contractor's total price objective, the memorandum shall explain this difference;

(7) When incentives are used, the memorandum of negotiation shall contain an explanation of the incentive fee/profit plan identifying each critical performance element, management decisions used to quantify each incentive element, reasons for incentives on particular performance characteristics, and a brief summary of trade-off possibilities considered as to cost, performance, and time; and

(8) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract to be obtained from the subcontractor.

(c) The Contractor shall obtain the written consent of the Contracting Officer prior to placing any subcontract for which advance notification is required under (a) above. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (c).

(d) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost.

(f) The Contractor shall give the Contracting Officer immediate notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any subcontractor or vendor which in the opinion of the Contractor, may result in litigation, related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(g) Notwithstanding (c) above, the Contractor may enter into subcontracts within (i) or (ii) of (a) above, without the consent of the Contracting Officer, if the Contracting Officer has approved in writing the Contractor's procurement system and the subcontract is within the scope of such approval. (This subparagraph (g) however, shall not be applicable to those subcontracts subject to paragraph (j) below, if any.)

(h) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to provide progress payments on the fixed-price types of subcontracts of those subcontractors which are small business concerns, in conformity with the standards for customary progress payments stated in the Federal Procurement Regulations, Subpart 1-30.5, as in effect on the date of this contract. The Contractor further agrees that the need for such progress payments will not be considered as a handicap or adverse factor in the award of subcontracts.

(i) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum extent consistent with the objectives and requirements of this Contract.

2.6 Consultant or Other Comparable Employment Services of Contractor Employees

The contractor shall require all employees who are employed full-time (an individual who performs work under the cost-type contract on a full-time annual basis) or part-time (50 percent or more of regular annual compensation received under terms of a contract with the Commission) on the contract work to disclose to the contractor all consultant or other comparable employment services which the employees proposed to undertake for others. The contractor shall transmit to the Contracting Officer all information obtained from such disclosures. The contractor will require any employee who will be employed full-time on the contract to agree, as a condition of his participation in such work, that he will not perform consultant or other comparable employment services for another Commission cost-type contractor under its contract with the Commission except with the prior approval of the contractor.

2.7 Litigation and Claims

(a) Initiation of litigation. The contractor may, with the prior written authorization of the Contracting Officer, and shall, upon the request of the Commission, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the Contracting Officer.

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

2.8 Excusable Delays (1-8.708)

Except with respect to defaults of subcontractors, the contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the contractor to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of the contractor. Such causes may include, but are not restricted to acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the contractor. If the failure to perform is caused by the failure of the subcontractor to perform or make progress, and if such failure arises out of causes beyond the control of both the contractor and subcontractor, and without the fault or negligence of either of them, the contractor shall not be deemed to be in default, unless (a) the supplies or services to be furnished by the subcontractor were obtainable from other sources, (b) the Contracting Officer shall have ordered the contractor in writing to procure such supplies or services from such other sources, and (c) the contractor shall have failed to comply reasonably with such order. Upon request of the contractor, the Contracting Officer shall ascertain the facts and extent of such failure and, if he shall determine that

any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Government under the clause hereof entitled "Termination for Default or for Convenience of the Government." (As used in this clause, the terms "sub-contractor" and "subcontractors" means subcontractor(s) at any tier.)

2.9 Changes (1-7.404-5)

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

- (i) Drawings, designs, or specifications;
- (ii) Method of shipment or packing; and
- (iii) Place of inspection, delivery, or acceptance.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, or otherwise affects any other provision of this contract, an equitable adjustment shall be made:

- (i) In the estimated cost or delivery schedule, or both;
- (ii) In the amount of any fixed fee to be paid to the Contractor;

and

(iii) In such other provisions of the contract as may be affected, and the contract shall be modified in writing accordingly

Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; Provided, however, That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, except as provided in paragraph (c) below, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(c) Notwithstanding the provisions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance thereof, shall not be increased or deemed to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until such modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the clause of this contract entitled "Limitation of Cost" or "Limitation of Funds."

In the foregoing clause, the period of "thirty (30) days" within which any claim for adjustment must be asserted, may be varied in accordance with agency procedures.

2.10 Inspection (1-7.402-5(c))

The Government, through any authorized representatives, has the right at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection, or evaluation is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require his subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

2.11 Required Source of Jewel Bearing (1-1.319)

(a) For the purpose of this clause:

(1) "Jewel bearing" means a piece of synthetic sapphire or ruby of any shape, except a phonograph needle, which has one or more polished surfaces and which is suitable for use in an instrument, mechanism, subassembly, or part without any additional processing. A jewel bearing may be either unmounted or mounted into a ring or bushing. Examples of jewel bearings are: Watch holes - olive, watch holes - straight, pallet stones, roller jewels (jewel pins), end stones (caps), vee (cone) jewels, instrument rings, cups, double cups, and orifice jewels. As used herein, the term "jewel bearings" includes "related items."

(2) "Related items" means other synthetic sapphire or ruby components. Examples of related items are pivots, knife edges, insulators, spacers, windows, and striking surfaces other than pallet stones.

(3) "Price list" means the official U.S. Government Jewel Bearing Price List for jewel bearings produced by the William Langer Jewel Bearing Plant. This list is issued periodically by the General Services Administration.

(4) "Plant" means the Government-owned William Langer Jewel Bearing Plant, Rolla, N. Dak.

(5) "Military Standard Jewel Bearing" means a jewel bearing conforming to Military Specification No MIL-B-27497 (latest revision) entitled "Bearings, Jewel, Sapphire or Ruby, Synthetic."

(b) Jewel bearings required in the performance of this contract shall be procured from the Plant at prices established in the price list dated (date to be filled in by Contracting Officer). Each purchase order issued to the Plant under this contract shall include the prime contract number and date of the price list cited above. The Contractor agrees that the quantities, types, and sizes (including tolerances) of jewel bearings so ordered will be those required

for the performance of this contract. Within 90 calendar days after the effective date of this contract, the Contractor shall furnish to the Contracting Officer a certification that the required jewel bearings were ordered pursuant to this clause. The Contractor agrees to notify the Contracting Officer promptly of the rejection of his (or any subcontractor's) purchase order in whole or in part by the Plant. The requirement for purchase and use of jewel bearings from the Plant will be waived to the extent of orders rejected because of the Plant's inability to deliver. If such a waiver is granted, an equitable adjustment shall be made in the contract price or delivery schedule, or both, in accordance with the "Changes" clause of this contract. Further, the requirement for use (but not the requirement for purchase from the Plant) of jewel bearings may be waived by the Contracting Officer when such waiver is determined by him to be consistent with established policy.

