

997375

FFP NEGOTIATED CONTRACT		DEPARTMENT Air Force	EFFECTIVE DATE	SHEET NO. 1	NO. OF SHEETS
REQ. NO. OR OTHER PURCHASE AUTH. SSD/RADC-65-1-1 Purchase Request 65-382	NEGOTIATED PURSUANT TO 10 U.S.C. 2304 (A) d1	DISCOUNT TERMS N/A	CONTRACT NO. AF30(602)-3658 FSC: ALT5		
ISSUED BY Rome Air Development Center Procurement Division (EMK) Griffiss Air Force Base, New York 13442 INITIATOR: Lt R. B. Stenstrom, EMIRC NEGOTIATOR: Mr. K. P. Long, EMKT		MAIL INVOICES TO Rome Air Development Center Procurement Division (EMK) Griffiss Air Force Base, New York 13442			
CONTRACTOR (Name and Address) David W. Mann Company Division of Geophysics Corp. of America 174 Middlesex Turnpike Burlington, Massachusetts		PAYMENT WILL BE MADE BY Finance Officer, USAF Griffiss Air Force Base New York 13442			
SHIP TO (Consignee and Address) SEE SCHEDULE		DELIVERY F.O.B.	SEE SCHEDULE <input type="checkbox"/> DESTINATION <input type="checkbox"/> OTHER (See Schedule)		
		DELIVERY DATE (S) SEE SCHEDULE			

CONTRACT FOR: Quality Inspection Tables
ACCOUNTING AND APPROPRIATION DATA

MAILING DATE: 17 Feb 1965

CONTRACTOR REPRESENTS

* DEFINITION CHANGED, SEE CONTINUATION PAGE 1A

- That it IS, IS NOT, a small business concern. Generally a small business concern for the purpose of Government procurement is a concern that (1) is not dominant in its field of operation and with its affiliates, employs fewer than 500 employees, or (2) is certified as a small business concern by the Small Business Administration. (See Code of Federal Regulations, Title 13, Part 103, as amended, which contains the detailed definition and related procedures.) If Contractor is a small business concern and is not the manufacturer of the supplies covered by this contract, it 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 Territories, its Possessions, or The Commonwealth of Puerto Rico.
- That it is a REGULAR DEALER IN, MANUFACTURER OF, the supplies covered by this contract. N/A
- (a) That it HAS, HAS NOT, employed or retained any company or person (other than a full-time bona fide employee working solely for the contractor) to solicit or secure this contract, and (b) that it HAS, HAS NOT, paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the contractor) 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. (For interpretation of the representation, including the term "bona fide employee", see Code of Federal Regulations, Title 44, Part 150.)
- That it operates as INDIVIDUAL PARTNERSHIP CORPORATION incorporated in the State of Delaware.

The Contractor agrees to furnish and deliver all the supplies and perform all the services set forth in the attached Schedule, for the consideration stated therein. The rights and obligations of the parties to this contract shall be subject to and governed by the Schedule and the General Provisions. To the extent of any inconsistency between the Schedule or the General Provisions and any specifications or other provisions which are made a part of this contract, by reference or otherwise, the Schedule and the General Provisions shall control. To the extent of any inconsistency between the Schedule and the General Provisions, the Schedule shall control.

The total amount of this contract is \$147,036.00

DAVID W. MANN COMPANY
DIVISION OF GEOPHYSICS CORP. OF AMERICA
NAME OF CONTRACTOR

By /s/ Burton W. Wheeler, Jr. 2/11/65
SIGNATURE DATE
BURTON W. WHEELER, JR.

TYPED NAME
General Manager

Title

UNITED STATES OF AMERICA

By /s/ Albert B. Mario 16 Feb 65
SIGNATURE OF CONTRACTING OFFICER DATE

ALBERT B. MARIO
TYPED NAME OF CONTRACTING OFFICER

DD Form 1261 Continuation Page

CONTRACTOR: David W. Mann Company
Division of Geophysics Corp. of America
174 Middlesex Turnpike
Burlington, Massachusetts

ADMINISTRATION OFFICE: Rome Air Development Center
Procurement Division (EMK)
Griffiss AFB NY 13442

DO-C9C Rating Certified Under DMS Regulation No. 1, as amended.

FCR: REHB 65-1-5

*General Definition. A small business concern is a concern that is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and with its affiliates, can further quality under the criteria set forth in regulations of the Small Business Administration (Code of Federal Regulations, Title 13, Section 121.3-8).

Government furnished property is authorized in the performance of this contract.

On file USAF release
instructions apply.

1A
AF30(602)-3658

ADMINISTRATIVE COMMITMENT DOCUMENT

FFP - SMALL BUSINESS

TO: EMKS
EMLCD
IN TURN

DATE
13 Jan 1965

CONTRACTUAL INSTRUMENT NO.
AF30(602)-3658
CONTRACTOR D. W. Mann Co.
Burlington, Massachusetts

PR ITEM NO.	CONTR ITEM NO.	CONTRACT QUANTITY	PR OR MIPR NUMBER AND ACCOUNTING CLASSIFICATION	UNIT PRICE	TOTAL COST
		N/A	SSD/RADC 65-1-1 Purchase Request 65-382 (Complete) 57X3600 2854730 6369AJ 4000 75664014 S594200 The Initiator concurs in the increase. ANTICIPATED OBLIGATION DATE: 1 March 1965		\$147,036.00

PREPARED BY (Typed Name, Org Code, Telephone No., and Signature)

Kenneth P. Long
KENNETH P. LONG, EMKT, X25189

The supplies and services to be obtained by this instrument are authorized by, are for the purpose set forth in, and are chargeable to allotments enumerated above, the available balance of which is sufficient to cover the cost in an amount not to exceed \$ 147,036.00

5 Feb 1965 *Millie W. Lockwood*
DATE SIGNATURE (Accounting Officer)

SCHEDULE

PART I - SUPPLIES AND SERVICES TO BE FURNISHED

(a) The Contractor shall furnish and deliver to the Government at the prices stated, the items listed below in accordance with the requirements of Exhibit "A" consisting of Purchase Request Continuation Sheet For: Quality Inspection Tables, dated 17 September 1964.

1	1 each	Experimental Model	\$137,726
2		Installation	1,985
3		Test and Evaluation	2,013
4	1 kit	Interim Spare Parts	Subject to Option
5.1	2 copies	Test Procedures	608
5.2	7 final copies	Instruction Manuals	2,013
5.3	1 set	Drawings	987
5.4	1 set	Spare Parts Data	272
5.5	3 copies	Contract Status Report	523
5.6	1 set	Technical Documentary Report	909
TOTAL PRICE			<u>\$147,036</u>
(except Item 4)			

(b) Exhibit "A" is attached hereto and as it may be amended below, is hereby made a part of this contract.

(c) The total fixed price stated above does not include any amounts for Item 4, Interim Spare Parts. The Contractor agrees that this item is within the general scope of the work of this contract, and may be ordered by the completion date thereof, in accordance with any specific provisions provided therefor elsewhere herein, or in accordance with and subject to the terms of the Changes clause of this contract.

(d) The total fixed price of this contract is stated in part (a) above. Payment however shall be in accordance with the Payments and Progress Payments clauses of this contract. Payments shall be 75% of total costs incurred as contemplated by A, B, C, D, & E of said clause.

PART II - DELIVERY

(a) Subject to any limitations in Part I above, the Contractor shall complete all services required thereunder and shall deliver all other items required thereunder to the Government in accordance with the following schedule and terms:

<u>Item</u>	<u>Quantity</u>	<u>Completion or Delivery Date</u>	<u>Prepaid to or FOB</u>
1	1 each	12 months after receipt of contract	Westover AFB, Mass 01022
2	Services	15 days after item 1	Westover AFB, Mass 01022
3	Services	(Preliminary) with Item 1 (Final) with Item 2	Contractor's Plant Westover AFB, Mass 01022

SCHEDULE

4	1 kit	Subject to Option	
5.1	2 copies	11 months after receipt of contract	RADC (EMIRC) GAFB NY 13442 Marked: For Contract AF30(602)-3658
5.2	1 draft & 7 final cys	(draft) with item 1 (Final) 30 days after approval of draft	(draft) with Item 1 (Final) RADC (EMIRC) GAFB NY 13442, Marked For: Contract AF30(602)-3658
5.3	1 set	13 months after receipt of contract	RADC (EMEAM) GAFB NY 13442 Marked for: Contract AF30(602)-3658
5.4	1 set	9 months after receipt of contract	RADC (EMKI) GAFB NY 13442 Marked: For Contract AF30(602)-3658
5.5	3 copies	Monthly, within 10 days after the month being reported	RADC (EMIRC) GAFB NY 13442 Marked: For Contract AF30(602)-3658
5.6	1 set	13 months after receipt of contract	RADC (EMLAP*3), GAFB NY 13442 Marked: For Contract AF30(602)-3658

(b) The drafts of any reports required hereunder which are not approved or disapproved by the Government within 30 days after their receipt shall be deemed to have been approved.

(c) Specific addresses and shipping instructions not given above shall be provided the contractor at such time or times as required for his performance hereunder, provided that such requests shall be in writing and reasonably in advance of his need.

PART III - RESERVED

PART IV - INSPECTION AND ACCEPTANCE

The points of final inspection and final acceptance of all items required under this contract shall be those indicated below for each item:

<u>ITEM</u>	<u>INSPECTION</u>	<u>ACCEPTANCE</u>
1, 2, 3	Westover AFB, Mass	RADC
5.1, 5.2, 5.3, 5.4, 5.5, 5.6	RADC	RADC

3
AF30(602)-3658

SCHEDULE

PART V - MILITARY SECURITY CLASSIFICATION

Military Security requirements in the performance of this Contract shall be maintained in accordance with "Security Requirements Check List", DD 254, dated 12 January 1965, a copy of which is attached hereto and hereby made a part hereof. The highest classification involved in the performance of this contract is SECRET. This contract document, with all attachments, has a security classification of Unclassified.

PART VI - SPECIAL PROVISIONS

(a) For the purposes of the clause of the General Provisions of this Contract entitled Acknowledgement of Sponsorship, the sponsoring agency is the Air Force Systems Command, Research and Technology Division, Rome Air Development Center, Griffiss Air Force Base, New York 13442.

(b) Rights in Data. The rights obtained by the Government in Technical data are set forth in the Data clause incorporated in this contract, and nothing elsewhere in this contract or in any documents incorporated by reference in this contract shall be construed as in any way altering such rights.

(c) Contract Schedule Items Requiring Experimental, Developmental or Research Work - For purposes of defining the nature of the work and the scope of rights in data granted to the Government pursuant to the clause of this contract entitled "Rights in Technical Data", it is understood and agreed that Item 1 requires the performance of experimental, developmental or research work.

(d) For the purposes of the clause of this contract entitled "Rights in Technical Data", it is understood and agreed that the Contractor shall furnish the Government with unlimited rights that technical data defined in paragraph (b)(1) of said clause. Further, it is understood and agreed that there is no data which is to be furnished the Government with limited rights, as defined in paragraph (b)(2) of said clause.

