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Next 11 Page(s) In Document Denied

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III. ENVIRONMENTAL

Clean Air Act, Act of July 14, 1955, c. 360, 69 Stat. 322, as completely revised by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685, as amended 42 U.S.C. 7401 *et seq.*

Coastal Zone Management Act of 1972, and Amendments of 1976, Pub. L. 89-454, as added Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1280, as amended, Pub. L. 94-370, Jul. 26, 1976, 90 Stat. 1013, 16 U.S.C. 1451-1454.

Energy Policy and Conservation Act, Pub. L. 94-163, December 27, 1975, 89 Stat. 871, as amended 42 U.S.C. 6201 *et seq.*

Executive Order No. 11514, Mar. 5, 1970 (35 F.R. 4247; 3 CFR), "Protection and Enforcement of Environmental Quality", as amended by Ex. Ord. No. 11991, May 24, 1977 (42 F.R. 26967; 3 CFR).

Executive Order No. 11593, May 15, 1971 (36 F.R. 8921; 3 CFR), "Protection and Enforcement of the Cultural Environment."

Executive Order No. 11602, Jun. 29, 1971 (36 F.R. 12475; 3 CFR) as superseded by Ex. Ord. No. 11739, Sep. 12, 1973 (38 F.R. 25161; 3 CFR), "Administration of the Clean Air Act with respect to Federal Contracts, Grants, & Loans."

Executive Order No. 11988, May 24, 1977 (42 F.R. 26951; 3 CFR), "Floodplan Management."

Executive Order No. 11990, May 24, 1977 (42 F.R. 26961; 3 CFR), "Protection of Wetland."

Executive Order No. 12088, October 3, 1978 (43 F.R. 47707; 3 CFR), "Federal Compliance with Pollution Control Standards."

Toxic Substances Control Act, Pub. L. 94-469, Oct. 11, 1976, 90 Stat. 2003, 15 U.S.C. 2601-2629.

Federal Water Pollution Control Act ("Clean Water Act"), Act of June 30, 1948, c. 758, title V, as added, Pub. L. 92-500, Oct. 18, 1972, 86 Stat. 896, and amended by Pub. L. 95-217, Dec. 27, 1977, 91 Stat. 1566 ("Clean Water Act of 1977"), 33 U.S.C. 1251 *et seq.*

National Energy Conservation Policy Act, Pub. L. 95-619, Title I, Nov. 9, 1978, 92 Stat. 3206, 42 U.S.C. 8201 *et seq.*

Noise Control Act of 1972, Pub. L. 92-574, Oct. 27, 1972, 86 Stat. 1234, as amended 42 U.S.C. 4901-4918.

Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, Title I, Nov. 9, 1978, 92 Stat. 3259, 42 U.S.C. 8301 *et seq.*

Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617, Nov. 9, 1978, 92 Stat. 3119, 16 U.S.C. 2601 *et seq.*

Solar Energy Research Development and Demonstration Act of 1974, Pub. L. 93-773, Oct. 26, 1974, 88 Stat. 1431, as amended 42 U.S.C. 5551 *et seq.*

Solid Waste Disposal Act, Pub. L. 89-272, Title II, Oct. 20, 1965, 79 Stat. 997, as amended, reorganized, and expanded by 82 of Pub. L. 94-580, Oct. 21, 1976, 90 Stat. 2796, as amended 42 U.S.C. 6901 *et seq.*

IV. MISCELLANEOUS

Anti-Deficiency Act, Act of Feb. 27, 1906, c. 510, 34 Stat. 49, as amended 31 U.S.C. 605.

Assimilative Crimes Act, Act of Jun. 25, 1948, c. 645, 62 Stat. 686, 18 U.S.C. 13.

Authentication of Government Records, Act of Jun. 25, 1948, c. 464, 62 Stat. 946, 28 U.S.C. 1733.

Declaration of Taking Act, Act of Feb. 26, 1931, c. 307, 46 Stat. 1421, 40 U.S.C. 258a, 258e.

Executive Order No. 12044; Mar. 23, 1978 (43 F.R. 12661; 3 CFR), "Improving Government Regulations."

False Claims Act, Act of Mar. 3, 1863, c. 67, R.S. §3490, 12 Stat. 698, 31 U.S.C. 231-233, 235.

Federal Tort Claims Act, Act of Aug. 2, 1946, c. 753, Title IV, 60 Stat. 842 (codified in 28 U.S.C. §1291, 1346(b), 2671-2680 and other sections of title 28).

National Historic Preservation Act of 1966, Pub. L. 89-665, Oct. 15, 1968, 80 Stat. 915, as amended 16 U.S.C. 470 *et seq.*

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TABLE OF GENERAL AUTHORITIES

I. CONTRACT-LABOR.

Anti-Pinkerton Act, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 416, 5 U.S.C. 3108.

Buy American Act, Act of Mar. 3, 1933, c. 212, Title III, 47 Stat. 1520, as amended 41 U.S.C. 10a-10c.

Contract Work Hours and Safety Standards Act, Pub. L. 87-581, Title I, Aug. 13, 1962, 76 Stat. 357, as amended 40 U.S.C. 327-333.

Copeland AntiKickback Act, Act of Jun. 25, 1948, c. 645, 62 Stat. 740, 18 U.S.C. 874.

Davis-Bacon Act, Act of Mar. 3, 1931, c. 411, 46 Stat. 1494, as amended 40 U.S.C. 276a-5.

Executive Order No. 11755, Jan. 3, 1974, (39 F.R. 779; 3 CFR), "Prison Labor."

Executive Order No. 12092, Nov. 1, 1978 (43 F.R. 151375; 3 CFR), "Prohibition against Inflationary Procurement."

Miller Act, Act of August 24, 1935, c. 642, 49 Stat. 793, as amended 40 U.S.C. 270a, 270d.

Office of Federal Procurement Policy Act, Pub. L. 93-400, Aug. 24, 1974, 88 Stat. 795, 41 U.S.C. 402-412.

Randolph-Sheppard Vending Facilities Act, Pub. L. 93-516, Title II, 88 Stat. 1623, as amended 20 U.S.C. 107-107e.

Service Contract Act of 1965, Pub. L. 89-286, October 22, 1965, 79 Stat. 1034, as amended 41 U.S.C. 351-358.

Walsh-Healy Act, Act of June 30, 1936, c. 881, 49 Stat. 2036, as amended 41 U.S.C. 35-45.

II. PERSONNEL

Age Discrimination in Employment Act, Pub. L. 90-202, December 15, 1967, 81 Stat. 602, as amended 29 U.S.C. 621-634.

Civil Rights Act of 1964, Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended 42 U.S.C. 2000a (Public accommodations),
 —2000c (Public Education)
 —2000d (Federally Assisted Programs)
 —2000e (Equal Employment Opportunities)

Civil Service Reform Act of 1978, Pub. L. 95-454, Title II, October 13, 1978, 92 Stat. 1119, 5 U.S.C. 1101 et seq.
 —Labor Management and Employee Relations, Pub. L. 95-454, Title VII, October 13, 1978, 92 Stat. 1192, 5 U.S.C. 7101 et seq.

Equal Pay Act of 1963, Pub. L. 88-38, Jun. 10, 1963, 77 Stat. 56, 29 U.S.C. 206.

Executive Order No. 11141; Feb. 15, 1964 (29 F.R., 2477; 3 CFR), "Public Policy against Discrimination on the Basis of Age."

Executive Order No. 11246, Sep. 24, 1965 (30 F.R. 12319; 3 CFR), "Equal Employment Opportunity" as amended by:
 —Ex. Ord. No. 12086, Oct. 5, 1978 (43 F.R. 46501; 3 CFR), "Consolidation of Contract Compliance Functions for Equal Employment Opportunity."

Executive Order No. 11478, Aug. 8, 1969, (34 F.R. 12985; 3 CFR), "Equal Employment Opportunity in the Federal Government."

Hatch Political Activity Act, Act of Aug. 2, 1939, c. 410, 53 Stat. 1147, as amended (codified as positive law in 5 U.S.C. 7324 and other sections of title 5).

Military Personnel and Civilian Employees' Claims Act of 1964, Pub. L. 88-558, August 31, 1964, 78 Stat. 767, as amended 31 U.S.C. 240-243.

United States Consent to Garnishment and Similar Legal Process for Enforcement of Child Support, Alimony, Pub. L. 94-647, 88 Stat. 2357, as amended 42 U.S.C. 659.



SPECIFICATION AND BID FORMS

PROJECT

PROJECT CONTROL NO.

VOLUME

I OF II

GENERAL AND TECHNICAL REQUIREMENTS

BID OPENING TIME AND DATE

**2:00 P.M., LOCAL TIME AT
PLACE OF BID OPENING, ON**

SUBMIT BIDS TO

**General Services Administration
National Capital Region
Bid Room (WXB)
Room 1701 GSA Regional Office Bldg.
Seventh and D Streets, SW.
Washington, DC 20407**



CONTRACT NO.

GENERAL SERVICES ADMINISTRATION

GSA FORM 1118 (REV. 11-73)

<p>GENERAL SERVICES ADMINISTRATION PUBLIC BUILDINGS SERVICE</p> <p>TITLE PAGE—SPECIFICATION (CONSTRUCTION CONTRACT)</p>	<p>REFERENCE</p> <p>1. APPROP. NO. 2. Project Control No. 3. CONTRACT NO. 4. DATE OF INVITATION</p>
<p>2. PROJECT TITLE AND LOCATION</p> <p><input type="checkbox"/> CONSTRUCTION <input type="checkbox"/> REPAIR & IMPROVEMENT</p>	<p>6. BIDS TO BE OPENED</p> <p>Bids will be opened _____ P.M. local time at place of bid opening, on _____ 19 ____</p>
<p>7. ISSUING OFFICE (Address, room, and telephone No.)</p> <p>General Services Administration National Capital Region Public Buildings Service Contracts Division Room 2660 GSA Regional Office Building Seventh and D Streets, SW. Washington, DC 20407 PHONE: (202) 472-1490</p>	<p>BID DOCUMENTS</p> <p>The Specifications and Drawings, for which a refundable deposit has been made, shall be returned without marks, notes or mutilations, within 20 days after the Bid Opening date.</p>
<p>8. EXPLANATION TO BIDDERS:</p> <p>Requests for clarification or interpretations of bid documents must be submitted in "Sufficient Time" (which, for the purposes of this Invitation, shall mean not less than <u>10</u> calendar days prior to date for receipt of bids) and in accordance with requirements of Standard Form 22, Instructions to Bidders, and modifications thereto.</p>	<p>9. REQUESTS FOR CLARIFICATION OR INTERPRETATION OF BID DOCUMENTS PRIOR TO DATE OF BID OPENING SHOULD BE ADDRESSED TO:</p> <p>General Services Administration National Capital Region Public Buildings Service Construction Management Division Seventh and D Streets, SW. Washington, DC 20407</p> <p>ATTENTION:</p>

GSA FORM 1746 (Rev. 5-73)

TABLE OF CONTENTS

VOLUME I OF II

NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE

*NOTICE OF TOTAL SMALL BUSINESS-LABOR SURPLUS AREA SET-ASIDE

*NOTICE OF TOTAL LABOR SURPLUS AREA SET-ASIDE

*NOTICE OF SUBCONTRACTING OPPORTUNITIES

GENERAL PROVISIONS (STD. FORM 23-A - 1975 EDITION)

MODIFICATION OF GENERAL PROVISIONS

GENERAL CONDITIONS - SECTION 0010 (GSA Form 1139 - August 1979 Edition)

MODIFICATION OF GENERAL CONDITIONS

VALUE ENGINEERING INCENTIVE CLAUSE - SECTION 0015 (GSA Form 2653 - June 1974 Edition)

LABOR STANDARDS PROVISIONS (Standard Form 19-A - January 1979 Edition)

APPLICABLE MINIMUM HOURLY RATES OF WAGES - SECTION 0020

DIVISION 1 - GENERAL REQUIREMENTS

(1) SECTION 01000 - SPECIAL CONDITIONS

DIVISION -

() SECTION

() SECTION

DIVISION -

() SECTION

() SECTION

*When applicable only

DIVISION -

() SECTION _____

() SECTION _____

DIVISION -

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STANDARD DETAILS

VOLUME II OF II

BID FORMS

SPEC. WRITER:

INSERT THE FOLLOWING IN THIS LOCATION:

- (1) CERTIFICATION OF DRAWINGS**
- (2) CERTIFICATION OF STANDARD DETAILS**

NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE

- (a) Restriction. Bids or proposals under this procurement are solicited from small business concerns only and this procurement is to be awarded only to one or more small business concerns. This action is based on a determination by the Contracting Officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of Government procurement is placed with small business concerns. Bids or proposals received from firms which are not small business concerns shall be considered nonresponsive.
- (b) Definition. In connection with invitations to bid on a contract for construction, alteration or repair (including painting and decorating) of a building or buildings, a "small business concern" is a concern, including its affiliates, which (a) is independently owned and operated, (b) is not dominant in the field of operation in which it is bidding on Government contracts, and (c) had average annual receipts for the preceding three fiscal years not exceeding \$12,000,000, unless a different criterion is applicable as shown in Item 1, Standard Form 19-B.

* * * * *

NOTICE OF TOTAL SMALL BUSINESS-LABOR
SURPLUS AREA SET-ASIDE

- (a) General. Bids or proposals under this procurement are solicited from small business concerns that agree to perform as labor surplus area concerns. Awards will be made only to one or more small business concerns. This set-aside action is based on a determination by the Contracting Officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, or in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of Government procurement is placed with small business concerns. Bids or proposals received from others will be considered non-responsive.
- (b) Definition. A "small business concern" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (13 CFR 121.3-8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting quotations in his own name must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns: Provided, that this additional requirement does not apply in connection with construction or service contracts.

For the purpose of this procurement any concern will be classified as small business if its average annual sales or receipts for its preceding three fiscal years do not exceed _____.

(_____ if the concern is located in Alaska.)

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

(3) The term "Concern located in a labor surplus area" means a labor surplus area concern.

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

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

c) Agreement. The bidder or offeror agrees that, if awarded a contract as a labor surplus area concern, he will:

(1) Perform the contract, or cause it to be performed, substantially in areas classified as labor surplus areas on the date of the solicitation. However, if an area selected by the bidder or offeror is no longer classified as a labor surplus area at the time of performance, he is encouraged to select another area for performance which is classified at that time as a labor surplus area.

(2) Submit a report to the Contracting Officer 30 days after the award of the contract (if it exceeds \$10,000), or such longer time as prescribed by the Contracting Officer, which contains the following information.

REPORT OF PERFORMANCE IN LABOR SURPLUS AREAS

(a) Amount of the contract.....\$ _____

PERFORMANCE IN LABOR SURPLUS AREAS

- (b) By the prime contractor:
 - (1) (Identity of labor surplus area)¹.....\$ _____
 - (2) (Same).....\$ _____
 - (3) (Same).....\$ _____
 - (4) (Same).....\$ _____
- (c) By the subcontractors (first-tier):
 - (1) (Identity of labor surplus area)¹.....\$ _____
 - (2) (Same).....\$ _____
 - (3) (Same).....\$ _____
 - (4) (Same).....\$ _____
- (d) Total of (b) and (c).....\$ _____

* * * * *

¹Costs incurred by the Contractor on his first-tier subcontractors on account of production, manufacturing, or appropriate services performed in labor surplus areas.

GENERAL PROVISIONS

(Construction Contract)

1. DEFINITIONS

(a) The term "head of the agency" or "Secretary" as used herein 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" as used herein means the person executing this contract on behalf of the Government and includes a duly appointed successor or authorized representative.

2. SPECIFICATIONS AND DRAWINGS

The Contractor shall keep on the work a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy either in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at his own risk and expense. The Contracting Officer shall furnish from time to time such detail drawings and other information as he may consider necessary, unless otherwise provided.

3. CHANGES

(a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the contract, including but not limited to changes:

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) In the Government-furnished facilities, equipment, materials, services, or site; or
- (4) Directing acceleration in the performance of the work.

(b) Any other written order or an oral order (which terms as used in this paragraph (b) shall include direction, instruction, interpretation, or determination) from the Contracting Officer, which causes any such change, shall be treated as a change order under this clause, provided that the Contractor gives the Contracting Officer written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a change order.

(c) Except as herein provided, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any order, an equitable adjustment shall be made and the contract modified in writing accordingly: *Provided, however,* That except for claims based on defective specifications, no claim for any change under (b) above shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as therein required: *And provided further,* That in the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective specifications.

(e) If the Contractor intends to assert a claim for an equitable adjustment under this clause, he must, within 30 days after receipt of a written change order under (a) above or the furnishing of a written notice under (b) above, submit to the Contracting Officer a written statement setting forth the general nature and monetary extent of such claim,

unless this period is extended by the Government. The statement of claim hereunder may be included in the notice under (b) above.

(f) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

4. DIFFERING SITE CONDITIONS

(a) The Contractor shall promptly, and before such conditions are disturbed, notify the Contracting Officer in writing of: (1) Subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract. The Contracting Officer shall promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the contract modified in writing accordingly.

(b) No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in (a) above; provided, however, the time prescribed therefor may be extended by the Government.

(c) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

5. TERMINATION FOR DEFAULT—DAMAGES FOR DELAY—TIME EXTENSIONS

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, the Government may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event the Government may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the Government resulting from his refusal or failure to complete the work within the specified time.

(b) If fixed and agreed liquidated damages are provided in the contract and if the Government so terminates the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Government in completing the work.

