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Field Engineering Corporation

Grand Junction Operations

P.O. Box 1569
Grand Junction, CO. 81501
Tel (303) 242-8621

A Subsidiary of
The Bendix Corporation

April 30, 1979

To: All Offerors

Request for proposal:

Subject: Borehole Logging in the San Juan Basin, BFEC-GJO-RFP-0205 ; 1979, *Bent F.F.E. Comp.*

60p.

Gentlemen:

Bendix Field Engineering Corporation (BFEC), Operating Contractor for the Department of Energy (DOE), Grand Junction, Colorado invites your organization to present a proposal on the subject project.

The solicitation includes the following documents:

Exhibit A--Work Statement. This document describes the technical requirements of the project. BFEC is aware that offerors may wish to supplement or recommend modifications to the Work Statement based upon their expertise or familiarity with other projects.

Exhibit B--Technical Proposal Instructions. Offerors shall address each topic listed and arrange and label the technical proposal sections in the order shown in these instructions.

Exhibit C--Proposal Evaluation and Award Criteria. This Exhibit delineates the basis for evaluating proposals and awarding any subcontract expected to result from this solicitation.

Exhibit D--General Proposal Instructions, BFE 1278. This Exhibit provides administrative guidance to offerors, and includes Proposal Representations and Certifications, BFE 1271, which must be completed by the offeror and returned to BFEC.

**UNIVERSITY OF UTAH
RESEARCH INSTITUTE
EARTH SCIENCE LAB.**



Page Two

BFEC-GJO-RFP-0205

April 30, 1979

Exhibit E--Business Proposal Instructions. Offerors shall submit their Business Proposal as a separate document which shall include pricing information in the detail shown by the Pricing Schedule, and any other support as may be necessary to explain pricing.

Exhibit F--Sample Subcontract. This document is provided for information purposes as it represents substantially the format for the subcontract expected to result from this solicitation. BFEC is contemplating awarding a Firm-Fixed-Price type of subcontract for this work.

Responses are due not later than May 29, 1979 and shall be addressed as follows:

Bendix Field Engineering Corporation
P.O. Box 1569
Grand Junction, Colorado 81501

Attn: Subcontracts Department

Requests for information of an administrative nature should be addressed to the undersigned (303) 242-8621, extension 520. Inquiries of a technical nature may be addressed to Ray Sadowski at extension 536.

Sincerely,

BENDIX FIELD ENGINEERING CORPORATION

A handwritten signature in cursive script that reads "Melvin L. Scott".

Melvin L. Scott
Subcontract Administrator
MLS:WP

Enclosures: Notice (1)
Exhibits--as described in body
of letter.

LIST OF BIDDERS

1. BPB Instruments, Inc.
P.O. Box 2086
2458 I-70 Business Loop
Grand Junction, CO 81501

2. Edcon, Inc.
345 S. Union Blvd., Suite 212
Denver, CO 80228

3. Century Geophysical Corp.
640 Independent Avenue
Grand Junction, CO 81501

4. Birdwell
P.O. Box 1590
Tulsa, OK 74102



Field Engineering Corporation

Grand Junction Operations

NOTICES

- 1) The following provision regarding nonsegregated facilities shall be directed to the offeror's attention and for his certification where contract awards exceeding \$10,000 may result.

NOTICE OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES

Bidders and offerors are cautioned as follows: By signing this bid or offer, the bidder or offeror will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities: in this solicitation. The certification provides that the bidder or offeror does not maintain or provide for his employees facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that he will not maintain such segregated facilities. Failure of a bidder or offeror to agree to the Certification of Nonsegregated Facilities will render his bid or offer nonresponsive to the terms of solicitations involving awards of contracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause.

- 2) The following provision regarding the employment of qualified disabled veterans and veterans of the Vietnam era shall be directed to the offeror's attention and for his certification where awards in the amount of \$10,000 or more may result:

AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

Bidders and offerors should note that this solicitation includes a provision requiring the listing of employment openings with the local office of the Federal-State employment service system where a contract award is for \$10,000 or more.

EXHIBIT A

WORK STATEMENT

BOREHOLE GEOPHYSICAL HALOS

1.0 OBJECTIVE

To investigate the depositional and mineralized environment surrounding a known sandstone uranium deposit so that criteria for a near miss borehole can be developed.

2.0 BACKGROUND

2.1 Location

The project is located in an area encompassing four (4) square miles at the west end of the Grants Mineral Belt in northwestern New Mexico. The stratigraphic sequence at the site consists of outcropping Mesa Verde Formation overlain by the Mancos shale, Dakota sandstone and Morrison Formation.

2.2 Access

Access to the project area is by U. S. Highway 66 from Grants, New Mexico, northwest 19 miles to the town of Prewitt, New Mexico then 15 miles north on a unnumbered road to the community of Borrego Pass Trading Post, then either on a left fork five (5) miles or a right fork for nine (9) miles.

2.3 Parent Drilling Program

On approximately May 1, 1979 the San Juan R&D Drilling project will commence and proceed to drill twelve boreholes located in, or proximal to, a uranium deposit. Each hole will be drilled to a depth of 2,300 feet and each will be drilled into the Westwater Canyon sandstone member of the Morrison Formation. Borehole geophysical logs obtained as part of this project will be combined with lithologic and geochemical data as part of a Bendix in-house project called San Juan Basin Integration.

3.0 SCOPE

A program of four (4) principal activities is proposed for this project.

The activities consist of:

1. field work
2. data processing
3. data interpretation, and
4. final report

4.0 GENERAL PROJECT SPECIFICATIONS

4.1 Survey Content

The geophysical logging survey shall encompass twelve (12) 3-1/2" diameter boreholes approximately 2,300 feet deep. The survey shall generate a suite of logs for each hole consisting of the following desired logs:

1. induced polarization
2. long spaced resistivity (16" normal or larger) or focused (guard) resistivity
3. neutron - epithermal neutron (will consider thermal)
4. sonic velocity
5. long and short spaced density
6. natural gamma-ray

4.2 Probe Calibration

The natural gamma-ray and density (minus its source) probes must be calibrated before and after the project at the nearest DoE calibration facility. The density tool must also be calibrated at the density pits located at the USGS facility in Denver.

5.0 TASKS

To complete the geophysical logging survey project, the subcontractor shall:

1. supply all required labor, services, material and mineral logging equipment necessary to acquire the geophysical logs cited in section 4.1 above;
2. process the data collected in 1. to produce
 - a. cross plots
 - b. characteristic response parameters
 - c. matrix parameters
3. interpret the processed data for;
 - a. permeability - porosity characteristics
 - b. carbonaceous matter content
4. produce a final report discussing the characteristics of the depositional and mineralized environment that pertain to a "near miss" borehole.

5. Make a digital record of the field logs on a seven (7) track 800 BPI tape in BCD format.
6. Provide a staff geologist or geophysicist to be available to consult with BFEC on planning and interpretation of the geophysical logging survey.

6.0 DOCUMENTATION

6.1 Final Report

The final report required in section 5.0 of this exhibit may be in the form of a technical memoranda, but shall be in a format suitable for Xerox reproduction. The report shall specifically provide:

1. a discussion of the interpretation procedures used by the subcontractor for;
 - a. generation of cross plots
 - b. determination of characteristic response parameters
 - c. determination of matrix parameters
 - d. development of log analysis programs of the data listed in a, b and c above, to determine:
 - (1) permeability - porosity characteristics/relationships.
 - (2) carbonaceous matter content.
2. contoured sections and sub-surface plan maps.

6.2 Logs

1. analog field record of logs (as recorded)
2. reproducible copies of logs

6.3 Tapes

Magnetic tapes of the logs in the form and format specified by section 5.1-5 above.

7.0 PROJECT DURATION AND SCHEDULE

The duration of work is expected to be approximately three (3) months depending upon the progress of the parent drilling program. A milestone schedule appears as Appendix 1 to delineate the expected period of each activity. (Offerors are expected to submit their own milestone chart to show proposed activity schedule.)

8.0 PROJECT ADMINISTRATIVE REQUIREMENTS

8.1 Oral Reports

Frequent informal communications with the BFEC Project Monitor is required to apprise BFEC of progress.

8.2 Bi-weekly Progress Letters

A progress letter shall be submitted once every two weeks during the period of performance. This shall be a brief summary of the Subcontractor's activities to date and shall indicate percentage of project completed, difficulties encountered which may affect the project schedule, any significant discoveries which may alter the thrust of the project and any other information which may be important in conducting the balance of the project.

NOTE: If adequate information is submitted in the progress letters, then the Subcontractor will not be required to submit a draft final report for approval prior to its final delivery.

9.0 DELIVERY REQUIREMENTS

The Subcontractor shall provide the documentation as specified below:

<u>Item</u>	<u>Quantity</u>	<u>Identification</u>
1	10 ea	Final Report
2	1 ea	Analog field record of log
3	1 ea	Reproducible copies of logs
4	1 ea	Magnetic data tapes
(5)*	1 ea (Listing)*	Computer Modeling programs*
(6)*	1 ea (Punched cards)*	Computer modeling programs*

*Only required if developed for this project.

EXHIBIT B

TECHNICAL PROPOSAL INSTRUCTIONS

The offeror, shall present, as part of the overall proposal, a separate document entitled "Technical Proposal." The offeror should be guided by the following information:

1.0 GENERAL

The Technical Proposal will primarily determine the capability of your organization to participate in this project; hence, it should be specific and complete in each detail. The proposal should be practical and should be prepared simply and economically, providing straight-forward, concise delineation of capabilities to satisfactorily perform the contract being sought. In order that the technical proposal may be evaluated strictly on the merit of the material submitted, no cost information is to be included in the Technical Proposal. Where estimated man-hours (or man-months) will provide clarity, this data shall be quoted in man-hours figures only, with no extension of the cost of these man-hours in the Technical Proposal (see instructions for preparation of Business/Cost Proposal on how to present cost data).

The technical proposal shall contain an outline of the proposed lines of investigation, method of approach to the problem, any recommended changes to the technical exhibit, i.e., the Work Statement - Exhibit A, the phases or steps into which this project might logically be divided, estimated time required to complete each phase or step, and any other information considered pertinent to the problem. The proposal shall not merely offer to perform the work in accordance with the scope of the work but shall outline the actual work proposed as specifically as possible. The scope of the work reflects the problems and objectives of the program under consideration, therefore, repeating the scope of work without sufficient elaboration will not be acceptable.

2.0 FORMAT AND CONTENT

Proposals shall, at a minimum, contain the information specified below in accordance with the following format:

2.1 Table of Contents

2.2 List of Illustrations

2.3 Introduction and Summary

A brief outline of the problem and the proposed general approach toward solving it.

2.4 Technical Discussion

This section shall constitute the major portion of the technical proposal and demonstrate that the proposer fully understands the scope of work. It should be presented in as much detail as

possible and contain at a minimum the following:

- 2.4.1 Specific statement of the problem and major difficulties anticipated.
- 2.4.2 Principles and techniques which may be applied to the solution of the problem, and an evaluation of the various methods considered and substantiations of the (selected) method(s). Indicate degree of success expected. A listing of data reduction and interpretational procedures should be included.
- 2.4.3 Specific statement of any interpretations, deviations, or expectations to the scope of work.
- 2.4.4 Proposers may include suggestions for either alternate probes (logs) or improvements in the work statement. Such improvements must be separately proposed and priced.

2.5 Facilities

A statement of the facilities and logistic support, if any, which will be utilized for the project. The facilities listing must include the logging truck and the required probes.

2.6 Supporting Information

- 2.6.1 A specific concurrence with the requirements for reporting.
- 2.6.2 Any other pertinent information which will aid in evaluation of the proposal, i.e., previous experience and past performance of the company and staff on similar projects should be discussed.

EXHIBIT C

PROPOSAL EVALUATION CRITERIA

1.0 GENERAL

Bendix expects to receive proposals from companies that have:

1. Experience in logging holes of the size and depth specified in the Work Statement.
2. A reputation for doing competent logging surveys. (references are requested and will be checked in the evaluation of proposals).

2.0 EVALUATION PROCEDURE

The evaluation process designed for this Procurement will be of a two phase nature. Initially the offerors technical proposal will be evaluated for "technical acceptability," and secondly the offerors proposed price and/or costs will be considered.

2.1 Technical Evaluation

The following criteria are weighted in accordance with their impact on the probability of successful and timely completion in the best interest of the Government. These weights will be the basis for determining "technical acceptability."

<u>Item</u>	<u>Category</u>	<u>Order of Importance</u>
1	Logging truck, probes, and procedures meet the requirements of the work statement.	Primary
2	Geologist or Geophysicst on staff for survey planning and interpretation.	Secondary
3	Technical approach to project a. Follows work statement b. Provides new insight to project or proposes alternate probes	Secondary
4	Previous experience	Tertiary

(Proposals will be ranked in terms of "technical acceptability" with any deviations from the work statement, specifically flagged.)

2.2 Price/Cost Evaluation

The offerors' proposed prices will be considered independent of the technical criteria. If there are no significant technical or financial management differences, price alone may be the

determining factor. However, significant technical advantages or disadvantages may offset price differentials.

3.0 AWARD

The award will be determined on the basis of:

1. Technical Acceptability (i.e., meets or exceeds the minimum needs of the NURE project as defined herein);
and
2. Price in an award to that responsible proposer whose price is most advantageous to Bendix.



Field Engineering Corporation

Grand Junction Operations

GENERAL PROPOSAL INSTRUCTIONS

- 1.0 APPLICABLE PROVISIONS. The proposal shall be based on contract provisions required by Public Law, Executive Order, Procurement Regulations, or other Government requirements are included as an attachment to the RFP.
- 2.0 PROPOSAL ORGANIZATION. Two separate documents with distinct labelings "Technical Proposal" and "Business Proposal" shall be prepared. Each of the documents shall be separate and complete in itself so that evaluation of one may be accomplished independently of/concurrently with evaluation of the other. The Technical Proposal shall be keyed to the Business Proposal in a format that will identify specific tasks to the proposed pricing for that task. Instructions for preparation of the Technical and Business Proposal are included as attachments to the RFP. The proposal shall be signed by an official authorized to legally commit your organization.
- 3.0 NUMBER OF COPIES. Submit your proposal in triplicate to the address given in the body of the cover letter.
- 4.0 LATE PROPOSALS, MODIFICATIONS OF PROPOSALS, AND WITHDRAWALS OF PROPOSALS.
 - a. Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made, and:
 - (1) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th or earlier);
 - (2) It was sent by mail (or telegram if authorized) and it is determined by BFEC that the late receipt was due solely to mishandling by BFEC after receipt at the GJO installation; or
 - (3) It is the only proposal received.
 - b. Any modification of a proposal, except a modification resulting from BFEC's request for "best and final" offer, is subject to the same conditions as in a(1) and a(2) of this provision.
 - c. A modification resulting from BFEC's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by BFEC after receipt at the GJO installation.

d. The only acceptable evidence to establish:

- (1) The date of mailing of a late proposal or modification sent either by registered or certified mail is the U.S. Postal Service postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. If neither postmark shows a legible date, the proposal or modification shall be deemed to have been mailed late. (The term "postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. Postal Service. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye "postmark" on both the receipt and the envelope or wrapper.)
- (2) The time of receipt at the GJO installation is the time-date stamp of such installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.

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

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

5.0 ALTERNATE PROPOSALS. You may, at your discretion, submit alternative proposals or proposals which deviate from the requirements: PROVIDED, that you also submit a proposal for performance of the work as specified in the statement of work. Such proposals may be considered if overall performance would be improved or not compromised and if they are in the best interest of BFEC. Alternative proposals, or deviations from any requirement of this RFP, shall be clearly identified.