(e) Use of Official Mail Indicia - In accordance with AFR 182-15 as in effect on this date, the contractor is authorized to use "Official Mail" Indicia in lieu of postage stamps to ship material for the Department of the Air Force. However, each such shipment must be cleared for release by the Administrative Contracting Officer or his representative and will be subject to the definitions, criteria, and procedural requirements stated in AFR 182-15. Subject to the same conditions, a subcontractor's shipments are equally qualified for "Official indicia mailing when the prime contract involved is qualified. Request for information on "Official Mail" Indicia supplies should be directed to the Administrative Contracting Officer.

The Government reserves the right to make an equitable adjustment in the price of this contract for any use that Contractor makes of "Official Mail" Indicia as he is otherwise authorized above. If the Contractor intends to use or does use such authorization, he shall so notify in writing the Administrative Contracting Officer at once and submit his proposal for equitable adjustment within a reasonable time.

SCHEDULE

(f) The Contractor shall have access to the Government site wherein the equipment is to be installed at such times as are necessary to fulfill the requirements of this contract. Access however shall be in accordance with "Safety and Accident Prevention" clause of this contract and all other regulations, including security regulations, in effect at the site. The Contractor shall give reasonably timely notice of his intended date or dates of access.

(g) Subject to the provisions of the Government Property clause, the Government will provide the Contractor with space and dimensional drawings and data of the Zeiss Standard Microscope Head, Type GFL, within thirty (30) days after receipt of contract. The Head will be provided within 90 days after receipt of contract.

PART VII - CONTRACTUAL CONTENTS

(a) This contract consists of (1) DD Form 1261 and Continuation Page 1A; (2) Administrative Commitment Document dated 13 Jan 65; (3) Schedule containing Parts I through VII; (4) General Provisions as shown in paragraph (b) below; (5) Exhibit "A" consisting of PRCS for: quality Inspection Tables, dated 17 September 1964, and (6) DD 254, Security Requirements Check List, dated 12 Jan 65.

(b) The following are the General Provisions of this Contract:

1. FP R&D AFPI 71-9 (Nov 1963)
2. Further General Provisions consisting of the following:

- Clause 44 - Alterations in Contract
- 45 - Buy American Act
- 46 - Equal Opportunity
- 47 - Patent Rights (License)
- 48 - Stop Work Order
- 49 - Reports of Work
- 50 - Rights in Technical Data
- 51 - Interchangeability of Terms
- 52 - Marking Technical Data
- 53 - Limitation on Technical Data Requirements
- 54 - Progress Payments
- 55 - Safety and Accident Prevention
- 56 - Price Reduction for Defective Cost or Pricing Data - Price Adjustments
- 57 - Audit - Price Adjustments
- 58 - Subcontractor Cost and Pricing Data - Price Adjustments

GENERAL PROVISIONS

FIXED PRICE RESEARCH AND DEVELOPMENT CONTRACT

1. **DEFINITIONS.** (Feb. 1962)—As used throughout this contract, the following terms shall have the meanings set forth below:

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

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

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

(d) The term "contract work" means all work to be performed under this contract including without limitation any studies covering fundamental, theoretical, or experimental investigations; any extension of the investigative findings and theories of a scientific or technical nature into practical application; any tangible items, hereinafter referred to as "supplies," furnished to the Government; and any reports, data, computations, plans, drawings, and specifications with respect to any of the foregoing. (Oct. 1957)

2. **PAYMENTS.** (Jun. 1959)—The Contractor shall be paid, upon submission of proper invoices or vouchers, the prices stipulated herein for work delivered or rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the contract.

3. **STANDARDS OF WORK.** (Jun. 1959)—The Contractor agrees that the performance of work and services pursuant to the requirements of this contract shall conform to high professional standards.

4. **INSPECTION.** (Jun. 1959)—(a) All work under this contract shall be subject to inspection and test by the Government, to the extent practicable, at all times (including the period of performance) and places, and in any event prior to acceptance. The Government through any authorized representative may inspect the premises of the Contractor or any subcontractor engaged in the performance of this contract.

(b) The Government may reject any work that is defective or otherwise not in conformity with the requirements of this contract. If the Contractor fails or is unable to correct or to replace such work, the Contracting Officer may accept such work at a reduction in price which is equitable under the circumstances. Failure to agree on the reduction in price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide, without additional charge, all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. If the Government inspection or test is made at a point other than the premises of the Contractor or subcontractor, it shall be at the expense of the Government. All inspections and tests by the Government shall be performed in such a manner as not unduly to delay the work. Final inspection and acceptance or rejection of the work shall be made as promptly as practicable after delivery except as otherwise provided in this contract; but failure to inspect and accept, or reject the work shall neither relieve the Contractor from responsibility for such of the work as is not in accordance with the contract requirements nor impose liability on the Government therefor.

(d) The inspection and test by the Government of any work shall not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract.

5. **ASSIGNMENT OF CLAIMS.** (Feb. 1962)—(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 monies due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payments to an assignee of any monies due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or set-off.

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

* Changes to previous edition are marked with a star.

AFPI 71-9, Nov 63

FP R&D

(Supersedes AFPI 71-9, June 63)

6. **EXAMINATION OF RECORDS.** (Feb. 1962)—(a) The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under this contract, 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.

(b) 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 three years after final payment under the subcontract, 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 the clause excludes (i) purchase orders not exceeding \$2,500 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

7. **FEDERAL, STATE, AND LOCAL TAXES** (Aug. 1961)—(a) Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties.

(b) Nevertheless, with respect to any Federal excise tax or duty on the transactions or property covered by this contract, if a statute, court decision, written ruling, or regulation takes effect after the contract date, and--

(1) results in the Contractor being required to pay or bear the burden of any such Federal excise tax or duty or increase in the rate thereof which would not otherwise have been payable on such transactions or property, the contract price shall be increased by the amount of such tax or duty or rate increase, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price as a contingency reserve or otherwise; or

(2) results in the Contractor not being required to pay or bear the burden of, or in his obtaining a refund or drawback of, any such Federal excise tax or duty which would otherwise have been payable on such transactions or property or which was the basis of an increase in the contract price, the contract price shall be decreased by the amount of the relief, refund, or drawback, or that amount shall be paid to the Government, as directed by the Contracting Officer. The contract price shall be similarly decreased if the Contractor, through his fault or negligence or his failure to follow instructions of the Contracting Officer, is required to pay or bear the burden of, or does not obtain a refund or drawback of, any such Federal excise tax or duty.

(c) No adjustment of less than \$100 shall be made in the contract price pursuant to paragraph (b) above.

(d) As used in paragraph (b) above, the term "contract date" means the date set for bid opening, or if this is a negotiated contract, the contract date. As to additional supplies or services procured by modification to this contract, the term "contract date" means the date of such modification.

(e) Unless there does not exist any reasonable basis to sustain an exemption, the Government upon the request of the Contractor shall, without further liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax; provided that, evidence appropriate to establish exemption from any Federal excise tax or duty which may give rise to either an increase or decrease in the contract price will be furnished only at the discretion of the Government.

(f) The Contractor shall promptly notify the Contracting Officer of matters which will result in either an increase or decrease in the contract price, and shall take action with respect thereto as directed by the Contracting Officer.

8. **UTILIZATION OF SMALL BUSINESS CONCERNS.** (Jan. 1958)—(a) It is the policy of the Government as declared by the Congress that a fair proportion of the purchases and contracts for supplies and services for the Government be placed with small business concerns.

(b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

9. **DEFAULT.** (Jul. 1962)—(a) The Government may, subject to the provisions of paragraph (c) of this clause, by written Notice of Default to the Contractor terminate the whole or any part of this contract in any one of the following circumstances:

(i) if the Contractor fails to perform the work called for by this contract within the time(s) specified herein or any extension thereof; or

(ii) if the Contractor fails to perform any of the other provisions of this contract, or so fails to prosecute the work as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, work similar to the work so terminated and the Contractor shall be liable to the Government for any excess costs for such similar work; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract 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 default of a subcontractor, and if such default 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 liable for any excess costs for failure to perform, unless the supplies or service to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule or other performance requirements.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer any of the completed or partially completed work not theretofore delivered to, and accepted by, the Government and any other property, including contract rights, specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon the direction of the Contracting Officer, protect and preserve property in the possession of the Contractor in which the Government has an interest. The Government shall pay to the Contractor the contract price, if separately stated, for completed work accepted by the Government and the amount agreed upon by the Contractor and the Contracting Officer for (i) completed work for which no separate price is stated, (ii) partially completed work, (iii) other property described above which is accepted by the Government and, (iv) the protection and preservation of property. Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." The Government may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government, be the same as if the notice of termination had been issued pursuant to such clause.

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

10. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT. (Jan. 1961)—(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

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

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

(ii) 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;

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

(iv) assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and 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;

(v) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(vi) transfer title and deliver to the Government, in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the Government;

(vii) 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 (vi) above; provided, however, that the Contractor (A) shall not be required to extend credit to any purchaser, and (B) 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;

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

(ix) 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.

At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, as it 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 title to 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 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 such 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 Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation 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 determination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), and subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation 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 to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph (d).

(e) In the event of the failure of the Contractor and the Contracting Officer to agree as provided in paragraph (d) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation 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 amounts determined as follows:

(i) for completed supplies accepted by the Government (or sold or acquired as provided in paragraph (b) (vii) above) and not theretofore paid for, a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(ii) the total of—

(A) the costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies paid or to be paid for under paragraph (e) (i) hereof;

(B) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b) (v) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors prior to the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (A) above); and

(C) a sum, as a profit, equal to 2 percent of that part of the amount determined under (A) above which represents the cost of articles and materials not processed by the Contractor, plus a sum equal to 8 percent of the remainder of such amount, but the aggregate of such sums shall not exceed 6 percent of the whole of the amount determined under (A) above; provided, however, that if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(iii) 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 property allocable to this contract.

The total sum to be paid to the Contractor under (i) and (ii) of this paragraph (e) shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in (e) (i) and (ii) (A) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph (b) (vii).

(f) Any determination of costs under paragraph (e) or (e) hereof shall be governed by the principles for consideration of costs set forth in Section XV, Part 2, of the Armed Services Procurement Regulation, as in effect on the date of this contract.

(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 paragraphs (c) or (e) above, except that if the Contractor has failed to submit his claim within the time 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: (i) 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 (ii) 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 (i) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of

this contract, (ii) any claim which the Government may have against the Contractor in connection with this contract, and (iii) the agreed price for, or the proceeds of 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) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.

(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 this 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 agreed or 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 such 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 ten 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) Unless otherwise provided for in this contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under this contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor but without direct charge to the Government, all his books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, micro-photographs, or other authentic reproductions thereof.

(The following paragraph (l) is applicable only if this contract is subject to Incentive Price Revision)

(l) Insofar as items under this contract are subject to incentive price revision and the total final price for such items has not been established under the incentive price revision clause of this contract, the total contract price shall include, for the purpose of paragraphs (d) and (e) of this clause, the amount which the total final price for such items may not exceed under the incentive price revision clause. (Nov. 1962)

11. DISPUTES. (Jan. 1958)—(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above; provided, that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

12. RENEGOTIATION. (Oct. 1959)—(a) To the extent required by law, this contract is subject to the Renegotiation Act of 1951 (50 U.S.C. App. 1211, et seq.), as amended, and to any subsequent act of Congress providing for the renegotiation of contracts. Nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of Congress heretofore or hereafter enacted. Subject to the foregoing this contract shall be deemed to contain all the provisions required by Section 104 of the Renegotiation Act of 1951, and by any such other act, without subsequent contract amendment specifically incorporating such provisions.