(c) If fixed and agreed liquidated damages are provided in the contract and if the Government does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

(d) The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

- (1) The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers; and
- (2) The Contractor, within 10 days from the beginning of any such delay (unless the Contracting Officer grants a further period of time before the date of final payment

under the contract), notifies the Contracting Officer in writing of the causes of delay.

The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in Clause 6 of these General Provisions.

(e) If, after notice of termination of the Contractor's right to proceed 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 delay 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. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the Government, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(f) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(g) As used in Paragraph (d) (1) of this clause, the term "subcontractors or suppliers" means subcontractors or suppliers at any tier.

6. DISPUTES

(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 head of the agency involved. The decision of the head of the agency or his duly authorized representative for the determination of such appeals shall be final and conclusive. This provision shall not be pleaded in any suit involving a question of fact arising under this contract as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged: *Provided, however*, That any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is 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 questions of law in connection with decisions provided for in paragraph (a) above. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

7. PAYMENTS TO CONTRACTOR

(a) The Government will pay the contract price as herein-after provided.

(b) The Government will make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. If requested by the Contracting Officer, the Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Contracting Officer, at his discretion, may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration (1) if such consideration is specifically authorized by the contract and (2) if the Contractor furnishes satisfactory evidence that he has acquired title to such material and that it will be utilized on the work covered by this contract.

(c) In making such progress payments, there shall be retained 10 percent of the estimated amount until final com-

pletion and acceptance of the contract work. However, if the Contracting Officer, at any time after 50 percent of the work has been completed, finds that satisfactory progress is being made, he may authorize payment in full of each progress payment for work performed beyond the 50 percent stage of completion. Also, whenever the work is substantially complete, the Contracting Officer, if he considers the amount retained to be in excess of the amount adequate for the protection of the Government, at his discretion, may release to the Contractor all or a portion of such excess amount. Furthermore, on completion and acceptance of each separate building, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made therefor without retention of a percentage.

(d) All material and work covered by progress payments made shall thereupon become the sole property of the Government, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work or as waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(e) Upon completion and acceptance of all work, the amount due the Contractor under this contract shall be paid upon the presentation of a properly executed voucher and after the Contractor shall have furnished the Government with a release of all claims against the Government arising by virtue of this contract, other than claims in stated amounts as may be specifically excepted by the Contractor from the operation of the release. If the Contractor's claim to amounts payable under the contract has been assigned under the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), a release may also be required of the assignee.

8. ASSIGNMENT OF CLAIMS

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating \$1,000 or more, claims for moneys due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payments to an assignee of any moneys due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or setoff. (The preceding sentence applies only if this contract is made in time of war or national emergency as defined in said Act; and is with the Department of Defense, the General Services Administration, the Energy Research and Development Administration, the National Aeronautics and Space Administration, the Federal Aviation Administration, or any other department or agency of the United States designated by the President pursuant to Clause 4 of the proviso of section 1 of the Assignment of Claims Act of 1940, as amended by the Act of May 15, 1951, 65 Stat. 41.)

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

9. MATERIAL AND WORKMANSHIP

(a) Unless otherwise specifically provided in this contract, all equipment, material, and articles incorporated in the work covered by this contract are to be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in this contract, reference to any equipment, material, article, or patented process, by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and the Contractor may, at his option, use any equipment, material, article, or process, which, in the judgment of the Contracting Officer, is equal to that named. The Contractor shall furnish to the Contracting Officer for his approval the name of the manufacturer, the model number,

and other identifying data and information respecting the performance, capacity, nature, and rating of the machinery and mechanical and other equipment which the Contractor contemplates incorporating in the work. When required by this contract or when called for by the Contracting Officer, the Contractor shall furnish the Contracting Officer for approval full information concerning the material or articles which he contemplates incorporating in the work. When so directed, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles installed or used without required approval shall be at the risk of subsequent rejection.

(b) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may, in writing, require the Contractor to remove from the work any employee the Contracting Officer deems incompetent, careless or otherwise objectionable.

10. INSPECTION AND ACCEPTANCE

(a) All work (which term includes but is not restricted to materials, workmanship, and manufacture and fabrication of components) shall be subject to inspection and test by the Government at all reasonable times and at all places prior to acceptance. Any such inspection and test is for the sole benefit of the Government and shall not relieve the Contractor of the responsibility of providing quality control measures to assure that the work strictly complies with the contract requirements. No inspection or test by the Government shall be construed as constituting or implying acceptance. Inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the Government after acceptance of the completed work under the terms of paragraph (f) of this clause, except as hereinabove provided.

(b) The Contractor shall, without charge, replace any material or correct any workmanship found by the Government not to conform to the contract requirements, unless in the public interest the Government consents to accept such material or workmanship with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(c) If the Contractor does not promptly replace rejected material or correct rejected workmanship, the Government (1) may, by contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed in accordance with the clause of this contract entitled "Termination for Default—Damages for Delay—Time Extensions."

(d) The Contractor shall furnish promptly, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspection and test as may be required by the Contracting Officer. All inspection and test by the Government shall be performed in such manner as not unnecessarily to delay the work. Special, full size, and performance tests shall be performed as described in this contract. The Government reserves the right to charge to the Contractor any additional cost of inspection or test when material or workmanship is not ready at the time specified by the Contractor for inspection or test or when reinspection or retest is necessitated by prior rejection.

(e) Should it be considered necessary or advisable by the Government at any time before acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, the Contractor shall, on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect, due to the fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, an equitable adjustment shall be made in the contract price to compensate the Contractor for the additional services involved in such examination and reconstruction and, if completion of the work has been delayed thereby, he shall, in addition, be granted a suitable extension of time.

(f) Unless otherwise provided in this contract, acceptance by the Government shall be made as promptly as practicable after completion and inspection of all work required by this contract, or that portion of the work that the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Government's rights under any warranty or guarantee.

11. SUPERINTENDENCE BY CONTRACTOR

The Contractor, at all times during performance and until the work is completed and accepted, shall give his personal superintendence to the work or have on the work a competent superintendent, satisfactory to the Contracting Officer and with authority to act for the Contractor.

12. PERMITS AND RESPONSIBILITIES

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal, State, and municipal laws, codes, and regulations, in connection with the prosecution of the work. He shall be similarly responsible for all damages to persons or property that occur as a result of his fault or negligence. He shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. He shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction thereof which theretofore may have been accepted.

13. CONDITIONS AFFECTING THE WORK

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the work without additional expense to the Government. The Government assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this contract, unless such understanding or representations by the Government are expressly stated in the contract.

14. OTHER CONTRACTS

The Government may undertake or award other contracts for additional work, and the Contractor shall fully cooperate with such other contractors and Government employees and carefully fit his own work to such additional work as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Government employees.

15. SHOP DRAWINGS

(a) The term "shop drawings" includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract.

(b) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate his approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate his approval or disapproval of the shop drawings and if not approved as submitted shall indicate his reasons therefor. Any work done prior to such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (c) below.

(c) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation(s), he shall issue an appropriate contract modification, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.

16. USE AND POSSESSION PRIOR TO COMPLETION

The Government shall have the right to take possession of or use any completed or partially completed part of the work. Prior to such possession or use, the Contracting Officer shall furnish the Contractor an itemized list of work remaining to be performed or corrected on such portions of the project as are to be possessed or used by the Government, provided that failure to list any item of work shall not relieve the Contractor of responsibility for compliance with the terms of the

contract. Such possession or use shall not be deemed an acceptance of any work under the contract. While the Government has such possession or use, the Contractor, notwithstanding the provisions of the clause of this contract entitled "Permits and Responsibilities," shall be relieved of the responsibility for the loss or damage to the work resulting from the Government's possession or use. If such prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment in the contract price or the time of completion will be made and the contract shall be modified in writing accordingly.

17. SUSPENSION OF WORK

(a) The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the Government.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Contracting Officer in the administration of this contract, or by his failure to act within the time specified in this contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or (2) for which an equitable adjustment is provided for or excluded under any other provision of this contract.

(c) No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the contract.

18. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

If not physically incorporated elsewhere, the clause in Section 1-3.703 of the Federal Procurement Regulations, or paragraph 7-602.29(a) of the Armed Services Procurement Regulation, as applicable, in effect on the date of this contract is hereby incorporated by reference as fully as if set forth at length herein.

19. PAYMENT OF INTEREST ON CONTRACTORS' CLAIMS

(a) If an appeal is filed by the Contractor from a final decision of the Contracting Officer under the Disputes clause of this contract, denying a claim arising under the contract, simple interest on the amount of the claim finally determined owed by the Government shall be payable to the Contractor. Such interest shall be at the rate determined by the Secretary of the Treasury pursuant to Public Law 92-41, 85 Stat. 97, from the date the Contractor furnishes to the Contracting Officer his written appeal under the Disputes clause of this contract, to the date of (1) a final judgment by a court of competent jurisdiction, or (2) mailing to the Contractor of a supplemental agreement for execution either confirming completed negotiations between the parties or carrying out a decision of a board of contract appeals.

(b) Notwithstanding (a) above, (1) interest shall be applied not from the date payment was due, if such date is later than the filing of appeal; and (2) interest shall not be paid for any period of time that the Contracting Officer determines the Contractor has unduly delayed in pursuing his remedies before a board of contract appeals or a court of competent jurisdiction.

20. PRICING OF ADJUSTMENTS

When costs are a factor in any determination of a contract price adjustment pursuant to the Changes clause or any other provision of this contract, such costs shall be in accordance with the contract cost principles and procedures in Part 1-15 of the Federal Procurement Regulations, (41 CFR 1-15) or Section XV of the Armed Services Procurement Regulation, as applicable, which are in effect on the date of this contract.

21. PATENT INDEMNITY

Except as otherwise provided, the Contractor agrees to indemnify the Government and its officers, agents, and em-

ployees against liability, including costs and expenses, for infringement upon any Letters Patent of the United States (except Letters Patent issued upon an application which is now or may hereafter be, for reasons of national security, ordered by the Government to be kept secret or otherwise withheld from issue) arising out of the performance of this contract or out of the use or disposal by or for the account of the Government of supplies furnished or construction work performed hereunder.

22. ADDITIONAL BOND SECURITY

If any surety upon any bond furnished in connection with this contract becomes unacceptable to the Government, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the Government, or if the contract price is increased to such an extent that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government and of persons supplying labor or materials in the prosecution of the work contemplated by this contract.

23. EXAMINATION OF RECORDS BY COMPTROLLER GENERAL

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

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

(c) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under the subcontract or such lesser time specified in either Appendix M of the Armed Services Procurement Regulation or the Federal Procurement Regulations Part 1-20, as appropriate, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding \$10,000 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

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

24. BUY AMERICAN

(a) *Agreement.* In accordance with the Buy American Act (41 U.S.C. 10a-10d), and Executive Order 10582, December 17, 1954 (3 CFR, 1954-58 Comp., p. 230), as amended by Executive Order 11051, September 27, 1962 (3 CFR, 1959-63 Comp., p. 635), the Contractor agrees that only domestic construction material will be used (by the Contractor, subcontractors, materialmen, and suppliers) in the performance of this contract, except for nondomestic material listed in the contract.

(b) *Domestic construction material.* "Construction material" means any article, material, or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a "domestic construction material" if it has been mined or produced in the United States. A manufactured construction material is a "domestic construction material" if it has been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. "Component" means any article, material, or supply directly incorporated in a construction material.

(c) *Domestic component.* A component shall be considered to have been "mined, produced, or manufactured in the

United States" (regardless of its source in fact) if the article, material, or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

25. EQUAL OPPORTUNITY

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

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

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

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

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

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, 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.

26. COVENANT AGAINST CONTINGENT FEES

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.

27. OFFICIALS NOT TO BENEFIT

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.

28. CONVICT LABOR

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 except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082(c)(2)) and Executive Order 11755, December 29, 1973.

29. UTILIZATION OF SMALL BUSINESS CONCERNS

(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.

30. UTILIZATION OF MINORITY BUSINESS ENTERPRISES

(a) It is the policy of the Government that minority business enterprises shall have the maximum practicable opportunity to participate in the performance of Government contracts.

(b) The Contractor agrees to use his best efforts to carry out this policy in the award of his subcontracts to the fullest extent consistent with the efficient performance of this contract. As used in this contract, the term "minority business enterprise" means a business, at least 50 percent of which is owned by minority group members or, in case of publicly-owned businesses, at least 51 percent of the stock of which is owned by minority group members. For the purposes of this definition, minority group members are Negroes, Spanish-speaking American persons, American-Orientals, American-Indians, American-Eskimos, and American-Aleuts. Contractors may rely on written representations by subcontractors regarding their status as minority business enterprises in lieu of an independent investigation.

31. FEDERAL, STATE, AND LOCAL TAXES

(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*, That the Contractor if requested by the Contracting Officer, 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 Contract-

ing 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 pursuant to paragraph b above will be made under this contract unless the aggregate amount thereof is or may reasonably be expected to be over \$100.00.

(d) As used in paragraph b above, the term "contract date" means the date set for the bid opening, or if this is a negotiated contract, the date of this contract. 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 request of the

Contractor, without further liability, agrees, except as otherwise provided in this contract, to furnish evidence appropriate to establish exemption from any tax which the Contractor warrants in writing was excluded from the contract price. In addition, the Contracting Officer may furnish evidence to establish exemption from any tax that may, pursuant to this Clause, give rise to either an increase or decrease in the contract price. Except as otherwise provided in this contract, evidence appropriate to establish exemption from duties will be furnished only at the discretion of the Contracting Officer.

(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.

GENERAL SERVICES ADMINISTRATION
WASHINGTON, DC 20405

MOD-SF 23-A
June 1980
Supersedes:
MOD-SF 23-A
March 1980

MODIFICATION OF GENERAL PROVISIONS
(STANDARD FORM 23-A - APRIL 1975 EDITION)

INSTRUCTIONS FOR USE

1. Clause 29A, UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS shall be included in all contracts over \$10,000.
2. Clause 29B, SMALL BUSINESS AND SMALL DISADVANTAGED SUBCONTRACTING PLAN (ADVERTISED) shall be included in all solicitations for formally advertised construction contracts or amendments or modifications thereto, except for total small-business set-asides entered into through the special method of procurement known as Small Business Restricted Advertising, which (a) offer subcontracting opportunities, (b) are expected to exceed \$1,000,000, and (c) are required to include the clause entitled Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals. (Omission of the clause under (a) must be supported by a written determination of the contracting officer that the proposed contract, amendment, or modification offers no subcontracting possibilities.)
3. Clause 30A, SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (NEGOTIATED) shall be included in all solicitations for negotiated construction contracts or negotiated amendments or modifications (including contracts, amendments, and modifications placed on a sole source basis), except for total small-business set-asides which (a) are expected to exceed \$1,000,000, and (b) are required to include the clause entitled Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals.
4. Clause 30B, INCENTIVE SUBCONTRACTING PROGRAM FOR SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS (NEGOTIATED) may be used in negotiated contracts for which a subcontracting plan is required.
5. Complete Clause 35, NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246) by:
 - a. Inserting the goals and timetables for females in the space provided in paragraph (2);
 - b. If the contract is to be performed in a geographic area for which the Department of Labor has issued goals for minority hiring, inserting the applicable goals in paragraph (2); and
 - c. Inserting the geographic designation of the covered area in the space provided in paragraph (4). The covered area, to be inserted if there are goals for females only, is the Standard Metropolitan Statistical Area or, if there is no SMSA, the Economic Area as established by the Department of Commerce (see Department of Labor's Policy Directive 77-65, September 29, 1977). However, whenever the contract is to be performed at a location where minority hiring goals are prescribed, the covered area for minority hiring will also be the covered area for women.

An initial list of timetables and goals for women as well as the geographical areas with goals for minorities has been published in the Federal Register, Volume 43, No. 68, Friday, April 7, 1978, at pages 14900 through 14905 and subsequently modified in the Federal Register, Volume 43, No. 88, Friday, May 5, 1978. Changes, including additions, will be published from time to time in the Federal Register by the Department of Labor.

MOD-57 23-A
June 1980

6. Clauses 40, 41, 42 and 43 shall be included in every advertised lump sum contract estimated to exceed \$100,000. For proposals on a negotiated lump sum contract or cost-plus-a-fixed-fee contract where the sum or the fee is expected to exceed \$100,000 assistance should be requested of the GSA Legal Staff.
7. Delete Clauses 44, 45 and 46 if:
 - (1) The contract is to be awarded by the advertised procurement method, or
 - (2) The contract is to be awarded by the negotiated procurement method and
 - (a) is expected to be under \$100,000, or
 - (b) is a Small Business Set Aside.
8. Clause 47., PREFERENCE FOR U.S. FLAG AIR CARRIERS shall be included in the contract whenever international air transportation of personnel and cargo will be required in the performance of the contract. Whenever international air transportation of personnel and cargo is not required, this clause shall be deleted.
9. Clause 48, UTILIZATION OF WOMEN-OWNED BUSINESS CONCERNS (OVER \$10,000) shall be included in all contracts expected to exceed \$10,000.
10. Clause 49, WOMEN-OWNED BUSINESS CONCERNS SUBCONTRACTING PROGRAM (OVER \$500,000 OR \$1,000,000 FOR CONSTRUCTION OF ANY PUBLIC FACILITY) shall be included in all contracts, amendments or modifications expected to exceed \$1,000,000 which require the inclusion of the clause entitled Utilization of Women-Owned Business Concerns (Over \$10,000).
11. A vertical line in the margin indicates a change or an addition. The vertical line in the margin should be deleted before including this modification in the contract specification.