6.0 DISCLOSURE OF INFORMATION. Proposals, when submitted to BFEC in response to this request for proposals, become Government records as defined in the Freedom of Information Act (5 U.S.C. 552). Therefore, the contents of such proposals may be disclosed by the U. S. Department of Energy pursuant to that Act, subject to the exemptions from disclosure contained therein. One such exemption is for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." The offeror is therefore requested to designate, on the cover sheet of the proposal, those specific portions of the proposal which the offeror deems to be privileged or confidential to the offeror. Although such designation will not be solely determinative of a Department of Energy decision to disclose or not to disclose such information in response to a Freedom of Information Act request, it will serve as one of the criteria applicable in making that determination. Further, information so designated by the offeror will not be disclosed pursuant to the Act without prior notification to the offeror.

Notwithstanding the above, if a contract is awarded to the offeror as a result of or in connection with the submission of this proposal, the Government or Bendix shall have the right to use or disclose technical data to the extent provided in the contract.

- 7.0 AWARD WITHOUT DISCUSSION. BFEC reserves the right to make an award without further discussion of the proposals received. Therefore, it is important that your proposal be submitted initially on the most favorable terms from both the technical and cost standpoints. After submission of proposals and closing thereof, no information will be released until after awards.
- 8.0 REJECTION OF PROPOSALS. BFEC reserves the right to reject any or all proposals received. It is understood that your proposal will become part of the official file on this matter without obligation to Bendix.
- 9.0 UNNECESSARILY ELABORATE PROPOSALS. Unnecessarily elaborate brochures or other presentations beyond that sufficient to present a complete and effective proposal are not desired and may be construed as an indication of the offeror's lack of cost consciousness. Elaborate art work, expensive visual, and other presentation aids are neither necessary nor solicited.
- 10.0 PRE-AWARD SURVEY. Prior to award of a contract, BFEC reserves the right to conduct a pre-award survey of any firm under consideration to confirm any part of the information furnished by the offeror or to require other evidence of managerial, financial, technical, and other capabilities, the positive establishment of which is determined by BFEC to be necessary for the successful performance of the contract. DOE may solicit, from all available Government sources, experience data concerning a proposer's past performance, and such information will be considered by Bendix in the evaluation of offers. Offerors are instructed to provide their record of similar, or comparable projects successfully accomplished, in a format identifying the projects being performed, or performed in the past five (5) years, under either prime contract or subcontract for Governmental agency and commercial customers.
- 11.0 PROPRIETARY TECHNICAL DATA. Proposals submitted in accordance with this request for proposal must identify those items of technical data as defined in paragraph (A)(1) of the article entitled "Rights in Technical Data" which the proposer, if awarded the subcontract, will withhold from BFEC pursuant to paragraph (e) of the article. If no technical data will be withheld, proposal must so state.



Field Engineering Corporation

Grand Junction Operations

PROPOSAL REPRESENTATIONS AND CERTIFICATIONS

BFEC Solicitation No. _____ Date: _____

Name _____

Address _____

In support of the attached proposal in response to the above referenced inquiry, offeror/subcontractor makes the following certifications and representations:

1. SMALL AND SMALL DISADVANTAGED BUSINESS CERTIFICATION

(Applicable to all solicitations and contracts over \$10,000.)

- (a) He is (), is not () a small business concern as defined in accordance with Section 3 of the Small Business Act (15 U.S.C. 632).
- (b) He is a small business (as set forth in (a) above) and is (), is not () owned and controlled by socially and economically disadvantaged individuals. Such a firm is defined as one;
 - (1) which is at least 51 per centum owned by one or more such individuals or in the case of a publicly owned business, at least 51 per centum of the stock is owned by such individuals;
 - (2) whose management and daily business operations are controlled by one or more such individuals; and
 - (3) which certifies concerning said ownership and control in accordance with section (c) below.
- (c) He is (), is not () a minority individual(s) in accordance with (c)(1) below or that he is (), is not () socially and economically disadvantaged in accordance with section (c)(1) or (c)(3). Socially and economically disadvantaged individuals are defined as:
 - (1) United States citizens who are Black Americans, Hispanic Americans, Native Americans, or other specified minorities;
 - (2) any other individual found to be disadvantaged pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637); or
 - (3) any other individual defined as socially, and economically disadvantaged, for purposes relating to other sections of the Small Business Act.

No solicitation may be properly considered without this certification and no award may be made without it being executed.

2. TYPE OF ORGANIZATION

He operates as an INDIVIDUAL (), STATE OR LOCAL AGENCY (), PARTNERSHIP (), JOINT VENTURE (), NONPROFIT (), EDUCATIONAL INSTITUTION (), CORPORATION (), organized and existing under the laws of the State of _____.

3. REGULAR DEALER—MANUFACTURER REPRESENTATION

(Applicable only to supply subcontracts exceeding \$10,000.)

He is a regular dealer (), manufacturer () of the supplies/services covered by this proposal.

Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

4. CONTINGENT FEE REPRESENTATION

(Applicable only to proposals in which the aggregate amount involved exceeds \$10,000).

Offeror represents: (a) that he has (), has not () employed or retained any company or person (other than a full-time bona fide employee working solely for the offeror) to solicit or secure this contract, and (b) that he has (), has not () paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the offeror) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract; and agrees to furnish information relating to (a) and (b) above as requested by the Contracting Officer.

Note: For interpretation of the representation, including the term "bona fide employee," see Code of Federal Regulations, Title 41, Chapter 1, Subpart 1-1.5.

5. EQUAL EMPLOYMENT OPPORTUNITY

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

(b) Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities. A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually (1970 August)).

Note: The penalty for making false statement in offers is prescribed in 18 U.S.C. 1001.

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

(d) Affirmative Action Program (1970 August). (The following certification shall be completed by each offeror whose offer is \$50,000 or more and who has 50 employees or more.)

The offeror certifies that he has (), has not () developed and maintained at each of his establishments Equal Opportunity Affirmative Action Programs, pursuant to 41 CFR 60.2.

(e) Certification of Equal Employment Compliance (1970 August). By submission of this offer, the offeror certifies that, except as noted below, up to the date of this offer, no advice, information or notice has been

received by the offeror from any Federal Government agency or representative thereof that the offeror or any of its divisions or affiliates or known first-tier subcontractors is in violation of any of the provisions of Executive Order No. 11246 of September 24, 1965, Executive Order No. 11375 of October 13, 1967, or rules and regulations of the Secretary of Labor (41 CFR, Chapter 60) and specifically as to not having an acceptable affirmative action program or being in noncompliance with any other aspect of the Equal Employment Opportunity Program. It is further certified and agreed that should there be any change in the status of circumstances certified to above, between this date and the date of expiration of this offer or any extension thereof, the Bendix Field Engineering Corporation buyer cognizant of this procurement will be notified forthwith.

6. DUPLICATION OF COST

The Contractor represents and certifies that any charges contemplated and included in his estimate of cost for performance are not duplicative of any charges against any other Government contract, subcontract, or other Government source.

7. CERTIFICATE; AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS

This certification shall apply to all nonexempt contracts and subcontracts resulting from this solicitation, which exceed \$2,500. The offeror certifies with respect to the Affirmative Action For Handicapped Workers clause as follows:

- (a) He has (), has not () previously been awarded a contract which included the clause FPR 1-12. 1304-1. (If affirmative, execute b).
- (b) The time specified for contract performance exceeded 90 days (), did not exceed 90 days (). (If more than 90 days, execute c).
- (c) The amount of the contract was less than \$500,000 (), more than \$500,000 (), and he has (), has not () published his program for the employment of the handicapped. (If more than \$500,000 execute d).
- (d) He has (), has not () submitted the required annual report to the Assistant Secretary of Labor for Employment Standards.
- (e) He has (), has not () made a good faith effort to effectuate and carry out his affirmative action program.
- (f) He will not award subcontracts to persons or concerns that have not published programs and submitted annual reports as required by the clause.

8. DATA

Offeror's proposal does not include any estimated costs for data previously furnished to BFEC or the Government under other Government contracts.

9. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (JUNE 1964)

- (a) By submission of this proposal, each offeror certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that in connection with this procurement:
 - (1) The prices in this proposal have been arrived at independently, without consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor;
 - (2) Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the offeror and will not be knowingly be disclosed by the offeror, prior to award directly or indirectly to any other offeror or to any competitor; and
 - (3) No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

- (b) The person signing this proposal certifies that:
- (1) He is the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein and that he has not participated, and will not participate, in any action contrary to 9(a)(1) through 9(a)(3); or
 - (2) (a) He is not the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein but that he has been authorized in writing to act as agent for the persons responsible for such decisions in certifying that such persons have not participated, and will not participate, in any action contrary to 9(a)(1) through 9(a)(3) and as their agent does hereby so certify; and
(b) He has not participated, and will not participate, in any action contrary to 9(a)(1) through 9(a)(3).
- (c) This certification is not applicable to a foreign offeror submitting a proposal for a contract which requires performance or delivery outside the United States, its possessions and Puerto Rico.
- (d) A proposal will not be considered for award where 9(a)(1), 9(a)(3), or 9(b) have been deleted or modified. Where 9(a)(2) has been deleted or modified, the proposal will not be considered for award unless the offeror furnished with the proposal a signed statement which sets forth in detail the circumstances of the disclosure and BFEC determines that such disclosure was not made for the purpose of restricting competition.

10. LABOR SURPLUS AREA

Work to be performed under this proposal will (), will not () be substantially performed in an area of persistent or substantial labor surplus.

11. CLEAN AIR AND WATER CERTIFICATION

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

The Bidder or Offeror certifies as follows:

- (a) Any facility to be utilized in the performance of this proposed order has (), has not () been listed on the Environmental Protection Agency list of violating facilities.
- (b) The Bidder or Offeror will promptly notify the Buyer, prior to award, of the receipt of any communication from the Director, Office of Federal Activities, U.S. Environmental Protection Agency, indicating that any facility which it proposes to use for the performance of the order is under consideration to be listed on the EPA list of violating facilities.
- (c) The Bidder or Offeror will include the substance of this certification, including this paragraph (c), in every nonexempt subcontract.

12. DIRECT EQUIPMENT COSTS

Offeror's proposal does (), does not () include any estimated direct costs for equipment to be procured under this subcontract which will not be incorporated in the end item to be delivered.

13. ROYALTIES

The Offeror certifies that the quoted price does (), does not () include an amount for royalty payment(s) by the Offeror directly to others.

14. BUY AMERICAN CERTIFICATE

(Applies to proposals involving end products as defined by EPR 1-6:101.)

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

Excluded end products (show country of origin for each excluded end product). _____

15. SUBCONTRACTING AND PLANS REPRESENTATION

(Applicable to all procurements expected to result in the award of contracts exceeding \$1,000,000 for construction or \$500,000 for all other contracts.)

(a) The following conditions prevail which determine whether the firm shall be required to submit a subcontracting plan for small business concerns owned and controlled by socially and economically disadvantaged individuals:

- (1) He is () a small business as defined in accordance with Section 3 of the Small Business Act (15 U.S.C. 632).
- (2) Subcontracting possibilities are not () offered with respect to this contract.
- (3) The contract, including all subcontracts thereunder, will be performed entirely outside of the United States, its territories and possessions, the District of Columbia and the Commonwealth of Puerto Rico and is therefore not covered ().
- (4) The contract, including all prior modifications and/or extensions of which this award is a part and all projected future actions, shall not () exceed \$1,000,000 (if solely for construction of a public facility) or \$500,000 otherwise.
- (5) The contract is for services which are personal in nature and is therefore not covered ().

(b) He is (), is not () required to submit plans for subcontracting with small and small disadvantaged businesses because he has properly executed one or more of the above representations.

He will submit () a Subcontracting Plan in accordance with the terms and conditions specified unless exempted by (a) above, and that he will (), will not () require it of all appropriate subcontractors unless they certify that they are exempt.

Failure to execute this representation will be deemed a minor informality and the offeror will be permitted to correct the omission prior to award.

16. WOMAN-OWNED BUSINESS

Concern is (), is not () a woman-owned business.

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

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

This is to certify that the information contained in Items 1 through 16 above is accurate to the best of my knowledge and belief.

NAME AND TITLE: _____

FIRM: _____ DATE: _____

EXHIBIT E

BUSINESS PROPOSAL INSTRUCTIONS

The offeror's Business Proposal shall consist of the following elements:

1. Price Schedule
2. Representations and Certifications
3. Other Administrative Data

1.0 PRICING DATA

The offeror, as minimum, must submit the Price Schedule, fully completed. The attached Price Schedule, in blank, must be used in the preparation of your offer.

2.0 REPRESENTATIONS AND CERTIFICATIONS

Proposal Certifications attached to these instructions must be executed by an official authorized to bind the offeror and are made a part of this proposal.

3.0 OTHER ADMINISTRATIVE DATA

- 3.1 The proposal shall stipulate that it is predicated upon all the terms and conditions of this solicitation. In addition, it shall contain a statement of the effect that it is firm for a period of at least thirty days from the date of receipt thereof by Bendix.
- 3.2 The proposal shall list the names and telephone numbers of persons authorized to conduct negotiations.
- 3.3 It is anticipated that offeror will provide all equipment and facilities necessary for performance of any resulting subcontract.
- 3.4 The offeror shall identify Government-owned property in its possession and/or property acquired from Federal funds, and title to which vests in the offeror, which he proposes to use in the performance of the prospective contract.

PRICING SCHEDULE

RFP _____

ITEM #	DESCRIPTION	ESTIMATED QUANTITY	UNIT PRICE	TOTAL PRICE
1.	Logging equipment & operators	90 days	\$/day	\$
2.	Basic Suite of logs			
	a. Induced polarization	27,600 ft.	\$/ft.	\$
	b. Long spaced resistivity	27,600 ft.	\$/ft.	\$
	c. Neutron-Epithermal	27,600 ft.	\$/ft.	\$
	d. Sonic velocity	27,600 ft.	\$/ft.	\$
	e. Long and short space density	27,600 ft.	\$/ft.	\$
	f. Natural gamma-ray	27,600 ft.	\$/ft.	\$
			TOTAL LOGGING	\$
3.	Per Diem	days	\$/day	\$
4.	Mileage	miles	\$/mi.	\$
5.	Digitizing logs on tape	hrs.	\$/hr.	\$
6.	Calibration of probes in e & f (above)		\$/ea.	\$
7.	Data Processing	hrs.	\$/hr.	\$
8.	Data interpretation	hrs.	\$/hr.	\$
9.	Final Report	10 copies	\$/copy	\$
10.	Reproducible copies of logs	6 logs	\$/copy	\$
11.	Staff Geophysicist/Geologist	hrs	\$/hr.	\$
			TOTAL	\$

Overtime in excess of _____ hrs. at \$ _____/hr.

In the event of an overage or underrun of the estimated quantities shown above, the total amount to be paid will be calculated by multiplying the amount actually successfully accomplished times the unit prices shown above. In no event shall the total amount to be paid by Contractor exceed the subcontract value as set forth on the signature page of this subcontract, unless the subcontract value is increased accordingly by a supplemental agreement.

Typed Name and Title

Signature

Name of Firm

Date of Submission

Project Number: 50-51-5104
B/R Code: BG-20-02-00-02
B/R Category: Technology Integration

SAMPLE SUBCONTRACT

Awarded By: Bendix Field Engineering Corporation
Grand Junction Operations
P. O. Box 1569
Grand Junction, Colorado 81501

Awarded To:

Type of Subcontract: Firm-Fixed-Price

Project Description: Borehole Geophysical Logging Survey

Place of Performance: Northwestern New Mexico

The subcontractor agrees to perform the technical services and furnish data as set forth in this subcontract. The subcontract consists of the following documents which are cited in descending order of precedence.