(b) The Contractor agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts, as that term is defined in section 103g of the Renegotiation Act of 1951, as amended.

13. BUY AMERICAN ACT. (Jul. 1960)—(a) In acquiring end products, the Buy American Act (41 U.S.C. 10 a-d) 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 or Canada 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 delivered under this contract 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 Secretary determines the domestic preference to be inconsistent with the public interest; or
- (iv) as to which the Secretary determines the cost to the Government to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954.)

14. **CONVICT LABOR. (Mar. 1949)**—In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

15. **WALSH-HEALEY PUBLIC CONTRACTS ACT. (Jan. 1958)**—If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

16. **WORK HOURS ACT OF 1962 — OVERTIME COMPENSATION. (Oct. 1962)**—This contract, to the extent that it is of a character specified in the Work Hours Act of 1962 (Public Law 87-581, 76 Stat. 357-360) and is not covered by the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45), is subject to the following provisions and to all other provisions and exceptions of said Work Hours Act of 1962.

(a) No Contractor or subcontractor contracting for any part of the contract work shall require or permit any laborer or mechanic to be employed on such work in excess of eight hours in any calendar day or in excess of forty hours in any workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is the greater number of overtime hours.

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

(c) The Contracting Officer may withhold, or cause to be withheld, from moneys payable on account of work performed by the Contractor or subcontractor, the full amount of wages required by this contract and such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for liquidated damages as provided in paragraph (b).

17. **NONDISCRIMINATION IN EMPLOYMENT. (June 1963)**—(The following clause is applicable unless this contract is exempt under the rules and regulations of the President's Committee on Equal Employment Opportunity issued pursuant to Executive Order No. 10925 of March 6, 1961, as amended.)

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, creed, color, 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 nondiscrimination 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 said labor union or workers' representative of the Contractor's commitments under this section, 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. 10925 of March 6, 1961, as amended, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

(e) The Contractor will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, as amended, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination 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. 10925 of March 6, 1961, as amended, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, 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 President's Committee on Equal Employment

Opportunity issued pursuant to Section 303 of Executive Order No. 10925 of March 6, 1961, as amended, 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.

* In accordance with regulations of the President's Committee on Equal Employment Opportunity, Subcontractors below the first tier shall not be required to insert the Nondiscrimination in Employment clause in their subcontracts, except that under contracts calling for construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property, each Subcontractor below the first tier shall include the clause in every subcontract which calls for such work to be performed at the site of construction, or except upon Special Order of the Secretary of the Department or the Executive Vice Chairman of the President's Committee.

18. OFFICIALS NOT TO BENEFIT (Jul. 1949)—No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

19. COVENANT AGAINST CONTINGENT FEES. (Jan. 1958)—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.

20. GRATUITIES. (Mar. 1952)—(a) The Government may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found, after notice and hearing, by the Secretary or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract; **provided,** that the existence of the facts upon which the Secretary or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event this contract is terminated as provided in paragraph (a) hereof, the Government shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

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

21. AUTHORIZATION AND CONSENT. (Jan. 1961)—The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract).

22. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT. (Feb. 1962)
—The provisions of this clause shall be applicable only if the amount of this contract exceeds \$10,000.

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

(b) In the event of any suit against the Government, or any claim against the Government made before suit has been instituted, 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, upon request, 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 in those cases in which the Contractor has agreed to indemnify the Government against the claim being asserted.

* **23. PATENT RIGHTS. (LICENSE) (Apr. 1962)**—(a) As used in this clause, the following terms shall have the meanings set forth below:

(i) The term "Subject Invention" means any invention, improvement, or discovery (whether or not patentable) conceived or first actually reduced to practice either—

(A) in the performance of the experimental, developmental, or research work called for or required under this contract; or

(B) in the performance of any experimental, developmental, or research work relating to the subject matter of this contract which was done upon an understanding in writing that a contract would be awarded; **provided,** that the term "Subject Invention" shall not include any invention which is specifically identified and listed in the Schedule for the purpose of excluding it from the license granted by this clause.

(ii) The term "Technical Personnel" means any person employed by or working under contract with the Contractor (other than a subcontractor whose responsibilities with respect to rights accruing to the Government in inventions arising under subcontracts are set forth in (g) and (h) below), who, by reason of the nature of his duties in connection with the performance of this contract, would reasonably be expected to make inventions.

(iii) The terms "subcontract" and "subcontractor" mean any subcontract or subcontractor of the Contractor, and any lower-tier subcontract or subcontractor under this contract.

(b) (1) The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, and royalty-free license to practice, and cause to be practiced by or for the United States Government, throughout the world, each Subject Invention in the manufacture, use, and disposition according to law, of any article or material, and in the use of any method. Such license (i) shall be nontransferable, except that the Government shall have the right to grant sublicenses to any foreign government or international organization specifically for use in programs established by International Agreements for research, development or production of weapons or equipment for mutual defense, and (ii) shall include the practice of Subject Invention in the manufacture, use, and disposition of any article or material, in the use of any method, or in the performance of any service acquired by or for the Government or with funds derived through the Military Assistance Program of the Government or otherwise through the Government.

(b) (1) (This paragraph applies if this contract has as one of its purposes the performance of research and development work under a space program, project or task and paragraph (b) (1) above is made inapplicable.) The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, and royalty-free license to practice, and cause to be practiced by or for the United States Government, throughout the world, each Subject Invention in the manufacture, use, and disposition according to law, of any article or material, and in the use of any method. Such license (i) shall be nontransferable, except that the Government shall have (a) the right to grant sublicenses to any foreign government or international organization specifically for use in programs established by International Agreements for research, development or production of weapons or equipment for mutual defense and (b) the right to grant sublicenses to others, under such terms and conditions as may be prescribed, for the practice of any Subject Invention throughout the world in the design, development, manufacture, operation, maintenance and testing of communications satellite systems, and of equipment, components, and ground tracking, transmitting and receiving facilities therefor, and (ii) shall include the practice of Subject Invention in the manufacture, use, and disposition of any article or material, in the use of any method or in the performance of any service acquired by or for the Government or with funds derived through the Military Assistance Program of the Government or otherwise through the Government.

(2) With respect to:

(i) any Subject Invention made by other than Technical Personnel; and

(ii) any Subject Invention conceived prior to, but first actually reduced to practice in the course of, any of the experimental, developmental, or research work specified in (a) (i) above;

the obligation of the Contractor to grant a license as provided in (b) (1) above, to convey title as provided in (d) (ii) (B) or (d) (iv) below, and to convey foreign rights as provided in (e) below, shall be limited to the extent of the Contractor's right to grant the same without incurring any obligation to pay royalties or other compensation to others solely on account of said grant. Nothing contained in this Patent Rights clause shall be deemed to grant any license under any invention other than a Subject Invention.

(c) The Contractor shall furnish to the Contracting Officer the following information and reports concerning Subject Inventions which reasonably appear to be patentable:

(i) a written disclosure promptly after conception or first actual reduction to practice of each such invention together with a written statement specifying whether or not a United States patent application claiming the Invention has been or will be filed by or on behalf of the Contractor;

(ii) interim reports at least every twelve months, commencing with the date of this contract, each listing all such Inventions conceived or first actually reduced to practice more than three months prior to the date of the report, and not listed on a prior interim report, or certifying that there are no such unreported Inventions; and

(iii) prior to final settlement of this contract, a final report listing all such Inventions including all those previously listed in interim reports.

(d) In connection with each Subject Invention referred to in (c) (i) above, the Contractor shall do the following:

(i) if the Contractor specifies that a United States patent application claiming such Invention will be filed, the Contractor shall file or cause to be filed such application in due form and time; however, if the Contractor, after having specified that such an application would be filed, decides not to file or cause to be filed said application, the Contractor shall so notify the Contracting Officer at the earliest practicable date and in any event not later than eight months after first publication, public use or sale.

(ii) if the Contractor specifies that a United States patent application claiming such Invention has not been filed and will not be filed (or having specified that such an application will be filed thereafter notifies the Contracting Officer to the contrary), the Contractor shall:

(A) inform the Contracting Officer in writing at the earliest practicable date of any publication of such Invention made by or known to the Contractor or, where applicable, of any contemplated publication by the Contractor, stating the date and identity of such publication or contemplated publication; and

(B) convey to the Government the Contractor's entire right, title, and interest in such Invention by delivering to the Contracting Officer upon written request such duly executed instruments (prepared by the Government) of assignment and application, and such other papers as are deemed necessary to vest in the Government the Contractor's right, title, and interest aforesaid, and the right to apply for and prosecute patent applications covering such Invention throughout the world, subject, however, to the rights of the Contractor in foreign applications as provided in (e) below, and subject further to the reservation of a nonexclusive and royalty-free license to the Contractor (and to his existing and future associated and affiliated companies, if any, within the corporate structure of which the Contractor is a part) which license shall be assignable to the successor of that part of the Contractor's business to which such Invention pertains;

(iii) the Contractor shall furnish promptly to the Contracting Officer on request an irrevocable power of attorney to inspect and make copies of each United States patent application filed by or on behalf of the Contractor covering any such Invention;

(iv) in the event the Contractor, or those other than the Government deriving rights from the Contractor, elects not to continue prosecution of any such United States patent application filed by or on behalf of the Contractor, the Contractor shall so notify the Contracting Officer not less than sixty days before the expiration

of the response period and, upon written request, deliver to the Contracting Officer such duly executed instruments (prepared by the Government) as are deemed necessary to vest in the Government the Contractor's entire right, title, and interest in such Invention and the application, subject to the reservation as specified in (d) (ii) above; and

(v) the Contractor shall deliver to the Contracting Officer duly executed instruments fully confirmatory of any license rights herein agreed to be granted to the Government.

(e) The Contractor, or those other than the Government deriving rights from the Contractor, shall, as between the parties hereto, have the exclusive right to file applications on Subject Inventions in each foreign country within:

(i) nine months from the date a corresponding United States application is filed;

(ii) six months from the date permission is granted to file foreign applications where such filing had been prohibited for security reasons; or

(iii) such longer period as may be approved by the Contracting Officer.

The Contractor shall, upon written request of the Contracting Officer convey to the Government the Contractor's entire right, title, and interest in each Subject Invention in each foreign country in which an application has not been filed within the time above specified, subject to the reservation of a nonexclusive and royalty-free license to the Contractor together with the right of the Contractor to grant sublicenses, which license and right shall be assignable to the successor of that part of the Contractor's business to which the Subject Invention pertains.

(f) If the Contractor fails to deliver to the Contracting Officer the interim reports required by (c) (ii) above, or fails to furnish the written disclosures for all Subject Inventions required by (c) (i) above shown to be due in accordance with any interim report delivered under (c) (ii) or otherwise known to be unreported, there shall be withheld from payment until the Contractor shall have corrected such failures either ten percent (10%) of the amount of this contract, as from time to time amended, or five thousand dollars (\$5,000), whichever is less. After payment of eighty percent (80%) of the amount of this contract, as from time to time amended, payment shall be withheld until a reserve of either ten percent (10%) of such amount, or five thousand dollars (\$5,000), whichever is less shall have been set aside, such reserve or balance thereof to be retained until the Contractor shall have furnished to the Contracting Officer:

(i) the final report required by (c) (iii) above;

(ii) written disclosures for all Subject Inventions required by (c) (i) above which are shown to be due in accordance with interim reports delivered under (c) (ii) above, or in accordance with such final reports, or are otherwise known to be unreported; and

(iii) the information as to any subcontractor required by (h) below.