(c) The Contractor agrees to use Langer-made jewel bearings in the production of subassemblies or end items under this contract or in his commercial production.

(d) Whenever it is necessary for the Contractor or any subcontractor to redesign or reengineer jeweled items in order to satisfy specific performance requirements, the Contractor or subcontractor shall provide in such redesign for the use of military standard jewel bearings. This requirement does not apply when the dimensional tolerances or configurations of military standard jewel bearings are such that their use in the product would prevent attainment of the required level of performance specified for the item. However, when one or more nonstandard bearings must be used to satisfy performance requirements of the jeweled item but military standard jewel bearings will function satisfactorily for other applications within the same item, the item will be required to be redesigned to provide for the use of military standard jewel bearings in such "other" applications. The Contractor or subcontractor is not required to redesign a jeweled item solely for the purpose of converting from the use of nonstandard to military standard jewel bearings. Nothing in this contract shall prevent any Contractor or subcontractor from voluntarily redesigning a jeweled item solely to accommodate the use of military standard jewel bearings.

(e) If at the end of this contract period, the total quantity of end items actually ordered under this contract is less than the total estimated quantity, and the Contractor, pursuant to paragraph (b) of this clause, has purchased a larger quantity of Langer-made jewel bearings than used in deliveries made under this contract, an equitable adjustment shall be made (if requested by the Contractor within 90 days after the end of the contract period) to reimburse the Contractor for any additional costs resulting from such excess purchase but in no event shall such additional costs cover more jewel bearings than necessary to deliver the total estimated quantity of end items. Such excess jewel bearings shall be disposed of as directed by the Contracting Officer. However, such excess jewel bearings may be used in partial satisfaction of the requirements to purchase Langer-made jewel bearings pursuant to paragraph (b) of this clause where a subsequent contract to furnish similar end items to the Government is entered into with the same Contractor. In this situation the requirement to purchase and use jewel bearings from the Plant

will be waived up to the amount of such excess jewel bearings in Contractor's possession upon submission of a written request by the Contractor. Such request shall contain documented evidence in support of the waiver of purchase and nonuse of such excess jewel bearings. If such waiver is granted, an equitable adjustment to the extent of differences in price lists shall be made in the contract price in accordance with the "Changes" clause of this contract.

(f) The Contractor agrees to retain for 3 years from the date of final payment under this contract and upon request of the Contracting Officer to make available during that period records showing compliance with this clause.

(g) The Contractor agrees to insert this clause, including this paragraph (g), in every subcontract and purchase order issued in performance of this contract unless he knows that the subassembly, component, or part being purchased does not contain jewel bearings.

2.12 Government Property (1-7.203-21)

(a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished Property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor make a determination of the delay, if any, occasioned the Contractor and shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provisions affected by any such delay in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event that Government-furnished property is received by the Contractor in a condition not suitable for intended use, the Contractor shall, upon receipt thereof notify the contracting officer of such fact and, as directed by the Contracting Officer, either (1) return such property at the Government's expense or otherwise dispose of the property, or (2) effect repairs or modifications. Upon completion of (1) or (2) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provision affected by the return or disposition, or the repair or modification in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished property or delivery of such property in a condition not suitable for its intended use.

(b) (1) By notice in writing the Contracting Officer may (i) decrease the property furnished or to be furnished by the Government under this contract, or (ii) substitute other Government-owned property for property to be furnished 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 with respect to the removal and shipping of property covered by such notice.

(2) In the event of any decrease in or substitution of property pursuant to paragraph (1), above, or any withdrawal of authority to use property provided under any contract or lease, which property the Government had agreed in the Schedule to make available for the performance of this contract, the Contracting Officer, upon the written request of the contractor (or, if the substitution of property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution, or withdrawal, in accordance with the procedures provided for in the "Changes" clause of this contract.

(c) Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, for the cost of 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 delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under the contract, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this contract, or (2) commencement of processing or use of such property in the performance of this contract, or (3) reimbursement of the cost thereof by the Government in whole or in part, whichever first occurs. All Government-furnished property, together with all property acquired by the Contractor title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as "Government property." Title to and Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government nor shall such Government property, or any part thereof, be or become a fixture or lose its identify as personalty by reason of affixation to any realty.

(d) The Contractor shall be directly responsible for and accountable for all Government property provided under this contract. The contractor shall establish and maintain a system to control, protect, preserve, and maintain all Government property. This system shall, upon request by the Contracting Officer, be submitted for review and, if satisfactory, approved in writing by the Contracting Officer. The Contractor shall maintain and make available such records as are required by the approved system and must account for all Government property until relieved of responsibility therefor in accordance with the written instructions of the Contracting Officer. To the extent directed by the Contracting Officer, the Contractor shall identify Government property by marking, tagging, or segregating in such manner as to clearly indicate its ownership by the Government.

(e) The Government property shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.

(f) The Contractor shall maintain and administer, in accordance with sound industrial practice, a program for the utilization, maintenance, repair, protection, and preservation of Government property so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all appropriate directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of Government property.

(g) (1) The Contractor shall not be liable for any loss of or damage to the Government property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto):

(i) Which results from willful misconduct or lack of good faith on the part of any one of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of:

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

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

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

(ii) Which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of his directors, officers, or other representatives mentioned in subparagraph (i), above:

(A) To maintain and administer, in accordance with sound industrial practice, the program for utilization, maintenance, repair, protection, and preservation of Government property as required by paragraph (f) hereof, or to take all reasonable steps to comply with any appropriate written direction of the Contracting Officer under paragraph (f) hereof; or

(B) To establish, maintain, and administer in accordance with paragraph (d) hereof a system for control of Government property.

(iii) For which the Contractor is otherwise responsible under the express terms or the clause or clauses designated in the Schedule;

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

(v) Which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement.

Any failure of the Contractor to act, as provided in subparagraph (1), above, shall be conclusively presumed to be a failure resulting from willful misconduct, or lack of good faith on the part of such directors, officers, or other representatives mentioned in subparagraph (1), above, if the Contractor is notified by the Contracting Officer by registered or certified mail addressed to one of such directors, officers, or other representatives, of the Government's disapproval, withdrawal of approval, or nonacceptance of the Contractor's program or system. In such event it shall be presumed that any loss or damage to Government property resulted from such failure. The Contractor shall be liable for such loss or damage unless he can establish by clear and convincing evidence that such loss or damage did not result from his failure to maintain an approved program or system, or occurred during such time as an approved program or system for control of Government property was maintained.

If more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception. 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 latter's possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, provides for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

(2) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provisions for a reserve, covering the risk of loss of or damage to the Government property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provisions of this contract.