- Signature Page
- Subcontract Schedule - Articles I thru X
- Terms and Conditions for Subcontracts - BFE-1271 Rev. 2/12/79
- Exhibit A - Work Statement - Borehole Geophysical Halos dated 4/26/79

The parties hereto have executed this subcontract on the date shown below:

BENDIX FIELD ENGINEERING CORPORATION
GRAND JUNCTION OPERATIONS
GRAND JUNCTION, COLORADO 81501

SUBCONTRACTOR

CONTRACTOR

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

SUBCONTRACT SCHEDULE

This subcontract is a first-tier procurement under Prime Contract No. DE-AC13-76GJ01664 between the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter identified as "DoE"), and Bendix Field Engineering Corporation as the Operating Contractor for the DoE - Grand Junction, Colorado Office.

This subcontract between Bendix Field Engineering Corporation, a Delaware Corporation (hereinafter identified as "Contractor"), a wholly owned subsidiary of the Bendix Corporation, and _____ (hereinafter identified as "Subcontractor") is entered into on the date cited on the Signature Page hereto.

NOW WITNESSETH

WHEREAS, the Contractor, in the performance of its obligations as the DoE Operating Contractor, has a need for certain specialized technical services during the period specified in Article II below, and

WHEREAS, Subcontractor has represented that it has the personnel and resources to provide said services, and

WHEREAS, the Subcontractor agrees to provide said services during the performance period specified elsewhere in this subcontract,

NOW THEREFORE, the parties hereto agree as follows:

ARTICLE I - SCOPE OF WORK

Subcontractor shall provide the necessary personnel and facilities to conduct the Borehole Geophysical Logging Survey more specifically described in the Work Statement, Exhibit A, attached to this subcontract, and incorporated by reference.

ARTICLE II - PERIOD OF PERFORMANCE

- (a) This subcontract shall become effective commencing on the date this subcontract is signed by BFEC, and run for a period of 90 days, both dates inclusive, at which time this subcontract shall lapse under terms, unless otherwise modified as to the period of performance, by a supplementary agreement executed by the parties.
- (b) The Subcontractor agrees that the goods and services required by Article I, Scope of Work, above shall begin within _____ calendar days after the award of this subcontract or at such other date as may be mutually agreed to in writing by Contractor and Subcontractor. The Subcontractor shall supply the Article III goods and services in accordance with the highest prevailing standards and in such a manner that the drilling project will not be delayed.

Subcontract Schedule
Page Two

ARTICLE III - ITEMS TO BE DELIVERED AND DELIVERY SCHEDULE

The Subcontractor shall deliver the items cited in Exhibit A, Section 9.0 in accordance with the schedule cited in that reference, with final delivery of the tapes, logs, and final report to be achieved within 90 days of signing of this subcontract.

ARTICLE IV - CONSIDERATION AND PAYMENT

(a) Consideration

In full consideration for Subcontractor's total performance of all requirements of this subcontract, Bendix shall pay \$_____ said sum representing the total obligation of Bendix unless otherwise adjusted by subsequent amendment of this subcontract.

(b) Payment

1. The Contractor agrees, upon receipt of properly executed invoices, to pay the Subcontractor for the satisfactory completion of the work required at each drilling site, in accordance with the Pricing Schedule cited in paragraph 3. below.
2. The Contractor agrees to make monthly progress payments to the Subcontractor based on actual performance at the rates specified in the Pricing Schedule less a withholding of 15% from each invoice. The withheld portion will be paid upon satisfactory completion of all requirements of this subcontract by the Subcontractor.
3. Pricing Schedule - The Subcontractor will be reimbursed according to the following schedule for all work successfully completed.

<u>Item #</u>	<u>Description</u>	<u>Estimated Quantity</u>	<u>Unit Price</u>	<u>Total Price</u>
1	Logging equipment & operators	90 days	\$ _____ /day	\$ _____
2.	Basic suite of logs			
	a. Induced polarization	27,600 ft.	\$ _____ /ft.	\$ _____
	b. Long Spaced Resistivity	27,600 ft.	\$ _____ /ft.	\$ _____
	c. Neutron-Epithermal	27,600 ft.	\$ _____ /ft.	\$ _____
	d. Sonic Velocity	27,600 ft.	\$ _____ /ft.	\$ _____
	e. Long and short space density	27,600 ft.	\$ _____ /ft.	\$ _____
	f. Natural gamma-ray	27,600 ft.	\$ _____ /ft.	\$ _____
TOTAL LOGGING				\$ _____

Subcontract Schedule
Page Three

3.	Per Diem	_____ days	\$ _____	/day	\$ _____
4.	Mileage	_____ miles	\$ _____	/mi.	\$ _____
5.	Digitizing logs on tape	_____ hrs.	\$ _____	/hr.	\$ _____
6.	Calibration of probes in c & f (above)		\$ _____	ea.	\$ _____
7.	Data Processing	_____ hrs.	\$ _____	/hr.	\$ _____
8.	Data interpretation	_____ hrs.	\$ _____	/hr.	\$ _____
9.	Final Report	10 copies	\$ _____	/copy	\$ _____
10.	Reproducible copies of logs	6 Logs	\$ _____	/copy	\$ _____
11.	Staff Geophysicist/ Geologist	_____ hrs.	\$ _____	/hr.	\$ _____
TOTAL					\$ _____

Overtime in excess of _____ hrs. at \$ _____ /hr.

In the event of an overage or underrun of the estimated quantities shown above, the total amount to be paid will be calculated by multiplying the amount actually successfully accomplished times the unit prices shown above. In no event shall the total amount to be paid by Contractor exceed the subcontract value as set forth on the signature page of this subcontract, unless the subcontract value is increased accordingly by a supplemental agreement.

ARTICLE V - SUBMISSION OF INVOICES, PROGRESS LETTERS, AND TECHNICAL DATA

- (a) Invoices (5 copies each) and one copy of each Monthly Progress letters shall be submitted to:

BENDIX FIELD ENGINEERING CORPORATION
Grand Junction Operations
P. O. Box 1569
Grand Junction, Colorado 81501

Attn: Subcontracts Department

- (b) All invoices shall be properly certified in accordance with the following:

"I certify that all expenditures reported (or payments requested) are for appropriate purposes and in accordance with the terms of the Subcontract."

Signed: _____

Subcontract Schedule
Page Four

- (c) Bi-weekly progress letters shall be submitted to the address cited in (a) except to:

ATD

Attn: Technical Monitor; Subcontract _____

The Subcontract Number and Project Number appearing on the Signature Page of this subcontract must appear on all invoices, reports, shipping documents or other correspondence submitted under this subcontract.

- (d) Shipments of physical items (i.e., other than administrative matters), from the Subcontractor to the Contractor shall be directed to:

BENDIX FIELD ENGINEERING CORPORATION
Grand Junction Operations
2597 B 3/4 Road
Grand Junction, CO 81501

Attn: BFEC Warehouse/Receiving

ARTICLE VI - ASSIGNMENT OF THE WORK OR SUBCONTRACTING

Neither the whole of the work required to be performed under this subcontract by the Subcontractor, nor a substantial portion of said work, may be assigned or transferred to another entity, whether wholly unrelated to the Subcontractor or partially or wholly owned by Subcontractor, except with the prior written approval of the Contractor. Such limitation does not limit the Subcontractor under the "Assignment" provision contained elsewhere in the subcontract.

ARTICLE VII - CONTRACTOR'S REPRESENTATIVES

- (a) Ray Sadowski is hereby assigned to this subcontract as Project Monitor. The Project Monitor has been delegated the authority to provide technical direction to the Subcontractor and determine the acceptability of the Subcontractor's progress and overall technical performance. This authority is limited to technical direction and approval of work currently specified in this subcontract. In the course of performing this subcontract, if the Subcontractor considers any technical direction by the Project Monitor as being a change in the work affecting the overall price or performance period or any other requirements of this subcontract, he shall promptly advise the Subcontract Administrator giving full details as provided under the "Changes" article of the subcontract.
- (b) Melvin L. Scott is hereby assigned as Subcontract Administrator and is responsible for all administrative activities under this subcontract.

Subcontract Schedule
Page Five

ARTICLE VIII - RELEASE OF INFORMATION AND ACQUISITION OF MINERAL INTEREST

Information or technical data acquired or generated by the Subcontractor in performing this subcontract shall be held confidentially between the Subcontractor and the Contractor until such time as such information or technical data is released in published reports by the Contractor. Subcontractor shall be prohibited from filing for, or otherwise acquiring, any mineral rights in the area being investigated under the subcontract until thirty days after the date of publication by Contractor or DoE of the data developed under this subcontract.

ARTICLE IX - AMENDMENTS OR REVISIONS

This subcontract incorporates all prior negotiation, understandings or agreement, whether written or otherwise, between the duly authorized representatives of the parties to this Agreement and upon execution herein shall only be amended or revised by mutual agreement and execution in similar formal instructions by duly authorized representatives of the parties; except this Article shall not preclude unilateral direction by Contractor under the "Changes" Article included hereinafter in this subcontract, and such direction shall be reduced to written form.

ARTICLE X - INDEMNITY CLAUSE

It is mutually agreed that Subcontractor is an independent contractor and that Subcontractor shall obtain and maintain all necessary insurance coverage including liability insurance.

The Subcontractor shall and does hereby indemnify and hold harmless Contractor and the UNITED STATES GOVERNMENT from any and all losses, damages or liability and from any and all claims arising therefore, on account personal injury, incapacity, death or property damage of any and all nature whatsoever arising out of activities related to this subcontract to the Contractor and Subcontractor, their employees, Subcontractors of any tier, and their officers or agents.

(END OF SUBCONTRACT SCHEDULE)



Field Engineering Corporation

Grand Junction Operations

TERMS AND CONDITIONS FOR SUBCONTRACTS

- 1.0 Definitions
- 2.0 Choice of Law
- 3.0 Extras
- 4.0 Changes
- 5.0 Pricing of Adjustments
- 6.0 Inspection and Warranty
- 7.0 Assignment
- 8.0 Accounts, Records, and Inspection
- 9.0 Examination of Records by Comptroller General
- 10.0 Property
- 11.0 Bonds and Insurance
- 12.0 Federal, State, and Local Taxes
- 13.0 Cost or Pricing Data & Defective Pricing Adjustment
- 14.0 Disputes
- 15.0 Control of Subcontractor by Foreign Interests
- 16.0 Preference for U.S. Flag Air Carriers
- 17.0 Clean Air and Water Requirements
- 18.0 Permits
- 19.0 Labor
- 19.1 Contract Work Hours and Safety Standards Act--Overtime Compensation
- 19.2 Convict Labor
- 19.3 Equal Opportunity
- 19.4 Notice of Labor Disputes
- 19.5 Walsh-Healey Public Contracts Act
- 19.6 Affirmative Action for Handicapped Workers
- 20.0 Buy American Act
- 21.0 Covenant Against Contingent Fees
- 22.0 Officials Not to Benefit
- 23.0 Termination
- 23.1 Termination for Convenience
- 23.2 Termination for Default
- 24.0 Patents
- 24.1 Patent Rights
- 24.2 Patent Indemnity
- 24.3 Authorization and Consent
- 25.0 Technical Data
- 25.1 Technical Data Requirements
- 25.2 Rights in Technical Data
- 25.3 Notice and Assistance Regarding Patent and Copyright Infringement
- 26.0 Labor Surplus Area Subcontracting Program
- 27.0 Minority Business Enterprises Subcontracting Program
- 28.0 Utilization of Small Business Concerns
- 29.0 Utilization of Labor Surplus Area Concerns
- 30.0 Private Use of Subcontract Information and Data

- 31.0 Priorities, Allocations and Allotments
- 32.0 Small Business Subcontracting Program
- 33.0 Cost Accounting Standards
 - 33.1 Disclosure
 - 33.2 Administration of Cost Accounting Standards
- 34.0 Renegotiation
- 35.0 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era
- 36.0 Utilization of Minority Business Enterprises
- 37.0 Payment of Interest on Subcontractor's Claims
- 38.0 Discounts

1.0 DEFINITIONS

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

- (a) The term "Government" means the United States of America.
- (b) The term "DOE" means the Department of Energy, the Secretary (Agency head), or any duly authorized representative of the Secretary, including the Contracting Officer except for the purpose of deciding an appeal under the article entitled "Disputes."
- (c) The term "Contracting Officer" means the authorized Government representative administering the prime contract acting on behalf of the Government, and the term includes the authorized representative of a Contracting Officer acting within the limits of his/her authority.
- (d) The term "Contractor" means the Bendix Field Engineering Corporation, in its performance of the prime contract with the United States of America, and includes the duly authorized representatives, thereof acting within the limits of their authority.
- (e) "Contract Administrator" means the person properly designated to administer this subcontract on behalf of the Contractor, and includes the authorized representative of a Contract Administrator acting within the limits of written authority delegation.
- (f) "Project Manager" means the properly designated Contractor representative who is directly responsible for maintaining liaison with the Subcontractor for the purpose of monitoring work statement progress of the project, and evaluating the final work statement results.
- (g) "Subcontract" means the total contents of this written instrument, including work to be performed and the terms and conditions under which it shall be performed.
- (h) Except as otherwise provided in this subcontract, the term "subcontract" includes purchase orders under this subcontract.

2.0 CHOICE OF LAW

The rights and obligations of the parties hereto shall be governed by, and this subcontract shall be interpreted in accordance with, federal law.

3.0 EXTRAS

Except as otherwise provided in this subcontract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contractor.

4.0 CHANGES

- (a) The Contractor may at any time and without notice to the sureties, if any, issue written directions requiring additional work within the general scope of this subcontract or directing the omission of or variation in work covered by this subcontract. If any such direction results in a material change in the amount or character of the subcontract an equitable adjustment will be made and the subcontract shall be modified in writing accordingly. Any claim by the Subcontractor for an adjustment under this article must be asserted in writing within 30 days from the date of receipt by the Subcontractor of the notification of change; provided, however, that the Contractor, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this subcontract. A failure to agree on an equitable adjustment under this article shall be deemed to be a dispute within the meaning of the article entitled "Disputes."
- (b) Nothing contained in this article shall excuse the Subcontractor from proceeding with the prosecution of the work in accordance with the requirements of any direction hereunder.

5.0 PRICING OF ADJUSTMENTS

When costs are a factor in any determination of a subcontract price adjustment pursuant to the "Changes" clause or any other provision of this subcontract, such costs shall be in accordance with the contract cost principles and procedures in Part 9-15 of the ERDA Procurement Regulations (ERDA-PR 9-15) in effect on the date of this subcontract.

6.0 INSPECTION AND WARRANTY

(a) Inspection

The Contractor and the DOE through any authorized representatives shall have the right, at all reasonable times, to inspect or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection or evaluation is made by the Contractor or the DOE on the premises of the Subcontractor or a subcontractor of any lower tier, the Subcontractor shall provide and shall require his subcontractors of any lower tier to provide all reasonable facilities and assistance for the safety and convenience of the Contractor's or the DOE's representatives in the performance of their duties. All inspection and evaluations shall be performed in such a manner as will not unduly delay the work. Any inspection by the Contractor or the DOE of the work to be performed under this subcontract does not relieve the Subcontractor of its lower-tier subcontractors from any responsibility regarding defects or other failures to meet the subcontract requirements, or relieve the Subcontractor or its lower-tier subcontractors of any responsibilities under any warranty included in this subcontract.