The maximum amount which may be withheld under this paragraph (f) shall not exceed ten percent (10%) of the amount of this contract or five thousand dollars (\$5,000), whichever is less, and no amount shall be withheld under this paragraph (f) when the amount specified by this paragraph (f) is being withheld under other provisions of this contract. The withholding of any amount or subsequent payment thereof to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract. This paragraph (f) shall not be construed as requiring the Contractor to withhold any amounts from a subcontractor to enforce compliance with the patent provision of a subcontract.

(g) The Contractor shall, unless otherwise authorized by the Contracting Officer as hereafter provided, include a patent rights clause containing all the provisions of this Patent Rights Clause except provision (f) in any subcontract hereunder of three thousand dollars (\$3,000) or more having experimental, developmental, or research work as one of its purposes. In the event of refusal by a subcontractor to accept such a patent rights clause, the Contractor (i) shall promptly submit a written report to the Contracting Officer setting forth the subcontractor's reasons for such 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 Contracting Officer. Reports, instruments, and other information required to be furnished by a subcontractor to the Contracting Officer under the provisions of such a patent rights clause in a subcontract hereunder may, upon mutual consent of the Contractor and the subcontractor (or by direction of the Contracting Officer) be furnished to the Contractor for transmission to the Contracting Officer.

(h) The Contractor shall, at the earliest practicable date, notify the Contracting Officer in writing of any subcontract containing one or more patent rights clauses; furnish the Contracting Officer a copy of each of such clauses; and notify the Contracting Officer when such subcontract is completed. It is understood that with respect to any subcontract clause granting rights to the Government in Subject Inventions, the Government is a third party beneficiary; and the Contractor hereby assigns to the Government all the rights that the Contractor would have to enforce the subcontractor's obligations for the benefit of the Government with respect to Subject Inventions. If there are no subcontracts containing patent rights clauses, a negative report is required. 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.

(i) The Contractor recognizes that the Government, or a foreign government with funds derived through the Military Assistance Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for royalties for the use of a Subject Invention on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for use of patents in which the Government holds a royalty-free license. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

24. DATA (Feb. 1962)—(a) The term "Subject Data" as used herein includes writings, sound recordings, pictorial reproductions, drawings or other graphical representations, and works of any similar nature (whether or not copyrighted) which are specified to be delivered under this contract. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) The Contractor agrees to and does hereby grant to the Government, and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for Government purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all Subject Data now or hereafter covered by copyright.

(c) The Contractor shall not include in the Subject Data any copyrighted matter, without the written approval of the Contracting Officer, unless he provides the Government with the written permission of the copyright owner for the Government to use such copyrighted matter in the manner provided in paragraph (b) above.

(d) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Subject Data delivered under this contract.


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

(f) Unless otherwise limited below, the Government may duplicate, use, and disclose in any manner and for any purpose whatsoever, and have others so do, all Subject Data delivered under this contract.

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

(h) Notwithstanding any provisions of this contract concerning inspection and acceptance, the Government shall have the right at any time to modify, remove, obliterate or ignore any marking not authorized by the terms of this contract on any piece of Subject Data furnished under this contract.

(i) Data need not be furnished for standard commercial items or services which are normally or have been sold or offered to the public commercially by any supplier and which are incorporated as component parts in or to be used with the product or process being developed if in lieu thereof identification of source and characteristics (including performance specifications, when necessary) sufficient to enable the Government to procure the part or an adequate substitute, are furnished; and further, "proprietary data" need not be furnished for other items which were developed at private expense and previously sold or offered for sale, including minor modifications thereof, which are incorporated as component parts in or to be used with the product or process being developed, if in lieu thereof the Contractor shall identify such other items and that "proprietary data" pertaining thereto which is necessary to enable reproduction or manufacture of the item or performance of the process. For the purpose of this clause "proprietary data" means data providing information concerning the details of a Contractor's secrets of manufacture, such as may be contained in but not limited to its manufacturing methods or processes, treatment and chemical composition of materials, plant layout and tooling, to the extent that such information is not disclosed by inspection or analysis of the product itself and to the extent that the Contractor has protected such information from unrestricted use by others. (Oct. 1958)

 25. **MILITARY SECURITY REQUIREMENTS.** (Jan. 1958)—(a) The provisions of this clause shall apply to the extent that this contract involves access to information classified "Confidential" including "Confidential—Modified Handling Authorized" or higher.

(b) The Government shall notify the Contractor of the security classifications of this contract and the elements thereof, and of any subsequent revisions in such security classification, by the use of a Security Requirements Check List (DD Form 254), or other written notification.

(c) To the extent the Government has indicated as of the date of this contract or thereafter indicates security classification under this contract as provided in paragraph (b) above, the Contractor shall safeguard all classified elements of this contract and shall provide and maintain a system of security controls within his own organization in accordance with the requirements of —

(i) the Security Agreement (DD Form 441), including the Department of Defense Industrial Security Manual for Safeguarding Classified Information as in effect on the date of this contract, and any modification to the Security Agreement for the purpose of adapting the Manual to the Contractor's business; and

(ii) any amendments to said Manual made after the date of this contract, notice of which has been furnished to the Contractor by the Security Office of the Military Department having security cognizance over the facility.

(d) Representatives of the Military Department having security cognizance over the facility and representatives of the contracting Military Department shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the Contractor in complying with the security requirements under this contract. Should the Government, through these representatives, determine that the Contractor is not complying with the security requirements of this contract the Contractor shall be informed in writing by the Security Office of the cognizant Military Department of the proper action to be taken in order to effect compliance with such requirements.

(e) If, subsequent to the date of this contract, the security classifications or security requirements under this contract are changed by the Government as provided in this clause and the security costs under this contract are thereby increased or decreased, the contract price shall be subject to an equitable adjustment by reason of such increased or decreased costs. Any equitable adjustment shall be accomplished in the same manner as if such changes were directed under the "Changes" clause in this contract.

(f) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (f) but excluding the last sentence of paragraph (e) of this clause.

(g) The Contractor also agrees that he shall determine that any subcontractor proposed by him for the furnishing of supplies and services which will involve access to classified information in the Contractor's custody has been granted an appropriate facility security clearance, which is still in effect, prior to being accorded access to such classified information.

26. UTILIZATION OF CONCERNS IN LABOR SURPLUS AREAS. (Feb. 1962)—(The provisions of this clause shall be applicable if this contract is in excess of \$5,000.00.) It is the policy of the Government to place contracts with concerns which will perform such contracts substantially in areas of persistent or substantial labor surplus where this can be done, consistent with the efficient performance of the contract, 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. In complying with the foregoing 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: (i) persistent labor surplus area concerns which are also small business concerns; (ii) other persistent labor surplus area concerns; (iii) substantial labor surplus area concerns which are also small business concerns; (iv) other substantial labor surplus area concerns; and (v) small business concerns which are not labor surplus area concerns.

27. FILING OF PATENT APPLICATIONS. (Jan. 1955)—(a) Before filing or causing to be filed a patent application disclosing any subject matter of this contract, which subject matter is classified "Secret" or higher, the Contractor shall, citing the thirty (30) day provision below, transmit the proposed application to the Contracting Officer for determination whether, for reasons of national security, such application should be placed under an order of secrecy or sealed in accordance with the provisions of 35 U.S. Code 181-188 or the issuance of a patent should be otherwise delayed under pertinent statutes or regulations; and the Contractor shall observe any instructions of the Contracting Officer with respect to the manner of delivery of the patent application to the U.S. Patent Office for filing, but the Contractor shall not be denied the right to file such patent application. If the Contracting Officer shall not have given any such instructions within thirty (30) days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

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

(c) In filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter.

28. PRIORITIES, ALLOCATIONS, AND ALLOTMENTS. (Jan. 1961)—The Contractor shall follow the provisions of DMS Regulation 1 and all other applicable regulations and orders of the Business and Defense Services Administration in obtaining controlled materials and other products and materials needed to fill this order.

29. GOVERNMENT-FURNISHED PROPERTY. (Nov. 1961)—(a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described 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 occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event the Government-furnished Property is received by the Contractor in a condition not suitable for the intended use the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property, or (ii) effect repairs or modifications. Upon the completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by the rejection 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) By notice in writing the Contracting Officer may decrease the property furnished or to be furnished by the Government under this contract. In any such case, the Contracting Officer upon the written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provisions affected by the decrease, in accordance with the procedures provided for in the clause of this contract entitled "Changes."

(c) Title to the Government-furnished Property shall remain in the Government. Title to Government-furnished Property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government-furnished Property, or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty. The Contractor shall comply with the provisions of the "Manual for Control of Government Property in Possession of Contractors" (Appendix B, Armed Services Procurement Regulation) as in effect on the date of the contract, which Manual is hereby incorporated by reference and made a part of this contract.

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(d) The Government-furnished Property shall, unless otherwise provided herein, be used only for the performance of this contract.

(e) The Contractor shall maintain and administer, in accordance with sound industrial practice, a program for the maintenance, repair, protection and preservation of Government-furnished Property, until disposed of by the Contractor in accordance with this clause. In the event that any damage occurs to Government-furnished Property the risk of which has been assumed by the Government under this contract, the Government shall replace such items or the Contractor shall make such repair of the property as the Government directs; provided, however, that if the Contractor cannot effect such repair within the time required, the Contractor shall dispose of such property in the manner directed by the Contracting Officer. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which the Government is responsible, and an equitable adjustment will be made in the contract price for any such repair or replacement of Government-furnished Property made at the direction of the Government. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at his own expense.

(f) (1) Except for loss, destruction or damage resulting from a failure of the Contractor due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel as defined herein, to maintain and administer the program for the maintenance, repair, protection and preservation of the Government-furnished Property, as required by paragraph (e) hereof, and except as specifically provided in the clause or clauses of this contract designated in the Schedule, the Contractor shall not be liable for loss or destruction of or damage to the Government-furnished Property —

(i) caused by any peril while the property is in transit off the Contractor's premises, or

(ii) caused by any of the following perils while the property is on the Contractor's or subcontractor's premises, or on any other premises where such property may properly be located, or by removal therefrom because of any of the following perils:

(A) Fire; lightning, windstorm, cyclone, tornado, hail; explosion; riot, riot attending a strike, civil commotion; vandalism and malicious mischief; sabotage; aircraft or objects falling therefrom; vehicles running on land or tracks, excluding vehicles owned or operated by the Contractor or any agent or employee of the Contractor; smoke; sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby rising of a body of water; hostile or warlike action, including action in hindering, combating, or defending against an actual, impending or expected attack by any government or sovereign power (de jure or de facto), or by any authority using military, naval, or air forces; or by an agent of any such government, power, authority, or forces; or

(B) Other peril, of a type not listed above, if such other peril is customarily covered by insurance (or by a reserve for self-insurance) in accordance with the normal practice of the Contractor, or the prevailing practice in the industry in which the Contractor is engaged with respect to similar property in the same general locale.

The perils as set forth in (i) and (ii) above are hereinafter called "excepted perils."

This clause shall not be construed as relieving a subcontractor from liability for loss or destruction of or damage to the Government-furnished Property while in his possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, may provide 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-furnished 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.