GENERAL SERVICES ADMINISTRATION
WASHINGTON, DC 20405

MOD-SF 23-A
June 1980
Supersedes:
MOD-SF 23-A
March 1980

MODIFICATION OF GENERAL PROVISIONS
(STANDARD FORM 23-A - APRIL 1975 Edition)

1. Clause 4, DIFFERING SITE CONDITIONS, is supplemented by the provisions of FPR 1-18.117, which read as follows:

"ADMINISTRATION OF THE DIFFERING SITE CONDITIONS CLAUSE"

(a) Nature of the clause. The Differing Site Conditions clause in § 1-7.602-4 provides for an equitable adjustment to the contractor or the Government which reflects the increases or decreases in a contractor's cost of and time for performance that result from a differing site condition (as that term is defined in the clause) encountered by the contractor. However, an equitable adjustment is only available to the contractor if he gives the contracting officer a prompt notice in writing before disturbing the conditions (or secures an extension of the time for giving such notice) and asserts the claim before final payment under the contract.

(b) Notice of differing site conditions. When a contractor believes that a differing site condition has been encountered, the clause requires that a prompt written notice be given to the contracting officer so that the condition of the site can be investigated, the facts can be ascertained, and a determination can be made regarding the presence or absence of a differing site condition. The prompt notice requirement enables the Government to examine the condition of the site and, if necessary, (1) To modify the contract so that it will reflect the increased or decreased cost of and time for performance or (2) to develop records concerning any increase or decrease in the cost of and time for performance. Cost and time information is essential for an independent Government judgment regarding an equitable adjustment of the contract. A failure to give a timely notice could seriously prejudice the Government's ability to determine the extent to which the contractor or the Government is entitled to an equitable adjustment. Since the existence of a differing site condition is not always recognizable immediately, the clause provides that the contracting officer may extend the time for the submission of the required notice. The purpose of the authority to extend the time for the notice is to ensure that contractors are not deprived of the remedy provided by the clause because of an inadvertent failure to give the required notice. However, this authority to extend the time for the notice does not entitle a contractor to a time extension beyond the time when he knew, or reasonably should have known, of the existence of a differing site condition. If the contractor gives the required notice at the time he knew, or reasonably should have known, of the existence of the differing site condition, he is entitled to an equitable adjustment which reflects the increased costs and time required for performance that result from the differing site condition. If the contractor fails to submit the required notice to the contracting officer by the time he knew, or reasonably should have known, of the existence of a differing site condition, he is not entitled to an equitable adjustment which reflects the increased costs and time required for performance prior to the time when he gave the notice or the time when the Government had actual notice of the existence of a differing site condition.

(c) Processing of claims.

(1) Since the time required by the contractor to ascertain the amount of his claim varies with the circumstances, no specific time for the submission of a claim is specified in the clause or in this section. The clause simply states that no claim will be allowed if asserted after final payment. However, contractors should not unnecessarily postpone the submission of claims for equitable adjustments.

(2) To prevent contractors from unnecessarily postponing the submission of claims, contracting officers shall take the following actions.

(i) When a contractor gives a prompt written notice of a differing site condition but has not submitted a claim for an equitable adjustment, although there has been a reasonable opportunity to ascertain the amount of the adjustment

MOD-SF 23-A
June 1980

involved, the contracting officer shall send a written request to the contractor (by registered or certified mail) that he submit within a specified period of time either a written claim or a request for an extension of the time for submission of the claim together with the reasons why the additional time is needed.

(ii) In the event that the contractor fails to submit a claim within the time specified in the request, or an approved time extension, the contracting officer shall make a unilateral determination of the amount of the equitable adjustment which the contractor is entitled to and shall notify the contractor of the determination. Such unilateral determinations may not be appealed under the Disputes clause of the contract."

2. Clause 6, DISPUTES, is deleted and the following substituted in lieu thereof:

"6. DISPUTES

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

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

(c)(i) As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this contract.

(ii) A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim for the purposes of the Act. However, where such submission is subsequently not acted upon in a reasonable time, or disputed either as to liability or amount, it may be converted to a claim pursuant to the Act.

(iii) A claim by the contractor shall be made in writing and submitted to the contracting officer for decision. A claim by the Government against the contractor shall be subject to a decision by the Contracting Officer.

(d) For contractor claims of more than \$50,000, the contractor shall submit with the claim a certification that the claim is made in good faith; the supporting data are accurate and complete to the best of the contractor's knowledge and belief; and the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable. The certification shall be executed by the contractor if an individual. When the contractor is not an individual, the certification shall be executed by a senior company official in charge at the contractor's plant or location involved, or by an officer or general partner of the contractor having overall responsibility for the conduct of the contractor's affairs.

(e) For contractor claims of \$50,000 or less, the Contracting Officer must render a decision within 60 days. For contractor claims in excess of \$50,000, the Contracting Officer must decide the claim within 60 days or notify the contractor of the date when the decision will be made.

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

(g) The authority of the Contracting Officer under the Act does not extend to claims or disputes which by statute or regulation other agencies are expressly authorized to decide.

(h) Interest on the amount found due on a contractor claim shall be paid from the date the claim is received by the Contracting Officer until the date of payment.

(i) Except as the parties may otherwise agree, pending final resolution of a claim by the contractor arising under the contract, the contractor shall proceed diligently with the performance of the contract in accordance with the contracting officer's decision."

3. Clause 7 is deleted in its entirety and the following is substituted in lieu thereof:

"7. PAYMENTS TO CONTRACTOR

(a) The Government will pay the contract price as hereinafter provided.

MOD-SF 23-A
June 1980

(b) The Government will make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. If requested by the Contracting Officer, the Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Contracting Officer, at his discretion, may authorize material delivered on the site and preparatory work done to be taken into consideration. Materials delivered to the contractor at locations other than the site may also be taken into consideration (1) if such consideration is specifically authorized by the contract and (2) if the Contractor furnishes satisfactory evidence that he has acquired title to such material and that it will be utilized on the work covered by this contract.

(c) In making such progress payments, there shall be retained 10 percent of the estimated amount until final completion and acceptance of the contract work. However, if the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, he may authorize such payment to be made in full without retention of a percentage. Also, whenever the work is substantially complete, The Contracting Officer shall retain an amount he considers adequate for protection of the Government, and, at his discretion, may release to the Contractor all or a portion of any excess amount. Furthermore, on completion and acceptance of each separate building, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made therefor without retention of a percentage.

(d) All material and work covered by progress payments made shall thereupon become the sole property of the Government, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work, or as waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(e) If Miller Act (40 U.S.C. 270a-270e) performance or payment bonds are required under this contract, the Government shall pay to the Contractor the total premiums paid by the Contractor to obtain the bonds. This payment shall be paid at one time to the Contractor together with the first progress payment otherwise due after the Contractor has (1) furnished the bonds (including coinsurance and reinsurance agreements, when applicable), (2) furnished evidence of full payment to the surety company, and (3) submitted a request for such payment. The payment by the Government of the bond premiums to the Contractor shall not be made as increments of the individual progress payments and shall not be in addition to the contract price.

(f) Upon completion and acceptance of all work, the amount due the Contractor under this contract shall be paid upon the presentation of a properly executed voucher and after the Contractor has furnished the Government with a release of all claims against the Government, arising by virtue of this contract, other than claims in stated amounts as may be specifically excepted by the Contractor from the operation of the release. If the Contractor's claim to amounts payable under the contract has been assigned under the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), a release may also be required of the assignee."

4. Clause 19, PAYMENT OF INTEREST ON CONTRACTORS CLAIMS, is deleted in its entirety.

5. Clause 25, EQUAL OPPORTUNITY, is deleted in its entirety and the following substituted in lieu thereof:

*25. EQUAL OPPORTUNITY

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

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

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to

MOD-SF 23-A
June 1980

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, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, 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 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, 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 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor 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, the Contractor may request the United States to enter into such litigation to protect the interests of the United States."

6. Clause 28, CONVICT LABOR, is deleted in its entirety and the following substituted in lieu thereof:

"28. CONVICT LABOR

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

7. Clause 29., UTILIZATION OF SMALL BUSINESS CONCERNS and Clause 30., UTILIZATION OF MINORITY BUSINESS ENTERPRISES are deleted in their entirety and the following substituted in lieu thereof:

MOD-SF 23-A
June 1980

"29A. UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS

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

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

(c)(1) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

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

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

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

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

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

"29B. SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (ADVERTISED)

(1) This provision does not apply to small business concerns.

(2) The term "subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

(3) The bidder acknowledges that it is aware of the subcontracting plan requirement in this provision; and if selected for award, will submit within the time specified by the contracting officer a subcontracting plan that will afford the maximum practicable opportunity to participate in the performance of the contract to small and small disadvantaged concerns, and will include:

(a) Percentage goals (expressed in terms of percentage of total planned subcontracting dollars) for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; (For the purposes of the subcontracting plan, the contractor may include all purchases which contribute to the performance of the contract, including a proportionate share of products, services, etc., whose costs are normally allocated as indirect or overhead costs.)

As part of its establishment of percentage goals the apparent successful bidder shall also include in its subcontracting plan:

(1) A statement of: (a) total dollars planned to be subcontracted; (b) total dollars planned to be subcontracted to small business; and (c) total dollars planned to be subcontracted to small disadvantaged business.

MOD-SF 23-A
June 1980

(2) A description of the principal product and service areas to be subcontracted and an identification of those areas where it is planned to use (i) small business subcontractors, and (ii) small disadvantaged business subcontractors.

(b) The name of an individual within the employ of the bidder who will administer the bidder's subcontracting program and a description of the duties of such individual;

(c) A description of the efforts the bidder will take to assure that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals will have an equitable opportunity to complete for subcontracts;

(d) Assurances that the bidder will include the clause entitled Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals in all subcontracts which offer further subcontracting opportunities and to require all subcontractors (except small business concerns) which receive subcontracts in excess of \$500,000, or in the case of a contract for the construction of any public facility, \$1,000,000, to adopt and comply with a plan similar to the plan agreed to by the bidder;

(e) Assurances that the bidder will submit such periodic reports and cooperate in any studies or surveys as may be required by the contracting agency or the Small Business Administration in order to determine the extent of compliance by the bidder with the subcontracting plan; and

(f) A recitation of the types of records the successful bidder will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in the plan, including the establishment of source lists of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; and efforts to identify and award subcontracts to such small business concerns. The records shall include at least the following (these records may be maintained on a plant-wide or company wide basis unless otherwise indicated):

(1) Small and disadvantaged business source lists, guides and other data identifying small and small disadvantaged business vendors.

(2) Organizations contacted for small and disadvantaged business sources.

(3) On a contract-by-contract basis, records on all subcontract solicitations over \$100,000, indicating on each solicitation (a) whether small business was solicited, and if not why not; (b) whether small disadvantaged business was solicited, and if not why not; and (c) reasons for the failure of solicited small business or small disadvantaged business to receive the subcontract award.

(4) Records to support other outreach efforts:

- . Contacts with minority and small business trade associations,
- . Contacts with business development organizations,
- . Attendance at small and minority business procurement conferences and trade fairs.

(5) Records to support internal activities to guide and encourage buyers:

- . Workshops, seminars, training programs,
- . Monitoring activities to evaluate compliance.

(6) On a contract-by-contract basis, records to support award data submitted to the Government to include name and address of subcontractor.

(4) The bidder understands that:

(a) It agrees to carry out the government's policy to provide the maximum practicable opportunity for small business concerns and small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate in the performance of the contract, consistent with its efficient performance.

MOD-SF 23-A
June 1980

(b) If it does not submit a subcontracting plan within the time limits prescribed by the contracting agency, it will be ineligible to be awarded the contract.

(c) Prior compliance of the bidder with other such subcontracting plans under previous contracts will be considered by the contracting officer in determining the responsibility of the offeror for award of the contract.

(d) It is the bidders responsibility to develop a subcontracting plan with respect to both small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals and that each such aspect of the plan will be judged independently of the other.

(5) The failure of any contractor or subcontractor to comply in good faith with (a) the clause entitled Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals or (b) the terms of any subcontracting plan required by this Small Business and Small Disadvantaged Business Subcontracting Plan (Advertised) provision, will be a material breach of the contract or subcontract.

(6) Commercial Products. If a commercial product (defined below) is offered the required subcontracting plan may relate to the company's or division's production generally (both for commercial and noncommercial products) rather than solely to the item being procured under the government contract. In such cases, the contractor shall be required to submit one company-wide, annual plan to be reviewed for approval by the first agency with which it enters into a prime contract (which requires a subcontracting plan) during the fiscal year, or by another agency satisfactory to the contracting officer. The approved plan will remain in effect for the company's entire fiscal year for all of the company's or division's commercial products.

The term "commercial products" means products in regular production sold in substantial quantities to the general public and/or industry at established market or catalog prices. A product which, in the opinion of the contracting officer, differs only insignificantly from the contractor's commercial product may be regarded for the purpose of this clause as a commercial product."

"30A. SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN
(NEGOTIATED)

(1) This provision does not apply to small business concerns.

(2) The term "subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

(3) The offeror acknowledges that it is aware of the subcontracting plan requirements in this provision; and if it is the apparent successful offeror, and if the contract offers subcontracting possibilities, agrees to negotiate a plan which includes:

(a) Percentage goals (expressed in terms of percentage of total planned subcontracting dollars) for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; (For the purposes of the subcontracting plan, the contractor may include all purchases which contribute to the performance of the contract, including a proportionate share of products, services, etc., whose costs are normally allocated as indirect or overhead costs.)

As part of its establishment of percentage goals the apparent successful offeror shall also include in its subcontracting plan:

(1) A statement of: (a) total dollars planned to be subcontracted; (b) total dollars planned to be subcontracted to small business; and (c) total dollars planned to be subcontracted to small disadvantaged business.

(2) A description of the principal product and service areas to be subcontracted and an identification of those areas where it is planned to use (i) small business subcontractors, and (ii) small disadvantaged business subcontractors.

MOD-SF 23-A
June 1980

(3) A statement of the method used in developing proposed subcontracting goals for (i) small business, (ii) small disadvantaged business concerns (e.g., did the offeror use for subcontract solicitation purposes company source lists, the small business and disadvantaged small business source identification system provided by the Small Business Administration's Procurement Automated Source System, the National Minority Purchasing Council Vendor Information Service, the Office of Minority Business Data Center in the Department of Commerce, and the facilities of local small business and minority associations?).

(4) If the offeror includes indirect and overhead costs as an element in establishing the goals in the subcontracting plan, the method used in determining the proportionate share of indirect and overhead costs incurred with (i) small business, and (ii) small disadvantaged business subcontractors shall be explained.

(b) The name of an individual within the employ of the offeror who will administer the subcontracting program of the offeror and a description of the duties of such individual;

(c) A description of the efforts the offeror will take to assure that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals will have an equitable opportunity to compete for subcontracts;

(d) Assurances that the offeror will include the clause entitled Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals in all subcontracts which offer further subcontracting opportunities and to require all subcontractors (except small business concerns) which receive subcontracts in excess of \$500,000, or in the case of a contract for the construction of any public facility, \$1,000,000, to adopt and comply with a plan similar to the plan agreed to by the offeror. Such assurances shall describe the offeror's procedures for the review, approval, and monitoring for compliance with such plans;

(e) Assurances that the offeror will submit such periodic reports and cooperate in any studies or surveys as may be required by the contracting agency or the Small Business Administration in order to determine the extent of compliance by the offeror with subcontracting plan; and

(f) A recitation of the types of records the offeror will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in the plan, including the establishment of source lists of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; and efforts to identify and award subcontracts to such small business concerns. The records shall include at least the following (these records may be maintained on a plant-wide or company-wide basis unless otherwise indicated):

(1) Small and disadvantaged business source lists, guides and other data identifying small and small disadvantaged business vendors.

(2) Organizations contacted for small and disadvantaged business sources.

(3) On a contract-by-contract basis, records on all subcontract solicitations over \$100,000, indicating on each solicitation (a) whether small business was solicited, and if not why not; (b) whether small disadvantaged business was solicited, and if not why not; and (c) reasons for the failure of solicited small business or small disadvantaged business to receive the subcontract award.

(4) Records to support other outreach efforts:

- . Contacts with minority and small business trade associations,
- . Contacts with business development organizations;
- . Attendance at small and minority business procurement conferences and trade fairs;

(5) Records to support internal activities to guide and encourage buyers:

- . Workshops, seminars, training programs, etc.
- . Monitoring activities to evaluate compliance.

MOD-SF 23-A
June 1980

(6) On a contract-by-contract basis, records to support award data submitted to the Government to include name and address of subcontractor.

(4) The offeror understands that:

(a) No contract will be awarded unless and until an acceptable plan is negotiated with the contracting officer which plan will be incorporated into the contract, as a material part thereof.

(b) An acceptable plan must, in the determination of the contracting officer, provide the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged persons to participate in the performance of the contract.

(c) If a subcontracting plan acceptable to the contracting officer is not negotiated within the time limits prescribed by the contracting activity and such failure arises out of causes within the control and with the fault or negligence of the offeror, the offeror shall be ineligible for an award. The contracting officer shall notify the contractor in writing of his reasons for determining a subcontracting plan to be unacceptable. Such notice shall be given early enough in the negotiation process to allow the contractor to modify the plan within the time limits prescribed.

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

(e) It is the offeror's responsibility to develop a satisfactory subcontracting plan with respect to both small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals and that each such aspect of the offeror's plan will be judged independent of the other.

(f) The offeror will submit, as required by the contracting officer, subcontracting reports in accordance with the instructions thereon, and as further directed by the contracting officer. Subcontractors will also submit these reports to the government's contracting officer or as otherwise directed, with a copy to the prime contractor's designated small and disadvantaged business liaison.

(5) The failure of any contractor or subcontractor to comply in good faith with (a) the clause entitled Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals or (b) an approved plan required by this Small Business and Small Disadvantaged Business Subcontracting Plan (Negotiated) provision, will be a material breach of such contract or subcontract.