(b) Warranty

The Subcontractor agrees that the supplies or services furnished under the subcontract shall be covered by the most favorable warranties the Subcontractor gives to any customer for the same or substantially similar supplies or services, and that the rights and remedies provided in the article shall extend to the Government and are in addition to and do not limit any rights afforded to the Contractor by any other article of this subcontract. The Subcontractor shall furnish to the Contractor copies of the most favorable warranties the Subcontractor gives to any customer for the same or substantially similar supplies or services, and such warranties shall be deemed a part of this subcontract.

7.0 ASSIGNMENT

This subcontract is assignable by the Contractor to the Government or its designee. Any assignment of this subcontract or the work to be performed, in whole or in part, or of any other interest hereunder without Contractor's written consent, except an assignment confined solely to monies due or to become due hereunder to a bank, trust company, or other financing institution, including any federal lending agency, shall be void.

8.0 ACCOUNTS, RECORDS, AND INSPECTION

(The following article shall be applicable to this subcontract if, under the terms of this subcontract, costs incurred by either the Subcontractor or any of its lower-tier subcontractors are a factor in determining the amount payable by the Contractor to the Subcontractor.)

(a) Accounts

The Subcontractor shall maintain a distinct set of accounts, records, documents, and other evidence showing and supporting all allowable costs incurred, revenues or other applicable credits, fee accruals, and the receipt, use, and disposition of all Government property coming into the possession of the Subcontractor under this subcontract. The system of accounts employed by the Subcontractor shall be satisfactory to the Contractor and in accordance with generally accepted accounting principles consistently applied.

(b) Inspection and Audit of Accounts and Records

All books of account and records relating to this subcontract shall be subject to inspection and audit by the Government or Contractor at all reasonable times, before and during the period of retention provided for in paragraph (d) below, and the Subcontractor shall afford the auditor proper facilities for such inspection and audit.

(c) Audit of Subcontractor's Records

The Subcontractor also agrees, with respect to any subcontracts (including lump-sum or unit price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the Subcontractor of any tier, to conduct an audit of the costs of the lower-tier subcontractor in a manner satisfactory to the Contractor except when the Contractor elects to waive such audit or to approve other arrangements for the conduct of the audit.

(d) Disposition of Records

Except as otherwise agreed by the Government or Contractor and the Subcontractor, all financial and cost reports, books of account, and supporting documents, and other data evidencing costs allowable and revenues and other applicable credits under this subcontract, shall be made available to the Government or otherwise disposed of by the Subcontractor, either as the Contractor may from time to time direct during the progress of the work, or in any event, as the Contractor shall direct upon completion or termination of this subcontract and final audit of all accounts hereunder.

(e) Reports

The Subcontractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this subcontract as the Contractor may from time to time require.

(f) Inspection

The Contractor and the DOE shall have the right to inspect the work and activities of the Subcontractor under this subcontract at such time and in such manner as it shall deem appropriate.

(g) Subcontracts

The Subcontractor further agrees to require the inclusion of provisions similar to those in paragraph (a) through this paragraph (g) of this article in all subcontracts (including lump-sum or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the Subcontractor.

9.0 EXAMINATION OF RECORDS BY COMPTROLLER GENERAL

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

- (a) 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 this subcontract, unless the DOE authorizes their prior disposition, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Subcontractor, involving transactions related to this subcontract. (The term "subcontract" as used in this clause excludes subcontracts or purchase orders for public utility service rates established for uniform applicability to the general public.)
- (b) The process of access and examination described above for records which relate to (a) appeals under the "Disputes" clause of this subcontract, (b) litigation or settlement of claims arising out of the performance of this subcontract, or (c) costs and expenses of this subcontract 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.

10.0 PROPERTY

(a) Furnishing of Government Property

The Contractor reserves the right to furnish any property, and such services as may be mutually agreed upon, for the performance of the work.

(b) Title to Property

Title to all property furnished by the Contractor shall vest in the Government except as otherwise provided in this article. Except as otherwise provided in this subcontract or by the Contractor, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Subcontractor, the cost of which is allowable as a direct item of cost under this subcontract, shall pass directly from the vendor to the Government. The Contractor reserves the right to inspect and in lieu of and prior to the Subcontractor's inspection and acceptance or rejection to accept or reject, any item of such property. The Subcontractor shall make such disposition of rejected items as the Contractor shall direct. Title to other property, the cost of which is reimbursable to the Subcontractor under this contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this Subcontract, or (ii) commencement of processing or use of such property in the per-

formance of this subcontract, or (iii) reimbursement of the cost thereof by the Contractor, whichever first occurs. Property furnished by the Contractor and property purchased or furnished by the Subcontractor, title to which vests in the Government under this paragraph, are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.

(c) Identification

To the extent directed by the Contractor, the Subcontractor shall identify Government property coming into the Subcontractor's possession or custody by marking or segregating in such a way, satisfactory to the Contractor, as shall indicate its ownership by the Government.

(d) Disposition

The Subcontractor shall make such disposition of Government property which has come into the possession or custody of the Subcontractor under this subcontract as the Contractor shall direct. When authorized in writing by the Contractor during the progress of the work or upon completion or termination of this subcontract, the Subcontractor may upon such terms and conditions as the Contractor approve, sell, or exchange such property, or acquire such property at a price agreed upon by the Contractor and the Subcontractor as the fair value thereof. The amount received by the Subcontractor as the result of any disposition, or the amount of the agreed fair value of any such property acquired by the Subcontractor shall be applied in payments made or costs allowable under this subcontract, or shall be otherwise credited to the account of the Government, as the Contractor may direct. Upon completion of the work or the termination of this subcontract the subcontractor shall render an accounting, as prescribed by the Contractor, of all Government property which has come into the possession or custody of the Subcontractor under this subcontract.

(e) Protection of Government Property - Classified Materials

The Subcontractor shall take all reasonable precautions, as directed by the Contractor, or in the absence of such directions in accordance with sound practice, to safeguard and protect Government property in the Subcontractor's possession or custody. Special measures shall be taken by the Subcontractor in the protection of and accounting for any classified or special materials involved in the performance of this subcontract in accordance with the regulations and requirements of the DOE.

(f) Risk of Loss of Government Property

The Subcontractor shall not be liable for loss or destruction of or damage to Government property in the Subcontractor's possession unless such loss, destruction, or damage results from willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel, or unless such loss, destruction, or damage results from a failure on the part of the Subcontractor's managerial personnel to take all reasonable steps to comply with any appropriate written directives of the Contractor to safeguard such property under paragraph (e) hereof. The term "Subcontractors' managerial personnel" as used herein means any corporate officer of the Subcontractor, or any representative of the Subcontractor having supervision or direction of all or substantially all of the activities under this subcontract.

(g) Steps to be Taken in Event of Loss

Upon the happening of any loss, or destruction of, or damage to Government property in the possession or custody of the Subcontractor, the Subcontractor shall immediately inform the Contractor of the occasion and extent thereof, shall take all reasonable steps to protect the property remaining, and shall repair or replace the lost, destroyed, or damaged property if and as directed by the Contractor, but shall take no action prejudicial to the right of the Government to recover therefor and shall furnish to the Government and the Contractor, on request, all reasonable assistance in obtaining recovery.

(h) Government Property for Government Use Only

Government property shall be used only for the performance of this subcontract, except as otherwise approved by the Contractor.

11.0 BONDS AND INSURANCE

The Subcontractor shall procure and maintain such bonds and insurance as are required by law. The terms of any such bond or insurance policy shall be submitted to the Contractor upon request. The Subcontractor will indemnify and save harmless the Contractor, its employees, agents and invitees from and against liability, demands, claims, loss cost, damage and expense by reason or on account of property damage, death and personal injury of whatsoever nature or kind arising out of, as a result of or in connection with the performance of this subcontract which is occasioned by the actions or omissions of Subcontractor or its suppliers. The Subcontractor will maintain and carry employer's liability insurance, workmen's compensation insurance in statutory amounts, and general liability insurance, including but not limited to public liability, property damage liability, product liability, completed operations liability, and contractual liability coverages, in amounts satisfactory to and with companies approved by the Contractor. The Subcontractor will if requested by the Contractor furnish certificates of insurance indicating

the foregoing coverage. The Subcontractor shall not procure or maintain for its own protection any insurance (including self-insurance or reserve) covering loss of or damage to Government property acquired or issued under this subcontract. Nor shall the Subcontractor insure the item(s) shipped FOB origin.

12.0 FEDERAL, STATE, AND LOCAL TAXES

The Subcontractor warrants that the price of this subcontract includes no amount for state or local taxes on property to which title is in the Government.

The Contractor on request of the Subcontractor, agrees to furnish evidence to establish exemptions from such taxes. If for any reason exemption cannot be established, the Contractor will pay any such tax applicable to this subcontract. Except as provided herein or as may be otherwise provided in this subcontract, this subcontract price includes all applicable federal, state, and local taxes and duties.

13.0 COST OR PRICING DATA AND DEFECTIVE PRICING ADJUSTMENT

(This clause is applicable if this is a negotiated subcontract in excess of \$100,000.)

- (a) (1) The Subcontractor shall require under the situations described in (2) below, unless exempted under the exceptions set forth in (3) below, each lower-tier subcontractor under this order to submit cost or pricing data and to certify that, to the best of its knowledge and belief, such cost or pricing data are accurate, complete, and current.
- (2) Except as provided in (3) below, certified cost or pricing data shall be submitted prior to (1) award of each lower-tier subcontract, the price of which is expected to exceed \$100,000 and (2) the negotiation of the price of each change or modification to a subcontract under this order for which the price adjustment is expected to exceed \$100,000.
- (3) Certified cost or pricing data need not be furnished pursuant to this paragraph (a) where (1) the Subcontractor has not been required to furnish cost or pricing data; or (2) the price or price adjustment is based on adequate price competition, established catalog, or market prices of commercial items sold in substantial quantities to the general public, or the prices are set by law or regulation; and the Subcontractor states in writing the basis for applying this exception.

- (4) In submitting the cost or pricing data, the lower-tier subcontractor shall use the form of certificate set forth in paragraph (b) below and shall certify that the data are accurate, complete, and current. Such certificate and data (actual or identified as provided in the certificate prescribed below) shall be submitted by the lower-tier subcontractor to the next higher-tier subcontractor or Contractor, as applicable, for retention.
- (b) The certificates required by this article shall be in the form set forth below.

SUBCONTRACTOR'S CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that to the best of my knowledge and belief, cost or pricing data (See note 1) submitted in writing, or specifically identified in writing if actual submission of the date is impracticable (See FPR 1-3.807-3 (h) (2), to Contractor in support of _____ (See note 2) are accurate, complete, and current as of _____ (See note 3). (date)

Firm _____

Name _____

Title _____

(See note 4)

(Date of execution)

NOTES:

- (1) For definition of "cost or pricing data," see FPR 1-3.807-3.
- (2) Describe the proposal, quotation, request for price adjustments, or other submission involved, giving appropriate identifying number (e.g., RFP No. _____).
- (3) This date shall be the date when the price negotiations were concluded and the order price was agreed to. The responsibility of the Subcontractor is not limited by the personal knowledge of the Subcontractor's negotiator if the Subcontractor has information reasonably available (see FPR 1-3.807-5 (a)) at the time of agreement showing that the negotiated price is not based on accurate, complete, and current data.
- (4) This date should be as close as practicable to the date when the price negotiations were concluded and the order price was agreed upon.

- (c) For purposes of verifying that certified cost or pricing data submitted in conjunction with the negotiation of this subcontract or any subcontract change or other modification involving an amount in excess of \$100,000 were accurate, complete, and current, the DOE or any of its authorized representatives shall, until the expiration of 3 years from the date of final payment under this order, have the right to examine those books, records, documents, papers, and other supporting data which involve transactions related to this subcontract or which will permit adequate evaluation of the cost or pricing data submitted along with the computation and projections used therein.
- (d) Whenever the price of any change or other modification to this subcontract is expected to exceed \$100,000, the Subcontractor agrees to furnish the Contractor certified cost or pricing data, using the certificate set forth in paragraph (b) above, unless 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.
- (e) The requirement for submission of certified cost or pricing data with respect to any change or other modification does not apply to any lower-tier subcontract change or other modification, at any tier, where this subcontract is firm fixed-price or fixed-price with escalation unless such change or other modification results from a change or other modification to this subcontract; nor does it apply to a lower-tier subcontract change or modification, at any tier, where this subcontract is not firm fixed-price or fixed-price with escalation unless the price of such change or other modification becomes reimbursable under this subcontract.
- (f) The Subcontractor agrees to insert paragraph (c) without change and the substance of paragraphs (a), (b), (d), (e), and (f) of this article in each lower-tier subcontract hereunder in excess of \$100,000 and in each lower-tier subcontract of \$100,000. The words "Contractor" and "Subcontractor" may, however, be changed to describe the contractual relationship in lower-tier subcontracts.
- (g) If the Contractor determines that any price, including profit or fee, negotiated in connection with this subcontract or any cost reimbursable under this subcontract was increased by any significant sums because the Subcontractor, or any lower-tier subcontractor pursuant to this article or any subcontract article herein required, furnished incomplete or inaccurate cost or pricing data or data not current as certified in the Subcontractor's Certificate of Current Cost or Pricing Data, then such price or cost shall be reduced accordingly and this subcontract shall be modified in writing to reflect such reduction.
- (h) Failure of the Contractor and Subcontractor to agree on any of the matters in paragraph (g) above shall be a dispute concerning a question of fact within the meaning of the "Disputes" article of this subcontract.

NOTE: Since this subcontract is subject to reduction under this article by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the Subcontractor may wish to include a clause in each such subcontract requiring the lower-tier subcontractor to appropriately indemnify the Subcontractor. It is also expected that any lower-tier subcontract subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by its lower-tier subcontractors.

14.0 DISPUTES

- (a) Except as otherwise provided in this subcontract, any dispute concerning a question of fact arising under this subcontract, which is not disposed of by agreement between the Contractor and Subcontractor shall be decided by the DOE Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the Subcontractor. The decision of the Contracting Officer shall be final and conclusive unless within 30 days from the date of receipt of such copy, the Subcontractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Administrator or his designee. The decision of the Administrator or his designee for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Subcontractor shall be afforded an opportunity to be heard to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Subcontractor shall proceed diligently with the performance of the subcontract and in accordance with the Contracting Officer's decision.
- (b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: Provided that nothing in this subcontract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

15.0 CONTROL OF SUBCONTRACTOR BY FOREIGN INTERESTS

The Subcontractor shall promptly notify the Contractor of any changes or proposed change in the ownership or control of the Subcontractor corporation which has the potential of creating a situation where the corporation is or could be owned or controlled by foreign interests. In the event this situation occurs, this subcontract may be terminated for convenience pursuant to the article of this subcontract entitled "Termination."

16.0 PREFERENCE FOR U.S. FLAG AIR CARRIERS

(This clause is applicable if this subcontract is in excess of \$10,000.)

- (a) It is the policy of the United States that all federal agencies and Government contractors and subcontractors utilize U.S. flag air carriers for international air transportation of personnel and cargo.
- (b) The Subcontractor agrees to utilize U.S. flag air carriers to the maximum extent practicable in connection with the performance of this subcontract in the transportation by air of any personnel and cargo between the United States and a foreign country, or between foreign countries.
- (c) The terms used in this clause have the following meaning:
 - (1) "International air transportation" means transportation by air of personnel and cargo from the United States to a foreign country, between two or more foreign countries, and between a foreign country and 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) "Practicable" includes (i) satisfactory servicing of agency programs, and (ii) timely deliveries at fair and reasonable prices.
- (d) The Subcontractor shall include the substance of this clause, including this paragraph (d) in each subcontract or purchase hereunder which may involve air transportation between the United States and a foreign country or between foreign countries.