The term "Contractor's managerial personnel" as used herein means the Contractor's directors, officers and any of his managers, superintendents, or other equivalent representatives who have supervision or direction of—

- (i) all or substantially all of the Contractor's business;
- (ii) all or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed;
- (iii) a separate and complete major industrial operation in connection with the performance of this contract.

(2) The Contractor represents that he is not including in the price hereunder, and agrees that he will not hereafter include in any price to the Government, any charge or reserve for insurance (including self-insurance funds or reserve) covering loss or destruction of or damage to the Government-furnished Property caused by any excepted peril.

(3) Upon the happening of loss or destruction of or damage to any Government-furnished Property caused by an excepted peril, 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 Organization so designated (unless the Contracting Officer has directed that no such organization be employed), shall take all reasonable steps to protect the Government-furnished Property from further damage, separate the damaged and undamaged Government-furnished Property, put all the Government-furnished Property in the best possible order, and furnish to the Contracting Officer a statement of:

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

The Contractor shall be reimbursed for the expenditures made by him in performing his obligations under this subparagraph (3) (including charges made to the Contractor by the Loss and Salvage Organization, except any of such charges the payment of which the Government has, at its option, assumed directly), to the extent approved by the Contracting Officer and set forth in a Supplemental Agreement.

(4) With the approval of the Contracting Officer after loss or destruction of or damage to Government-furnished Property, and subject to such conditions and limitations as may be imposed by the Contracting Officer, the Contractor may, in order to minimize the loss to the Government or in order to permit resumption of business or the like, sell for the account of the Government any item of Government-furnished Property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor, that separation is impracticable.

(5) Except to the extent of any loss or destruction of or damage to Government-furnished Property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the Government-furnished Property in accordance with the provisions of this contract, the Government-furnished Property (other than property permitted to be sold) shall be returned to the Government in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph (e) above.

(6) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government-furnished Property, caused by an excepted peril, he shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights 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 a subcontractor has not been relieved from liability for any loss or destruction of or damage to the Government-furnished Property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government-furnished Property for the benefit of the Government.

(7) If this contract is for the development, production, modification, maintenance or overhaul of aircraft, or otherwise involves the furnishing of aircraft by the Government, the "Ground and Flight Risk" clause of this contract shall control, to the extent it is applicable, in the case of loss or destruction of, or damage to, aircraft.

(g) The Government shall at all reasonable times have access to the premises wherein any Government-furnished Property is located.

(h) Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government-furnished Property not consumed in the performance of this contract (including any resulting scrap) or not theretofore delivered to the Government, and shall deliver or make such other disposal of such Government-furnished Property, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid in such other manner as the Contracting Officer may direct.

(i) Directions of the Contracting Officer and communications of the Contractor issued pursuant to this Clause shall be in writing.

30. NOTICE TO THE GOVERNMENT OF LABOR DISPUTES. (Sep. 1958)—(a) Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

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

31. LIMITATION ON WITHHOLDING OF PAYMENTS. (Sep. 1958)—If more than one clause or Schedule provision of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts so withheld at any one time shall not exceed the greatest amount which may be withheld under any one such clause or Schedule provision at that time; provided, that this limitation shall not apply to—

- (i) withholdings pursuant to any clause relating to wages or hours of employees;
- (ii) withholdings not specifically provided for by this contract; and
- (iii) the recovery of overpayments.

32. INTEREST (May 1963). 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 of six percent per annum from the date due until paid and shall be subject to adjustments as provided by Part 6 of Appendix E of the Armed Services Procurement Regulation, as in effect on the date of this contract. Amounts shall be due upon the earliest one of (i) the date fixed pursuant to this contract, (ii) the date of the first written demand for payment, consistent with this contract, (iii) the date of transmittal by the Government to the Contractor of a proposed supplemental agreement to confirm completed negotiations fixing the amount, or (iv) if this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or in connection with a negotiated pricing agreement not confirmed by contract supplement.

33. COMPETITION IN SUBCONTRACTING. (Apr. 1962)—(Applicable only if this is a negotiated contract over \$10,000.00.) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

34. CHANGES. (Jun. 1959)—The Contracting Officer may at any time, by 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, (iii) place of inspection, delivery, or acceptance, and (iv) the amount of Government-furnished property. If any such change causes an increase or decrease in the cost of, or the time required for performance of, this contract, or otherwise affects any other provisions of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the contract price or time of performance, or both, and (ii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within sixty (60) 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, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

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35. **SHIPMENTS. (Oct. 1957)**—(a) Unless otherwise provided in this contract or unless the Contracting Officer acting under the "Changes" clause hereof directs in writing otherwise, all supplies to be furnished under this contract shall be delivered f.o.b. carrier's equipment at the plant or plants at which such supplies are to be finally inspected and accepted, or if the facilities for shipment by carrier's equipment are not available at the Contractor's plant, f.o.b. the point or points nearest thereto that carrier service is available. When the carrier's equipment is rail, any shipment occupying sufficient space in a railroad car to constitute a carload shipment subject to carload freight rates shall be properly and adequately loaded in freight cars by the Contractor, and any shipment subject to less-than-carload freight rates shall be delivered by the Contractor into the carrier's possession at the Contractor's plant, or at the point or points nearest thereto at which delivery can be effected.

(b) Whenever it is provided in this contract that supplies shall be delivered f.o.b. specified destinations, such supplies shall be shipped direct by the Contractor to the specified destinations on commercial bills of lading, at the expense of the Contractor. Provided, however, that nothing contained herein shall preclude reimbursement of the Contractor by the Government of any such transportation expenses if this is a cost-reimbursement type contract.

(c) Notwithstanding other provisions of this contract, shipments made under cost-reimbursement contracts which do not exceed (i) 1000 pounds if shipped by rail, truck, or freight forwarder, or (ii) 100 pounds if shipped by railway express, or (iii) 50 pounds if shipped by commercial air, shall be made by commercial bills of lading, charges to destination(s) paid by the Contractor.

(d) If the Contracting Officer directs in writing that any of the supplies to be furnished hereunder be delivered to a carrier for shipment from a point other than specified in this contract, equitable adjustment shall be made in the contract price in the manner provided in the general provisions of this contract entitled "Changes."

(e) **Shipping Instructions.** If not otherwise provided herein, names of consignees of all supplies to be delivered by the Contractor hereunder will be furnished in writing by the Contracting Officer at a later date. Request therefor shall be made to such address as the Contracting Officer may direct, not later than thirty (30) days prior to the date on which any of the articles are ready for shipment.

(f) **Routing Instructions.** If not otherwise provided herein and deliveries are other than f.o.b. specified destinations, Government routing instructions will be furnished to the Contractor in writing by the Contracting Officer at a later date. If the Government routing instructions have not been received by the Contractor thirty (30) days prior to date on which any of the articles are anticipated to be ready for shipment, request therefor shall immediately be made to the cognizant transportation activity specified herein.

(g) **Notice of Shipments. (Jul. 1949)** At the time of delivery of any shipment of supplies to a carrier for transportation, the Contractor shall give prepaid notice of shipment to the consignee establishment, and to such other persons or installations designated by the Contracting Officer, in accordance with instructions of the Contracting Officer. If such instructions have not been received by the Contractor at least twenty-four (24) hours prior to such delivery to a carrier, the Contractor shall request instructions from the Contracting Officer concerning the notice of shipment to be given.

(h) **Computation of Delivery Time.** For the purpose of determining the fulfillment of this contract so far as delivery dates are concerned, in the event the delivery point or points are not the same as the point or points of destination, the time of delivery of the supplies shall be the date of delivery to the carrier ready for shipment to destination.

(i) **Shipments by the Government.** Unless this is a cost-reimbursement type contract, any articles, supplies or other items to be delivered by the Government to the Contractor shall, unless otherwise provided herein, be delivered to the Contractor f.o.b. carrier's equipment at the plant or plants of the Contractor designated, or if facilities for shipment by carrier's equipment are not available at the Contractor's plant or plants, f.o.b. the point or points nearest thereto that carrier's equipment is available.

(j) Where the contract provides that inspection and acceptance shall be accomplished at a subcontractor's plant (whether in whole or in part) the foregoing provisions, except paragraphs (e) and (f), shall be equally applicable to such subcontractors as provided in said subcontract. Subcontractors' shipping instructions and routing instructions, if not previously furnished, shall be requested from the Prime Contractor.

36. **GOVERNMENT BILL OF LADING. (Jul. 1961)** When it is provided in this contract that the supplies shall be delivered other than f.o.b. specified destinations, shipment(s) will be made on a Government Bill of Lading. The required number of such Government Bills of Lading will be furnished to the Contractor by the cognizant transportation activity. The Contractor shall acknowledge receipt of these Government Bills of Lading in the manner prescribed. As shipments are made, the Contractor shall prepare and distribute the applicable Government Bills of Lading in accordance with AFLC Form 232, "Instructions for Processing U.S. Government Bill of Lading." The Contractor also agrees that Government Bills of Lading in excess of the requirements of this contract will be returned to the cognizant transportation activity within a reasonable time after final shipment. The use of U.S. Government mailing indicia is authorized in lieu of U.S. Government Bills of Lading when commodity, weight, and cube permit movement within the U.S. Postal Service.

37. **DATA—WITHHOLDING OF PAYMENT. (Apr. 1962)**—If "Subject Data" (as defined in the clause of this contract entitled "Data"), or any part thereof, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not specifically authorized by this contract), the Contracting Officer may, until such data is delivered or deficiencies are corrected, withhold payment to the Contractor of ten percent (10%) of the contract price unless a lesser withholding is specified in the schedule. Payments shall not be withheld nor any other action taken pursuant to this clause where the Contractor's failure to make timely delivery or to deliver data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor within the meaning of the clause hereof entitled "Default." The withholding of any amount or subsequent payment thereof to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

38. **SUPERSEDING SPECIFICATIONS. (Jul. 1948)**—All references in any Government specification incorporated herein to other Government specifications shall be deemed to include all specifications supplementary to or superseding the specifications so referred to, to the extent that such supplementary or superseding specifications are in effect at the date of Contractor's latest quotation, if the Contractor was furnished or otherwise notified of the existence of such supplementary or superseding specifications at the time of said quotation.

39. **SUBCONTRACTS.**—No contract shall be made by the Contractor with any other party for furnishing any of the completed or substantially completed articles, spare parts, or work, herein contracted for, without the written approval of the Contracting Officer as to sources.

* 40. **SUBCONTRACTS. (Nov. 1963)**—If this contract provides for price redetermination or contains incentive provisions, the following provisions shall apply to subcontracts in lieu of Clause 39 above:

- (a) As used in this clause, the term "subcontract" includes purchase orders.
- (b) Except as provided in paragraph (d) below, the Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract which—
 - (i) is on a cost-plus-a-fee, time and material, or labor-hour basis and which would involve an estimated amount in excess of \$10,000 including any fee; or
 - (ii) is proposed to exceed \$25,000 or five per cent (5%) of the total amount of this contract; or
 - (iii) 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 \$25,000 or five per cent (5%) of the total amount of this contract.
- (c) The advance notification required by paragraph (b) above shall include:
 - (i) a description of the supplies or services to be called for by the subcontract;
 - (ii) identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained;
 - (iii) the proposed subcontract price, together with the Contractor's cost or price analysis thereof;
 - (iv) 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; and
 - (v) identification of the type of contract to be used.