(3) Upon the happening of loss or destruction of or damage to the Government property, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the loss and salvage organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the loss and salvage organizations so designated (unless the Contracting Officer has designated that no such organization be employed), shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the Contracting Officer a statement of:

- (i) The lost, destroyed, and 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.

The Contractor shall make repairs and renovations of the damaged Government property or take such other action as the Contracting Officer directs.

(4) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government property, he shall use the proceeds to repair, renovate, or replace the Government property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction, or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where the subcontractor has not been relieved from liability for any loss or destruction of or damage to Government property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government property for the benefit of the Government.

(h) The Commission, and any persons designated by it, shall at all reasonable times have access to the premises where any of the Government property is located, for the purpose of inspecting the Government property.

(i) Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit to the Contracting Officer in a form acceptable to him, inventory schedules covering all items of the Government property not consumed in the performance of this contract, or not theretofore delivered to the Government, and shall deliver or make such other disposal of such Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by the contract or shall be paid in such manner as the Contracting Officer may direct. The foregoing provisions shall apply to scrap from Government property: Provided, however, That the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings, or cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's established accounting procedures.

(j) Unless otherwise provided herein, the Government:

(i) May abandon any Government property in place, and thereupon all obligations of the Government regarding such abandoned property shall cease; and

(ii) Has no obligation to the Contractor with regard to restoration or rehabilitation of the Contractor's premises, neither in case of abandonment (paragraph (j) (i), above), disposition on completion of need or of the contract (paragraph (i), above), nor otherwise, except for restoration or rehabilitation costs caused by removal of Government property pursuant to paragraph (b), above.

(k) All communications issued pursuant to this clause shall be in writing.

SOCIO-ECONOMIC PROVISIONS NO. 3.0

3.1 Employment of the Handicapped (FPR Temp. Reg. 38)

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

(b) The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Rehabilitation Act of 1973, as amended.

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

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

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

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

3.2 Disabled Veterans and Veterans of the Vietnam Era (FPR Temp. Reg. 39)

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

(b) The contractor agrees that all suitable employment openings of the contractor which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one wherein the contract is being performed but excluding those of independently operated corporate affiliates, shall be listed at an appropriate local office of the State employment service system wherein the opening occurs. The contractor further agrees to provide such reports to such local office regarding employment openings and hires as may be required.

State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service, but are not required to provide those reports set forth in paragraphs (d) and (e).

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

(d) The reports required by paragraph (b) of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the contractor has more than one

hiring location in a State, with the central office of that State employment service. Such reports shall indicate for each hiring location (1) the number of individuals hired during the reporting period, (2) the number of nondisabled veterans of the Vietnam era hired, (3) the number of disabled veterans of the Vietnam era hired, and (4) the total number of disabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 U.S.C. 1787. The contractor shall submit a report within 30 days after the end of each reporting period wherein any performance is made on this contract identifying data for each hiring location. The contractor shall maintain at each hiring location copies of the reports submitted until the expiration of one year after final payment under the contract, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representative of the contracting officer or of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment, and placement.

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

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

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

(h) As used in this clause: (1) "All suitable employment openings" includes, but is not limited to, openings which occur in the following job categories: production and non-production; plant and office; laborers and mechanics; supervisory and nonsupervisory; technical; and executive, administrative, and professional openings that are compensated on a salary basis of less than \$25,000 per year. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment. It does not include openings which the contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement nor openings in an educational institution which are restricted to students of that institution. Under the most compelling circumstances an employment opening may not be suitable for listing, including such situations where the needs of the Government cannot reasonably be otherwise supplied, where listing would be contrary to national security, or where the requirement of listing would otherwise not be for the best interest of the Government.

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

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

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

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

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

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

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

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

3.3 Convict Labor (1-12.204)

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

3.4 Equal Opportunity (1-12.803-2)

(The following clause is applicable unless this contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor (41 CFR, ch. 60)).

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

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

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

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

(d) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

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

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

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

3.5 Preference for U.S. Flag Air Carriers (1-1.323-2)

(a) Pub. L. 93-623 requires that all Federal agencies and Government contractors and subcontractors will use U.S. flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent service by such carriers is available. It further provides that the Comptroller General of the United States shall disallow any expenditures from appropriated funds for international air transportation on other than a U.S. flag air carrier in the absence of satisfactory proof of the necessity therefor.

(b) The contractor agrees to utilize U.S. flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent service by such carriers is available.

(c) In the event that the contractor selects a carrier other than a U.S. flag air carrier for international air transportation; he will include a certification on vouchers involving such transportation which is essentially as follows:

CERTIFICATION OF UNAVAILABILITY OF U.S. FLAG AIR CARRIERS

I hereby certify that transportation service for personnel (and their personal effects) or property by certificated air carrier was unavailable for the following reasons: 1 (state reasons)

1See Federal Procurement Regulations (41 CFR 1-1.323-3).

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

(1) "International air transportation" means transportation of persons (and their personal effects) or property by air between a place in the United States and a place outside thereof or between two places both of which are outside the United States.

(2) "U.S. Flag air carrier" means one of a class of air carriers holding a certificate of public convenience and necessity issued by the Civil Aeronautics Board, approved by the President, authorizing operations between the United States and/or its territories and one or more foreign countries.

(3) The term "United States" includes the fifty states, Commonwealth of Puerto Rico, possessions of the United States, and the District of Columbia.

(e) The contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase hereunder which may involve international air transportation.

3.6 Use of U.S. Flag Commercial Vessels (1-19.108-2)

(a) The Cargo Preference Act of 1954 (Pub. L. 664, August 26, 1954, 68 Stat. 832, 46 U.S.C. 1241(b)), requires that Federal departments or agencies shall transport at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) of equipment, materials, or commodities which may be transported on ocean vessels, on privately owned United States flag commercial vessels. Such transportation shall be accomplished whenever:

(1) Any equipment, materials, or commodities, within or outside the United States, which may be transported by ocean vessel, are:

(A) Procured, contracted for, or otherwise obtained for the agency's account; or

(B) Furnished to or for the account of any foreign nation without provision for reimbursement.

(2) Funds or credits are advanced or the convertibility of foreign currencies is guaranteed in connection with furnishing such equipment, materials, or commodities which may be transported by ocean vessel.

NOTE: This requirement does not apply to small purchases as defined in 41 CFR 1-3.6 or to cargoes carried in the vessels of the Panama Canal Company.

(b) The contractor agrees as follows:

(1) To utilize privately owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved whenever shipping

any equipment, material, or commodities under the conditions set forth in (a) above pursuant to this contract to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels.