17.0 CLEAN AIR AND WATER REQUIREMENTS

(Applicable only if this subcontract exceeds \$100,000, or the Contractor has determined that orders under an indefinite quantity subcontract in any 1 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 subcontract is not otherwise exempt.)

(a) The Subcontractor 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, as amended by Public Law 95-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specific in Section 114 and Section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the execution of this subcontract.

- (2) That no portion of the work required by this subcontract will be performed in a facility listed on the Environmental Protection Agency list of violating facilities on the date when this subcontract was executed unless and until the EPA eliminated the name of such facilities from such listing.
 - (3) To use its best efforts to comply with clean air standards and clean water standards at the facilities in which the subcontract is being performed.
 - (4) To insert the substance of the provisions of this Article 17.0 in any nonexempt subcontract of any lower tier under this subcontract, including this paragraph (a) (4).
- (b) The terms used in this clause have the following meaning:
- (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), an approved implementation procedure or plan under Section 111 (c) or Section 111 (d), or an approved implementation procedure under Section 112 (d) or 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 requirement of the Air Act or Water Act and regulations issued pursuant thereto.
- (6) The term "facility," for purposes of this article, 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 shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

18.0 PERMITS

The Subcontractor shall procure all necessary permits, licenses, and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under the subcontract is performed.

19.0 LABOR

19.1 Contract Work Hours and Safety Standards Act--Overtime Compensation

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

(a) Overtime Requirements

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

(b) Violation. Liability of Unpaid Wages; liquidated damages.

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

(c) Withholding for Unpaid Wages and Liquidated Damages

The Contractor may withhold from the Subcontractor, from any monies payable on account of work performed by the Subcontractor or lower-tier subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Subcontractor or lower-tier subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).

(d) Subcontracts

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

19.2 Convict Labor

In connection with the performance of work under this subcontract, the Subcontractor 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.

19.3 Equal Opportunity

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

During the performance of this subcontract, the Subcontractor agrees as follows:

- (a) The Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employ-

ment, 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 Subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contractor setting forth the provisions of this Equal Opportunity clause.

- (b) The Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (c) The Subcontractor 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 Contractor, advising the labor union or workers' representative of the Subcontractor'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 Subcontractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (e) The Subcontractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the DOE and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (f) In the event of the Subcontractor's noncompliance with the Equal Opportunity clause of this subcontract or with any of the said rules, regulations, or orders, this subcontract may be cancelled, terminated, or suspended, in whole or in part, and the Subcontractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (g) The Subcontractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that provisions will be binding upon subcontractor or vendor. The subcontractor will take such action with respect to any subcontract or pur-

chase order as the DOE may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, that in the event the Subcontractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the DOE, the Subcontractor may request the Government to enter into such litigation to protect the interests of the United States.

19.4 Notice of Labor Disputes

Whenever the Subcontractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this subcontract, the Subcontractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Contractor. The Subcontractor agrees to insert the substance of this clause, including this sentence, in any purchase order or subcontract hereunder.

19.5 Walsh-Healey Public Contracts Act

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

19.6 Affirmative Action for Handicapped Workers

(This clause is applicable if the subcontract is in excess of \$2,500)

- (a) The Subcontractor 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 Subcontractor 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 Subcontractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- (c) In the event of the Subcontractor'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 Subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor, provided by or through the purchaser. Such notices shall state the Subcontractor'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 Subcontractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Subcontractor 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 Subcontractor will include the provisions of this clause in every lower-tier subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The Subcontractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs, may direct to enforce such provisions, including action for noncompliance.

20.0 BUY AMERICAN ACT

- (a) In acquiring end products, the Buy American Act (41 U.S. Code 10a through d) provides that the Government give preference to domestic source-end products. For the purpose of this clause:
 - (1) "components" means those articles, materials, and supplies which are directly incorporated in the end product;
 - (2) "end products" means those articles, materials, and supplies which are to be acquired under this subcontract for public use; and
 - (3) a "domestic source end product" means (A) an unmanufactured end product which has been mined or produced in the United States, and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For the purposes of this (a) (iii) (B), components of foreign origin of the same type or kind as the products referred to in (b) (ii) or (iii) of this clause shall be treated as components mined, produced, or manufactured in the United States.

(b) The Subcontractor agrees that there will be delivered under this subcontract (by the Subcontractor, his subcontractors, materialmen, and suppliers) only domestic source-end products except end products:

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

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

21.0 COVENANT AGAINST CONTINGENT FEES

The Subcontractor warrants that no person or selling agency has been employed or retained to solicit or secure this subcontract 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 Subcontractor for the purpose of securing business. For breach or violation of this warranty the Contractor shall have the right to annul this subcontract without liability or in its discretion to deduct from the subcontract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

22.0 OFFICIALS NOT TO BENEFIT

No members of or delegate to Congress or resident Commissioner shall be admitted to any share or part of this subcontract or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this subcontract if made with a corporation for its general benefit.

23.0 TERMINATION

23.1 Termination for Convenience

- (a) The performance of work under this subcontract may be terminated by the Contractor in accordance with this clause in whole, or from time to time in part, whenever the Contractor shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Subcontractor of a Notice of Termination specifying the extent to which performance of work under the subcontract is terminated, and the date upon which such termination becomes effective.
- (b) After receipt of a Notice of Termination, and except as otherwise directed by the Contractor, the Subcontractor shall:
- (1) Stop work under the subcontract on the date and to the extent specified in the Notice of Termination;
 - (2) Place no further orders or lower-tier subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the subcontract as is not terminated;
 - (3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
 - (4) Assign to the Contractor in the manner, at the times, and to the extent directed by the Contractor, all of the right, title, and interest of the Subcontractor under the orders and subcontracts so terminated, in which case the Contractor shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
 - (5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contractor, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;
 - (6) Transfer title to the Government and deliver in the manner, at the times, and to the extent, if any, directed by the Contractor, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the work terminated by the Notice of Termination, and (ii) the completed or partially completed plans, drawings, information, and other property which, if the subcontract had been completed, would have been required to be furnished by the Contractor;

- (7) Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contractor, any property of the types referred to in (6) above: Provided, however, that the Subcontractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contractor: and Provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Contractor to the Subcontractor under this subcontract or shall otherwise be credited to the price or cost of the work covered by this subcontract or paid in such other manner as Contractor may direct;
- (8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and
- (9) Take such action as may be necessary, or as the Contractor may direct, for the protection and preservation of the property related to this subcontract which is in the possession of the Subcontractor and in which the Government has or may acquire an interest.

At any time after expiration of the plant clearance period, as defined in Subpart 1-8.1 of the Federal Procurement Regulations (41 CFR 1-8.1), as the definition may be amended from time to time, the Subcontractor may submit to the Contractor a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contractor, and may request the Contractor to remove such items or enter into a storage agreement covering them. Not later than 15 days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same: Provided, that the list submitted shall be subject to verification by the Contractor upon removal of the items or, if the items are stored, within 45 days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

- (c) After receipt of a Notice of Termination, the Subcontractor shall submit to the Contractor his termination claim, in the form and with certification prescribed by the Contractor. Such claim shall be submitted promptly but in no event later than 1 year from the effective date of termination, unless one or more extensions in writing are granted by the Contractor upon request of the Subcontractor made in writing within such 1-year period or authorized extension thereof. However, if the Contractor determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such 1-year period or any extension thereof. Upon failure of the Subcontractor to submit his termination claim within the time allowed, the Contractor may, subject to any review required by the Contractor's procedures in effect as of the date of execution of this subcontract, determine, on the basis of information available to him, the amount, if any, due to the Subcontractor by reason of the termination and shall thereupon pay to the Subcontractor the amount so determined.
- (d) Subject to the provisions of paragraph (c), and subject to any review required by the Contractor's procedures in effect as of the date of execution of this subcontract, the Subcontractor and the Contractor may agree upon the whole or any part of the amount or amounts to be paid to the Subcontractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done: Provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total subcontract price as reduced by the amount of payments otherwise made and as further reduced by the subcontract price of work not terminated. The subcontract shall be amended accordingly, and the Subcontractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Subcontractor in the event of failure of the Subcontractor and the Contractor to agree upon the whole amount to be paid to the Subcontractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Subcontractor pursuant to this paragraph (d).
- (e) In the event of the failure of the Subcontractor and the Contractor to agree as provided in paragraph (d) upon the whole amount to be paid to the Subcontractor by reason of the termination of work pursuant to this clause, the Contractor shall, subject to any review required by the Contractor's procedures in effect as of the date of execution of this subcontract, determine, on the basis of information available to him, the amount, if any, due to the Subcontractor by reason of the termination and shall pay to the Subcontractor the amounts determined as follows:

- (1) for completed supplies accepted by the Government (or sold or acquired as provided in paragraph (b) (7) above) and not theretofore paid for, a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the subcontract, appropriately adjusted for any saving of freight or other charges;
- (2) (i) the total of the costs incurred in the performance of the work terminated, includes initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies paid or to be paid for under paragraph (e) (i) hereof;
(ii) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b) (5) above, which are properly chargeable to the terminated portion of the subcontract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors prior to the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (i) above); and
(iii) a sum, as profit on (i) above, determined by the Contractor pursuant to 1-8.303 of the Federal Procurement Regulations (41 CFR 1-8.303), in effect as of the date of execution of this subcontract, to be fair and reasonable: Provided, however, that if it appears that the Subcontractor would have sustained a loss on the entire subcontract had it been completed, no profit shall be included or allowed under this subdivision (iii), and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and
- (3) the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the subcontract and for the termination and settlement of lower-tier subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this subcontract. The total sum to be paid to the Subcontractor under (1) and (2) of this paragraph (e) shall not exceed the total subcontract price as reduced by the amount of payments otherwise made and as further reduced by the subcontract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Subcontractor as provided in (e) (1) and (2) (i) above, the fair value, as determined by the Contractor, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Contractor or to a buyer pursuant to paragraph (b) (7).

- (f) Costs claimed, agreed to, or determined pursuant to paragraphs (c), (d), and (e) of this clause shall be in accordance with the applicable subcontract cost principles and procedures in Part 1-15 of the Federal Procurement Regulations (41 CFR 1-15) in effect on the date of this subcontract.
- (g) The Subcontractor shall have the right to appeal, under the clause of this subcontract entitled "Disputes", from any determination made by the Contractor under paragraph (c) or (e) above, except that, if the Subcontractor has failed to submit his claim within the time provided in paragraph (c) above and has failed to request the extension of such time, he shall have no such right of appeal. In any case where the Contractor has made a determination of the amount due under paragraph (c) or (e) above, the Contractor shall pay to the Subcontractor the following:
- (1) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contractor; or
 - (2) if an appeal has been taken, the amount finally determined on such appeal.
- (h) In arriving at the amount due the Subcontractor under this clause there shall be deducted:
- (1) all unliquidated advance or other payments on account theretofore made to the Subcontractor, applicable Government/Contractor may have against the Subcontractor in connection with this subcontract; and
 - (2) the agreed price for, or the proceeds of sale of, and materials, supplies, or other things acquired by the Subcontractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Contractor.
- (i) If the termination hereunder be partial, prior to the settlement of the terminated portion of this subcontract, the Subcontractor may file with the Contractor a request in writing for an equitable adjustment of the price or prices specified in the subcontract relating to the continued portion of the subcontract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.
- (j) The Contractor may, from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Subcontractor in connection with the terminated portion of this subcontract whenever in the opinion of the Contractor the aggregate of such payments shall be within the amount to which the Subcontractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined

to be due under this clause, such excess shall be payable by the Subcontractor to the Contractor upon demand, together with interest computed at the rate of 6 percent per annum for the period from the date such excess payment is received by the Subcontractor to the date on which such excess is repaid to the Contractor: Provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Subcontractor's claim by reason of retention or other disposition of termination inventory until 10 days after the date of such retention or disposition, or such later date as determined by the Contractor by reason of the circumstances.

- (k) Unless otherwise provided for in this subcontract, or by applicable statute, the Subcontractor from the effective date of termination and for a period of 3 years after final settlement under this subcontract, shall preserve and make available to the Government at all reasonable times at the office of the Subcontractor, but without direct charge to the Government, all his books, records, documents, and other evidence bearing on the costs and expenses of the Subcontractor under this subcontract and relating to the work terminated hereunder, or, to the extent approved by the Contractor, photographs, microphotographs, or other authentic reproductions thereof.

23.2 Termination for Default

- (a) The Contractor may, subject to the provisions of paragraph (c) below, by writing notice of default to the Subcontractor, terminate the whole or any part of this subcontract in any one of the following circumstances:
- (1) if the Subcontractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or
 - (2) if the Subcontractor fails to perform any of the other provisions of this subcontract, or so fails to make progress as to endanger performance of this subcontract in accordance with its terms, and either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contractor may authorize in writing) after receipt of notice from the Contractor specifying such failure.
- (b) In the event the Contractor terminates this subcontract in whole or in part as provided in paragraph (a) of this clause, the Contractor may procure, upon such terms and in such manner as the Contractor may deem appropriate, supplies or services similar to those so terminated, and the Subcontractor shall be liable to the Contractor for any excess costs for such similar supplies or services: Provided, that the Subcontractor shall continue the performance of this subcontract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of lower-tier subcontractors, the Subcontractor shall not be liable for any excess costs if the failure to perform the subcontract arises out of causes beyond the control and without the fault or negligence of the Subcontractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Contractor, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor. If the failure to perform is caused by the default of a lower-tier subcontractor, and if such default arises out of causes beyond the control of both the Subcontractor and lower-tier subcontractor, and without the fault or negligence of either of them, the Subcontractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by a lower-tier subcontractor were obtainable from other sources in sufficient time to permit the Subcontractor to meet the required delivery schedule.

(d) If this subcontract is terminated as provided in paragraph (a) of this clause, the Contractor, in addition to any other rights provided in this clause, may require the Subcontractor to transfer title to the Government and deliver to the Contractor or the Government in the manner and to the extent directed by the Contractor:

(1) any completed supplies, and

(2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and subcontract rights (hereinafter called "manufacturing materials") as the Subcontractor has specifically produced or specifically acquired for the performance of such part of this subcontract as has been terminated; and

the Subcontractor shall, upon direction of the Contractor, protect and preserve property in possession of the Subcontractor in which the Government or Contractor has an interest. Payment for completed supplies delivered to and accepted by the Contractor shall be at the subcontract price. Payment for manufacturing materials delivered to and accepted by the Contractor and for the protection and preservation of property shall be in an amount agreed upon by the Subcontractor and Contractor; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this subcontract entitled "Disputes". The Contractor may withhold from amounts otherwise due the Subcontractor for such completed supplies or manufacturing materials such sum as the Contractor determines to be necessary to protect the Contractor against loss because of outstanding liens or claims of former lien holders.

- (e) If, after notice of termination of this subcontract under the provisions of this clause, it is determined for any reason that the Subcontractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the subcontract contains a clause providing for termination for convenience, be the same as if the notice of termination had been issued pursuant to such clause. If, after notice of termination of this subcontract under the provisions of this clause, it is determined for any reason that the Subcontractor was not in default under the provisions of this clause, and if this subcontract does not contain a clause providing for termination for convenience of the Contractor, the subcontract shall be equitably adjusted to compensate for such termination and the subcontract 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 subcontract entitled "Disputes".
- (f) The rights and remedies of the Contractor and the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this subcontract.
- (g) As used in paragraph (c) of this clause, the terms "Subcontractor" and "lower-tier contractors" mean subcontractor(s) at any tier.

24.0 PATENTS

24.1 Patent Rights

(This clause is applicable if this subcontract is for research and development or demonstration, design, or other special services.)