(6) Commercial Products. If a commercial product (defined below) is offered the required subcontracting plan may relate to the company's production generally (both for commercial and noncommercial products) rather than solely to the item being procured under the government contract. In such cases, the contractor shall be required to submit one company-wide, annual plan to be reviewed for approval by the first agency with which it enters into a prime contract (which requires a subcontracting plan) during the fiscal year, or by another agency satisfactory to the contracting officer. The approved plan will remain in effect for the company's entire fiscal year for all of the company's or division's commercial products.

The term "commercial products" means products in regular production sold in substantial quantities to the general public and/or industry at established market or catalog prices. A product which, in the opinion of the contracting officer, differs only insignificantly from the contractor's commercial product may be regarded for the purpose of this clause as a commercial product."

"30B. INCENTIVE SUBCONTRACTING PROGRAM FOR SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS (NEGOTIATED)

(1) The Contractor has established, in its subcontracting plan, the following goals for awards to small business and small disadvantaged business concerns:

MOD-SF 23-A
June 1980

(i) _____¹ percent of the total planned subcontract amount of \$ _____¹ to small business concerns, and

(ii) _____² percent of the total planned subcontract amount of \$ _____¹ to small business concerns owned and controlled by socially and economically disadvantaged individuals.

(2) To the extent that the Contractor exceeds such subcontract goals in the performance of this contract, it will receive _____³ percent (not to exceed 10 percent) of the dollar amount of such excesses, unless the Contracting Officer determines that such excess was not due to efforts by the Contractor, i.e., subcontractor costs in excess of those contractually agreed upon or where the actual subcontract amount exceeds that estimated in the subcontract plan; or planned subcontracts which were not disclosed in the subcontract plan during contract negotiation.

(3) If the contract is a cost plus fixed fee type, the total of the fixed fee and the incentive payments made pursuant to this clause is subject to the limitations set forth in FPR 1-3.405-5(c)(2) and DAR 3-405.6(c)(2)."

8. The following clauses are added to the General Provisions:

"32. DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

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

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

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

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

(d) The reports required by paragraph (b) of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the contractor has more than one hiring location in a State, with the central office of that State employment service. Such reports

¹ Identified elsewhere in the contract.

² Identified elsewhere in the contract.

³ Exact percentage to be inserted into the contract document.

MOD-SF 23-A
June 1980

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

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

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

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

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

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

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

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

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

MOD-S7 23-A
June 1980

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

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

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

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

33. EMPLOYMENT OF THE HANDICAPPED

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

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

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

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

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

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

MOD-SF 23-A
June 1980

34. CLEAN AIR AND WATER

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

(a) The Contractor agrees as follows:

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

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

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

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

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

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

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

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

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

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

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

MOD-SF 23-A
June 1980

9. The provisions of the Clause 25 entitled "EQUAL OPPORTUNITY" of the General Provisions, Standard Form 23-A, are supplemented by the following Clauses 35 and 36:

***35. NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)**

(1) The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" as set forth herein.

(2) The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables	Goals for minority participation for each trade	Goals for female participation in each trade
From 11/3/80 until further notice----- All trades	28.0	6.9

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

(3) The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor, employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

(4) As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is the Metropolitan Washington, D.C. area for minorities and females.

MOD-SF 23-A
June 1980

36. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

(1) As used in these specifications:

(a) "Covered area" means the geographical area described in the solicitation from which this contract resulted;

(b) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

(c) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

(d) "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

(3) If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

(4) The Contractor shall implement the specific affirmative action standards provided in paragraphs (7)(a) through (p) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

(5) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

MOD-SF 23-A
June 1980

(6) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(7) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

(a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

(b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.

(c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

(d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under (7)(b) above.

(f) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

(g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

MOD-SF 23-A
June 1980

(h) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

(i) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.

(k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

(l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

(m) Ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

(n) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(p) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

(8) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations ((7)(a) through (p)). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under (7)(a) through (p) of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(9) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is

MOD-SF 23-A
June 1980

employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is under-utilized).

(10) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(11) The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

(12) The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

(13) The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (7) of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

(14) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

(15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program)."

10. The following clauses are added to the General Provisions:

"37. CERTIFICATION - WAGE AND PRICE STANDARDS (1979 JAN)

(This clause is applicable if the award, an order under an existing contract or a supplemental agreement for new work is in excess of \$5 million, or the expected cumulative value of orders (when the contract is of the indefinite delivery type) is in excess of \$5 million.)

(a) The Contractor hereby certifies that, as of the date of this action, he is in compliance with the Wage and Price Standards issued by the Council on Wage and Price Stability (6 CFR 705, Appendix, and Part 706).

(b) If it is later determined after notice and opportunity to be heard, that the Contractor was willfully not in compliance with such standards as of the date of this certification, then this contract may be terminated in accordance with the provisions of the Termination for Default Clause.

(c) Should the Government determine that termination for default would not be in the public interest, the Contractor agrees that he will accept an equitable reduction of the contract price or cost allowance and profit or fee, as appropriate under the circumstances.

MOD-SF 23-A
June 1980

(d) The Contractor shall require a Certification - Wage and Price Standards limited to (a) above, as a condition of award of any first tier subcontract which exceeds \$5 million. The Contractor further agrees that should any price adjustment in subcontract prices result from the operation of this provision as to subcontracts, he will advise the Contracting Officer and an equitable adjustment of the contract price will be made. The operation of this provision in any subcontract shall not excuse the Contractor from performance of this contract in accordance with its terms and conditions. Any waiver or relaxation of the certification requirements with respect to such first tier subcontractors can only be made by the agency head involved.

38. NON-USE OF FOREIGN-FLAG VESSELS ENGAGED IN CUBAN OR NORTH VIETNAM TRADE

(a) If, after the date of award, any shipment of supplies to be delivered under this contract, or any shipment of material to be incorporated in such supplies, or any shipment of articles, materials, or supplies to be incorporated in a construction project, will require ocean transportation to or from the United States, the Contractor shall not use any foreign-flag vessel which the Maritime Administration has listed in the Federal Register as having called at a Cuban port on or after January 1, 1963, or a North Vietnam port on or after January 25, 1966, unless an exception has been made by the Secretary of Commerce.

(b) For the purposes of this clause, the term "United States" includes the fifty States, Puerto Rico, possessions of the United States, and the District of Columbia.

(c) The Contractor shall include the substance of this clause, including this paragraph (c), in each subcontract or purchase order hereunder which may involve ocean transportation to or from the United States.

39. USE OF U.S. FLAG COMMERCIAL VESSELS

(a) The Cargo Preference Act of 1954 (Public Law 664, August 26, 1954, 68 Stat. 832, 46 U.S.C. 1241(5)), requires that Federal departments or agencies shall transport at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) of equipment, materials, or commodities which may be transported on ocean vessels on privately owned United States flag commercial vessels. Such transportation shall be accomplished whenever:

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

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

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

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

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

(b) The contractor agrees as follows:

(1) To utilize privately owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved whenever shipping any equipment, material, or commodities under the conditions set forth in (a) above pursuant to this contract to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels.

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

MOD-SF 23-A
June 1980

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

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

* 40. CERTIFICATE OF CURRENT COST OR PRICING DATA

40.1 In connection with the negotiation of any change or other modification of this contract which involves aggregate increases and/or decreases in costs, plus applicable profits (as explained in FPR 1-3.807-3), in excess of \$100,000, and the change is not 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 contractor shall furnish cost or pricing data and, as soon as practicable after agreement is reached on price, shall furnish a certification in the following form:

This is to certify that, to the best of my knowledge and belief, cost or pricing data¹ submitted in writing, or specifically identified in writing if actual submission of the data is impracticable (see §1-3.807-3(h)(2)), to the Contracting Officer or his representative in support of _____³ are accurate, complete, and current as of _____⁴ (Date)

Firm _____

Name _____⁴

(Date of Execution)

¹For definition of "cost or pricing data," see FPR §1-3.807-3.

²Describe the proposal, quotation, request for price adjustments, or other submission involved, giving appropriate identifying number (e.g., RFP No. _____).

³This date shall be the date when the price negotiations were concluded and the contract price was agreed to. The responsibility of the contractor is not limited by the personal knowledge of the contractor's negotiator if the contractor had information reasonably available (see §1-3.807-5(a)) at the time of agreement, showing that the negotiated price is not based on accurate, complete, and current data.

⁴This date should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed upon.

* 41. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA-PRICE ADJUSTMENTS

41.1 This clause shall become operative only with respect to any modification of this contract which involves aggregate increases and/or decreases in costs plus applicable profits in excess of \$100,000 unless the modification is priced on the basis of 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 is limited to defects in data relating to such modification.

41.2 If any price, including profit, or fee, negotiated in connection with any price adjustment under this contract was increased by any significant sums because:

MOD-SF 23-A
June 1980

41.2.1 The Contractor furnished cost or pricing data which was not accurate, complete and current as certified in the Contractor's Certificate of Current Cost or Pricing Data;

41.2.2 A subcontractor, pursuant to the clause of this contract entitled "Subcontractor Cost or Pricing Data" or "Subcontractor Cost or Pricing Data-Price adjustments" or any subcontract clause therein required, furnished cost or pricing data which was not accurate, complete and current as certified in the subcontractor's Certificate of Current Cost or Pricing Data;

41.2.3 A subcontractor or prospective subcontractor furnished cost or pricing data which was required to be accurate, complete and current and to be submitted to support a subcontract cost estimate furnished by the Contractor but which was not accurate, complete and current as of the date certified in the Contractor's Certificate of Current Cost or Pricing Data; or

41.2.4 The Contractor or a subcontractor or prospective subcontractor furnished any data, not within 41.2.1, 41.2.2 or 41.2.3 above, which was not accurate, as submitted; the price shall be reduced accordingly and the contract shall be modified in writing as may be necessary to reflect such reduction. However, any reduction in the contract price due to defective subcontract data of a prospective subcontractor, when the subcontract was not subsequently awarded to such subcontractor, will be limited to the amount (plus applicable overhead and profit markup) by which the actual subcontract, or actual cost to the Contractor if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor: Provided, the actual subcontract price was not affected by defective cost or pricing data.

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

41.3 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.

* 42. AUDIT

42.1 General. The Contracting Officer or his representatives shall have the audit and inspection rights described in the applicable paragraphs 42.2, 42.3 and 42.4, below.

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

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

MOD-SF 23-A
June 1980

42.4 Availability. The materials described in 42.2 and 42.3 above, shall be made available at the office of the Contractor, at all reasonable times, for inspection, audit or reproduction, until the expiration of 3 years from the date of final payment under this contract or such lesser time specified in Part 1-20 of the Federal Procurement Regulations (41 CFR Part 1-20) and for such longer period, if any, as is required by applicable statute, or by other clauses of this contract, or by (1) and (2) below:

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

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

42.5 The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph 42.5, in all subcontracts hereunder except altered as necessary for proper identification of the contracting parties and the Contracting Officer under the Government prime contract.

* 43. SUBCONTRACTOR COST OR PRICING DATA - PRICE ADJUSTMENTS

43.1 Paragraphs 43.2 and 43.3 of this clause shall become operative only with respect to any modification made pursuant to one or more provisions of this contract which involves aggregate increases and/or decreases in cost plus applicable profits expected to exceed \$100,000. The requirements of this clause shall be limited to such modifications.

43.2 The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances:

(1) Prior to the award of any subcontract the amount of which is expected to exceed \$100,000 when entered into;

(2) Prior to the pricing of any subcontract modification which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed \$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.

43.3 The Contractor shall require subcontracts to certify that to the best of their knowledge and belief the cost or pricing data submitted under 43.2 above is accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

43.4 The Contractor shall insert the substance of this clause including the paragraph 43.4 in each subcontract which exceeds \$100,000.

* 44. COST ACCOUNTING STANDARDS - NONDEFENSE CONTRACT

(NOTE: This clause is applicable unless (1) the contract price is under \$100,000; (2) the contract price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public, or set by law or regulation; (3) the contractor is a small business concern; (4) the contract is to be executed and performed in its entirety outside the United States, its territories and possessions; (5) the contractor is an educational institution and is subject to Subpart 1-15.3 of the Federal Procurement Regulations; (6) the contractor is a State or local government and is subject to Subpart 1-15.7 of the Federal Procurement Regulations; (7) the contractor is a hospital; (8) this is a firm fixed-price contract awarded to the lowest offeror in compliance with the solicitation, after issuance of an identical solicitation to all competing firms, price was the only consideration in selecting the contractor from among the competing firms solicited, at least two offers were received from firms not associated with each other, and the profit center, division, or similar organizational unit of the company to which this contract was awarded was not, on the date of the award, performing a negotiated national defense contract or subcontract under which the contractor is subject to cost accounting standards; (9) the contract price is under \$500,000, is the first negotiated nondefense contract or subcontract received by

MOD-SF 23-A
June 1980

the contractor business unit, and the contractor or business unit is not performing any other contract or subcontract under which it is subject to cost accounting standards; (10) each negotiated national defense contract or subcontract which the contractor business unit is performing is under \$10,000,000; and (11) the aggregate of national defense contracts and/or subcontracts awarded to the contractor during the preceding cost accounting period and under which the contractor is subject to cost accounting standards, is less than \$10,000,000 and constituted less than 10 percent of the contractor business unit's sales for the preceding period. This clause shall be included in each subcontract except when any of the foregoing exemptions are applicable.

(a) Unless the Administrator of General Services has prescribed rules or regulations exempting the Contractor or this contract from standards, rules, and regulations promulgated by the Cost Accounting Standards Board, the Contractor, in connection with this contract, shall:

(1) Follow consistently the cost accounting practices established or disclosed as required by regulations of the Cost Accounting Standards Board and administered under the Administration of Cost Accounting Standards clause. If any change in disclosed practices is made for purposes of any contract or subcontract subject to those disclosure requirements, the change must be applied in a consistent manner to this contract.

(2) Comply with all cost accounting standards which the Contractor is required to comply with by reason of concurrent performance of any contract or subcontract subject to the Cost Accounting Standards clause (4 CFR 331) and administered under the Administration of Cost Accounting Standards clause. The Contractor also shall comply with any cost accounting standard which hereafter becomes applicable to such a contract or subcontract. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract. Compliance shall continue until the Contractor completes performance of work under this contract.

(3) Agree to an equitable adjustment (as provided in the Changes clause of this contract, if any) if the contract cost is affected by a change which, pursuant to (2) above, the Contractor is required to make to his established cost accounting practices whether such practices are covered by a Disclosure Statement or not.

(4) Negotiate with the Contracting Officer to determine the terms and conditions under which a change to either a disclosed cost accounting practice or an established cost accounting practice, other than a change under (a)(3) above or (a)(6) below may be made. A change to a practice may be proposed by either the Government or the Contractor, provided, however, that no agreement may be made under this provision that will increase costs paid by the United States.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if it or a subcontractor fails to comply with the applicable Cost Accounting Standards or to follow any practice disclosed or established pursuant to subparagraph (a)(1) or (a)(2) above and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the rate determined by the Secretary of the Treasury pursuant to Public Law 92-41, (50 U.S.C. App. 1215(b)(2)), or 7 percent per annum, whichever is less, from time the payment by the United States was made to the time the adjustment is effected.

(6) Negotiate an equitable adjustment (as provided in the Changes clause of this contract, if any) when the parties agree to a change to either a disclosed cost accounting practice or an established cost accounting practice.

(b) The Contractor shall permit any authorized representatives of the head of the agency, of the Cost Accounting Standards Board, or of the Comptroller General of the United States to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause until the expiration of 3 years after final payment under this contract or such lesser time specified in the Federal Procurement Regulations (FPR) part 1-20.

(c) Unless a subcontract or Subcontractor is exempt under rules or regulations prescribed by the Administrator of General Services, the Contractor: (1) shall include the substance of this clause including this paragraph (c) in all negotiated subcontracts under this contract with subcontractors that are currently

MOD-SF 23-A
June 1980

performing a national defense contract or subcontract that contains the clause entitled to Cost Accounting Standards and that are currently required to accept the clause in applicable national defense awards, and (2) shall include the substance of the Consistency of Cost Accounting Practices - Nondefense Contract clause set forth § 1-3.1204-2(b) of the FPR in negotiated subcontracts under this contract with all other subcontractors. The Contractor may elect to use the substance of the solicitation notice set forth in § 1-3.1203-2(b) of the FPR in his determination of applicability cost accounting standards to subcontracts.

(d) The terms defined in § 331.20 of Part 331 of Title 4, Code of Federal Regulations, shall have the same meaning herein. As there defined, "negotiated subcontract" means "any subcontract except a firm fixed-price subcontract made by a contractor or subcontractor after receiving offers from at least two firms not associated with each other or such contractor or subcontractor, providing (1) the solicitation to all competing firms is identical, (2) price is the only consideration in selecting the subcontractor from among the competing firms solicited, and (3) the lowest offer received in compliance with the solicitation from among those solicited is accepted."

(e) The administration of this clause by the Government shall be accomplished in conjunction with the administration of the Contractor's national defense contracts and subcontracts subject to rules and regulations of the Cost Accounting Standards Board, pursuant to the Administration of Cost Accounting Standards clause. For the purposes of the Administration of Cost Accounting Standards clause contained in this contract, references to the Cost Accounting Standards clause shall be deemed to include this Cost Accounting Standards-Non-defense Contract clause and reference to the Disclosure and Consistency of Cost Accounting Practices clause shall be deemed to include the Consistency of Cost Accounting Practices-Nondefense Contract clause.