NOTE: Guidance regarding fair and reasonable rates for United States flag vessels may be obtained from the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20230; Area Code 202, phone 377-3449.

(2) To furnish, within 15 working days following the date of loading for shipments originating within the United States or within 25 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated "onboard" commercial ocean bill of lading in English for each shipment of cargo covered by the provisions in (a) above to both the Contracting Officer (through the prime contractor in the case of subcontractor bills of lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20230.

(3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract except for small purchases as defined in 41 CFR 1-3.6.

3.7 Buy American Act (1-6.104-5)

(a) In acquiring end products, the Buy American Act (41 U.S. Code 10a-10d) provides that the Government give preference to domestic source end products. For the purpose of this clause:

(i) "Components" means those articles, materials, and supplies which are directly incorporated in the end products;

(ii) "End products" means those articles, materials, and supplies which are to be acquired under this contract for public use; and

(iii) A "domestic source end product" means (A) an unmanufactured end product which has been mined or produced in the United States and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For the purposes of this (a) (iii) (B), components of foreign origin of the same type or kind as the products referred to in (b) (ii) or (iii) of this clause shall be treated as components mined, produced, or manufactured in the United States.

(b) The Contractor agrees that there will be used under this contract (by the Contractor, subcontractor, materialmen and suppliers) only domestic source end products, except end products:

(i) Which are for use outside the United States;

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

(iii) As to which the Commission determines the domestic preference to be inconsistent with the public interest; or

(iv) As to which the Commission determines the cost to the Government to be unreasonable.

3.8 Contract Work Hours and Safety Standards Act - Overtime Compensation (1-12.303)

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), is subject to the following provisions and to all other applicable provisions and exceptions of such act and the regulations of the Secretary of Labor thereunder.

(a) Overtime Requirement. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, apprentices, trainees, watchmen, and guards shall require or permit any laborer, mechanic, apprentice, trainee, watchman, or guard in any workweek in which he is employed on such work to work in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer, mechanic, apprentice, trainee, watchman, or guard receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek, whichever is the greater number of overtime hours.

(b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions of paragraph (a), the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, apprentice, trainee, watchman, or guard employed in violation of the provisions of paragraph (a) in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of 8 hours or in excess of his standard workweek of 40 hours without payment of the overtime wages required by paragraph (a).

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

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

(e) Records. The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for 3 years from the completion of the contract.

3.9 Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (FPR Temp Reg. No. 50)

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

(b) The contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract. The contractor further agrees to cooperate in any studies or surveys that may be conducted by the Small Business Administration or the contracting agency which may be necessary to determine the extent of the contractor's compliance with this clause.

(c) (1) The term "small business concern" shall mean a small business as defined pursuant to Section 3 of the Small Business Act and in relevant regulations promulgated pursuant thereto.

(2) The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern -

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

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

The contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, and other minorities, or any other individual found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

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

3.10 Utilization of Labor Surplus Area Concerns (1-1.805-3(a))

(The following clause is applicable if this contract exceeds \$10,000.)

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

(b) In complying with paragraph (a) of this clause and with paragraph (b) of the clause of this contract entitled "Utilization of Small Business Concerns," the Contractor in placing his subcontracts shall observe the following order of preference: (1) Small business concerns that are labor surplus area concerns, (2) other small business concerns, and (3) other labor surplus area concerns.

(c) (1) The term "labor surplus area" means a geographical area identified by the Department of Labor as an area of concentrated unemployment or underemployment or an area of labor surplus.

(2) The term "labor surplus area concern" means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas.

(3) The term "perform substantially in a labor surplus area" means that the costs incurred on account of manufacturing, production, or appropriate services in labor surplus areas exceed 50 percent of the contract price.

3.11 Clean Air and Water (1-1.2302-2)

(Applicable only if the contract exceeds \$100,000, or the contracting officer has determined that orders under an indefinite quantity contract in any one year will exceed \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1)) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA, or the contract is not otherwise exempt.)

(a) The Contractor agrees as follows:

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

(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 such facility or facilities from such listing.

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

(4) To insert the substance of the provisions of this clause into any nonexempt subcontract, including this paragraph (a)(4).

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

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

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

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

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

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

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

3.12 Utilization of Women-owned Business Concerns (over \$10,000) (FPR Temp Reg 54)

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

(b) The Contractor agrees to use his best efforts to carry out this policy in the award of subcontracts to the fullest extent consistent with the efficient performance of this contract. As used in this contract, a "woman-owned business" concern means a business that is at least 51% owned by a woman or women who also control and operate it. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management. "Women" mean all women business owners.

PATENT AND COPYRIGHT PROVISIONS NO. 4.0

4.1 Patent Rights - Acquisition by the Government (1-9.107-5(a))

(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 plant, which is or may be patentable under the Patent Laws of the United States of America or any foreign country.

(2) "Contract" means any contract, agreement, grant, or other arrangement, or subcontract entered into with or for the benefit of the Government where a purpose of the contract is the conduct of experimental, developmental, or research work.

(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.

(b) Allocation of principal rights

(1) Assignment to the Government. The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each Subject Invention, except to the extent that rights are retained by the Contractor under paragraphs (b)(2) and (d) of this clause.

(2) Greater rights determinations. The Contractor or the employee-inventor with authorization of the Contractor may retain greater rights than the nonexclusive license provided in paragraph (d) of this clause in accordance with the procedure and criteria of 41 CFR 1-9.109-6. A request for determination whether the Contractor or the employee-inventor is entitled to retain such greater rights must be submitted to the Contracting Officer at the time of the first disclosure of the invention pursuant to paragraph (e)(2)(i) of this clause, or not later than 3 months thereafter, or such longer period as may be authorized by the Contracting Officer for good cause shown in writing by the Contractor. The information to be submitted for a greater rights determination is specified in 41 CFR 1-9.109-6. Each determination of greater rights under this contract normally shall be subject to paragraph (c) of this clause and to the reservations and conditions deemed to be appropriate by the agency.