(a) Definitions

- (1) "Subject Invention" means any invention or discovery of the Subcontractor conceived or first actually reduced to practice in the course of or under this subcontract, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plants, whether patented or unpatented under the Patent Laws of the United States of America or any foreign country.
- (2) "Subcontract" means any purchase order, contract, grant, agreement, understanding, or other arrangement, which includes research, development, or demonstration work, and includes any assignment, substitution of parties, or lower-tier subcontract executed or entered into thereunder.
- (3) "States and Domestic Municipal Governments" means the states of the United States; the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and any political subdivision and agencies thereof.

- (4) "Government Agency" includes an executive department, independent commission, board, office, agency, administration, authority, Government corporation, or other Government establishment of the Executive Branch of the Government of the United States of America.
- (5) "To the Point of Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine and under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

(b) Allocation of Principal Rights

- (1) Assignment to the Government. The Subcontractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each Subject Invention, except to the extent that rights are retained by the Subcontractor under paragraphs (b) (2) and (c) of this article.
- (2) Greater rights determination. The Subcontractor or the employee-inventor with authorization of the Subcontractor may request greater rights than the nonexclusive license and the right to request foreign patent rights provided in paragraph (c) of this article on identified inventions in accordance with 41 CFR 9-9.109-6. Such request must be submitted to the DOE at the time of the first disclosure pursuant to paragraph (e) (2) of this article, or not later than 3 months thereafter, or such longer period as may be authorized by the DOE for good cause shown in writing by the Subcontractor.

(c) Minimum Rights to the Subcontractor

- (1) The Subcontractor reserves a revocable, nonexclusive, paid-up license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government acquires title. The license shall extend to the Subcontractor's domestic subsidiaries and affiliates, if any, within the corporate structure of which the Subcontractor is a part and shall include the right to grant sublicenses of the same scope, and revocable under the same terms and conditions set forth therein. The license shall be assignable only with approval of the DOE except to the successor of that part of the Subcontractor's business to which the invention pertains.
- (2) Revocation limitations. The Subcontractor's nonexclusive license retained pursuant to paragraph (c) (1) of this article and sublicenses granted thereunder may be revoked or modified by the DOE, either in whole or in part, only to the extent necessary to achieve expeditious practical application of the Subject Invention under the DOE's published licensing regulations (10 CFR 781), and only to the extent an exclusive license is actually granted. This license

shall not be revoked in that field of use and/or the geographical areas in which the Subcontractor, or its sublicensee, has brought the invention to the point of practical application and continues to make the benefits of the invention reasonably accessible to the public, or is expected to do so within a reasonable time.

- (3) Revocation procedures. Before modification or revocation of the license or sublicense, pursuant to paragraph (c) (2) of this article, the DOE shall furnish the Subcontractor a written notice of its intention to modify or revoke the license and any sublicense thereunder, and the Subcontractor shall be allowed 30 days (or such longer period as may be authorized by the DOE for good cause shown in writing by the Subcontractor) after such notice to show cause why the license or any sublicense should not be modified or revoked. The Subcontractor shall have the right to appeal, in accordance with 10 CFR 781, any decision concerning the modification or revocation of its license or any sublicense.
- (4) Foreign patent rights. Upon written request submitted to the DOE, in accordance with paragraph (e) (2) (A) of this article, and subject to DOE security regulations and requirements, there may be reserved to the Subcontractor or the employee-inventor with authorization of the Subcontractor, the patent rights to a Subject Invention in any foreign country where the Government has elected not to secure such rights provided:
- (A) The recipient of such rights, when specifically requested by the DOE and 3 years after issuance of a foreign patent disclosing said Subject Invention, shall furnish the DOE a report setting forth:
1. the commercial use that is being made, or is intended to be made, of said invention; and
 2. the steps taken to bring the invention to the point of practical application or to make the invention available for licensing.
- (B) The Government shall retain at least an irrevocable, nonexclusive, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government (including any Government agency) and states and domestic municipal governments, unless the Agency head or his/her designee determines that it would not be in the public interest to acquire the license for the state and domestic municipal governments.
- (C) Subject to the rights granted in (c) (1), (2), and (3) of this article, the Agency head or his/her designee shall have the right to terminate the foreign patent rights granted in this paragraph (c) (4) in whole or in part unless the recipient of such rights demonstrates to the satisfaction of the Agency head or his/her designee that effective steps necessary to accomplish substantial utilization of the invention have been taken or within a reasonable time will be taken.

(D) Subject to the rights granted in (c) (1), (2), and (3) of this article, the Agency head or his/her designee shall have the right, commencing 4 years after foreign patent rights are accorded under this paragraph (c) (4), to require the granting of a nonexclusive or partially exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances and, in appropriate circumstances, to terminate said foreign patent rights in whole or in part, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing:

1. if the Agency head or his/her designee determines, upon review of such material as he/she deems relevant, and after the recipient of such rights, or other interested person, has had the opportunity to provide such relevant and material information as the Agency head or his/her designee may require, that such foreign patent rights have tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology related; or
2. unless the recipient of such rights demonstrates to the satisfaction of the Agency head or his/her designee at such hearing that the recipient has taken effective steps or within a reasonable time thereafter is expected to take such steps, necessary to accomplish substantial utilization of the invention.

(d) Filing of Patent Applications

- (1) With respect to each Subject Invention in which the Subcontractor or the inventor requests foreign patent rights in accordance with paragraph (c) (4) of this article, a request may also be made for the right to file and prosecute the U.S. application on behalf of the U.S. Government. If such request is granted, the Subcontractor or inventor shall file a domestic patent application on the invention within 6 months after the request for foreign patent rights is granted, or such longer period of time as may be approved by the DOE for good cause shown in writing by the requestor. With respect to the invention, the requestor shall promptly notify the DOE of any decision not to file an application.
- (2) For each Subject Invention on which a domestic patent application is filed by the Subcontractor or inventor, the Subcontractor or inventor shall:
 - (A) within 2 months after the filing or within 2 months after submission of the invention disclosure if the patent application previously has been filed, deliver to the DOE a copy of the application as filed including the filing date and serial number;

- (B) within 6 months after filing the application or within 6 months after submitting the invention disclosure if the application has been filed previously, deliver to the DOE a fully executed and approved assignment to the Government on a form specified by the Government;
 - (C) provide the DOE with the original patent grant promptly after a patent is issued on the application; and
 - (D) no less than 30 days before the expiration required by the Patent and Trademark Office, notify the DOE of any decision not to continue prosecution of the application.
- (3) With respect to each Subject Invention in which the Subcontractor or inventor has requested foreign patent rights, the Subcontractor or inventor shall file a patent application on the invention in each foreign country in which such request is granted in accordance with applicable statutes and regulations and within one of the following periods:
- (A) eight months from the date of filing a corresponding United States application, or if such an application is not filed, 6 months from the date the request was granted;
 - (B) six months from the date a license is granted by the Commissioner of Patents and Trademarks to file the foreign patent application where such filing has been prohibited by security reasons; or
 - (C) such longer periods as may be approved by the DOE for good cause shown by the Subcontractor or inventor.
- (4) Subject to the license specified in paragraph (c) (1), (2), and (3) of this article, the Subcontractor or inventor agrees to convey to the Government, upon request, the entire right, title, and interest in any foreign country in which the Subcontractor or inventor fails to have a patent application filed in accordance with paragraph (d) (3) of this article, or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the Subcontractor or inventor shall, not less than 60 days before the expiration period for any action required by any Patent Office, notify the DOE of such failure or decision, and deliver to the DOE the executed instruments necessary for the conveyance specified in this paragraph.

(e) Invention Identification, Disclosures, and Reports

- (1) The Subcontractor shall establish and maintain active and effective procedures to ensure that Subject Inventions are promptly identified and timely disclosed. These procedures shall include the maintenance of laboratory notebooks of equivalent records and any other records that are reasonably necessary to document the conception and/or the first actual reduction to practice of Subject Inventions, and records which show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Subcontractor shall furnish the DOE a description of these procedures so that the DOE may evaluate and determine their effectiveness.
- (2) The Subcontractor shall furnish the DOE on a DOE approval form:
 - (A) a written report containing full and complete technical information concerning each Subject Invention within 6 months after conception or first actual reduction to practice whichever occurs first in the course of or under this subcontract, but in any event prior to any sale, public use, or public disclosure of such invention known to the Subcontractor. The report shall identify the subcontract and inventor and shall be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose, operations, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention. The report should also include any request for foreign patent rights under paragraph (c) (4) of this article and any request to file a domestic patent application under (d) (1) of this article. However, such requests shall be made within the period set forth in paragraph (b) (2) of this article. When an invention is reported under this (e) (2) (A), it shall be presumed to have been made in the manner specified in Section (a) (1) and (2) of 42 USC 5908 unless the Subcontractor contends it was not so made in accordance with paragraph (g) (2) (C) of this article;
 - (B) upon request, but not more than annually, interim reports on a DOE approved form listing Subject Inventions and subcontracts awarded containing a Patent Rights clause for that period and certifying that:
 1. the Subcontractor's procedures for identifying and disclosing Subject Inventions as required by this paragraph (e) have been followed throughout the reporting period;
 2. all Subject Inventions have been disclosed or that there are no such inventions;
 3. all subcontracts containing a Patent Rights clause have been reported or that no such subcontracts have been awarded; and

- (C) a final report on a DOE approved form within 3 months after completion of the order work listing all Subject Inventions and all subcontracts awarded containing a Patent Rights clause and certifying that:
1. all Subject Inventions have been disclosed or that there were no such inventions; and
 2. all subcontracts containing a Patent Rights clause have been reported or that no such subcontracts have been awarded.
- (3) The Subcontractor shall obtain patent agreements to effectuate the provisions of this article from all persons in its employ who perform any part of the work under this subcontract except nontechnical personnel, such as clerical employees and manual laborers.
- (4) The Subcontractor agrees that the Government may duplicate and disclose Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this article. If the Subcontractor is to file a foreign patent application on a Subject Invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures until the expiration of the time period specified in paragraph (d) (1) of this article, but in no event shall the Government, or its employees, be liable for and publication thereof.

(f) Publication

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

(g) Forfeiture of Rights in Unreported Subject Inventions

- (1) The Subcontractor shall forfeit to the Government, at the request of the Agency head or his/her designee, all rights in any Subject Inventions which the Subcontractor fails to report to the DOE within 6 months after the time the Subcontractor:
- (A) files or causes to be filed a United States or foreign patent application thereon; or
 - (B) submits the final report required by paragraph (e) (2) (C) of this article, whichever is later.

- (2) However, the Subcontractor shall not forfeit rights in a Subject Invention if, within the time specified in (1) (A) or (1) (B) of this paragraph (g), the Subcontractor:
 - (A) prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under this subcontract and files the same with the DOE;
 - (B) contending that the invention is not a Subject Invention, the Subcontractor nevertheless discloses the invention and all facts pertinent to this contention to the DOE; or
 - (C) establishes that the failure to disclose did not result from the Subcontractor's fault or negligence.
- (3) Pending written assignment of the patent applications and patents on a Subject Invention determined by the Agency head or his/her designee to be forfeited (such determination to be a final decision under the "Disputes" article), the Subcontractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (g) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to Subject Inventions.

(h) Examination of Records Relating to Inventions

- (1) The DOE, until the expiration of 3 years after final payment under this subcontract, shall have the right to examine books (including laboratory notebooks), records, documents, and other supporting data of the Subcontractor which the DOE reasonably deems pertinent to the discovery of identification of Subject Inventions or to determine compliance with the requirements of this article.
- (2) The DOE shall have the right to review all books (including laboratory notebooks), records, documents, of the Subcontractor relating to the conception of first actual reduction to practice of inventions in the same field of technology as the work under this subcontract to determine whether any such inventions are Subject Inventions, if the Subcontractor refuses or fails to:
 - (A) establish the procedures of paragraph (e) (1) of this article;
 - (B) maintain and follow such procedures; or
 - (C) correct or eliminate any material deficiency in the procedures within 30 days after the DOE notifies the Subcontractor of such a deficiency.

(i) Withholding of Payment

- (1) Any time before final payment of the amount of the subcontract, the Contractor may, if it deems such action warranted, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of this subcontract, whichever is less, shall have been set aside if in its opinion the Subcontractor fails to:
 - (A) establish, maintain, and follow effective procedures for identifying and disclosing Subject Inventions pursuant to paragraph (e) (1) of this article;
 - (B) disclose any Subject Invention pursuant to paragraph (e) (2) (A) of this article;
 - (C) deliver the interim reports pursuant to paragraph (e) (2) (B) of this article;
 - (D) provide the information regarding subcontracts pursuant to paragraph (j) (5) of this article; or
 - (E) convey to the Government on a DOE approved form the title and/or rights of the Government in each Subject Invention as required by this article.

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

- (2) Final payment under this subcontract shall not be made by the Contractor before the Subcontractor delivers to the DOE all disclosures of Subject Inventions and other information required by (e) (2) (A) of this article, the final report required by (e) (2) (C) of this article, and the DOE has issued a patent clearance certification to the Contractor.
- (3) The Contractor may, in its discretion, decrease or increase the sums withheld up to the maximum authorized above. If the Subcontractor is a non-profit organization, the maximum amount that may be withheld under this paragraph shall not exceed \$50,000 or 1 percent of the amount of this order, whichever is less. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the subcontract. The withholding of any amount or subsequent payment thereof shall not be construed as a waiver of any rights accruing to the Government under this subcontract.

(j) Subcontracts

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

- (2) Unless otherwise authorized or directed by the DOE in accordance with 41 CFR 9-9.107-4(f), the Contractor shall include the Patent Right clause of 41 CFR 9-9.107-5(a) or 41 CFR 9-9.107-6 as appropriate, modified to identify the parties in any subcontract hereunder. In the event of refusal by a Subcontractor to accept this clause, or if in the opinion of the Contractor this clause is inconsistent with the DOE's patent policies, the Contractor shall:
 - (A) promptly submit written notice to the DOE setting forth reasons for the Subcontractor's refusal and other pertinent information which may expedite disposition of the matter; and
 - (B) not proceed with the subcontract without the written authorization of the DOE.
- (3) The Contractor shall not, in any subcontract or by using a subcontract as consideration therefor, acquire any rights in its Subcontractor's Subject Invention for the Contractor's own use (as distinguished from such rights as may be required solely to fulfill the Contractor's contract obligations to the Contractor or the Government in the performance of this order).
- (4) All invention disclosures, reports, instruments, and other information required to be furnished by the Subcontractor under the provisions of a Patent Rights clause in any subcontract hereunder, unless otherwise specified, may, in the discretion of the DOE, be furnished to the Contractor for transmission to the DOE.
- (5) The Contractor shall promptly notify the DOE in writing upon the award of any subcontract containing a Patent Rights clause by identifying the Subcontractor, the work to be performed under the subcontract, and the dates of award, and estimated completion. Upon the request of the DOE, the Contractor shall furnish a copy of the subcontract.
- (6) The Contractor shall identify all Subject Inventions of the Subcontractor of which it acquires knowledge in the performance of this order and shall notify the DOE promptly upon identification of the inventions.
- (7) It is understood that the Government is a third party beneficiary of any subcontract clause granting rights to the Government in Subject Inventions, and the Contractor hereby assigns to the Government all rights that the Contractor would have to enforce the Subcontractor's obligations for the benefit of the Government with respect to Subject Inventions. The Contractor shall not be obligated to enforce the agreements of any Subcontractor hereunder relating to the obligations of the Subcontractor to the Government in regard to Subject Inventions.