45. CONSISTENCY OF COST ACCOUNTING PRACTICES - NONDEFENSE CONTRACT

(NOTE: This clause is applicable, if Clause 44 is inapplicable, unless any of exemptions (1) through (10) set forth in the Note in Clause 44 is or are applicable. This clause shall be included in each subcontract except when any of the foregoing exemptions are applicable.)

(a) Unless the Administrator of General Services has prescribed rules or regulations exempting the Contractor or this contract from standards, rules, or regulations promulgated by the Cost Accounting Standards Board, the Contractor, in connection with this contract shall:

(1) Comply with the requirements of 4 CFR Parts 401, Consistency in Estimating, Accumulating and Reporting Costs, and 402, Consistency in Allocating Costs Incurred for the Same Purpose, in effect on the date of award of this contract and administered under the Administration of Cost Accounting Standards clause. Compliance shall continue until the Contractor completes performance of work under this contract.

(2) Follow consistently the cost accounting practices established or disclosed as required by regulations of the Cost Accounting Standards Board and administered under the Administration of Cost Accounting Standards clause. If any change is made in established practice or in disclosed practices for purposes of any contract or subcontract subject to those disclosure requirements, the change must be applied in a consistent manner to this contract. A change to these practices may be proposed, however, by either the Government or the Contractor and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract. No agreement may be made under this provision that will increase costs paid by the United States.

(3) Agree to an adjustment of the contract price or cost allowance, as appropriate, if it or a subcontractor fails to comply with the applicable Cost Accounting Standards or to follow any practice disclosed or established pursuant to subparagraph (a)(2) above and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the rate determined by the Secretary of the Treasury pursuant to Public Law 92-41 (50 U.S.C. App. 1215(b)(2)), or 7 percent per annum, whichever is less, from the time the payment by the United States was made to the time the adjustment is effected.

MOD-SF 23-A
June 1980

(4) Negotiate an equitable adjustment (as provided in the Changes clause of this contract, if any) when the parties agree to either a disclosed cost accounting practice or an established cost accounting practice.

(b) The Contractor shall permit any authorized representatives of the head of the agency, of the Cost Accounting Standards Board, or of the Comptroller General of the United States to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause until the expiration of 3 years after final payment under this contract or such lesser time specified in the Federal Procurement Regulations (FPR) Part 1-20.

(c) Unless a subcontract or Subcontractor is exempt under rules or regulations prescribed by the Administrator of General Services, the Contractor shall include the substance of this clause including this paragraph (c) in all negotiated subcontracts under this contract except that it shall include the substance of the Cost Accounting Standards - Nondefense Contract clause set forth in § 1-3.1204-2(a) of the FPR in negotiated subcontracts under this contract with subcontractors that are currently performing a national defense contract or subcontract that contains the clause entitled Cost Accounting Standards and that are currently required to accept that clause in applicable negotiated national defense contracts. The Contractor may elect to use the substance of the solicitation notice set forth in § 1-3.1203-2(b) of the FPR in his determination of applicability of cost accounting standards to subcontracts.

(d) The terms defined in 4 CFR 331.20 and 332.20 shall have the same meaning herein. As there defined, "negotiated subcontract" means "any subcontract except a firm fixed-price subcontract made by a contractor or subcontractor after receiving offers from at least two firms not associated with each other or such contractor or subcontractor, providing (1) the solicitation to all competing firms is identical, (2) price is the only consideration in selecting the subcontractor from among the competing firms solicited, and (3) the lowest offer received in compliance with the solicitation from among those solicited is accepted."

(e) The administration of this clause by the Government shall be accomplished in conjunction with the administration of the Contractor's national defense contracts and subcontracts, if any, subject to rules and regulations of the Cost Accounting Standards Board, pursuant to the Administration of Cost Accounting Standards clause. For the purposes of the Administration of Cost Accounting Standards clause contained in this contract, references to the Disclosure and Consistency of Cost Accounting Practices clause shall be deemed to include this Consistency of Cost Accounting Practices - Nondefense Contract clauses and references to the Cost Accounting Standards clauses shall be deemed to include the Cost Accounting Standards - Nondefense Contract clause.

46. ADMINISTRATION OF COST ACCOUNTING STANDARDS

(NOTE: This clause is inapplicable if the contract is exempt from both Clauses 44 and 45. This clause shall be included in each subcontract except when the subcontract is exempt from both Clauses 44 and 45.)

For the purpose of administering Cost Accounting Standards requirements under this contract, the Contractor shall:

(a) Submit to the cognizant Contracting Officer a description of the accounting change and the general dollar magnitude of the change to reflect the sum of all increases and the sum of all decreases for all contracts containing the Cost Accounting Standards clause or the Disclosure and Consistency of Cost Accounting Practices clause:

(1) For any change in cost accounting practices required to comply with a new cost accounting standard in accordance with paragraph (a)(3) and (a)(4)(A) of the Cost Accounting Standards clause within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring such change;

(2) For any change to cost accounting practices proposed in accordance with paragraph (a)(4)(B) or (a)(4)(c) of the Cost Accounting Standards clause or with paragraph (a)(3) or (a)(5) of the Disclosure and Consistency of Cost Accounting Practices clause not less than 60 days (or such other date as may be mutually agreed to) prior to the effective date of the Proposed change; or

MOD-SF 23-A
June 1980

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

(b) Submit a cost impact proposal in the form and manner specified by the cognizant Contracting Officer within sixty (60) days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to (a)(1), (2), or (3), above.

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

(d) When the subcontract is subject to either the Cost Accounting Standards clause of the Disclosure and Consistency of Cost Accounting Practices clause so state in the body of the subcontract and/or in the letter of award. Self-deleting clauses shall not be used.

(e) Include the substance of this clause in all negotiated subcontracts containing either the Cost Accounting Standards clause or the Disclosure and Consistency of Cost Accounting Practices clause. In addition, include a provision in these subcontracts which will require such subcontractors, within 30 days after receipt of award (or such other date as may be mutually agreed to) to submit the following information to the Contract Administration Office cognizant of the subcontractor's facility.

(1) Subcontractor's name and subcontract number.

(2) Dollar amount and date of award.

(3) Name of Contractor making the award.

(4) A statement as to whether the subcontractor has made or proposes to make any changes to accounting practices that affect prime contracts or subcontracts containing the Cost Accounting Standards clause or Disclosure and Consistency of Cost Accounting Practices clause unless such changes have already been reported. If award of the subcontract results in making a cost accounting standard(s) effective for the first time, this shall also be reported.

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

(g) In the event an adjustment is required to be made to any subcontract hereunder, notify the Contracting Officer in writing of such adjustment and agree to an adjustment in the price or estimated cost and fee of this contract, as appropriate, based upon the adjustment established under the subcontract. Such notice shall be given within 30 days after receipt of the proposed subcontract adjustment, and shall include a proposal for adjustment to such higher tier subcontract or prime contract as appropriate.

(h) When either the Cost Accounting Standards clause or the Disclosure and Consistency of Cost Accounting Practices clause and this clause are included in subcontracts, the term "Contracting Officer" shall be suitably altered to identify the purchaser.

47. PREFERENCE FOR U.S. FLAG AIR CARRIERS

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

MOD-SF 23-A
June 1980

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

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

CERTIFICATION OF UNAVAILABILITY OF U.S. FLAG AIR CARRIERS

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

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

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

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

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

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

48. UTILIZATION OF WOMEN-OWNED BUSINESS CONCERNS [OVER \$10,000]

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

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

49. WOMEN-OWNED BUSINESS CONCERNS SUBCONTRACTING PROGRAM (OVER \$500,000 OR \$1,000,000 FOR CONSTRUCTION OF ANY PUBLIC FACILITY)

(a) The Contractor agrees to establish and conduct a program which will enable women-owned business concerns to be considered fairly as subcontractors and suppliers under this contract. In this connection, the contractor shall:

(1) Designate a liaison officer who will administer the Contractor's "Women-Owned Business Concerns Program."

(2) Provide adequate and timely consideration of the potentialities of known women-owned business concerns in all "make-or-buy" decisions.

(3) Develop a list of qualified bidders that are women-owned businesses and assure that known women-owned business concerns have an equitable opportunity to compete for subcontracts, particularly by making information on forthcoming opportunities available, by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of women-owned business concerns.

MOD-SF 23-A
June 1980

(4) Maintain records showing (i) procedures which have been adopted to comply with the policies set forth in this clause, including the establishment of a source list of women-owned business concerns; (ii) awards to women-owned businesses on the source list by minority and non-minority women-owned business concerns; and (iii) specific efforts to identify and award contracts to women-owned business concerns.

(5) Include the "Utilization of Women-Owned Business Concerns" clause in subcontracts which offer substantial subcontracting opportunities.

(6) Cooperate in any studies and surveys of the Contractor's women-owned business concerns procedures and practices that the Contracting Officer may from time-to-time conduct.

(7) Submit periodic reports of subcontracting to women-owned business concerns with respect to the records referred to in subparagraph (4) above, in such form and manner and at such time (not more often than quarterly) as the Contracting Officer may prescribe.

(b) The Contractor further agrees to insert, in any subcontract hereunder which may exceed \$500,000 or \$1,000,000 in the case of contracts for the construction of any public facility and which offers substantial subcontracting possibilities, provisions which shall conform substantially to the language of this clause, including this paragraph (b), and to notify the Contracting Officer of the names of such subcontractors.

(c) The Contractor further agrees to require written certification by its subcontractors that they are bona fide women-owned and controlled business concerns in accordance with the definition of a women-owned business concern as set forth in the Utilization Clause 1(b) above at the time of submission of bids or proposals."

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PUBLIC BUILDINGS SERVICE

SECTION 00100

GENERAL CONDITIONS

1. DEFINITIONS

1.1 The terms "Administration" and "Service" as used in this contract shall mean the General Services Administration (GSA) and the Public Buildings Service (PBS), respectively.

2. AUTHORITIES AND LIMITATIONS

2.1 All work shall be performed under the general direction of the Contracting Officer, who alone shall have the power to bind the Government and to exercise the rights, responsibilities, authorities and functions vested in him by the contract documents, except that he shall have the right to designate authorized representatives to act for him. Wherever any provision in this contract specifies an individual (such as, but not limited to, Construction Engineer, Resident Engineer, Inspector or Custodian) or organization, whether Governmental or private, to perform any act on behalf of or in the interests of the Government, that individual or organization shall be deemed to be the Contracting Officer's authorized representative under this contract but only to the extent so specified. The Contracting Officer may, at any time during the performance of this contract, vest in any such authorized representatives additional power and authority to act for him or designate additional representatives, specifying the extent of their authority to act for him; a copy of each document vesting additional authority in an authorized representative or designating an additional authorized representative shall be furnished to the Contractor.

2.2 The Contractor shall perform the contract in accordance with any order (including but not limited to instruction, direction, interpretation or determination) issued by an authorized representative in accordance with his authority to act for the Contracting Officer; but the Contractor assumes all the risk and consequences of performing the contract in accordance with any order (including but not limited to instruction, direction, interpretation or determination) of anyone not authorized to issue such order.

3. CONTRACT AND BONDS

3.1 If the successful bidder fails to satisfactorily execute the required forms of contract, performance bond and payment bond within the time established in the bid, the Government may proceed to have the required work performed by contract or otherwise, and the bidder to whom award was originally made shall be liable for any excess cost to the Government and the bid guarantee shall be available toward offsetting such excess cost.

4. WORKING HOURS

4.1 It is contemplated that all work will be performed during the customary working hours of the trades involved unless otherwise specified in this

contract. Work performed by the Contractor at his own volition outside such customary working hours shall be at no additional expense to the Government.

4.2 Any requests received by the Contractor from occupants of existing buildings to change the hours of work shall be referred to the Contracting Officer for determination.

5. USE OF PREMISES

5.1 If the premises are occupied, the Contractor, his subcontractors, and their employees shall comply with the regulations governing access to, operation of, and conduct while in or on the premises and shall perform the work required under this contract in such a manner as not to unreasonably interrupt or interfere with the conduct of Government business.

5.2 Any requests received by the Contractor from occupants of existing buildings to change the sequence of work shall be referred to the Contracting Officer for determination.

5.3 If the premises are occupied, the Contractor, his subcontractors and their employees shall not have access to or be admitted into any building outside the scope of this contract except with official permission.

6. MEASUREMENTS

6.1 All dimensions shown of existing work and all dimensions required for work that is to connect with work now in place, shall be verified by the Contractor by actual measurement of the existing work. Any discrepancies between the contract requirements and the existing conditions shall be referred to the Contracting Officer before any work affected thereby has been performed.

7. SURVEY MONUMENTS AND BENCH MARKS

7.1 The Government has established, or will establish, such general reference points as will enable the Contractor to proceed with the work. The Contractor will provide new monuments where shown or specified. If the Contractor finds that any previously established reference points have been destroyed or displaced, or that none have been established, he shall promptly notify the Contracting Officer.

7.2 The Contractor shall protect and preserve established bench marks and monuments and shall make no changes in locations without the written approval of the Contracting Officer. Established reference points which may be lost, covered, destroyed or disturbed in the course of performance of the work under this contract or which require shifting because of necessary changes in grades or locations shall, subject to prior approval of the Contracting Officer, be replaced and accurately located or relocated (as appropriate) at the Contractor's expense, by a licensed engineer or licensed land surveyor.

GENERAL SERVICES ADMINISTRATION

GSA FORM 1139 PAGE 1 (REV 8-79)

7.3 New monuments shall be 6 inches square by 3 feet deep (unless otherwise specified), of concrete or stone, with a 3-inch copper or brass pin, 3/8-inch in diameter, in the center, and shall be set flush with the ground or pavement in locations indicated on the site plan.

7.4 Monuments will not be required where lines of building(s) are coincident with property lines.

7.5 The Contractor shall verify the figures shown on the survey and site plan before undertaking any construction work and shall be responsible for the accuracy of the finished work.

7.6 After completion of construction and prior to final payment, the Contractor shall furnish to the Government blueprints (in triplicate) of plats showing the exact location of construction survey monuments with reference to true property lines.

8. BUILDING CODES, FEES AND CHARGES

8.1 State and local building codes and regulations do not apply to work inside the property lines of Government-owned properties but generally do apply to Government-leased properties.

8.2 The Contractor shall obtain and pay all fees and charges for connections to outside services and for use of property outside the site.

9. SUBCONTRACTS

9.1 Nothing contained in the contract shall be construed as creating any contractual relationship between any subcontractor and the Government. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors, or to limit the work performed by any trade.

9.2 The Contractor shall be responsible to the Government for acts and omissions of his own employees and of subcontractors and their employees. He shall also be responsible for the coordination of the work of the trades, subcontractors and suppliers.

9.3 The Government will not undertake to settle any differences between or among the Contractor, subcontractors, or suppliers.

10. CONSTRUCTION PROGRESS CHART

10.1 Within 30 days after receipt of notice to proceed, the Contractor shall prepare and submit to the Contracting Officer for approval, six copies of a practicable progress chart. The chart shall show the principal categories of work corresponding with those used in the breakdown on which progress payments are based; the order in which the Contractor proposes to carry on the work, the date on which he will start each of the categories of work, and the contemplated dates for completing the same. The chart shall be in suitable scale to indicate graphically the total percentage of work scheduled to be in place at any time. At the end of each progress payment period, or at such intervals as directed by the Contracting Officer, the Contractor shall (1) adjust the chart to reflect any changes in the contract work, completion time, or both; as approved by the Contracting Officer, (2) enter on the chart the total

percentage of work actually in place, and (3) submit three copies of the adjusted chart to the Contracting Officer.

10.2 If in the opinion of the Contracting Officer work actually in place falls behind that schedule, the Contractor shall take such action as necessary to improve his progress. In addition, the Contracting Officer may require the Contractor to submit a revised chart demonstrating his program and proposed plan to make up lag in scheduled progress and to insure completion of work within the contract time. If the Contracting Officer finds the proposed plan not acceptable, he may require the Contractor to submit a new plan. If a satisfactory plan is not agreed upon, the Contracting Officer may require the Contractor to increase the work force, the construction plant and equipment or the number of work shifts without additional cost to the Government.

10.3 Failure of the Contractor to comply with these requirements shall be considered grounds for determination by the Contracting Officer that the Contractor is failing to prosecute the work with such diligence as will insure its completion within the time specified.

11. PAYMENTS TO CONTRACTOR

11.1 The provisions of the Clause entitled "Payments to Contractor" of the General Provisions, Standard Form 23-A, are supplemented as follows:

11.2 Before the first progress payment under this contract becomes due, the Contractor shall prepare a breakdown of the contract price acceptable to the Contracting Officer. The values in the breakdown will be used for determining progress payments. The Contractor's overhead and profit shall be prorated through the life of the contract.

11.3 Preparatory work done (including shop drawings) will not be taken into consideration in preparing estimates upon which progress payments are based.

11.4 Unless otherwise provided in the specifications, material delivered that will be incorporated into the structure will be taken into consideration in computing progress payments, provided the material is delivered on the site, or is delivered to the Contractor and properly stored by him in a warehouse, storage yard or similar suitable place as may be approved by the Contracting Officer. Before each such payment is made for delivered material stored on the site, the Contractor shall furnish to the Contracting Officer such evidence as he may require as proof of the quantity and value of such materials. Before each such payment is made for delivered material stored off the site, the Contractor shall furnish the Contracting Officer properly executed bills of sale for the delivered material upon which payment is being made. The Contractor shall remain responsible for such stored materials.

11.5 Estimates on which progress payments are based shall include the value (as determined by the Contracting Officer) of satisfactory in-place work performed pursuant to a change order as to which final agreement on the equitable price adjustment has not been reached, provided, however, that (except in an unusual case where a unilateral determination cannot be made, as provided in paragraph 23.1.6 of the Equitable Adjustments Clause) no further progress payments shall be made under the provisions of this paragraph 11.5 after the work is 50% completed as determined by the Contracting Officer.