(c) Minimum rights acquired by the Government. With respect to each Subject Invention to which the Contractor retains principal or exclusive rights, the Contractor:

(1) Hereby grants to the Government a nonexclusive, nontransferable, paid-up license to make, use, and sell each Subject Invention throughout the world by or on behalf of the Government of the United States (including any Government agency) and States and domestic municipal governments;

(2) Agrees to grant to responsible applicants, upon request of the Government, a license on terms that are reasonable under the circumstances:

(i) Unless the Contractor, his licensee, or his assignee demonstrates to the Government that effective steps have been taken within 3 years after a patent issues on such invention to bring the invention to the point of practical application, or that the invention has been made available for licensing royalty-free or on terms that are reasonable in the circumstances, or can show cause why the principal or exclusive rights should be retained for a further period of time; or

(ii) To the extent that the invention is required for public use by governmental regulations or as may be necessary to fulfill public health, safety, or welfare needs, or for other public purposes stipulated in this contract;

(3) Shall submit written reports at reasonable intervals upon request of the Government during the term of the patent on the Subject Invention regarding:

(i) The commercial use that is being made or is intended to be made of the invention; and

(ii) The steps taken by the Contractor or his transferee to bring the invention to the point of practical application or to make the invention available for licensing;

(4) Agrees to refund any amounts received as royalty charges on any Subject Invention in procurements for or on behalf of the Government and to provide for that refund in any instrument transferring rights to any party in the invention; and

(5) Agrees to provide for the Government's paid-up license pursuant to paragraph (c)(1) of this clause in any instrument transferring rights in a Subject Invention and to provide for the granting of licenses as required by (2) of this clause, and for the reporting of utilization information as required by paragraph (c)(3) of this clause whenever the instrument transfers principal or exclusive rights in any Subject Invention.

Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a Subject Invention.

(d) Minimum rights to the Contractor.

(1) The Contractor reserves a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government acquires title. The license shall extend to the Contractor's domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and shall include the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license shall be transferable only with approval of the agency except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's nonexclusive domestic license retained pursuant to paragraph (d)(1) of this clause may be revoked or modified by the agency to the extent necessary to achieve expeditious practical application of the Subject Invention under 41 CFR 101-4.103-3 pursuant to an application for exclusive license submitted in accordance with 41 CFR 101-4.1043. This license shall not be revoked in that field of use and/or the geographical areas in which the Contractor has brought the invention to the point of practical application and continues to make the benefits of the invention reasonably accessible to the public. The Contractor's nonexclusive license in any foreign country reserved pursuant to paragraph (d)(1) of this clause may be revoked or modified at the discretion of the agency to the extent the Contractor or his domestic subsidiaries or affiliates have failed to achieve the practical application of the invention in that foreign country.

(3) Before modification or revocation of the license, pursuant to paragraph (d)(2) of this clause, the agency shall furnish the Contractor a written notice of its intention to modify or revoke the license, and the Contractor shall be allowed 30 days (or such longer period as may be authorized by the agency for good cause shown in writing by the Contractor) after the notice to show cause why the license should not be modified or revoked. The Contractor shall have the right to appeal, in accordance with procedures prescribed by the agency, any decision concerning the modification or revocation of his license.

(e) Inventions, 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 any 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 Contracting Officer:

(i) A complete technical disclosure for each Subject Invention within 6 months after conception or first actual reduction to practice which ever occurs first in the course of or under the contract, but in any event prior to any on sale, public use, or publication of such invention known to the Contractor. The disclosure 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;

(ii) Interim reports¹ at least every 12 months from the date of the contract listing Subject Inventions 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; and

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

(iii) A final report¹ within 3 months after completion of the contract work, listing all Subject Inventions or certifying that there were no such inventions.

¹Agency may specify form.

(3) The Contractor shall obtain patent agreements to effectuate the provisions of this clause from all persons in his 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.

(f) Forfeiture of rights in unreported Subject Inventions

(1) The Contractor shall forfeit to the Government all rights in any Subject Invention which he fails to disclose to the Contracting Officer within 6 months after the time he:

(i) Files or causes to be filed a United States or foreign application thereon; or

(ii) Submits the final report required by paragraph (e)(2)(iii) of this clause, whichever is later.

(2) However, the Contractor shall not forfeit rights in a Subject Invention if, within the time specified in (1)(i) or (1)(ii) of this paragraph (f), the Contractor:

(i) Prepared a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract; or

(ii) Contending that the invention is not a Subject Invention, he nevertheless discloses the invention and all facts pertinent to his contention to the Contracting Officer; or

(iii) Establishes that the failure to disclose did not result from his fault or negligence.

(3) Pending written assignments of the patent applications and patents on a Subject Invention determined by the Contracting Officer to be forfeited (such determination to be a final decision under the Disputes Clause), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (f) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to Subject Inventions.

(g) Examination of records relating to inventions

(1) The Contracting Officer or his authorized representative until the expiration of 3 years after final payment under this contract shall have the right to examine any books (including laboratory notebooks), records, documents, and other supporting data of the Contractor which the Contracting Officer

reasonably deems pertinent to the discovery or identification of Subject Inventions to determine compliance with the requirements of this clause.

(2) The Contracting Officer shall have the right to review all books (including laboratory notebooks), records and documents of the Contractor relating to the conception of first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether any such inventions are Subject Inventions if the Contractor refuses or fails to:

(i) Establish the procedures of paragraph (e)(1) of this clause; or

(ii) Maintain and follow such procedures; or

(iii) Correct or eliminate any material deficiency in the procedures within thirty (30) days after the Contracting Officer notifies the Contractor of such a deficiency.

(h) Withholding of payment (Not applicable to Subcontracts)

(1) Any time before final payment of the amount of this contract, the Contracting Officer may, if he deems such action warranted, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if in his opinion, the Contractor fails to:

(i) Establish, maintain, and follow effective procedures for identifying and disclosing Subject Inventions pursuant to paragraph (e)(1) of this clause; or

(ii) Disclose any Subject Invention pursuant to paragraph (e)(2)(i) of this clause; or

(iii) Deliver acceptable interim reports pursuant to paragraph (e)(2)(ii) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (i)(5) of this clause.

The reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(2) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of Subject Inventions required by paragraph (e)(2)(i) of this clause, and an acceptable final report pursuant to (e)(2)(iii) of this clause.

(3) The Contracting Officer may, in his discretion, decrease or increase the sums withheld up to the maximum authorized above. If the Contractor is a

nonprofit organization the maximum amount that may be withheld under this paragraph shall not exceed \$50,000 or 1 percent of the amount of this contract whichever is less. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or subsequent payment thereof shall not be construed as a waiver of any rights accruing to the Government under this contract.

(i) Subcontracts

(1) For the purpose of this paragraph the term "Contractor" means the party awarding the subcontract and the term "Subcontractor" means the party being awarded a subcontract, regardless of tier.

(2) Unless otherwise authorized or directed by the Government Contracting Officer, the Contractor shall include this Patent Rights clause modified to identify the parties in any subcontract hereunder if a purpose of the subcontract is the conduct of experimental, developmental, or research work. In the event of refusal by a Subcontractor to accept this clause, or if in the opinion of the Contractor this clause is inconsistent with the policy set forth in 41 CFR 1-9.107-3, the Contractor:

(i) Shall promptly submit a written notice to the Government Contracting Officer setting forth reasons for the Subcontractor's refusal and other pertinent information which may expedite disposition of the matter; and

(ii) Shall not proceed with the subcontract without the written authorization of the Government Contracting Officer.