(k) Background Patent Rights

- (1) "Background Patent Rights" means a foreign or domestic patent covering an invention or discovery which is not a Subject Invention and which is owned or controlled by the Subcontractor at any time through the completion of this subcontract:
 - (A) which the Subcontractor, but not the Government, has the right to license to others; and
 - (B) infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture, or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this subcontract.
- (2) The Subcontractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive license under any Background Patent for practicing a subject of this subcontract for purposes of research, development, and demonstration work only.
- (3) The Subcontractor also agrees that upon written application by the DOE, it will grant to responsible parties for purposes of practicing a subject of this subcontract, nonexclusive licenses under any Background Patent on terms that are reasonable under the circumstances. If, however, the Subcontractor believes that exclusive or limited licensing is necessary to achieve expeditious commercial development or utilization, then a request may be made to the DOE for approval of such licensing by the Subcontractor.
- (4) Notwithstanding the foregoing paragraphs (2) and (3), the Subcontractor shall not be obligated to license any Background Patent if the Subcontractor demonstrates to the satisfaction of the Agency head or his/her designee that:
 - (A) a competitive alternative to the subject matter covered by said Background Patent is commercially available from other sources; or
 - (B) the Subcontractor or its licensees are supplying the subject matter covered by said Background Patent in sufficient quantity and at reasonable prices to satisfy market needs.

(l) Atomic Energy

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

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

24.2 Patent Indemnity

(This clause is applicable if this subcontract is over \$10,000.)

The Subcontractor shall indemnify the Contractor, the Government and their officers, agents, and employees against liability, including cost, for infringement of letters patent (except letters patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) resulting from the Subcontractor's furnishing or supplying standard parts or components or utilizing its normal practices or methods in the performance of the subcontract or to any parts, components, practices, or methods as to which the Subcontractor has secured indemnification from liability. The foregoing indemnity shall not apply unless the Subcontractor shall have been informed as soon as practicable by the Contractor or the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof and, further, such indemnity shall not apply to a claimed infringement which is settled without the consent of the Subcontractor unless required by final decree of a court of competent jurisdiction.

24.3 Authorization and Consent

(This clause is applicable if "Patent Indemnity" as cited in 24.2 above is applicable.)

The Government has given its authorization and consent to the Contractor and its subcontractors (without prejudice to any rights of indemnification) for all use and manufacture, in the performance of this subcontract or any part hereof or any amendment hereto or any lower-tier subcontract, of any invention described in and covered by a patent of the United States (1) embodied in the structure or composition of any article the delivery of which is accepted by the Contractor under this subcontract or (2) utilized in the machinery, tools or methods the use of which necessarily results from compliance by the subcontractor with (A) specifications or written provisions now or hereafter forming a part of this subcontract, or (B) specific written instructions given by the Contractor directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clauses, if any, included in this subcontract or any lower-tier subcontract hereunder, and the Government assumes liability for all other infringements to the extent of the authorization and consent hereinabove granted.

25.0 TECHNICAL DATA

25.1 Technical Data Requirements

(This clause is applicable if this subcontract is for research and development or demonstration.)

- (a) To the extent that the following technical data is not elsewhere required to be furnished to the Contractor or to the Government under this subcontract, and is of the type customarily retained in the normal course of business, the Subcontractor, upon written request of the Contractor, at any time during subcontract performance or within 1 year after final payment, shall furnish the following:
- (1) a set of engineering drawings which will be sufficient to enable the manufacture of items or equipment furnished under this subcontract (other than components or items of standard commercial design, or items fabricated heretofore) by a firm skilled in the art of manufacturing items or equipment of the general type and character of the items or equipment furnished under this subcontract or a set of flow sheets and engineering drawings which will be sufficient to enable performance of any process developed under this subcontract by a firm skilled in the art of practicing processes of the general type and character of such process. Such set or sets of drawings and flow sheets shall incorporate all changes made in the equipment or process in the form in which it was delivered to the Contractor; and
 - (2) any of the following technical data which is necessary to explain or help the Contractor or Government technical personnel understand any equipment, items, or process developed under the subcontract and furnished to the Contractor:
 - (A) a copy of drawings and other technical data used in or prepared in connection with the development, practice, and testing of any process or processes required under the subcontract, or with the development, fabrication, and testing of prototype models of equipment or items (other than items of standard commercial design or items fabricated heretofore), if required under the subcontract;
 - (B) a report of all studies made in planning the work, and in developing background research for the work, including citation references to all such background research, and a copy of all compilations, digests, or analyses of such background research compiled in connection with the performance of this subcontract; or

(C) a copy of design, studies, research notes, parameter or tolerance studies, drawings, including Subcontractor's identification of symbols and markings, specifications, test results, and any other technical information used in any research, development, demonstration, design, engineering, and testing required in the performance of this subcontract, including test equipment and related items together with any information as to safety precautions which may be necessary in connection with the manufacture, storage, or use of the equipment, material, or processes, if any, in the event that equipment, material, or process is the subject of research, development, or demonstration work under this subcontract.

The Subcontractor shall not be required to furnish any technical data which may be described in (B) and (C) above unless such data is essential and closely related to the subcontract work.

- (b) All technical data which is required to be furnished by the Subcontractor under this provision are "subject data" within the meaning of the "Rights in Technical Data" article of this subcontract.
- (c) Nothing contained in this "Technical Data Requirements" article shall require the Subcontractor to deliver:
- (1) any technical data the delivery of which is excused by paragraph (e) of the article of this subcontract entitled "Rights in Technical Data" and is not called for under a paragraph of this subcontract entitled "Third Party Licensing"; or
 - (2) technical data previously developed by authorities other than the Subcontractor independently of this subcontract and acquired by the Subcontractor prior to this subcontract, under conditions restricting the Subcontractor's right to disclose the same.
- (d) In the event the Contractor requests the delivery of technical data by the Subcontractor, as contemplated by (a) above prior to final payment, such request shall be treated as a change under the article of the subcontract entitled "Changes" and an equitable adjustment in price, if this is a fixed-price subcontract, or estimated cost and any fixed fee, if this is a cost-type subcontract, shall be made to cover the cost of preparing drawings called for in (a) (1) above, and of collecting, preparing, editing, duplicating, assembling, and shipping the technical data requested under (a) above, but only to the extent that the Subcontractor warrants that such costs were not included in the price (or estimated cost and fixed fee) of the subcontract. The Subcontractor shall comply with the request of the Contractor made under (a) above within 1 year following final payment provided that suitable provision is made for reimbursement of the additional cost of compliance with such request, together with a reasonable fee or profit thereon, such

additional cost being limited to the cost set forth above, and warranted to have been excluded from the price (or estimated cost and fixed fee) of the subcontract. Any adjustment or payment under this paragraph shall not include any amount for the value of the technical data, as distinguished from the cost set forth above.

- (e) Unless otherwise authorized and directed by the Contractor, the Subcontractor shall include this "Technical Data Requirements" article, modified to identify the parties, in any lower-tier subcontract hereunder wherein the lower-tier subcontractor is required to perform research, development, or demonstration work of any nature.

25.2 Rights in Technical Data

(a) Definitions

- (1) "Technical Data" means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, or demonstration or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications, or related performance, or design type documents, or computer software or printouts. Examples of technical data include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical data as used herein does not include financial reports, cost analyses, and other information incidental to subcontract administration.
- (2) "Proprietary Data" means technical data which are trade secrets, such as may be included in design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments.
- (3) "Subject Data" means technical data resulting directly from performance of the subcontract and technical data which are specified to be delivered, or which are in fact delivered pursuant to this subcontract.
- (4) "Unlimited Rights" means rights to use, duplicate, or disclose technical data, in whole or in part, in any manner for any purpose whatsoever, and to have others do so, without any claim for compensation by the Subcontractor.

(b) General

The Government shall have:

- (1) unlimited rights in all subject data unless otherwise limited below; and
- (2) the right at any time to modify, remove, or ignore any markings on subject data not authorized by this subcontract.

(c) Copyrights

- (1) The Subcontractor agrees to and does hereby grant to the Government and to its officers, agents, servants, and employees acting within the scope of their duties:
 - (A) a royalty-free, nonexclusive, irrevocable license to reproduce, translate, publish, use, and dispose of and to authorize others so to do, all copyrightable material first produced or composed under this subcontract by the Subcontractor, its employees or any individual or concern specifically employed or assigned to originate and prepare such material; and
 - (B) a license as aforesaid under any and all copyrighted or copy rightable work not first produced or composed by the Subcontractor in the performance of this subcontract but which is incorporated in the material furnished under the subcontract, provided that such license shall be only to the extent the Subcontractor now has or, prior to completion of final settlement of the subcontract may acquire the right to grant such license without becoming liable to pay compensation to others solely because of such grant.
- (2) The Subcontractor agrees that it will not include any copyrighted material in any written or copyrightable material published or delivered under this subcontract, without a license as provided for in paragraph (1) (B) hereof, or without the consent of the copyright owner, unless specific written approval of the Contractor to the inclusion of such copyrighted material is secured.
- (3) The Subcontractor agrees to report to the Contractor promptly and in reasonable written detail any notice or claim of copyright infringement received by the Subcontractor with respect to any material delivered under this subcontract.

(d) Relation to Patents

Nothing contained in this article shall imply a license to the Contractor or the Government under any patent or be construed as affecting the scope of any license or other rights otherwise granted to the Contractor or the Government under any patent.

(e) Withholding of Proprietary Data

Proprietary data need not be furnished for items or processes, including minor modifications thereof, which were developed at private expense and which are incorporated as component parts in or to be used with the product or process being developed or furnished under this subcontract, if, in lieu thereof, the Subcontractor provides the Contractor a list of such items or processes, and furnishes data for the purpose of identifying sources, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements ("form, fit, and function" data).

(f) Inspection Rights

Except as specified in the subcontract for specific items of proprietary data, the Contractor's and the Government's representatives, at all reasonable times, may inspect at the Subcontractor's facility any proprietary data withheld pursuant to paragraph (e) of this article for the purposes of verifying that such data properly fell within the withholding provision of paragraph (e) or to evaluate work performance.

(g) Lower-Tier Subcontracts

Unless otherwise authorized or directed by the Contractor, the Subcontractor shall include this "Rights in Technical Data" article, appropriately modified to identify the parties, in any lower-tier subcontract issued hereunder wherein the Subcontractor requires its lower-tier subcontractor to supply technical data.

25.3 Notice and Assistance Regarding Patent and Copyright Infringement

(The following clause is applicable if the amount of this subcontract is in excess of \$10,000.)

- (a) The Subcontractor shall report to the Contractor promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this subcontract of which the Subcontractor has knowledge.
- (b) In the event of any claim or suit against the Contractor or the Government on account of any alleged patent or copyright infringement arising out of the performance of this subcontract or out of the use of any supplies furnished or work services performed hereunder, the Subcontractor shall furnish to the Contractor upon its request, all evidence and information in possession of the Subcontractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Contractor except where the Subcontractor has agreed to indemnify the Contractor and/or the Government.
- (c) This clause appropriately modified, shall be included in all subcontracts issued hereunder.

26.0 LABOR SURPLUS AREA SUBCONTRACTING PROGRAM

If this subcontract exceeds \$500,000, the following provisions shall apply.

- (a) The Subcontractor agrees to furnish and conduct a program which will encourage labor surplus area concerns to compete for subcontracts within their capabilities. In this connection, the Subcontractor shall:
- (1) designate a liaison officer who will (i) maintain liaison with duly authorized representatives of the Government on labor surplus areas matters, (ii) supervise compliance with the "Utilization Surplus Area Concerns" article, and (iii) administer the Subcontractor's "Labor Surplus Area Subcontracting Program";
 - (2) provide adequate and timely consideration of the potentialities of labor surplus area concerns in all "make-or-buy" decisions;
 - (3) assure that labor surplus area concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of labor surplus area concerns;
 - (4) maintain records showing procedures which have been adopted to comply with the policies set forth in this article. Records maintained pursuant to this article will be kept available for review by the Contractor and/or the Government until expiration of 1 year after the award of this subcontract or for such longer period as may be required by any other article of this subcontract or by applicable laws or regulations; and
 - (5) include the "Utilization of Labor Surplus Area Concerns" article in subcontracts which offer substantial labor surplus area subcontracting opportunities.
- (b) A "labor surplus area concern" is a concern that (a) has been certified by the Secretary of Labor (hereinafter referred to as a certified-eligible concern) regarding the employment of a proportionate number of disadvantaged individuals and has agreed to perform substantially in or near sections of concentrated unemployment or underemployment, in persistent or substantial labor surplus areas, or in other areas of the United States or (b) is a non-certified concern which has agreed to perform a substantial proportion of a subcontract in persistent or substantial labor surplus areas. A certified-eligible concern shall be deemed to have performed a substantial proportion of a subcontract in or near sections of concentrated unemployment or underemployment, in persistent or substantial labor surplus areas, or in other areas if the costs that the concern will incur on account of manufacturing or production in or near such sections or in such areas (by itself, if a certified concern, or by certified concerns acting as first-tier subcontractors) amount to more than 25 percent of the subcontract price.

A concern shall be deemed to have performed a substantial proportion of a subcontract in persistent or substantial labor surplus areas (by itself or its first-tier subcontractors) if the costs that the concern will incur on account of production or manufacturing in such areas amount to more than 50 percent of the subcontract price.

- (c) The Subcontractor further agrees to insert in any subcontract hereunder which may exceed \$500,000 and which contains the "Utilization of Labor Surplus Area Concerns" article, provisions which shall conform substantially to the language of this article, including this paragraph (c), and to notify the Contractor of the names of such subcontractors.

27.0 MINORITY BUSINESS ENTERPRISES SUBCONTRACTING PROGRAM

If this subcontract exceeds \$500,000 the following provisions shall apply.

- (a) The Subcontractor agrees to establish and conduct a program which will enable minority business enterprises (as defined in the clause entitled "Utilization of Minority Business Enterprises") to be considered fairly as subcontractors and suppliers under this subcontract. In this connection, the Subcontractor shall:
 - (1) Designate a liaison officer who will administer the Subcontractor's minority business enterprises program.
 - (2) Provide adequate and timely consideration of the potentialities of known minority business enterprises in all "make-or-buy" decisions.
 - (3) Assure that known minority business enterprises will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of minority business enterprises.
 - (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 minority business enterprises, (ii) awards to minority business enterprises on the source list, and (iii) specific efforts to identify and award contracts to minority business enterprises.
 - (5) Include the "Utilization of Minority Business Enterprises" clause in subcontracts which offer substantial minority business enterprises subcontracting opportunities.
 - (6) Cooperate with the Contractor in any studies and surveys of the Subcontractor's minority business enterprises procedures and practices that the Contractor may from time to time conduct.

- (7) Submit periodic reports of subcontracting to known minority business enterprises with respect to the records referred to in subparagraph (4) above in such form and manner and at such time (nor more often than quarterly) as the Contractor may prescribe.
- (b) The Subcontractor further agrees to insert, in any subcontract hereunder which may exceed \$500,000 provisions which shall conform substantially to the language of this clause including this paragraph (b) and to notify the Contractor of the names of such subcontractors.

28.0 UTILIZATION OF SMALL BUSINESS CONCERNS

(This clause is applicable if this subcontract is in excess of \$10,000.)

- (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 Subcontractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Subcontractor finds to be consistent with the efficient performance of this subcontract.

29.0 UTILIZATION OF LABOR SURPLUS AREA CONCERNS

(This clause is applicable if this subcontract is in excess of \$10,000.)