(d) Advance notifications of subcontracts, as required by paragraph (b) above, are not required for any subcontract (i) not on a cost-plus-a-fee, time and material, or labor-hour basis, if the Contracting Officer has in writing approved the Contractor's purchasing system and the subcontract is within the limitations of such approval, or (ii) consented to in writing by the Contracting Officer as a proposed subcontract prior to the execution of this contract.

(e) The Contractor shall not, without the prior written consent of the Contracting Officer, enter into any subcontract for which advance notification to the Contracting Officer is required by this clause; provided that, in his discretion, the Contracting Officer may ratify in writing any subcontract and such ratification shall constitute the consent of the Contracting Officer required by this paragraph.

(f) No consent by the Contracting Officer to any subcontract or any provisions thereof or approval of the Contractor's purchasing system shall be construed to be a determination of the acceptability of any subcontract price or of any amount paid under any subcontract or to relieve the Contractor of any responsibility for performing this contract, unless such approval or consent specifically provides otherwise.

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

* 41. **QUALITY CONTROL SYSTEM. (Jan. 1963)**—The Contractor shall provide and maintain a quality control system acceptable to the Government for the supplies covered by this contract. The system of Quality Control shall be in accordance with Military Specification MIL-Q-9858, U. S. Air Force Bulletin No. 515, Control of Nonconforming Supplies and Military Specification MIL-C-45662A, Calibration System Requirements, as in effect on the date of this contract. The provisions of this clause shall be inapplicable if this contract is one of the types specified in Paragraph 1.2 of MIL-Q-9858.

42. **RESPONSIBILITIES FOR SUPPLIES. (Jan. 1958)** (If this contract is for the delivery of end items other than designs, drawings, or reports the following clause shall be applicable.) Except as otherwise provided in this contract, (i) the Contractor shall be responsible for the supplies covered by this contract until they are delivered at the designated delivery point, regardless of the point of inspection; (ii) after delivery to the Government at the designated point and prior to acceptance by the Government or rejection and giving notice thereof by the Government, the Government shall be responsible for the loss or destruction of or damage to the supplies only if such loss, destruction, or damage results from the negligence of officers, agents, or employees of the Government acting within the scope of their employment; and (iii) the Contractor shall bear all risks as to rejected supplies after notice of rejection, except that the Government shall be responsible for the loss, or destruction of, or damage to the supplies only if such loss, destruction or damage results from the gross negligence of officers, agents, or employees of the Government acting within the scope of their employment.

* 43. **ACKNOWLEDGEMENT OF SPONSORSHIP.**—(a) The Contractor agrees that in the release of information relating to this contract such release shall include a statement to the effect that the project or effort depicted was or is sponsored by the agency set forth in the Schedule of this contract.

(b) For the purpose of this clause, "information" includes but is not limited to, news releases, articles, manuscripts, brochures, advertisements, still and motion pictures, speeches, trade association meetings, symposia, etc.

(c) Nothing in the foregoing shall affect compliance with the requirements of the clause of this contract entitled "Military Security Requirements."

(d) The Contractor further agrees to include this provision in any subcontract awarded as a result of this contract.

* SEE CLAUSE.....44.....ALTERATIONS

44 ALTERATIONS IN CONTRACT. (JUL. 1949). The following alterations have been made in the provisions of this contract:

- Clause 13 - Buy American Act (Jul. 1960) - of the General Provisions is hereby deleted.
- Clause 17 - Nondiscrimination in Employment (June 1963) - of the General Provisions is hereby deleted.
- Clause 23 - Patent Rights (License) (Apr. 1962) - of the General Provisions is hereby deleted.
- Clause 24 - Data (Feb. 1962) - of the General Provisions is hereby deleted.
- Clause 25 - Military Security Requirements (Jan 1958) - of the General Provisions is amended by changing the date in the title to (Jun. 1958).
- Clause 40 - Subcontracts (Nov. 1963) - of the General Provisions is hereby deleted.

Any reference in any clause to "Subject Data" shall be deemed to be a reference to "Technical Data" as defined in any basic Data Clause of this contract.

- Clause 41 - Quality Control System (Jan. 1963) - of the General Provisions is hereby deleted.

AFPI 71-9 (Nov. 1963) FP R&D

23 July 1964

For use with commercial concerns or not-for-profit organizations (receiving profit) where equipment items are being purchased. With new Data Provisions.

BUY AMERICAN ACT (MAY 1964)

(a) In acquiring end products, the Buy American Act (41 U.S.C. 10a-d) 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 or Canada 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 delivered under this contract 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 Secretary determines the domestic preference to be inconsistent with the public interest; or
- (iv) as to which the Secretary determines the cost to the Government to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954. So as to alleviate the impact of Department of Defense expenditures on the United States balance of international payments, bids offering domestic source end products normally will be evaluated against bids offering other end products by adding a factor of fifty percent (50%) to the latter, exclusive of import duties. Details of the evaluation procedure are set forth in Section VI of the Armed Services Procurement Regulation.

EQUAL OPPORTUNITY (APR. 1964)

(The following clause is applicable unless this contract is exempt under the rules and regulations of the President's Committee on Equal Employment Opportunity (41 C.F.R. Chapter 60). Exemptions include contracts and subcontracts (i) not exceeding \$10,000, (ii) not exceeding \$100,000 for standard commercial supplies or raw materials, and (iii) under which work is performed outside the United States and no recruitment of workers within the United States is involved.)

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, creed, color, 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; lay-off 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 nondiscrimination 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 said labor union of workers' representative of the Contractor's commitments under this nondiscrimination 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. 10925 of March 6, 1961, as amended, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

(e) The Contractor will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, as amended, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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PATENT RIGHTS (LICENSE) (May 1964)

AF-WP-O-NOV 64 10M

(a) Definitions Used in This Clause.

(1) **Subject Invention** means any invention or discovery, whether or not patentable, conceived or first actually reduced to practice in the course of or under this contract. The term "Subject Invention" includes, but is not limited to, any art, 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) **Governmental purpose** means the right of the Government of the United States (including any agency thereof, state or domestic municipal government) to practice and have practiced (make or have made, use or have used, sell or have sold) any Subject Invention throughout the world by or on behalf of the Government of the United States.

(3) **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.

(4) **Subcontract and subcontractor** mean any subcontract or subcontractor of the Contractor, any lower-tier subcontract or subcontractor under this contract.

(5) **To bring 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 or system and, in each case, under such conditions as to establish that the Invention is being worked and that its benefits are reasonably accessible to the public.

(b) Rights Granted to the Government.

(1) The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, and royalty-free license to practice and have practiced each Subject Invention (made by the Contractor) throughout the world for Governmental purposes. In addition, the Government shall have the right to grant licenses to any foreign government or international organization specifically for use in programs established by International Agreements for research, development, or production of weapons or equipment for mutual defense and shall include the practice of such Subject Invention in the manufacture, use, and disposition of any article or material, in the use of any method, or in the performance of any service acquired by or for the Government or with funds derived through the Military Assistance Program of the Government or otherwise through the Government.

(2) The Contractor further agrees to grant, upon the request of the Government, a license under any Subject Invention (made by the Contractor) to:

(i) any applicant on a nonexclusive, royalty-free basis, unless the Contractor, his licensee, or his assignee demonstrates to the Government, at its request, that effective steps have been taken within three 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;

(ii) any applicant royalty-free or on terms that are reasonable in the circumstances to the extent that the Invention is required for public use by governmental regulations or as may be necessary to fulfill health needs, or for other public purposes stipulated in the Schedule of this contract.

Nothing contained in this Patent Rights clause shall be deemed to grant any rights with respect to any invention other than a Subject Invention.

(c) Invention Disclosures and Reports. With respect to Subject Inventions (made by the Contractor), the Contractor shall furnish to the Contracting Officer:

(i) a written disclosure of each such Invention within four (4) months after conception or first actual reduction to practice, whichever occurs first under this contract, sufficiently complete as to technical detail to convey to one skilled in the art to which the Invention pertains a clear understanding of the nature, purpose, operation and, as the case may be, physical, chemical or electrical characteristics of the Invention, together with a written statement making an election as to whether a United States patent application claiming the Invention will be filed by or on behalf of the Contractor;

(ii) interim reports at least every twelve (12) months, the initial period of which shall commence with the date of this contract, each report listing all such Inventions conceived or first actually reduced to practice more than three (3) months prior to the date of the report and not listed on a prior interim report, or certifying that there are no such unreported Inventions;

(iii) prior to final settlement of this contract, a final report listing all such Inventions including all those previously listed in interim reports, or certifying that there are no such unreported Inventions; and

(iv) written reports at reasonable intervals, prior to and after final settlement, when requested by the Government, as to

(A) the commercial use that is being made or is intended to be made of such Invention;

(B) the steps taken by the Contractor to bring the Invention to the point of practical application, or to make the Invention available for licensing.

(d) Domestic Filing. In connection with each Subject Invention referred to in (c)(i) above:

(i) if the Contractor has elected to file a United States patent application claiming such Invention, the Contractor shall, within six (6) months after the election, file or cause to be filed such application in due form and shall so notify the Contracting Officer at the time of such filing; if the Contractor does not file or cause to be filed such application, he shall notify the Contracting Officer within the six (6) month period;

(ii) if the Contractor has elected not to file or to cause to be filed a United States patent application claiming such Invention, or has made the contrary election but has not filed or caused to be filed such application within six (6) months after the election, the Contractor shall:

(A) inform the Contracting Officer in writing, as soon as practicable, of the date and identity of any public use, sale, or publication of such Invention made by or known to the Contractor or of any contemplated publication by the Contractor;

(B) upon written request, convey to the Government the Contractor's entire right, title and interest in such Invention by delivering to the Contracting Officer such duly executed instruments (prepared by the Government) of assignment and application, and such other papers as are deemed necessary to vest in the Government the entire right, title, and interest aforesaid, and the right to apply for and prosecute patent applications covering such Invention throughout the world, subject to the reservation of a nonexclusive and royalty-free license to the Contractor (and to his existing and future associated and affiliated companies, if any, within the corporate structure of which the Contractor is a part) which license shall be assignable to the successor of that part of the Contractor's business to which such Invention pertains;

(iii) the Contractor shall furnish promptly to the Contracting Officer on request an irrevocable power of attorney to inspect and make copies of each United States patent application filed by or on behalf of the Contractor covering any such Invention;

(iv) in the event the Contractor, or those other than the Government deriving rights from the Contractor, elects not to continue prosecution of any such United States patent application filed by or on behalf of the Contractor, the Contractor shall so notify the Contracting Officer not less than sixty (60) days before the expiration of the response period and, upon written request, deliver to the Contracting Officer such duly executed instruments (prepared by the Government) as are deemed necessary to vest in the Government the entire right, title, and interest in such Invention and the application, subject to the reservation as specified in paragraph (d) (ii) (B) of this clause; and

(v) the Contractor shall deliver to the Contracting Officer duly executed instruments fully confirmatory of all rights herein agreed to be granted or reserved to the Government.

(e) **Foreign Filing.** The Contractor, or those other than the Government deriving rights from the Contractor, shall as between the parties hereto, have the exclusive right, subject to the rights of the Government under paragraph (b) of this clause, to file applications on Subject Inventions (made by the Contractor) in each foreign country within:

(i) nine (9) months from the date a corresponding United States application is filed, or nine (9) months from the date the Contractor discloses a Subject Invention under paragraph (c) (i) above with an election not to file a United States application;

(ii) six (6) months from the date permission is granted to file foreign applications where such filing had been prohibited for security reasons; or

(iii) such longer period as may be approved by the Contracting Officer.