(3) The Contractor shall not, in any subcontract or by using a subcontract as consideration therefor, acquire any rights in his Subcontractor's Subject Invention for his own use (as distinguished from such rights as may be required solely to fulfill his 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 the Government Contracting Officer under the provisions of a Patent Rights clause in any subcontract hereunder may, in the discretion of the Government Contracting Officer, be furnished to the Contractor for transmission to the Government Contracting Officer.

(5) The Contractor shall promptly notify the Government 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 request of the Government Contracting Officer, the Contractor shall furnish a copy of the subcontract. If there are no subcontracts containing Patent Rights Clauses, a negative report shall be included in the final report submitted pursuant to paragraph (e)(2)(iii) of this clause.

(6) The Contractor shall identify all Subject Inventions of the Subcontractor of which he acquires knowledge in the performance of this contract and shall notify the Government 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 he 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 in regard to Subject Inventions.

(j) 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.

(k) With respect to any U.S. Patent Application filed by the contractor or any contract invention or discovery made or conceived in the course of the contract, the contractor will incorporate in the first paragraph of the U.S. Patent Application the following statement:

'The invention described herein was made in the course of, or under, a contract (if desired, may substitute contract with identifying number) with the Commission.'

4.2 Patent Indemnification of Government by Contractor

The contractor agrees to indemnify the Government, its officers, agents, servants, and employees against liability of any kind (including costs and expenses incurred) for the use of any invention or discovery and for the infringement of any Letters Patent (not including liability, arising pursuant to sec. 183, Title 35 (1952) U.S.C., prior to the issuance of Letters Patent) occurring in the performance of this contract or arising by reason of the use or disposal by or for the account of the Government of items manufactured or supplied under this contract.

4.3 Rights in Copyrightable Material Under Contracts

(a) The contractor (i) agrees that the Commission shall determine the disposition of the title to and the rights under any copyright secured by the contractor or its employees on copyrightable material first produced or composed under this contract and (ii) hereby grants to the Government a royalty-free, nonexclusive, irrevocable license to reproduce, translate, publish, use and dispose of, and to authorize others so to do, all copyrightable work not first produced or composed by the contractor in the performance of this contract but which is 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 the 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.

(b) The contractor agrees that it will not include any copyrighted material in any written or copyrightable material furnished or delivered under this contract, without a license as provided for in paragraph (a)(11) hereof, or without the consent of the copyright owner, unless specific written approval of the Contracting Officer to the inclusion of such copyrighted material is secured.

(c) The contractor agrees to report in writing to the Commission, promptly and in reasonable detail, any notice or claim of copyright infringement received by the contractor with respect to any material delivered under this contract.

4.4 Copyright Indemnification of Government

Except as otherwise provided, the contractor agrees to indemnify the Government, its officers, agents, servants, and employees against liability, including costs and expenses, for the infringement of any copyright in any work protected under the copyright laws of the United States arising out of the performance of this contract, including the reproduction, translation, publication or use of any such copyrighted material.

4.5 Notice and Assistance Regarding Patent and Copyright Infringement (1-7.103-4)

(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.

FINANCIAL AND TERMINATION PROVISIONS NO. 5.0

5.1 Limitation of Cost (1-7.202-3(a))

(Applicable to Contracts which are fully funded only)

(a) It is estimated that the total cost to the Government for the performance of this contract, exclusive of any fee, will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost. If, at any time, the Contractor

has reason to believe that the costs which he expects to incur in the performance of this contract in the next succeeding 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost then set forth in the Schedule, or if, at any time, the Contractor has reason to believe that the total cost to the Government for the performance of this contract, exclusive of any fee, will be greater or substantially less than the then estimated cost hereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving the revised estimate of such total cost for the performance of this contract.

(b) Except as required by other provisions of this contract specifically citing and stated to be an exception from this clause, the Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue performance under the contract (including actions under the Termination clause) or otherwise to incur costs in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. No notice, communication, or representation in any other form or from any person other than the Contracting Officer shall affect the estimated cost of this contract. In the absence of the specified notice, the Government shall not be obligated to reimburse the Contractor for any costs in excess of the estimated cost set forth in the Schedule, whether those excess costs were incurred during the course of the contract or as a result of termination. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of the estimated cost prior to such increase shall be allowable to the same extent as if such costs had been incurred after the increase; unless the Contracting Officer issues a termination or other notice and directs that the increase is solely for the purpose of termination or other specified expenses.

(c) Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the estimated cost set forth in the Schedule in the absence of a statement in the change order, or other contract modification, increasing the estimated cost.

(d) In the event that this contract is terminated or the estimated cost not increased, 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.

5.2 Limitation of Funds (1-7.202-3(b))

(Applicable to contracts which are incrementally funded)

(a) It is estimated that the cost to the Government for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost.

(b) The amount presently available for payment and allotted to this contract, the items covered thereby, the period of performance which it is estimated the allotted amount will cover, are specified in the Schedule. It is contemplated that from time to time additional funds will be allotted to this contract up to the full estimated cost set forth in the Schedule, exclusive of any fee. The Contractor agrees to perform or have performed work on this contract up to the point at which the total amount paid and payable by the Government pursuant to the terms of this contract approximates but does not exceed the total amount actually allotted to the contract.

(c) If at any time the Contractor has reason to believe that the costs which he expects to incur in the performance of this contract in the next succeeding 60 days, when added to all costs previously incurred, will exceed 75 percent of the total amount then allotted to the contract, the Contractor shall notify the Contracting Officer in writing to that effect. The notice shall state the estimated amount of additional funds required to continue performance for the period set forth in the Schedule. Sixty days prior to the end of the period specified in the Schedule the Contractor will advise the Contracting Officer in writing as to the estimated amount of additional funds, if any, that will be required for the timely performance of the work under the contract or for such further period as may be specified in the Schedule or otherwise agreed to by the parties. If, after such notification, additional funds are not allotted by the end of the period set forth in the Schedule or an agreed date substituted therefor, the Contracting Officer will, upon written request, by the Contractor, terminate this contract pursuant to the provisions of the Termination clause on such date. If the Contractor, in the exercise of his reasonable judgment, estimates that the funds available will allow him to continue to discharge his obligations hereunder for a period extending beyond such date, he shall specify the later date in his request and the Contracting Officer, in his discretion, may terminate this contract on that later date.