12. CERTIFICATION OF PAYMENT

12.1 The Contractor, prior to receiving a progress or final payment under this contract, shall submit to the Contracting Officer a certification that the Contractor has made payment from proceeds of prior payments, or that he will make timely payment from the proceeds of the progress or final payment then due him, to his subcontractors and suppliers in accordance with his contractual arrangements with them.

13. ACCIDENT PREVENTION

13.1 Occupational Safety and Health Standards issued by the Secretary of Labor pursuant to the Williams-Steiger Occupational Safety and Health Act of 1970 are applicable to work performed by the Contractor subject to the provisions of the Act. The Contractor shall also comply with the provisions of the GSA Handbook, Accident and Fire Prevention - Construction and Alteration Work (PBS P 5900.3) and shall take other reasonable precautions directed by the Contracting Officer which are necessary to protect all persons against injury at the site of the work. Where there may be conflicting requirements, the more stringent one will apply.

14. WORKMEN'S COMPENSATION LAWS

14.1 The Act of June 25, 1936, 49 Stat. 1938 (40 U.S.C. 290) authorizes the constituted authority of the several States to apply their workmen's compensation laws to all lands and premises owned or held by the United States.

15. BUY AMERICAN ACT

15.1 Pursuant to the Buy American Act, referred to in the Buy American clause of Standard Form 23-A, General Provisions, the Administrator of General Services has determined that the provisions of the said clause shall not apply to the following:

Cork; sisal; hemp; flax; jute; silk; licorice root; asbestos; English china clay; English ball clay; carnauba wax; mica; rubber; antimony; manganese; titanium; tungsten; zirconium; chromium; platinum; tin; nickel and natural nickel alloys.

16. STANDARD REFERENCES

16.1 All documents and publications (such as, but not limited to, manuals, handbooks, codes, standards and specifications) which are cited in this contract for the purpose of establishing requirements applicable to equipment, materials, or workmanship under this contract, shall be deemed to be incorporated herein as fully as if printed and bound with the specifications of this contract, in accordance with the following:

16.1.1 Wherever reference is made to Standard Specifications of the Public Buildings Service, Interim Federal Specifications, Interim Amendments to Federal Specifications, Interim Federal Standards, or Interim Amendments to Federal Standards, the Contractor shall comply with the requirements set out in the issue or edition identified in this contract except as modified or

as otherwise provided in the specifications of this contract.

16.1.2 Wherever reference is made to any such document other than those specified in subparagraph 16.1.1 above, the Contractor shall comply with the requirements set out in the edition specified in this contract, or, if not specified, the latest edition or revision thereof, as well as the latest amendment or supplement thereto, in effect on the date of the Invitation for Bids on this project, except as modified by, as otherwise provided in, or as limited to type, class or grade, by the specifications of this contract.

16.2 Federal Specifications, Federal Standards, Standard Specifications of the Public Buildings Service and Public Buildings Service Standard Methods of Test may be obtained from the Business Service Center at any GSA Regional Office. Inquiries regarding "Commercial Standards", "Product Standards", and "Simplified Practice Recommendations" should be addressed to the Standard Development Service Section, National Bureau of Standards, Washington, DC, 20234. Publications of Associations referred to in the specifications may be obtained directly from the Associations.

16.3 Upon request the Contractor shall make available at the job site within a reasonable time, a copy of each trade manual and standard which is incorporated by reference in this contract and which governs quality and workmanship.

17. SPECIFICATIONS AND DRAWINGS

17.1 The provisions of the Clause entitled "Specifications and Drawings" in Standard Form 23-A, General Provisions, are supplemented as follows:

17.2 In case of difference between small and large-scale drawings, the large-scale drawings shall govern. Schedules on any contract drawing shall take precedence over conflicting information on that or any other contract drawing. On any of the drawings where a portion of the work is detailed or drawn out and the remainder is shown in outline, the parts detailed or drawn out shall apply also to all other like portions of the work.

17.3 Where the word "similar" occurs on the drawings, it shall have a general meaning and not be interpreted as being identical, and all details shall be worked out in relation to their location and their connection with other parts of the work.

18. STANDARD DETAILS AND SPECIFICATION DRAWINGS

18.1 Standard Details or Specification Drawings are applicable when listed, bound with the specifications, noted on the drawings or referenced elsewhere in the specifications. Where the notes on the drawing indicate modifications, such modifications shall govern.

18.2 In case of difference between Standard Details or Specification Drawings and the specifications, the specifications will govern. In case of difference between the Standard Details or Specification Drawings and the drawings prepared specifically for this contract, the later shall govern.

19. SHOP DRAWINGS, COORDINATION DRAWINGS, AND SCHEDULES

19.1 The provisions of the clause entitled "Shop Drawings" in Standard Form 23-A, General Provisions, are supplemented as follows:

19.2 The Contractor shall submit shop drawings, coordination drawings, and schedules for approval as required by the specifications or requested by the Contracting Officer as follows:

19.3 Shop drawings shall include fabrication, erection and setting drawings, schedule drawings, manufacturers' scale drawings, wiring and control diagrams, cuts or entire catalogs, pamphlets, descriptive literature, and performance and test data.

19.4 Drawings and schedules, other than catalogs, pamphlets and similar printed material, shall be submitted in reproducible form with two prints made by a process approved by the Contracting Officer. Upon approval, the reproducible form will be returned to the Contractor who shall then furnish the number of additional prints, not to exceed 10, required by the Special Conditions of the specifications. The Contractor shall submit shop drawings in catalog, pamphlet and similar printed form in a minimum of four copies plus as many additional copies as the Contractor may desire or need for his use or use by subcontractors.

19.5 Before submitting shop drawings on the mechanical and electrical work, the Contractor shall submit and obtain the Contracting Officer's approval of such lists of mechanical and electrical equipment and materials as may be required by the specifications.

19.6 Each shop drawing or coordination drawing shall have a blank area 5 by 5 inches, located adjacent to the title block. The title block shall display the following:

- Number and title of drawing
- Date of drawing or revision
- Name of project building or facility
- Name of Contractor and (if appropriate) name of subcontractor submitting drawing
- Clear identity of contents and location on the work
- Project title and contract number

19.7 Unless otherwise provided in this contract, or otherwise directed by the Contracting Officer, shop drawings, coordination drawings and schedules shall be submitted to the Contracting Officer, with a letter in triplicate, sufficiently in advance of construction requirements to permit no less than 10 working days for checking and appropriate action.

19.8 Approval of drawings and schedules will be general and shall not be construed as permitting any departure from the contract requirements, or as approving departures from full-size details furnished by the Contracting Officer.

20. SAMPLES

20.1 After the award of the contract, the Contractor shall furnish for the approval of the Contracting Officer, samples required by the specifications or by the Contracting Officer. Samples shall be delivered to the Contracting Officer or to the Architect as specified or as directed. The Contractor shall prepay

all shipping charges on samples. Materials or equipment for which samples are required shall not be used in the work until approved in writing by the Contracting Officer.

20.2 Each sample shall have a label indicating:

20.2.1 Name of project building or facility, project title and contract number

20.2.2 Name of Contractor and, if appropriate, name of subcontractor

20.2.3 Identification of material or equipment with specification requirement

20.2.4 Place of origin

20.2.5 Name of producer and brand (if any)

Samples of finished materials shall have additional markings that will identify them under the finish schedules.

20.3 The Contractor shall mail under separate cover a letter in triplicate submitting each shipment of samples and containing the information required in 20.2 above. He shall enclose a copy of this letter with the shipment and send a copy to the Government representative on the project. Approval of a sample shall be only for the characteristics or use named in such approval and shall not be construed to change or modify any contract requirement. Substitutions will not be permitted unless they are approved in writing by the Contracting Officer.

20.4 Approved samples not destroyed in testing will be sent to the Government representative at the project. Approved samples of hardware in good condition will be marked for identification and may be used in the work. Materials and equipment, incorporated in the work shall match the approved samples. Other samples not destroyed in testing or not approved will be returned to the Contractor at his expense if so requested at time of submission.

20.5 Failure of any material to pass the specified tests will be sufficient cause for refusal to consider, under this contract, any further samples of the same brand or make of that material or equipment which previously has proved unsatisfactory in service.

20.6 Samples of various materials or equipment delivered on the site or in place may be taken by the Government representative for testing. Samples failing to meet contract requirements will automatically void previous approvals of the items tested. The Contractor shall replace such materials or equipment found not to have met contract requirements, or there shall be a proper adjustment of the contract price as determined by the Contracting Officer.

20.7 Unless otherwise specified, when tests are required only one test of each sample proposed for use will be made at the expense of the Government. Samples which do not meet specification requirements will be rejected. Testing of additional samples will be made by the Government at the expense of the Contractor.

21. HEAT

21.1 Unless otherwise specified or unless already provided by the Government the Contractor shall:

21.2 Provide heat as necessary to protect all work, materials, and equipment against injury from dampness and cold:

21.3 Protect, cover and/or heat, as may be necessary, to produce and maintain a temperature of not less than 50 degrees Fahrenheit (1) in the concrete during the placing, setting and curing of concrete, and (2) in the plaster during the application, setting and curing of plaster; and

21.4 Provide heat as necessary in the area where work is to be done to provide the minimum temperature recommended by the supplier or manufacturer of the material, but in no case less than 50 degrees Fahrenheit, for a period beginning 10 days before placing of interior finishes and finish materials and continuing until completion or beneficial occupancy of the area, whichever is earlier.

22. PERFORMANCE OF WORK BY CONTRACTOR

22.1 The Contractor shall perform on the site, and with his own organization, work equivalent to at least twelve percent (12%) of the total amount of work to be performed under the contract. If, during the progress of the work hereunder, the Contractor requests a reduction in such percentage, and the Contracting Officer determines that it would be to the advantage of the Government, the percentage of the work required to be performed by the Contractor may be reduced with the written approval of the Contracting Officer.

23. EQUITABLE ADJUSTMENTS

23.1 The provisions of the Changes clause of Standard Form 23-A, General Provisions, are supplemented as follows:

23.1.1 Upon written request, the Contractor shall submit a proposal, in accordance with the requirements and limitations set forth in this "Equitable Adjustments" clause, for work involving contemplated changes covered by the request. The proposal shall be submitted within the time limit indicated in the request or any extension of such time limit as may be subsequently granted. The Contractor's written statement of the monetary extent of a claim for equitable adjustment shall be submitted in the following form:

(1) Proposals totaling \$5,000 or less shall be submitted in the form of a lump sum proposal with supporting information to clearly relate elements of cost with specific items of work involved to the satisfaction of the Contracting Officer, or his authorized representative.

(2) For proposals in excess of \$5,000, the claim for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following detail:

Direct Costs

Material quantities by trades and unit costs (Manufacturing burden associated with material fabrication performed off the job site will be considered to be part of the material costs of the fabricated item delivered to the job site)

Labor breakdown by trades and unit costs (Identified with specific item of material to be placed or operation to be performed)

Construction equipment exclusively necessary for the change

Costs of preparation and/or revision to shop drawings resulting from the change

Workmen's Compensation and Public Liability Insurance

Employment taxes under FICA and FUTA

Bond Costs - when size of change warrants revision

Overhead, Profit and Commission

23.1.2 The maximum allowable overhead, profit and commission percentage given in this paragraph shall be considered to include, but are not limited to, job-site staff and office expense, incidental job burdens, small tools and general office overhead allocation. The percentages for overhead, profit and commission shall be negotiated and may vary according to the nature, extent and complexity of the work involved, but in no case shall exceed the following:

	<u>Overhead</u>	<u>Profit</u>	<u>Commission</u>
To Contractor on work performed by other than his own forces-----	--	--	10%
To first tier subcontractor on work performed by his subcontractors---	--	--	10%
To Contractor and/or the subcontractors for that portion of the work performed with their respective forces-----	10%	10%	--

Not more than four percentages, not to exceed the maximum percentages shown above, will be allowed regardless of the number of tier subcontractors. Equitable adjustments for deleted work shall include credits for Overhead, Profit and Commission. On proposals covering both increases and decreases in the amount of the contract, the application of overhead and profit shall be on the net change in direct costs for the Contractor or subcontractor performing the work.

23.1.3 The Contractor shall submit with the proposal his request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the contract in its entirety.

23.1.4 In considering a proposal, the Government shall make check estimates in detail, utilizing unit prices where specified or agreed upon, with a view to arriving at an equitable adjustment.

23.1.5 After receipt of a proposal the Contracting Officer shall act thereon, within 30 days; provided, however, that when the necessity to proceed with a change does not allow time properly to check a proposal

or in the event of failure to reach an agreement on a proposal, the Government may order the Contractor to proceed on the basis of price to be determined at the earliest practicable date. Such price shall not be more than the increase or less than the decrease proposed, except that on proposals under \$100,000, the increase shall not exceed the proposed increase plus 10%.

23.16 If a mutually acceptable agreement cannot be reached, the Contracting Officer may determine the price unilaterally.

23.2 The provisions of the Differing Site Conditions clause of Standard Form 23-A, General Provisions, are supplemented as follows: The Contractor shall submit all claims for equitable adjustment in accordance with, and subject to the requirements and limitations set out in, paragraph 23.1 of this "Equitable Adjustments" clause.

24. FINAL INSPECTION AND TESTS

24.1 The requirements of the Inspection and Acceptance clause of Standard Form 23-A, General Provisions, are supplemented to provide that the Contractor shall give the Contracting Officer at least 10 days' advance written notice of the date the work will be fully completed and ready for final inspection and tests. Final inspection and tests will be started within 10 days from the date specified in the aforesaid notice unless the Contracting Officer determines that the work is not ready for final inspection and so informs the Contractor.

25. GUARANTEES

25.1 Unless otherwise provided in the specifications, the Contractor guarantees all work to be in accordance with contract requirements and free from defective or inferior materials, equipment, and workmanship for one year after the date of final acceptance or the date the equipment or work was placed in use by the Government.

25.2 If, within any guarantee period, the Contracting Officer finds that guaranteed work needs to be repaired or changed because of the use of materials, equipment, or workmanship which, in his opinion, are inferior, defective, or not in accordance with the terms of the contract, he shall so inform the Contractor in writing and the Contractor shall promptly and without additional expense to the Government:

25.2.1 Place in a satisfactory condition all of such guaranteed work;

25.2.2 Satisfactorily correct all damage to equipment, the site, the building or contents thereof, which is the result of such unsatisfactory guaranteed work; and

25.2.3 Satisfactorily correct any work, materials, and equipment that are disturbed in fulfilling the guarantee, including any disturbed work, materials and equipment that may have been guaranteed under another contract. Should the Contractor fail to proceed promptly in accordance with the guarantee, the Government may have such work performed at the expense of the Contractor.

25.3 Any special guarantees that may be required under the contract shall be subject to the

stipulations set forth above, insofar as they do not conflict with the provisions of such special guarantees.

25.4 The Contractor shall obtain each transferable guarantee or warranty of equipment, materials or installation thereof which is furnished by any manufacturer, supplier or installer in the ordinary course of the manufacturer's, supplier's, or installer's business or trade. In addition, the Contractor shall obtain and furnish to the Government all information which is required in order to make any such guarantee or warranty legally binding and effective, and shall submit both the information and the guarantee or warranty to the Government in sufficient time to permit the Government to meet any time limit requirements specified in the guarantee or warranty or, if no time limit is specified, prior to completion and acceptance of all work under this contract.

26. DEBRIS AND CLEANING

26.1 The Contractor shall, during the progress of the work, remove and dispose of the resultant dirt and debris and keep the premises clean.

26.2 The Contractor shall, upon completion of the work, remove all construction equipment and surplus materials (except materials or equipment that are to remain Government property as provided by this contract), and except as otherwise provided in this contract leave the premises in a broom clean condition satisfactory to the Government.

27. FURNISHING INFORMATION AND RECORDS

27.1 If the Contractor or any subcontractor under this contract, or the officers or agents of the Contractor or any subcontractor, shall refuse or have refused, except as provided by the terms of the prime contract involved, to furnish to any Government agency or any establishment in the legislative or judicial branch of the Government information or records reasonably pertinent to this contract, or any other Government contract in connection with which the Contractor or such subcontractor has or shall have performed work or furnished materials or supplies to undertaken so to do, the following action may be taken:

27.2 In the case of a refusal by the Contractor, its officers or agents, the Government may, after affording an opportunity to explain or justify such refusal, terminate the Contractor's right rights and remedies provided in paragraphs (a) and (b) of the clause entitled "Termination for Default - Damages for Delay - Time Extensions," General Provisions (Standard form 23-A) of this contract in addition to any other rights and remedies provided by law or under this contract;

27.3 In the case of a refusal by a subcontractor, its officers or agents, the Government may, after affording an opportunity to explain or justify such refusal, require the Contractor to terminate the subcontract without cost to the Government, or if the Contractor fails or refuses to effect such termination, the Government may terminate the Contractor's right to proceed with the work under this contract and thereupon the Government may avail itself of the rights and remedies referred to in subparagraph 27.2 above.

27.4 The term "subcontract" as used in this paragraph means any contract entered into, or any purchase order issued by, a prime contractor under a

contract with the Government in connection with the performance of the prime contractor's obligations under such Government contract.

27.5 The term "subcontractor" as used in this paragraph means a party to a subcontract other than the prime contractor under the related Government contract.