The Contractor shall notify the Contracting Officer of each foreign application filed and, upon written request of the Contracting Officer, convey to the Government the entire right, title, and interest in each such Subject Invention in each foreign country in which an application has not been filed within the time above specified, subject to the reservation as specified in paragraph (d) (ii) (B) of this clause.

(f) **Withholding of Payment.** If the Contractor fails to deliver to the Contracting Officer the interim reports required by (c) (ii) above, or fails to furnish the written disclosures for all Subject Inventions required by (c) (i) above shown to be due in accordance with any interim report delivered under (c) (ii) or otherwise known to the Government to be unreported, there shall be withheld from payment, until the Contractor shall have corrected such failures, either ten percent (10%) of the amount of this contract, as from time to time amended, or ten thousand dollars (\$10,000), whichever is less. After payment of eighty percent (80%) of the amount of this contract, as from time to time amended, payment shall be withheld until a reserve of either ten percent (10%) of the amount of this contract, or ten thousand dollars (\$10,000) whichever is less, shall have been set aside, such reserve or balance thereof to be retained until the Contractor shall have furnished to the Contracting Officer:

(i) the final report required by (c) (iii) of this clause;

(ii) written disclosures for all Inventions required by (c) (i) above which are shown to be due in accordance with interim reports delivered under (c) (ii) above, or in accordance with such final reports, or are otherwise known to the Government to be unreported; and

(iii) the information as to any subcontractor required by (g) below.

No amount shall be withheld under this paragraph when the amount specified by this paragraph is being withheld under other provisions of this contract. The withholding of any amount or subsequent payment thereof to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract. This paragraph shall not be construed as requiring the Contractor to withhold any amounts from a subcontractor to enforce compliance with the patent provision of a subcontract. In cost-type contracts, "amount of this contract" shall mean "estimated cost of this contract."

(g) **Subcontracts.**

(1) The Contractor shall, unless otherwise authorized or directed by the Contracting Officer, include a patent rights clause containing all of the provisions of this Patent Rights clause except provision (f) in any subcontract hereunder where 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 Patent Rights clause, or if in the opinion of the Contractor this Patent Rights clause is inconsistent with the policy set forth in ASPR 9-107.2 and 9-107.3, the Contractor:

(i) shall promptly submit a written report to the Contracting Officer setting forth the subcontractor's reason for such refusal or the reasons the Contractor is of the opinion that the inclusion of this clause would be so inconsistent, 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 Contracting Officer.

The Contractor shall not, in any subcontract or by using such a subcontract as consideration therefor, acquire any rights to Subject Inventions 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). Reports, instruments, and other information required to be furnished by a subcontractor to the Contracting Officer under the provisions of such a patent rights clause in a subcontract hereunder may, upon mutual consent of the Contractor and the subcontractor (or by direction of the Contracting Officer) be furnished to the Contractor for transmission to the Contracting Officer.

(2) The Contractor, at the earliest practicable date, shall also notify the Contracting Officer in writing of any subcontract containing a patent rights clause, furnish him a copy of such clause, and notify him when such subcontract is completed. 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 the rights that he would have to enforce the subcontractor's obligations for the benefit of the Government with respect to Subject Inventions. If there are no subcontracts containing patent rights clauses, a negative report is required. 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.

(h) **Licenses Granted by Contractor to Others Subject to Government's Rights.** The Contractor recognizes that the Government, or a foreign government with funds derived through the Military Assistance Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for royalties for the use of a Subject Invention on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for use of patents in which the Government holds a royalty-free license. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(i) **Rights to Disclose Subject Inventions.** The Government may duplicate and disclose reports and disclosures of Subject Inventions required to be furnished by the Contractor or a subcontractor pursuant to this Patent Rights clause.

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CLAUSE STOP WORK ORDER (Jul 1960)

(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 the contract for a period of ninety (90) days after the order is delivered to the Contractor, and for any further period to 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 allowable 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 Contracting Officer shall either -

(i) cancel the stop work order, or

(ii) terminate the work covered by such order as provided in 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 or contract price, or both, 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 allowable 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.

Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(c) If a stop work order is not canceled 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.

ASPR 7-105.8(c)

11 March 1963

Clause 49 REPORTS OF WORK (JUL 60)

(a) The Contractor shall submit reports making full disclosure of all work done and the results thereof, in the manner, at the times, and to the extent set forth in the Schedule; provided that, unless otherwise specified in the Schedule, the Contractor shall submit such reports in triplicate from time to time as requested and upon completion (or earlier termination) of the work. Except as may be otherwise specified in the Schedule, or unless the Contractor is otherwise instructed, the Contractor shall, upon completion (or earlier termination) of the work, deliver any working drawings and specifications of any prototypes as may have been developed.

(b) If the Contractor becomes unable to complete the contract work and to deliver at the time specified in the Schedule because of technical difficulties, notwithstanding the exercise of good faith and diligent efforts in performance of the work, he shall give, the Contracting Officer written notice of the anticipated delays with reasons therefor not less than forty-five (45) days before the completion date specified in the Schedule or within such time as the Contracting Officer deems sufficient. When notice is so required, the Contracting Officer may, in his discretion, extend the time specified in the Schedule for such period as he deems advisable.

RIGHTS IN TECHNICAL DATA (MAY 1964)

(a) Definitions.

(1) Technical Data, as used in this clause, means technical writing, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of a technical nature, whether or not copyrighted, which are specified to be delivered pursuant to this contract. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(2) Limited Rights means rights to use, duplicate, and disclose technical data in whole or in part, by or for the Government, with the express limitation that such data may not be released outside the Government, used, duplicated, or disclosed in whole or in part, for manufacture or procurement, except for:

(i) emergency repair or overhaul work by or for the Government where the item or process concerned is not otherwise reasonably available to enable timely performance of the work; and

(ii) release to a foreign government as the interests of the United States may require;

provided, in either case, that the release of such data shall be subject to the limitations of this paragraph (2).

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

(b) Government Rights.

(1) The Government shall have unlimited rights in:

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

(ii) technical data necessary to enable manufacture of end-items, components and modifications, or to enable the performance of processes, when the end-items, components, modifications or processes have been, or are being developed under this or any other Government contract or subcontract in which experimental, developmental or research work is, or was specified as an element of contract performance, except that technical data pertaining to components or processes which were developed at private expense and incorporated into, or used in making, the end-items, components, modifications or processes developed, shall be acquired with limited rights if the Contractor furnishes with unlimited rights the "form, fit and function" data, as described under (iv) below, for the components or processes developed at private expense;

- (iii) technical data constituting corrections or changes to Government-furnished data;
- (iv) technical data pertaining to end-items, components or processes which was prepared for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.);
- (v) manuals or instructional materials prepared for installation, operation, maintenance or training purposes;
- (vi) other technical data which has been, or is normally furnished without restriction by the Contractor or sub-contractor; and
- (vii) technical data listed or described in an agreement incorporated into the Schedule of this contract, which the parties have predetermined, on the basis of subparagraphs (i) thru (vi) above, and agreed will be furnished with unlimited rights.

(2) The Government shall have limited rights in

- (i) technical data, listed or described in an agreement incorporated into the Schedule of this contract, which the parties have agreed will be furnished with limited rights; and
- (ii) except as provided in (1) above, other technical data pertaining to items, components or processes developed at private expense;

provided that each piece of such data is marked with the following legend in which is inserted the number of the prime contract under which the technical data is to be delivered and the name of the Contractor or subcontractor by whom the technical data was generated:

"Furnished under United States Government Contract No. _____
Shall not be either released outside the Government, or used, duplicated, or disclosed in whole or in part for manufacture or procurement, without the written permission of _____, except for: (i) emergency repair or overhaul work by or for the Government, where the item or process concerned is not otherwise reasonable available to enable timely performance of the work; or (ii) release to a foreign government, as the interests of the United States may require; provided that in either case the release, use, duplication or disclosure hereof shall be subject to the foregoing limitations. This legend shall be marked on any reproduction hereof in whole or in part."

No legend shall be marked on, nor shall any limitation on rights of use be asserted as to, any data which the Contractor has previously delivered to the Government without restriction. The limited rights provided for by this paragraph (b)(2) shall not impair the right of the Government to use similar or identical data acquired from other sources.

(c) Material Covered by Copyright

(1) Notwithstanding the provisions of (b) above, the Contractor agrees to and does hereby grant to the Government, and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for Government purposes to publish, translate, reproduce, deliver, perform dispose of, and to authorize others so to do, all technical data now or hereafter covered by copyright.

(2) No such copyrighted matter shall be included in technical data furnished hereunder without the written permission of the copyright owner for the Government to use such copyrighted matter in the manner described above.

(3) The Contractor shall report to the Government (or higher-tier Contractor) promptly and in reasonable written detail each notice or claim of copyright infringement received by the Contractor with respect to any technical data delivered hereunder.

(d) Removal of Unauthorized Markings. Notwithstanding any provisions of this contract concerning inspection and acceptance, the Government may modify, remove, obliterate, or ignore any marking not authorized by the terms of this contract on any technical data furnished hereunder, if --

- (i) the Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the use of the marking, or
- (ii) the Contractor's response fails to substantiate his contention that the use of the marking is authorized, in which case the Government shall give written notice to the Contractor.

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

(f) Limitation on Charges for Data. The Contractor recognizes that the Government, or a foreign government with funds derived through the Military Assistance Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of technical data on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for data which the Government has a right to use and disclose to others, which is in the public domain, or which the Government has been given without restrictions upon its use and disclosure to others,

This policy does not apply to reasonable reproduction, handling, mailing and similar administrative costs incident to the furnishing of such data. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts, or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(g) Acquisition of Data from Subcontractors.

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

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

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

(h) The Contractor will promptly notify the Contracting Officer in writing of the intended use in the performance of the contract of any end-item, component, modification or process for which the Contractor intends to furnish data with limited rights; provided, that no such notice is required with respect to standard commercial items which are manufactured by more than one source of supply or with respect to data which the parties have specified in the Schedule would be furnished with limited rights.

1 CLAUSE 51 INTERCHANGEABILITY OF TERMS. (JUL. 1964)

Whenever used in this contract the term "Subject Data" is one and the same as "Technical Data."

AFPI 9-203.50(a)

CLAUSE 52 MARKING TECHNICAL DATA (JUL. 1964)

The Contractor agrees to mark the number of this contract, and the name and address of the Contractor or subcontractor who generated the data, on technical data delivered to the Government pursuant to any requirement of this contract.

AFPI 9-203.50(d)

CLAUSE 53 LIMITATION ON TECHNICAL DATA REQUIREMENTS (JUL. 1964)

All the technical data and reports requirements of this contract are set forth in the contractor data requirements list (DD Form 1423) attached thereto and made a part hereof and in the ASPR and AFPI clauses included herein. In case of difference or conflict between the data requirements list and the ASPR and AFPI clause, the latter shall govern. Nothing in any other documents or specifications made a part hereof shall be construed as altering such data and reports requirements in any way.