(d) Except as required by other provisions of this contract specifically citing and stated to be an exception from this clause, the Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the total amount from time to time allotted to the contract, and the Contractor shall not be obligated to continue performance under the contract (including actions under the Termination clause) or otherwise to incur costs in excess of the amount allotted to the contract, unless and until the Contracting Officer has notified the Contractor in writing that such allotted amount has been increased and has specified in such notice an increased amount constituting the total amount then allotted to the contract. To the extent the amount allotted exceeds the estimated cost set forth in the Schedule, such estimated cost shall be correspondingly increased. No notice, communication, or representation in any other form or from any person other than the Contracting Officer shall affect the amount allotted to this contract. In the absence of the specified notice, the Government shall not be obligated to reimburse the Contractor for any costs in excess of the total amount then allotted to the contract, whether those excess costs were incurred during the course of the contract or as a result of termination. When and to the extent that the amount allotted to the contract has been increased, any costs incurred by the Contractor in excess of the amount previously allotted shall

be allowable to the same extent as if such costs had been incurred after such increase in the amount allotted; unless the Contracting Officer issues a termination or other notice and directs that the increase is solely for the purpose of covering termination or other specified expenses.

(e) Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the amount allotted in the Schedule in the absence of a statement in the change order, or other contract modification, increasing the amount allotted.

(f) Nothing in this clause shall affect the right of the Government to terminate this contract. In the event 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.

(g) In the event that sufficient funds are not allotted to this contract to allow completion of the work contemplated by this contract, the Contractor shall be entitled to that percentage of the fee set forth in the Schedule equivalent to the percentage of completion of the work contemplated by this contract.

5.3 Allowable Cost, Fixed-Fee, and Payment (1-7.202-4) and (1-7.402-3(a))

(Applicable to cost-reimbursement type contracts which provide for payment of a fixed fee)

(a) For the performance of this contract, the Government shall pay to the Contractor:

(1) The cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with:

(i) Subpart 1-15.2 of the Federal Procurement Regulations (41 CFR 1-15.2), as in effect on the date of this contract; and

(ii) The terms of this contract; and

(2) Such fixed-fee, if any, as may be provided for in the Schedule.

(b) Payments shall be made to the Contractor when requested as work progresses, but not more frequently than bi-weekly, in amounts approved by the Contracting Officer. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost for the performance of this contract and claimed to constitute allowable cost. For this purpose, except as provided herein with respect to pension contributions, the term "costs" shall include only those recorded costs which result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract, together with (when the Contractor

is not delinquent in payment of costs of contract performance in the ordinary course of business) costs incurred, but not necessarily paid, for materials which have been issued from the Contractor's stores inventory and placed in the production process for use on the contract, for direct labor, for direct travel, for other direct inhouse costs, and for properly allocable and allowable indirect costs, as is shown by records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts plus the amount of progress payments which have been paid to the Contractor's subcontractors under similar cost standards. In addition, when pension contributions are paid by the Contractor to the retirement fund less frequently than quarterly, accrued costs therefor shall be excluded from indirect costs for payment purposes until such costs are paid. If pension contributions are paid on a quarterly or more frequent basis, accruals therefor may be included in direct costs for payment purposes provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from indirect cost for payment purposes until payment has been made. The restriction on payment more frequently than bi-weekly and the requirement of prior payment for items or services purchased directly for the contract shall not apply when the Contractor is a small business concern.

(c) Promptly after receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract subject to the provisions of (d) below, make payment thereon as approved by the Contracting Officer. Payment of the fixed-fee, if any, shall be made to the Contractor as specified in the Schedule: Provided, however, That after payment of 85 percent of the fixed-fee set forth in the Schedule, the Contracting Officer may withhold further payment of fee until a reserve shall have been set aside in an amount which he considers necessary to protect the interests of the Government, but such reserve shall not exceed 15 percent of the total fixed-fee, or \$100,000, whichever is less.

(d) At any time or times prior to final payment under this contract the Contracting Officer may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(e) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including, without limitation, the provisions relating to patents and the provisions of (f), below), the Government shall promptly pay to the Contractor any balance of allowable cost, and any part of the fixed-fee, which has been withheld pursuant to (c), above, or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than 1 year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

(f) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

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

(2) A release discharging the Government its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(i) Special claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;

(ii) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract: Provided, However, That such claims are not known to the Contractor on the date of the execution of the release; and provided further, that the Contractor gives notice of such claims in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

(g) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at his expense or without cost to the Government.

5.4 Allowable Cost and Payment (1-7.402-3(b))

(Applicable to contracts, without fee)

(a) For the performance of this contract, the Government shall pay to the Contractor the cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with:

(1) Subpart 1-15.2 of the Federal Procurement Regulations (41 CFR 1-15.2), as in effect on the date of this contract; and

(2) The terms of this contract.

(b) Payments shall be made to the Contractor when requested as work progresses, but not more frequently than bi-weekly, in amounts approved by the Contracting Officer. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost for the performance of this contract and claimed to constitute allowable cost. For this purpose, except as provided herein with respect to pension contributions, the term "costs" shall include only those recorded costs which result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract, together with (when the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business) costs incurred, but not necessarily paid, for materials which have been issued from the Contractor's store inventory and placed in the production process for use on the contract, for direct labor, for direct travel, for other direct inhouse costs, and for properly allocable and allowable indirect costs, as is shown by records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts plus the amount of progress payments which have been paid to the Contractor's subcontractors under similar cost standards. In addition, when pension contributions are paid by the Contractor to the retirement fund less frequently than quarterly, accrued costs therefor shall be excluded from indirect costs for payment purposes until such costs are paid. If pension contributions are paid on a quarterly or more frequent basis, accruals therefor may be included in indirect costs for payment purposes provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from indirect cost for payment purposes until payment has been made. The restriction on payment more frequently than bi-weekly and the requirement of prior payment for items or services purchased directly for the contract shall not apply when the Contractor is a small business concern.

(c) Promptly after receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract subject to the provisions of (d), below, make payment thereon as approved by the Contracting Officer.

After payment of an amount equal to 80 percent of the total estimated cost of performance of this contract set forth in the Schedule, the Contracting Officer may withhold further payment on account of allowable cost until a reserve shall have been set aside in an amount which he considers necessary to protect the interests of the Government, but such reserve shall not exceed 1 percent of (the Government's share of) such total estimated cost or \$100,000, whichever is less.

(d) At any time or times prior to final payment under this contract the Contracting Officer may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(e) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including, without limitation, the provisions relating to patents and the provisions of (f), below, the Government shall promptly pay to the Contractor any balance of allowable cost which has been withheld pursuant to (c), above, or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than 1 year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

(f) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

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

(2) A release discharging the Government its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(i) Special claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor.