28. NON-COMPLIANCE WITH CONTRACT REQUIREMENTS

28.1 In the event the Contractor, after receiving written notice from the Contracting Officer of non-compliance with any requirement of this contract, fails to initiate promptly such action as may be appropriate to comply with the specified requirement within a reasonable period of time, the Contracting Officer shall have the right to order the Contractor to stop any or all work under the contract until the Contractor has complied or has initiated such action as may be appropriate to comply within a reasonable period of time. The Contractor will not be entitled to any extension of contract time or payment for any costs incurred as a result of being ordered to stop work for such cause.

GENERAL SERVICES ADMINISTRATION
WASHINGTON, DC 20405

MOD-1139A
March 1980
Supersedes:
MOD-1139U
August 1978

PUBLIC BUILDINGS SERVICE
GUIDE SPECIFICATION

MODIFICATION OF GENERAL CONDITIONS
(GSA FORM 1139 - AUGUST 1979)

1. Delete "MOD-1139U" dated August 1978 in its entirety and substitute the attached "MOD-1139A".
2. An asterisk in the left margin indicates item to be checked for contract requirement.
3. A vertical line in the margin indicates a change or an addition. The vertical line in the margin should be deleted before including this modification in the contract specifications.

GENERAL SERVICES ADMINISTRATION
WASHINGTON, DC 20405

MOD-1139A
March 1980
Supersedes:
MOD-1139U
August 1978

PUBLIC BUILDINGS SERVICE
GUIDE SPECIFICATION

MODIFICATION OF GENERAL CONDITIONS
(GSA FORM 1139 - AUGUST 1979)

Instructions For Use

1. Clause 10., CONSTRUCTION PROGRESS CHART shall be deleted (1) whenever a completion time of 75 days or less is specified and it is determined by the Contracting Officer that the requirements contained in the clause should not be applied, (2) whenever a cash flow curve requirement is included in Critical Path Method Scheduling provisions, or (3) whenever GSA's Construction Management Control System (CMCS) is to be used for scheduling the contractor's work and determining progress.
2. Clause 22., PERFORMANCE OF WORK BY CONTRACTOR shall be deleted in the manner stated in this Guide Specification whenever it is determined by the Contracting Officer that the nature of the project is such that it is not feasible that the Contractor be required to perform on the site work equivalent to 12 percent of the amount of the contract price.
3. Clause 23., EQUITABLE ADJUSTMENTS shall be modified as stated in this Guide Specification.

GENERAL SERVICES ADMINISTRATION
WASHINGTON, DC 20405

MOD-1139A
March 1980
Supersedes:
MOD-1139U
August 1978

MODIFICATION OF GENERAL CONDITIONS
(GSA FORM 1139 - AUGUST 1979)

SECTION 00100

* 10. CONSTRUCTION PROGRESS CHART

Delete.

* 22. PERFORMANCE OF WORK BY CONTRACTOR

Delete.

23. EQUITABLE ADJUSTMENTS

Delete paragraph 23.1.2 and substitute the following in lieu thereof:

"23.1.2 The maximum allowable overhead, profit and commission percentage given in this paragraph shall be considered to include, but are not limited to, job-site office expense, incidental job burdens, small tools and general office overhead allocation. The percentages for overhead, profit and commission shall be negotiated and may vary according to the nature, extent and complexity of the work involved, but in no case shall exceed the following:

	<u>Overhead</u>	<u>Profit</u>	<u>Commission</u>
To Contractor on work performed by other than his own forces -----	--	--	10%
To first tier subcontractor on work performed by his subcontractors -----	--	--	10%
To Contractor and/or the subcontractors for that portion of the work performed with their respective forces -----	10%	10%	--

Not more than four percentages, not to exceed the maximum percentages shown above, will be allowed regardless of the number of tier subcontractors. The contractor shall not be allowed a commission on the commission received by a first tier subcontractor. Equitable adjustments for deleted work shall include credits for Overhead, Profit and Commission. On proposals covering both increases and decreases in the amount of the contract, the application of overhead and profit shall be on the net change in direct costs for the Contractor or subcontractor performing the work."

**VALUE INCENTIVE CLAUSE
(CONSTRUCTION CONTRACT)**

1. OBJECTIVES—This clause applies to any cost reduction proposal (hereinafter referred to as a Value Change Proposal or VCP) initiated and developed by the Contractor for the purpose of changing any requirement of this contract. This clause does not, however, apply to any such proposal unless it is identified by the Contractor, at the time of its submission to the Government, as a proposal submitted pursuant to this clause.

1.1 VCP's contemplated are those that would result in net savings to the Government by providing either: (1) a decrease in the cost of performance of this contract, or; (2) a reduction in the cost of ownership (hereinafter referred to as collateral costs) of the work provided by this contract, regardless of acquisition costs. VCP's must result in savings without impairing any required functions and characteristics such as service life, reliability, economy of operation, ease of maintenance, standardized features, esthetics, fire protection features and safety features presently required by this contract. However, nothing herein precludes the submittal of VCP's where the Contractor considers that the required functions and characteristics could be combined, reduced or eliminated as being nonessential or excessive to the satisfactory function served by the work involved.

1.2 A VCP identical to one submitted under any other contract with the Contractor or another Contractor may also be submitted under this contract.

1.3 A proposal to decrease the cost of performing the contract solely or principally by substituting another Subcontractor for one listed by the Contractor in his bid is not a VCP. In considering a VCP which, as an incident thereof, would entail substitution for a listed Subcontractor, maintaining the objective of the Subcontractor listing will be taken into account along with factors cited in paragraph 1.1 above.

2. SUBCONTRACTOR INCLUSION—The Contractor shall include the provisions of this clause, with a provision for sharing arrangements that meet or exceed the minimum percentage contained herein, in all first-tier subcontracts in excess of \$25,000, and in any other subcontract which, in the judgment of the Contractor, is of such nature as to offer reasonable likelihood of value change proposals. At the option of the first-tier Subcontractor, this clause may be included in lower tier subcontracts. The Contractor shall encourage submission of VCP's from Subcontractors; however, it is not mandatory that the Contractor accept and/or transmit to the Government VCP's proposed by his Subcontractors.

3. DATA REQUIREMENTS—As a minimum, the following information shall be submitted by the Contractor with each VCP:

3.1 A description of the difference between the existing contract requirement and the proposed change, and the comparative advantages and disadvantages of each; including justification where function or characteristic of a work item is being reduced;

3.2 Separate detailed cost estimates for both the existing contract requirement and the proposed change, and an estimate of the change in contract price including consideration of the costs of development and implementation of the VCP and the sharing arrangement set forth in this clause;

3.3 An estimate of the effects the VCP would have on collateral costs to the Government, including an estimate of the sharing that

the Contractor requests be paid by the Government upon approval of the VCP;

3.4 Architectural, engineering or other analysis, in sufficient detail to identify and describe each requirement of the contract which must be changed if the VCP is accepted, with recommendation as to how to accomplish each such change and its effect on unchanged work;

3.5 A statement of the time by which approval of the VCP must be issued by the Government to obtain the maximum cost reduction during the remainder of this contract, noting any effect on the contract completion time or delivery schedule; and,

3.6 Identification of any previous submission of the VCP including the dates submitted, the agencies involved, the numbers of the Government contracts involved, and the previous actions by the Government, if known.

4. PROCESSING PROCEDURES—Six copies of each VCP shall be submitted to the Contracting Officer, or his duly authorized representative. VCP's will be processed expeditiously; however, the Government will not be liable for any delay in acting upon a VCP submitted pursuant to this clause. The Contractor may withdraw, in whole or in part, a VCP not accepted by the Government within the period specified in the VCP. The Government shall not be liable for VCP development cost in the case where a VCP is rejected or withdrawn. The decision of the Contracting Officer as to the acceptance of a VCP under this contract shall be final and shall not be subject to the "Disputes" clause of this contract.

4.1 The Contracting Officer may modify a VCP, with the concurrence of the Contractor, to make it acceptable, and the Contractor's fair share will be based on the VCP as modified.

4.2 Pending written acceptance of a VCP in whole or in part, the Contractor shall remain obligated to perform in accordance with the terms of the existing contract.

4.3 An approved VCP shall be finalized through an equitable adjustment in the contract price and time of performance by the execution of a contract modification pursuant to the provisions of this clause bearing a notation so stating.

4.4 When the necessity to proceed with a VCP (in whole or in part) does not allow sufficient time for execution of a contract modification, the Government may issue a letter accepting the VCP (in whole or in part), authorizing the Contractor to proceed with the work, as changed, on the basis of contract price adjustment to be determined at the earliest practicable date but not to be less than the decrease nor more than the increase, as the case may be, than the decrease or increase set forth in the VCP submitted and accepted.

5. COMPUTATIONS FOR CHANGE IN CONTRACT COST OF PERFORMANCE—Separate estimates shall be prepared for both the existing (instant) contract requirement and the proposed change. Each estimate shall consist of an itemized breakdown of all costs of the Contractor and all Subcontractors' work in sufficient detail to show unit quantities and costs of labor, material, and equipment.

5.1 Contractor development and implementation costs for the VCP shall be included in the estimate for the proposed change. However, these costs will not be allowable if they are otherwise reimbursable as a direct charge under this contract.

5.2 Government costs of processing or implementation of a VCP shall not be included in the estimate.

5.3 If the difference in the estimates indicate a net reduction in contract price, no allowance will be made for overhead, profit and bond. The resultant net reduction in contract cost of performance shall be shared as provided hereinafter.

5.4 If the difference in the estimates indicate a net increase in contract price, the price shall be adjusted pursuant to an equitable adjustment that will include Contractor's overhead and profit on his additional work or the additional work of one of his subcontractors.

6. **COMPUTATIONS FOR COLLATERAL COSTS**—Separate estimates shall be prepared for collateral costs of both the existing contract requirement and the proposed change. Each estimate shall consist of an itemized breakdown of all costs and the basis for the data used in the estimate. Cost benefits to the Government include, but are not limited to: reduced costs of operation, maintenance or repair, extended useful service life, increases in usable floor space, and reduction in the requirements for Government furnished property. Increased collateral costs include the converse of such factors. Computation shall be as follows:

6.1 Costs shall be calculated over a 20-year period on a uniform basis for each estimate and shall include Government costs of processing or implementing the VCP.

6.2 If the difference in the estimates as approved by the Government indicate a savings, the Contractor shall divide the resultant amount by 20 to arrive at the average annual net collateral savings. The resultant savings shall be shared as provided hereinafter.

6.3 In the event that agreement cannot be reached on the amount of estimated collateral costs, the Contracting Officer shall determine the amount. His decision is final and is not subject to the provisions of the "Disputes" clause of this contract.

7. **SHARING ARRANGEMENTS**—If a VCP is accepted by the Government, the Contractor is entitled to share in instant contract savings and collateral savings not as alternatives, but rather to the full extent provided for in this clause. For the purposes of sharing under this clause, the term "instant contract" will include any

changes to or other modifications of this contract, executed subsequent to acceptance of the particular VCP, by which the Government increases the quantity of any item of work or adds any item of work. It will also include any extension of the instant contract through exercise of an option (if any) provided under this contract after acceptance of the VCP. The Contractor shall be entitled to a contract modification for instant or collateral savings shares on changes or options only at such time as a change order has been issued or an option has been exercised.

7.1 When only the prime Contractor is involved, he shall receive 50% and the Government 50% of the net reduction in the cost of performance of this contract.

7.2 When a first-tier Subcontractor is involved, he shall receive a minimum of 30%, the prime Contractor a maximum of 30%, and the Government a fixed 40% of the net reduction in the cost of performance of this contract. Other Subcontractors shall receive a portion of the first-tier Subcontractor savings in accordance with the terms of their contracts with the first-tier Subcontractor.

7.3 When collateral savings occur the Contractor shall receive 20% of the average one year net collateral savings.

8. **ADJUSTMENTS TO CONTRACT PRICE**—

8.1 The method for payment of instant savings shares shall be accomplished by reducing the contract price by an amount equal to the Government's share of the savings.

8.2 Collateral savings shares and costs of increased work shall be paid by increasing the contract price.

9. **DATA RESTRICTION RIGHTS**—The contractor may restrict the Government's right to use any sheet of a VCP or the supporting data, submitted pursuant to this clause, in accordance with the terms of the following legend if it is marked on each such sheet:

The data furnished pursuant to the Value Incentive Clause of contract No. _____ shall not be disclosed outside the Government for any purpose other than to evaluate a VCP submitted under said clause. This restriction does not limit the Government's right to use information otherwise available, from the contractor or from another source without limitations, or if release of the data is required under the Freedom of Information Act.

In the event of acceptance of a VCP, the Government shall have the right fully to utilize such proposal on this and any other Government contract.

LABOR STANDARDS PROVISIONS

Applicable to Contracts in Excess of \$2,000

1. DAVIS-BACON ACT (40 U.S.C. 276a-276a-7)

(a) All mechanics and laborers employed or working directly upon the site of the work shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Copeland Regulations, 29 CFR Part 3), the full amounts due at time of payment computed at wage rates not less than the aggregate of the basic hourly rates and the rates of payments, contributions, or costs for any fringe benefits contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and such laborers and mechanics. A copy of such wage determination decision shall be kept posted by the Contractor at the site of the work in a prominent place where it can be easily seen by the workers. The term "mechanics and laborers" shall be deemed to include apprentices and trainees not covered by an approved program as provided by the Apprentices and Trainees clause of this contract.

(b) The Contractor may discharge his obligation under this clause to workers in any classification for which the wage determination decision contains:

(1) Only a basic hourly rate of pay, by making payment at not less than such basic hourly rate, except as otherwise provided in the Copeland Regulations (29 CFR Part 3); or

(2) Both a basic hourly rate of pay and fringe benefits payments, by making payment in cash, by irrevocably making contributions pursuant to a fund, plan, or program for, and/or by assuming an enforceable commitment to bear the cost of, bona fide fringe benefits contemplated by the Davis-Bacon Act, or by any combination thereof. Contributions made, or costs assumed, on other than a weekly basis shall be considered as having been constructively made or assumed during a weekly period to the extent that they apply to such period. Where a fringe benefit is expressed in a wage determination in any manner other than as an hourly rate and the Contractor pays a cash equivalent or provides an alternative fringe benefit, he shall furnish information with his payrolls showing how he determined that the cost incurred to make the cash payment or to provide the alternative fringe benefit is equal to the cost of the wage determination fringe benefit. In any case where the Contractor provides a fringe benefit different from any contained in the wage determination, he shall similarly show how he arrived at the hourly rate shown therefor. In the event of disagreement between or among the interested parties as to an equivalent of any fringe benefit, the Contracting Officer shall submit the question, together with his recommendation, to the Secretary of Labor for final determination.

(c) The assumption of an enforceable commitment to bear the cost of fringe benefits, or the provision of any fringe benefits not expressly listed in section 1(b)(2) of the Davis-Bacon Act or in the wage determination decision forming a part of the contract, may be considered as payment of wages only with the approval of the Secretary of Labor pursuant to a written request by the Contractor. The Secretary of Labor may require the Contractor to set aside assets, in a separate account, to meet his obligations under any unfunded plan or program.

(d) The Contracting Officer shall require that any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination decision and which is to be employed under the contract shall be classified or reclassified conformably to the wage determination decision, and shall report the action taken to the Secretary of Labor. If the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers or mechanics, including apprentices and trainees to be used, the Contracting Officer shall submit the question, together with his recommendation, to the Secretary of Labor for final determination. Apprentices and trainees may be added under this clause only where they are employed pursuant to an apprenticeship or trainee program meeting the requirements of the Apprentices and Trainees clause below.

(e) In the event it is found by the Contracting Officer that any laborer or mechanic, including apprentices and trainees, employed by the Contractor or any subcontractor directly on the site of the

work covered by this contract has been or is being paid at a rate of wages less than the rate of wages required by paragraph (a) of this clause, or by the Apprentices and Trainees clause of this contract, the Contracting Officer may (1) by written notice to the Government Prime Contractor terminate his right to proceed with the work, or such part of the work as to which there has been a failure to pay said required wages, and (2) prosecute the work to completion by contract or otherwise, whereupon such Contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

(f) Paragraphs (a) through (e) of the clause shall apply to this contract to the extent that it is (1) a prime contract with the Government subject to the Davis-Bacon Act, or (2) a subcontract also subject to the Davis-Bacon Act under such prime contract.

2. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (40 U.S.C. 327-333).

This contract is subject to the Contract Work Hours and Safety Standards Act and to the applicable rules, regulations, and interpretations of the Secretary of Labor.

(a) The Contractor shall not require or permit any laborer or mechanic, including apprentices, trainees, watchmen, and guards, in any workweek in which he is employed on any work under this contract to work in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer or mechanic, including apprentices, trainees, watchmen, and guards, receives compensation at a rate not less than 1½ times his basic rate of pay for all such hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek, whichever is the greater number of overtime hours. The "basic rate of pay," as used in this clause, shall be the amount paid per hour exclusive of the Contractor's contribution or cost for fringe benefits, and any cash payment made in lieu of providing fringe benefits, or the basic hourly rate, contained in the wage determination, whichever is greater.

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

3. APPRENTICES AND TRAINEES

(a) Apprentices shall be permitted to work at less than the predetermined rate for the work they performed (1) when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or (2) if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in paragraph (b) of this clause or who is not registered or otherwise employed, as stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Contractor or subcontractor shall furnish to the Contracting Officer written evidence of the registration of his

program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeymen hourly rates) for the area of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of the journeymen's rate contained in the applicable wage determination.

(b) Trainees shall be permitted to work at less than the predetermined rate for the work performed when they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training. The term "trainee" means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, as meeting its standards for on-the-job training programs and which has been so certified by the Bureau. The ratio of trainees to journeymen on this contract shall not be greater than the ratio permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Contractor or subcontractor shall furnish the Contracting Officer written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the Contractor shall no longer utilize trainees at less than the applicable predetermined rate for work performed until an acceptable program is approved.