AFPI 9-203.51

PROGRESS PAYMENTS (Total Costs) (Jan. 1961)

Progress payments shall be made to the Contractor as work progresses, from time to time upon request, in amounts approved by the Contracting Officer upon the following terms and conditions:

(a) **Computation of Amounts.** (1) Unless a smaller amount is requested, each progress payment shall be (i)A* percent of the amount of the Contractor's total costs incurred under this contract plus (ii) the amount of progress payments to subcontractors as provided in (j) below; all less the sum of previous progress payments.

(2) The Contractor's total costs ((a)(1)(i)) shall be reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices. However, such costs shall not include (i) any costs incurred by subcontractors or suppliers, or (ii) any payments or amounts payable to subcontractors or suppliers, except for completed work (including partial deliveries) to which the Contractor has acquired title and except for amounts paid or payable under cost-reimbursement or time and material subcontracts for work to which the Contractor has acquired title, or (iii) costs ordinarily capitalized and subject to depreciation or amortization except for the property depreciated or amortized portion of such costs.

(3) The amount of unliquidated progress payments shall not exceed the lesser of (i)B* percent of the costs mentioned in (a)(1)(i), above, plus any unliquidated progress payments mentioned in item (a)(1)(ii) above, both of which are applicable only to the supplies and services not yet delivered and invoiced to and accepted by the Government, or (ii)C* percent of the total contract price of supplies and services not yet delivered and invoiced to and accepted by the Government, less unliquidated advance payments.

(4) The aggregate amount of progress payments made shall not exceedD* percent of the total contract price.

(5) If at any time a progress payment or the unliquidated progress payments exceed the amount permitted by this paragraph (a), the Contractor shall pay the amount of such excess to the Government upon demand.

(b) **Liquidation.** Except as provided in the clause entitled "Termination For Convenience of the Government," all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress, the amount of unliquidated progress payments, orE* percent of the gross amount invoiced, whichever is less. Repayment to the Government required by a retroactive price reduction will be made after recalculating liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly.

(c) **Reduction or Suspension.** The Contracting Officer may reduce or suspend progress payments, or liquidate them at a rate higher than the percentage stated in (b) above, or both, whenever he finds upon substantial evidence that the Contractor (i) has failed to comply with any material requirement of this contract, (ii) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, (iii) has allocated inventory to this contract substantially exceeding reasonable requirements, (iv) is delinquent in payment of the costs of performance of this contract in the ordinary course of business, (v) has so failed to make progress that the unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract, or (vi) is realizing less profit than the estimated profit used for establishing a liquidation percentage in paragraph (b), if that liquidation percentage is less than the percentage stated in paragraph (a) (1).

* (d) **Title.** Immediately, upon the date of this contract, title to all parts; materials; inventories; work in process; special tooling as defined in the clause of this contract entitled "Special Tooling"; nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids not included within the definition of special tooling in such "Special Tooling" clause; and drawings and technical data (to the extent delivery thereof to the Government is required by other provisions of this contract); theretofore acquired or produced by the Contractor and allocated or properly chargeable to this contract under sound and generally accepted accounting principles and practices shall forthwith vest in the Government; and title to all like property thereafter acquired or produced by the Contractor and allocated or properly chargeable to this contract as aforesaid shall forthwith vest in the Government upon said acquisition, production or allocation. Notwithstanding that title to property is in the Government through the operation of this clause, the handling and disposition of such property shall be determined by the applicable provisions of this contract such as: the Default clause and paragraph (h) of this clause; Termination for Convenience of the Government clause; and the Special Tooling clause. Current production scrap may be sold by the Contractor without approval of the Contracting Officer and the proceeds shall be credited against the costs of contract performance. With the consent of the Contracting Officer and on terms approved by him, the Contractor may acquire or dispose of property to which title is vested in the Government pursuant to this clause, and in that event, the costs allocable to the property so transferred from this contract shall be eliminated from the costs of contract performance and the Contractor shall repay to the Government (by cash or credit memorandum) an amount equal to the unliquidated progress payments allocable to the property so transferred. Upon completion of performance of all the obligations of the Contractor under this contract, including liquidation of all progress payments hereunder, title to all property (or the proceeds thereof) which had not been delivered to, and accepted by the Government under this contract or which had not been incorporated in supplies delivered to and accepted by the Government under this contract and to which title has vested in the Government under this clause shall vest in the Contractor. The provisions of this contract referring to or defining liability for Government-furnished property shall not apply to property to which the Government shall have acquired title solely by virtue of the provisions of this clause.

(e) **Risk of Loss.** Except to the extent that the Government shall have otherwise expressly assumed the risk of loss of property, title to which vests in the Government pursuant to this clause, in the event of the loss, theft or destruction of or damage to any such property before its delivery to and acceptance by the Government, the Contractor shall bear the risk of loss and shall repay the Government an amount equal to the unliquidated progress payments based on costs allocable to such lost, stolen, destroyed or damaged property.

(f) **Control of Costs and Property.** The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) **Reports—Access to Records.** Insofar as pertinent to the administration of this clause, the Contractor will (i) furnish promptly such relevant reports, certificates, financial statements, and other information as may be reasonably requested by the Contracting Officer, and (ii) give the Government reasonable opportunity to examine and verify his books, records and accounts.

(h) **Special Provisions Regarding Default.** If this contract is terminated pursuant to the clause entitled "Default," (i) the Contractor shall, upon demand, pay to the Government the amount of unliquidated progress payments and (ii) with respect to all property as to which the Government elects not to require delivery under the clause entitled "Default," title shall vest in the Contractor upon full liquidation of progress payments, and the Government shall be liable for no payment except as provided by the "Default" clause.

(i) **Reservations of Rights.** The rights and remedies of the Government provided in this clause shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this contract. No payment, or vesting of title pursuant to this clause, shall excuse the Contractor from performance of his obligations under this contract, nor constitute a waiver of any of the rights and remedies of the parties under this contract. No delay or failure of the Government in exercising any right, power or privilege under this clause shall affect any such right, power or privilege, nor shall any single or partial exercise thereof preclude or impair any further exercise thereof or the exercise of any other right, power or privilege of the Government.

(j) **Progress Payments to Subcontractors.** (1) The amount mentioned in item (a) (1)(ii) above shall be the sum of (i) all the progress payments made by the Contractor to his subcontractors and remaining unliquidated, and (ii) unpaid billings for progress payments to subcontractors which have been approved for current payment in the ordinary course of business, when under subcontracts which conform to (2) below.

(2) Subcontracts on which progress payments to subcontractors may be included in the base for progress payments pursuant to paragraph (a) of this clause are limited to those subcontracts in which there is expected to be a long "lead time," approximating six months or more between the beginning of work and the first delivery, containing subcontract progress payment provisions which (i) are substantially similar to and as favorable to the Government as this "Progress Payments" clause, no more favorable to the subcontractor than this clause is to the Contractor and on a basis of not more than 70 percent of total costs or 85 percent of direct labor and material costs (except that these percentages may be 75 percent of total costs or 90 percent of direct labor and material costs for those subcontractors which are small business concerns), and (ii) make all rights of the subcontractor with respect to all property to which the Government has title under the subcontract subordinate to the rights of the Government to require delivery of such property to it in the event of default by the Contractor under this contract or in the event of the bankruptcy or insolvency of the subcontractor.

(3) The Government agrees that any proceeds received by it from property to which it has acquired title by virtue of such provisions in any subcontract shall be applied to reduce the amount of unliquidated progress payments made by the Government to the Contractor under this contract. In the event the Contractor fully liquidates such progress payments made by the Government to him hereunder and there are progress payments to any subcontractors which are unliquidated, the Contractor shall be subrogated to all the Government's rights by virtue of such provisions in the subcontract or subcontracts involved as if all such rights had been thereupon assigned and transferred to the Contractor.

(4) The billings described in (j) (1)(ii) above shall be paid promptly by the Contractor in the ordinary course of business, not later than a reasonable time after payment of equivalent amounts by the Government to the Contractor.

(5) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to provide progress payments to those subcontractors which are small business concerns, in conformity with the standards for customary progress payments stated in paragraph 503 of Appendix E of the Armed Services Procurement Regulation, 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.

* Percentages for A, B, C, D and E above are specified in the Schedule hereof.

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA — PRICE ADJUSTMENTS (Mar. 1963)

(a) This clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of \$100,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The right to price reduction under this clause shall be limited to such price adjustments.

(b) If the Contracting Officer determines that any price, including profit, or fee, negotiated in connection with any price adjustment under this contract was increased by any significant sum because the Contractor or any subcontractor in connection with a subcontract covered by paragraph (d) below, furnished incomplete or inaccurate cost or pricing data or data not current as of the date of execution of the Contractor's Certificate of Current Cost or Pricing Data, then such price shall be reduced accordingly and the contract shall be modified in writing to reflect such adjustment.

(c) Failure to agree on a reduction shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(d) The Contractor agrees to insert the substance of paragraphs (a), (b), and (d) of this clause in each subcontract hereunder that exceeds \$100,000.

(a) This clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of \$100,000, unless the price adjustment is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(b) For purposes of verifying that cost or pricing data submitted in conjunction with a contract change or other modification involving an amount in excess of \$100,000 are accurate, complete, and current, the Contracting Officer, the Comptroller General of the United States, or any authorized representatives, shall—until the expiration of three years from the date of final payment under this contract—have the right to examine those books, records, documents and other supporting data which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein, which were available to the Contractor as of the date of execution of the Contractor's Certificate of Current Cost or Pricing Data.

(c) The Contractor agrees to insert the substance of this clause in all subcontracts hereunder in excess of \$100,000 so as to apply until three years after final payment under the subcontract and only when the change or other modification to the subcontract results from a change or other modification to the Government prime contract.

58**SUBCONTRACTOR COST AND PRICING DATA (Sep. 1964)**

AF-WP-O-NOV 64 40M

(a) The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances: (i) prior to award of any cost-reimbursement type, incentive, or price redeterminable subcontract; (ii) prior to the award of any subcontract the price of which is expected to exceed \$100,000; (iii) prior to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed \$100,000; except in the case of (ii) or (iii) where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(b) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the certificate by the Prime Contractor to the Government, that to the best of their knowledge and belief, the cost and pricing data submitted under (a) above is accurate, complete, and current as of the date of execution, which date shall be as close as possible to the date of agreement on the negotiated price of the subcontract.

(c) The Contractor shall insert the substance of this clause including this paragraph (c) in each of his cost-reimbursement type, price redeterminable, or incentive subcontracts hereunder, and in any other subcontract hereunder which exceeds \$100,000 except where the price thereof is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In each such excepted subcontract hereunder in excess of \$100,000, the Contractor shall insert the substance of the following clause:

SUBCONTRACTOR COST AND PRICING DATA—PRICE ADJUSTMENTS

(a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of \$100,000. The requirements of this clause shall be limited to such price adjustments.

(b) The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances: (i) prior to award of any cost-reimbursement type, incentive, or price redeterminable subcontract; (ii) prior to the award of any subcontract, the price of which is expected to exceed \$100,000; (iii) prior to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed \$100,000; except, in the case of (ii) or (iii), where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the certificate by the Prime Contractor to the Government, that to the best of their knowledge and belief the cost and pricing data submitted under (b) above is accurate, complete, and current as of the date of the execution, which date shall be as close as possible to the date of agreement on the negotiated price of the contract modification.

(d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract hereunder which exceeds \$100,000.