(ii) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract: Provided, however, That such claims are not known to the Contractor on the date of the execution of the release; and provided further, that the Contractor gives notice of such claims in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

(g) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at his expense or without cost to the Government.

5.5 Negotiated Overhead Rates (1-3.704-1)

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost, Fixed Fee, and Payment," the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible but not later than ninety (90) days after the expiration of his fiscal year, or such other period as may be specified in the contract, shall submit to the Contracting Officer, with a copy to the cognizant audit activity, a proposed final overhead rate or rates for that period based on the Contractor's actual cost experience during that period, together with supporting cost data. Negotiation of overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Subpart 1-15.2 of the Federal Procurement Regulations (41 CFR 115.2) as in effect on the date of this contract. Subparts 1-15.3 and 1-15.7 of said Regulations apply in contracts with educational institutions or with State and local governments, respectively.

(d) The results of each negotiation shall be set forth in a modification to this contract, which shall specify (1) the agreed final rates, (2) the bases to which the rates apply, and (3) the periods for which the rates apply.

(e) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated provisional rates as provided in the contract, or at billing rates acceptable to the Contracting

Officer, subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over or under payment, and to apply either retroactively or prospectively: (1) Provisional rates may, at the request of either party, be revised by mutual agreement and (2) billing rates may be adjusted at any time by the Contracting Officer. Any such revision of negotiated provisional rates provided in the contract shall be set forth in a modification to this contract.

(f) Any failure by the parties to agree on any final rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract.

5.6 State and Local Taxes

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

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

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

5.7 Termination for Default or for Convenience of the Government (1-8.702)

(a) The performance of work under the contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part:

(1) Whenever the contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten days (or such longer period as the Contracting Officer may allow after receipt from the Contracting Officer of a notice specifying the default; or

(2) Whenever for any reason the Contracting Officer shall determine that such termination is in the best interests of the Government.

Any such termination shall be effected by delivery to the contractor of a Notice of Termination specifying whether termination is for the default of the contractor or for the convenience of the Government, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this contract for default under (1) above, it is determined for any reason that the contractor was not in default pursuant to (1), 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 pursuant to the provisions of the clause of this contract relating to excusable delays, the Notice of Termination shall be deemed to have been issued under (2) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(b) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the contractor shall:

(1) Stop work under the contract on the date and to the extent specified in the Notice of Termination;

(2) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;

(3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(4) Assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of the right, title, and interest of the contractor under the orders or subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(5) With the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final and

conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this contract;

(6) Transfer title to the Government (to the extent that title has not already been transferred) and deliver in the manner, at the times and to the extent directed by the Contracting Officer, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination; (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Government; and (iii) the jigs, dies, and fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the contractor has been or will be reimbursed under this contract;

(7) Use his best efforts to sell; in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (6) above: Provided, however, That the contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer: And provided further, That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

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

The contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of the fee, or any item of reimburseable cost, under this clause. At any time after expiration of the plant clearance period, as defined in Subpart 1-8.1 of the Federal Procurement Regulations (41 CFR 1-8.1), as the definition may be amended from time to time, the contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept such items and remove them or enter into a storage agreement covering the same: Provided, That the list submitted shall be subject to verification by the Contracting Officer upon

removal of the items or, if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the contractor shall submit to the Contracting Officer his termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the contractor made in writing within one-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one-year period or any extension thereof. Upon failure of the contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the contractor by reason of the termination and shall thereupon pay to the contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), and subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, the contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid (including an allowance for the fee) to the contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the contractor shall be paid the agreed amount.

(e) In the event of the failure of the contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (d), as to the amounts with respect to costs and fee, or as to the amount of the fee, to be paid to the contractor in connection with the termination of work pursuant to this clause, the Contracting Officer shall, subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the contractor by reason of the termination and shall pay to the contractor the amount determined as follows:

(1) If the settlement includes cost and fee -

(i) There shall be included therein all costs and expenses reimburseable in accordance with this contract, not previously paid to the contractor for the performance of this contract prior to the effective date of the Notice of Termination, and such of these costs and may continue for a reasonable time thereafter with the approval of or as directed by the Contracting Officer: Provided, however, That the contractor shall proceed as rapidly as practicable to discontinue such costs;

(ii) There shall be included therein so far as not included under (i) above, the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(5) above, which are properly chargeable to the terminated portion of the contract;

(iii) There shall be included therein the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory: Provided, however, That if the termination is for default of the contractor there shall not be included any amounts for the preparation of the contractor's settlement proposal; and

(iv) There shall be included therein a portion of the fee payable under the contract determined as follows -

(A) In the event of the termination of this contract for the convenience of the Government and not for the default of the contractor, there shall be paid a percentage of the fees equivalent to the percentage of the completion of work contemplated by the contract, but exclusive of subcontract effort included in subcontractors' termination claims, less fee payments previously made hereunder; or

(B) In the event of the termination of this contract for the default of the contractor, the total fee payable shall be such proportionate part of the fee (or, if this contract calls for articles of different types, of such part of the fee as is reasonable allocable to the type of article under consideration) as the total number of articles delivered to and accepted by the Government bears to the total number of articles of a like kind called for by this contract.

If the amount determined under this subparagraph (1) is less than the total payment theretofore made to the contractor, the contractor shall repay to the Government the excess amount.

(2) If the settlement includes only the fee, the amount thereof will be determined in accordance with subparagraph (1)(iv) above.

(f) Costs claimed, agreed to, or determined pursuant to paragraphs (c), (d), and (e) of this clause shall be in accordance with the contract cost principles and procedures in FPR 1-15.2.

(g) The contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the Contracting Officer under paragraph (c) or (e) above, except that, if the contractor has failed to submit his claim within the time period provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall

pay to the contractor the following: (1) If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (2) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the contractor under this clause there shall be deducted (1) all unliquidated advance or other payments theretofore made to the contractor, applicable to the terminated portion of this contract, (2) any claim which the Government may have against the contractor in connection with this contract, and (3) the agreed price for, or the proceeds for sale of, any materials, supplies, or other things acquired by the contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(i) In the event of a partial termination, the portion of the fee which is payable with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the contractor and Contracting Officer and such adjustment shall be evidenced by an amendment to this contract.

(j) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the contractor in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess shall be payable by the contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the contractor to the date on which excess is repaid to the Government: Provided, however, That no interest shall be charged with respect to any such excess payment attributable to a reduction in the contractor's claim by reason of retention or other disposition of termination inventory until 10 days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(k) The provisions of this clause relating to the fee shall be inapplicable if this contract does not provide for payment for a fee.