(c) The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of this contract.

(d) If at any time the Bureau of Apprenticeship and Training determines, after opportunity for a hearing, that the standards of a training program have not been complied with, or that such a program fails to provide adequate training for participants, the Contractor shall not utilize trainees at less than the predetermined rate for the classification of work actually performed until an acceptable program is approved. If the Contractor brings an appeal pursuant to 29 CFR 5.17 within 30 days of his receipt of a certified letter withdrawing the Bureau of Apprenticeship and Training's approval, the effect of the withdrawal of approval of the program will be delayed until a decision is rendered on the appeal pursuant to 29 CFR 5.17.

4. PAYROLLS AND BASIC RECORDS

(a) The Contractor shall maintain payrolls and basic records relating thereto during the course of the work and shall preserve them for a period of 3 years thereafter for all laborers and mechanics, including apprentices, trainees, watchmen, and guards working at the site of the work. Such records shall contain the name and address of each such employee, his correct classification, rate of pay (including rates of contributing for or costs assumed to provide, fringe benefits), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Contractor has obtained approval from the Secretary of Labor as provided in paragraph (c) of the clause entitled "Davis-Bacon Act", he shall maintain records which show the commitment, its approval, written communication of the plan or program to the laborers or mechanics affected, and the costs anticipated or incurred under the plan or program.

(b) The Contractor shall submit weekly a copy of all payrolls to the Contracting Officer. The Government Prime Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The copy shall be accompanied by a statement signed by the Contractor indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor, and that the classifications set forth for each laborer or mechanic, including

apprentices and trainees conform with the work to be performed. Submission of the "Weekly Statement of Compliance" required under this contract and the Copeland Regulations of the Secretary of Labor (29 CFR Part 3) shall satisfy the requirement for submission of the above statement. The Contractor shall submit also a copy of any approval by the Secretary of Labor with respect to fringe benefits which is required by paragraph (c) of the clause entitled "Davis-Bacon Act". Contractors employing apprentices or trainees under approved programs shall include a notation of the first weekly certified payrolls submitted to the contracting agencies that their employment is pursuant to an approved program and shall identify the program.

(c) The Contractor shall make the records required under this clause available for inspection by authorized representatives of the Contracting Officer and the Department of Labor, and shall permit such representatives to interview employees during working hours on the job.

NOTE: Watchmen and guards appear on payroll records only for purposes of the Contract Work Hours and Safety Standards Act.

5. COMPLIANCE WITH COPELAND REGULATIONS

The Contractor shall comply with the Copeland Regulations of the Secretary of Labor (29 CFR Part 3) which are incorporated herein by reference.

6. WITHHOLDING OF FUNDS

(a) The Contracting Officer may withhold or cause to be withheld from the Government Prime Contractor so much of the accrued payments or advances as may be considered necessary (1) to pay laborers and mechanics, including apprentices, trainees, watchmen, and guards employed by the Contractor or any subcontractor on the work the full amount of wages required by the contract, and (2) to satisfy any liability of the Contractor and any subcontractor for liquidated damages under paragraph (b) of the clause entitled "Contract Work Hours and Safety Standards Act—Overtime Compensation."

(b) If the Contractor or any subcontractor fails to pay any laborer, mechanic, apprentice, trainee, watchman, or guard employed or working on the site of work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Government Prime Contractor, take such action as may be necessary to cause suspension of any further payments or advances until such violations have ceased.

7. SUBCONTRACTS

The Contractor agrees to insert the clauses hereof entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act—Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Regulations," "Withholding of Funds," "Subcontracts," and "Contract Termination—Debarment" in all subcontracts. The term "Contractor" as used in such clauses in any subcontract shall be deemed to refer to the subcontractor except in the phrase "Government Prime Contractor."

8. CONTRACT TERMINATION—DEBARMENT

A breach of the clauses hereof entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act—Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Regulations," "Withholding of Funds," and "Subcontracts" may be grounds for termination of the contract, and for debarment as provided in 29 CFR 5.6.

9. DISPUTES CONCERNING LABOR STANDARDS

Disputes arising out of the labor standards provisions of this contract shall be subject to the Disputes clause except to the extent such disputes involve the meaning of classifications or wage rates contained in the wage determination decisions of the Secretary of Labor or the applicability of the labor provisions of this contract which questions shall be referred to the Secretary of Labor in accordance with the procedures of the Department of Labor.

SECTION 0020

APPLICABLE MINIMUM HOURLY RATES OF WAGES

1. The attached wage determination decision of the Secretary of Labor specifies the minimum hourly rates of wages which shall be paid to laborers and mechanics employed or working directly upon the site of the work, the rates having been determined by the Secretary of Labor in accordance with the provisions of the Davis-Bacon Act, as amended, to be the prevailing rates for the corresponding classes of laborers and mechanics employed on contracts of a similar character in the locality where this work is to be performed. THESE MINIMUM HOURLY RATES OF WAGES SHALL APPLY ONLY IF THE CONTRACT IS IN EXCESS OF \$2,000 IN AMOUNT.
2. While the wage rates given in the attached decision are the minimum rates required to be paid during the life of the contract, it is the responsibility of bidders to inform themselves as to local labor conditions such as the prevailing wage rates, the length of the work day and work week, overtime compensation, fringe benefit payments, available labor supply, and prospective changes or adjustments of wage rates. The Contractor shall abide by and conform to all applicable laws, Executive Orders, and rules, regulations and orders of the Secretary of Labor. No increase in the contract price shall be allowed or authorized on account of the payment of wage rates in excess of those listed in the attached decision.
3. The wage determination decision of the Secretary of Labor is attached solely for the purpose of setting forth the minimum hourly wage rates required to be paid during the life of the contract and is not to be accepted as a guarantee, warranty or representation as to the wage rates indicated. Under no circumstances shall any mistake in attaching the appropriate wage determination decision of the Secretary of Labor and in the wage rates set forth entitle the successful bidder to cancellation of his bid or contract or to an increase in the contract price or other additional payment or recovery.

**U.S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON**

DECISION OF THE SECRETARY

This case is before the Department of Labor pursuant to a request for a wage predetermination as required by law applicable to the work described.

A study has been made of wage conditions in the locality and based on information available to the Department of Labor the wage rates and fringe payments listed are hereby determined by the Secretary of Labor as prevailing for the described classes of labor in accordance with applicable law.

This wage determination decision and any modifications thereof during the period prior to the stated expiration date shall be made a part of every contract for performance of the described work as provided by applicable law and regulations of the Secretary of Labor, and the wage rates and fringe payments contained in this decision, including modifications, shall be the minimums to be paid under any such contract by contractors and subcontractors on the work.

The contracting officer shall require that any class of laborers and mechanics which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination, and a report of the action taken shall be sent by the Federal agency to the Secretary of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question accompanied by the recommendation of the contracting officer shall be referred to the Secretary for determination.

Before using apprentices on the job the contractor shall present to the contracting officer written evidence of registration of such employees in a program of a State apprenticeship and training agency approved and recognized by the U.S. Bureau of Apprenticeship and Training. In the absence of such a State agency, the contractor shall submit evidence of approval and registration by the U.S. Bureau of Apprenticeship and Training.

The contractor shall submit to the contracting officer written evidence of the established apprentice-journeyman ratios and wage rates in the project area, which will be the basis for establishing such ratios and rates for the project under the applicable contract provisions.

Fringe payments include medical and hospital care, compensation for injuries or illness resulting from occupational activity, unemployment benefits, life insurance, disability and sickness insurance, accident insurance (all designated as health and welfare), pensions, vacation and holiday pay, apprenticeship or other similar programs and other bona fide fringe benefits.

By direction of the Secretary of Labor,



Alfred L. Ganna, Director
Division of Wage Determinations
Workplace Standards Administration

WAGE RATE SCHEDULE

SHEET _____ OF _____

DEPARTMENT, AGENCY, OR BUREAU GENERAL SERVICES ADMINISTRATION - PUBLIC BUILDINGS SERVICE		DECISION NO.
LOCATION OF PROJECT (<i>City or other description</i>)		LAW INVOLVED Davis-Bacon
STATE	COUNTY	DATE OF DECISION
DESCRIPTION OF WORK		EXPIRES
		SUPERSEDES DECISION NO.

C R A F T	BASIC HOURLY RATES	FRINGE BENEFITS PAYMENTS				
		H & W	PENSIONS	VACATION	APP. TR.	OTHERS

D.

Public Contracts, Property Management**Chapter 101—Federal Property Mgmt. Regs.****§ 101-20.112-5**

(e) Paid attendants may be used in some instances under arrangements with a parking management contractor (concessionaire). This technique may be used in conjunction with either stackparking or block parking or in locations where it is deemed advantageous to use a management contractor to operate the parking facility. In instances in which a parking contractor is used, the fees for management of the facility shall be paid by the employees using the facility.

(f) Motor pool vehicles and vehicles on indefinite assignment to agencies shall be subject to the same parking procedures (such as bumper-to-bumper parking) as employee vehicles. Emergency and law enforcement vehicles (see § 101-20.111-1a(a)(2)) are exempt from such procedures.

(g) The provision of facilities for storing vehicles which are awaiting disposal or assignment or which have been impounded by law enforcement agencies shall be limited to outlying locations where spaces are not at a premium.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))
[42 FR 56122, Oct. 21, 1977]

§ 101-20.111-2c Billing for assigned vehicle parking spaces.

(a) *Official parking.* Each agency will be billed the appropriate standard level user charge (SLUC) for all official parking spaces assigned in accordance with § 101-20.111-2a. Visitor, patron, and service vehicle parking spaces assigned specifically to an agency will be billed at the appropriate standard level user charge. Spaces assigned or reserved for general use by visitor, patron, and service vehicles will be billed on a prorated basis to using agencies.

(b) *Employee parking.* Employee vehicle parking spaces, when requested by an agency, will be assigned in accordance with § 101-20.111-2a. The agency will be billed the appropriate standard level user charge. (NOTE: SLUC billings will be made to agencies and not to individual employees.) In situations in which the number of parking spaces exceeds the number requested by using agencies, such as may occur at Federal centers and depots, the excess spaces will be metered,

made available to a concessionaire or to an employee group by outlease or permit, or otherwise handled as appropriate.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))
[42 FR 56122, Oct. 21, 1977]

§ 101-20.111-3 Parking space allotments.

Allotment of areas will be made to agencies which shall administer those areas for parking purposes. Guidelines for policing public buildings and grounds, including parking areas, are set forth in Subpart 101-20.3. If necessary, and at occupant agency request, provisions will be made by GSA to regulate the use of parking areas by policing with GSA or other Government personnel or by arrangements with local law enforcement authorities. Unusual protection requirements shall be subject to reimbursement.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))
[42 FR 56123, Oct. 21, 1977]

§ 101-20.112 Concessions.**§ 101-20.112-1 Applicability.**

This section applies to concessions in buildings operated by GSA, except vending stands operated by blind persons under the Randolph-Sheppard Act (20 U.S.C. 107 et seq.).

§ 101-20.112-2 General.

(a) Concessions require the use of space and the provision of various building facilities and services. The type and location of each concession may seriously affect GSA costs for its installation, as well as later costs for building maintenance and operation.

(b) It is essential, therefore, that the type and location of each concession be satisfactory to GSA and that each concession contract definitely establish the responsibilities of the concessionaire with respect to costs and other matters which affect building maintenance and operation. It also is imperative that consideration be given to pertinent legislation and the terms of existing contracts between GSA and concessionaires.

(c) GSA will arrange for the establishment of all concessions, including public telephones, in buildings under its custody and control. It will provide

suitable space for approved concessions, arrange for necessary alterations and installations, enter into contracts or issue permits, and select concessionaires.

§ 101-20.112-3 Transferred buildings.

Concessions which were contracted for or otherwise arranged for by a Federal agency having custody and control of a building before its transfer to GSA, except concessions operated by the blind, may be continued under the supervision of that agency upon written approval of GSA subject to the following:

(a) Proposed alterations and improvements, purchases of equipment for replacement, and other matters affecting the building structure or its maintenance and operation, shall be approved by GSA.

(b) GSA will arrange for periodic inspections to insure compliance with safety, health, and sanitary codes.

§ 101-20.112-4 Supervision.

(a) Responsibility for supervision and administration of all concessions, except as provided in § 101-20.112-3, is vested in GSA.

(b) In the case of contracts and permits to which GSA is a party, officials of occupant agencies shall not, unless authorized by GSA, instruct concessionaires concerning types of service, articles to be sold, prices, or any other phase of operations. They shall communicate their wishes and requirements in such matters and shall refer suggestions and criticisms of Federal employees to the GSA buildings manager or to the appropriate regional official of GSA who will take such action in consequence thereof as may be deemed appropriate.

§ 101-20.112-5 Determination of need.

GSA will determine the need for concessions based on the following requirements:

(a) There must be adequate justification for each concession, and sufficient and satisfactory space must be available for the concession.

(b) Subject to the other requirements of this section, concession services shall be such as are satisfactory to the building occupants and not incon-

§ 101-20.112-6

Title 41—Public Contracts, Property Management

sistent with their policies and programs. Except for blind stands, GSA shall not place concessionaires in space in federally owned or leased buildings without consulting the occupant agency(ies) or without the agency(ies) requesting the services to be provided by the concessionaires.

(c) Sufficient funds shall be legally available, either to GSA or occupant agencies, to defray the costs for which the Government will be responsible. Prior to placing concessionaires in a building, agreement shall be reached with the occupant agency(ies) as to whether funds are budgeted and appropriated to the agency(ies) for payment of any expenses for which the agency may be obligated and that any such concession services are necessary for the health or efficiency of the agency's employees while on duty.

(d) It shall be possible to establish and operate each concession in conformance with safety, health, and sanitary codes.

(e) There shall be no contravention of the provisions of law, or the terms of any lease (except with the prior consent of the lessor).

(f) The proposed concession shall not be detrimental or objectionable to other occupant agencies in the building.

(g) Commodities and services sold shall be limited to those which Federal employees may need to obtain while on duty, which are essential to their health, comfort, or efficiency, and which cannot be obtained conveniently from nearby existing facilities; *Provided:* That this requirement shall not prevent the approval of concessions required to serve a functional need of an occupant agency, as when the Government provides meals to inductees into the armed forces; or to inductees into the armed forces; as permitted by law; e.g., vending stands operated under 20 U.S.C. 107 by the blind.

(h) Except when unusual conditions prevail, each concession shall be such as will serve all Federal employees in the building. This does not preclude the establishment of duplicate facilities when justified by the size of the building.

§ 101-20.112-6 Scheduling patronage.

When requested by GSA, each occupant agency should endeavor to schedule the times at which its employees may use concession services, so that patronage will be distributed evenly over a reasonable serving period.

§ 101-20.112-7 Safety, cleanliness, and sanitation.

(a) In the interest of safety, cleanliness, and sanitation, patrons shall be encouraged to consume foods and beverages at the point of purchase. When foods or beverages are removed from the concession area for consumption, agency heads shall require that:

(1) Beverages and liquid foods be in covered containers.

(2) Empty cans be placed in receptacles provided by the concessionaires, or be placed alongside office waste receptacles.

(3) Liquids not be poured into waste receptacles.

(4) Spillage of liquids in corridors, lobbies, or work areas be avoided.

(5) Nondisposable dishes, silverware, and other utensils not be removed from concession areas without the permission of the concessionaire, and those removed with his permission be returned promptly after each use by the person granted permission.

(b) Violation of these requirements may make it necessary to withdraw the privilege of carrying foods and beverages from concession areas.

§ 101-20.112-8 Music.

(a) As in the case of other concessions, the broadcasting of music in work or concession areas shall be subject to the prior approval of GSA.

(b) Approval will be subject to the applicable provisions of § 101-20.112-4 and to the following requirements:

(1) The interested occupant agency shall accept responsibility for the satisfactory selection of music and other aspects of the service.

(2) The music shall be provided without expense to GSA, and in concession areas without expense to the concessionaire, except with his prior concurrence.

(3) Installations incident to the provision of the music shall be satisfactory to the buildings manager.

Chapter 101—Federal Property

(4) The provision of the music shall not unduly interfere with the satisfactory operation of a concession.

(5) The installation shall not be for commercial advertising.

§ 101-20.113 Staggering hours of Metropolitan Washington.

(a) *Applicability.* (1) The provisions of this section apply to all proposals to establish or change the hours of operation in Metropolitan Washington, including proposals related to the establishment or relocation of a Government office.

(2) For the purpose of this section, Metropolitan Washington includes the District of Columbia, Montgomery and Prince Georges Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties in Virginia; and all municipalities hereafter existing in Maryland and Virginia within the geographic boundaries bounded by the outer boundaries of the combined area of said counties.

(b) *Responsibility.* Except as otherwise provided, any agency considering a schedule of hours of duty shall obtain the approval of the Regional Administrator, Region 3, before the proposed schedule is put in effect. The Regional Administrator, in approving proposals to change hours of duty, will be guided by the overall policy of maintaining a staggered schedule of hours of duty in Metropolitan Washington.

(c) *Requirements.* (1) The requesting agency shall submit a written proposal to the General Services Administration (3A), Washington, D.C., which will include the proposed schedule of duty, the number of employees affected, and a detailed justification for such action.

(2) The requesting agency shall coordinate with the related employee union(s) and/or the affected employees in determining the percentage of employees in favor of any proposed change of hours and shall submit a figure with the request.

(3) In addition, the GSA Regional Administrator, Region 3, will coordinate the proposal with appropriate agencies of the District of Co