- (a) It is the policy of the Government to award subcontracts to labor surplus area concerns that (1) have been certified by the Secretary of Labor (hereafter referred to as certified-eligible concerns with first or second preferences) regarding the employment of a proportionate number of disadvantaged individuals and have agreed to perform substantially (i) in or near sections of concentrated unemployment or underemployment or in persistent or substantial labor surplus areas, or (ii) in other areas of the United States, respectively, or (2) are noncertified concerns which have agreed to perform substantially in persistent or substantial labor surplus areas, where this can be done consistent with the efficient performance of the subcontract and at prices no higher than are obtainable elsewhere. The Subcontractor agrees to use his best efforts to place his lower-tier subcontracts in accordance with this policy.
- (b) In complying with paragraph (a) of this clause and with paragraph (b) of the clause of this subcontract entitled "Utilization of Small Business Concerns" the Subcontractor in placing his lower-tier subcontracts shall observe the following order of preferences: (1) Certified-eligible concerns with a first preference which are also small business concerns; (2) other certified-eligible concerns with a first preference; (3) certified-eligible concerns with a second preference which are also small business concerns; (4) other certified-eligible concerns with a second preference; (5) persistent or substantial labor

surplus area concerns which are also small business concerns; (6) other persistent or substantial labor surplus area concerns; and (7) small business concerns which are not labor surplus area concerns.

30.0 PRIVATE USE OF SUBCONTRACT INFORMATION AND DATA

Except as specifically authorized by this subcontract, or as otherwise approved by the Contractor, information and other data developed or acquired by or furnished the Subcontractor in the performance of this subcontract, shall be used only in connection with the work under this subcontract.

31.0 PRIORITIES, ALLOCATIONS, AND ALLOTMENTS

The Subcontractor shall follow the provisions of DMS Regulation 1 and all other applicable regulations and orders of the Domestic and International Business Administration, Department of Commerce in obtaining controlled materials and other products and materials needed to perform this subcontract.

32.0 SMALL BUSINESS SUBCONTRACTING PROGRAM

If this subcontract exceeds \$500,000, the following provisions shall apply.

- (a) The Subcontractor agrees to establish and conduct a small business subcontracting program which will enable small business concerns to be considered fairly as subcontractors and suppliers under this subcontract. In this connection, the Subcontractor shall:
 - (1) Designate a liaison officer who will (i) maintain liaison with the Contractor on small business matters, (ii) supervise compliance with the "Utilization of Small Business Concerns" article, and (iii) administer the Subcontractor's "Small Business Subcontracting Program."
 - (2) Provide adequate and timely consideration of the potentialities of small business concerns in all "make-or-buy" decisions.
 - (3) Assure that small business concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of small business concerns. Where the Subcontractor's lists of potential small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(4) Maintain records showing (i) whether each prospective subcontractor is a small business concern, (ii) procedures which have been adopted to comply with the policies set forth in this article, and (iii) with respect to the letting of any subcontract (including purchase orders) exceeding \$10,000 information substantially as follows:

- (A) Whether the award went to a large or small business.
- (B) Whether less than three or more than two small business concerns were solicited.
- (C) The reason for nonsolicitation of small business if such was the case.
- (D) The reason for small business failure to receive the award if such was the case when small business was solicited.

The records maintained in accordance with (iii), above may be in such forms as the Subcontractor may determine, and the information shall be summarized quarterly and submitted by the purchasing department of each individual plant or division to the Subcontractor's cognizant small business liaison officer. Such quarterly summaries will be considered to be management records only and need not be submitted routinely to the Contractor; however, records maintained pursuant to this article will be kept available for review by the Contractor or the Government until the expiration of 1 year after the award of this subcontract or for such longer period as may be required by any other article of this subcontract or by applicable law or regulation.

- (5) Notify the Contractor before soliciting bids or quotations on any subcontract (including purchase orders) in excess of \$10,000 if (i) no small business concern is to be solicited, and (ii) the Contractor's consent to the subcontract (or ratification) is required by this subcontract. Such notice will state the Subcontractor's reasons for nonsolicitation of small business concerns, and will be given as early in the procurement cycle as possible so that the Contractor may give the SBA timely notice to permit the SBA a reasonable period to suggest potentially qualified small business concerns through the Contractor. In no case will the procurement action be held up when to do so would, in the Subcontractor's judgement, delay performance under the subcontract.
- (6) Include the "Utilization of Small Business Concerns" article in subcontracting which offer substantial small business subcontracting opportunities.
- (7) Cooperate with the Contractor in any studies and surveys of the Subcontractor's subcontracting procedures and practices that the Contractor may from time to time conduct.

- (8) Submit such information on subcontracting to small business concerns as is called for by the Contractor.
- (b) A "small business concern" is a concern that meets the pertinent criteria established by the Small Business Administration and set forth in Section 1-1.701 of the Federal Procurement Regulations.
- (c) The Subcontractor agrees that, in the event he fails to comply with his contractual obligations concerning the small business subcontracting program, this subcontract may be terminated, in whole or in part, for default.
- (d) The Subcontractor further agrees to insert, in any lower-tier subcontract hereunder which may exceed \$500,000 and which contains the "Utilization of Small Business Concerns" article, provisions which shall conform substantially to the language of this article, including this paragraph (d), and to notify the Contractor of the names of such subcontractors.

33.0 COST ACCOUNTING STANDARDS

33.1 Disclosure

- (a) Unless the Cost Accounting Standards Board has prescribed rules or regulations exempting the Subcontractor or this subcontract from standards, rules and regulations promulgated pursuant to 50 U.S.C. App. 2168 (Public Law 91-379, August 15, 1970), or other statutory authority, Subcontractor, in connection with this subcontract shall:
- (1) By submission of a Disclosure Statement, disclose in writing its cost-accounting practices as required by regulations of the Cost Accounting Standards Board. The required disclosure must be made prior to subcontract award unless the Contractor provides a written notice to the Subcontractor authorizing post-award submission in accordance with regulations of the Cost Accounting Standards Board. The practices disclosed for this subcontract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Subcontractor and which contain this Cost Accounting Standards article. If the Subcontractor has notified the Contractor that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement will not be released outside of the Government.
- (2) Follow consistently the cost accounting practices disclosed pursuant to (1), above, in accumulating and reporting subcontract performance cost data concerning this subcontract. If any change in disclosed practices is made for the purposes of any contract or subcontract subject to Cost Accounting Standards Board requirements, the change must be applied prospectively to this sub-

contract, and the Disclosure Statement must be amended accordingly. If the price or cost allowance of this subcontract is affected by such changes, adjustment shall be made in accordance with subparagraph (a) (4) or (a) (5), below as appropriate.

- (3) Comply with all Cost Accounting Standards in effect on the date of award of this subcontract or, if the Subcontractor has submitted cost of pricing data, on the date of final agreement on price as shown on Subcontractor's signed certificate of current cost or pricing data. Subcontractor shall also comply with any Cost Accounting Standard which hereafter becomes applicable to a contract of the Subcontractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.
 - (4) (A) Agree to an equitable adjustment (as provided in the Changes clause of this subcontract, if any) if the cost of this subcontract is affected by a change which, pursuant to (3) above, the Subcontractor is required to make to its established cost-accounting practices whether such prices are covered by a Disclosure Statement or not.

(B) Negotiate with the Contractor 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) (4) (A) above, may be made. A change to a practice may be proposed by either Contractor or Subcontractor, provided, however, that no agreements may be made under this provision that will increase costs paid by the Government.
 - (5) Agree to an adjustment of the subcontract price or cost allowance, as appropriate, if it or a Subcontractor fails to comply with an applicable Cost Accounting Standard or to follow any practice disclosed pursuant to subparagraphs (a) (1) and (a) (2), above, and such failure results in any increased costs paid by the Contractor or the Government. Such adjustment shall provide for recovery of the increased costs to the Contractor or the Government together with interest thereon computed at the rate determined by the Secretary of the Treasury pursuant to Public Law 92-41, 85 Stat. 97, or 7 percent per annum, whichever is less, from the time the payment by the Contractor or the Government was made to the time the adjustment is effected.
- (b) If the Contractor and Subcontractor fail to agree whether the Subcontractor has complied with an applicable Cost Accounting Standard, rule, or regulation of the Cost Accounting Standards Board and as to any cost adjustment demanded by the Contractor or the Government, such failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes article of this subcontract.

- (c) Subcontractor shall permit any authorized representative of DOE, the Cost Accounting Standards Board, the Comptroller General of the United States, or the Contractor to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this article.
- (d) Subcontractor shall include in all negotiated subcontracts which it enters into the substance of this article, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that this requirement shall apply only to negotiated subcontracts in excess of \$100,000 where the price is not based on:
- (1) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or
 - (2) Prices set by law or regulation, and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to accept the Cost Accounting Standards article by reason of 331.30(b) of Title 4, Code of Federal Regulations (4 CFR 331.30(b) or 1-3.1203 (a) (2) of Title 41), Code of Federal Regulations (41 CFR 1-3.1203 (a) (2)).

NOTE: Lower-tier Subcontractors shall be required to submit their Disclosure Statements to the Subcontractor. However, if a lower-tier Subcontractor has previously submitted its Disclosure Statement to the Contractor or Government Contracting Officer, it may satisfy that requirement by certifying to the Subcontractor the date of such Statement and the address of Government Contracting Officer.

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

- (e) The terms defined in Section 331.20 of Part 331 of Title 4, Code of Federal Regulations (4 CFR 331.20) shall have the same meanings herein. As there defined, "negotiated subcontract" means "any subcontract except a firm fixed-price subcontract made by a Contractor or Subcontractor after receiving offers from at least two firms not associated with each other or such Contractor or Subcontractor, providing (i) the solicitation to all competing firms is identical, (ii) price is the only consideration in selecting the Subcontractor from among the competing firms solicited, and (iii) the lowest offer received in compliance with the solicitation from among those solicited is accepted.'
- (f) In addition to any other remedies provided by law or under this subcontract, if the Contractor is subjected to any liability as the result of a failure of the Subcontractor or his lower-tier subcontractors to comply with the requirements of this clause (or, with respect to such lower-tier subcontracts, the Cost Accounting Standards clause in such subcontracts) then the Subcontractor agrees to indemnify and hold the Contractor harmless to the full extent of any loss, damage, expense (including Attorney's fees) or liability resulting from such failure.

33.2 Administration of Cost Accounting Standards

For the purpose of administering Cost Accounting Standards requirements under this subcontract, the Subcontractor shall:

- (a) Submit to Contractor 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 Contractor's orders containing the Cost Accounting Standards article:
- (1) For any change in Cost Accounting Practices required to comply with a new Cost Accounting Standard in accordance with paragraphs (a) (3) and (a) (4) (A) of the article of this subcontract entitled "Cost Accounting Standards" within 60 days (or such other date as may be mutually agreed to) after award of a subcontract requiring such change;
 - (2) For any change in cost accounting practices proposed in accordance with paragraph (a) (4) (B) of the article of this subcontract entitled "Cost Accounting Standards" 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
 - (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 article of this subcontract entitled "Cost Accounting Standards" within 60 days (or such other date as may be mutually agreed to) after the date of the agreement of such noncompliance by the Subcontractor.

- (b) Submit a cost impact proposal in the form and manner specified by the Contractor within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to (a) (1), (2), and (3) above.
- (c) Agree to appropriate subcontract amendments to reflect adjustments established in accordance with paragraphs (a) (4) and (a) (5) of the article of this subcontract entitled "Cost Accounting Standards."
- (d) In the event the Subcontractor has in existence a negotiated contract(s) or subcontract(s) containing the article entitled "Cost Accounting Standards", submit the following information to the Contracting Officer cognizant of the subcontractor's facility or to the next higher-tier contractor within 30 days after receipt of this award:
 - (1) Subcontractor's name and contract/subcontract number(s);
 - (2) Dollar amount and date of award;
 - (3) Name of the 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 contracts or subcontracts containing the Cost Accounting Standards article, unless such changes have already been reported. If award of this subcontract results in making a Cost Accounting Standard(s) effective for the first time this shall also be reported.
- (e) In the event an adjustment is required to be made to any lower-tier subcontract hereunder, notify the Contractor in writing of such adjustment and agree to an adjustment in the price or estimated cost and fee of this subcontract, as appropriate, based upon the adjustment established within 30 days after receipt of the proposed subcontract adjustment to any higher-tier subcontract.
- (f) Include the substance of this article in all negotiated subcontracts containing the article entitled "Cost Accounting Standards".
- (g) When the Cost Accounting Standards article and this article are included in subcontracts, the term "Contractor" shall be suitably altered to identify the Purchaser.

34.0 RENEGOTIATION

If this subcontract is subject to the Renegotiation Act of 1951, as amended, the following provisions shall apply:

- (a) This subcontract is subject to the Renegotiation Act of 1951 (50 U.S.C. App. 1211, et seq.), as amended, and to any subsequent act of Congress providing for the renegotiation of contracts. Nothing

contained in this clause shall impose any renegotiation obligation with respect to this subcontract or any lower-tier subcontract hereunder which is not imposed by an act of Congress heretofore or hereafter enacted. Subject to the foregoing, this subcontract shall be deemed to contain all the provisions required by Section 104 of the Renegotiation Act of 1951; and by any such other act, without subsequent subcontract amendment specifically incorporating such provisions.

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

35.0 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

(This clause is applicable pursuant to 41 CFR 60-250 if this subcontract is in excess of \$10,000.)

- (a) The Subcontractor 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 Subcontractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam Era without discrimination based upon their disability or veterans status in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay, or other forms of compensation, and selection for training, including apprenticeship.
- (b) The Subcontractor agrees that all suitable employment openings of the Subcontractor which exist at the time of the execution of this subcontract and those which occur during the performance of this subcontract including those not generated by this subcontract and including those occurring at an establishment of the Subcontractor other than the one wherein the subcontract 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 Subcontractor 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 non-veterans. 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 Subcontractor 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 limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the Subcontractor has more than one hiring location in a state, with the central office of that state employment service. Such reports shall indicate for each hiring location (1) the number of individuals hired during the reporting period, (2) the number of nondisabled veterans of the Vietnam Era hired, (3) the number of disabled veterans of the Vietnam Era hired, and (4) the total number of disabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 USC 1787. The Subcontractor shall submit a report within 30 days after the end of each reporting period wherein any performance is made on this subcontract identifying data for each hiring location. The Subcontractor shall maintain at each hiring location copies of the reports submitted until the expiration of 1 year after final payment under the subcontract, 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 Subcontractor becomes contractually bound to the listing provisions of this clause, it shall advise the employment service system in each state where it has establishments of the name and location of each hiring location in the state. As long as the Subcontractor is contractually bound to these provisions and has so advised the state system, there is no need to advise the state system of subsequent subcontracts. The Subcontractor may advise the state system when it is no longer bound by this subcontract 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 Subcontractor 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 non-supervisory; technical; and executive, administrative, and professional openings as are compensated on a salary basis of less than \$25,000 per year. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment. It does not include openings which the Subcontractor 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 Subcontractor proposes to fill from within his own organization" means employment openings for which no consideration will be given to persons outside the Subcontractor's organization (including any affiliates, subsidiaries, and the parent companies) and includes any openings which the Subcontractor proposes to fill from regularly established "recall" lists.
- (4) "Openings which the Subcontractor proposes to fill pursuant to a customary and traditional employer-union hiring arrangement" means employment openings which the Subcontractor proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the Subcontractor and representatives of his employees.
- (i) The Subcontractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- (j) In the event of the Subcontractor'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 Subcontractor 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 Subcontractor'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 Subcontractor will notify each labor union or representatives of workers with which it has a collective bargaining agreement or other contract understanding, that the Subcontractor is bound by the terms of the Vietnam Era Veterans 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 Subcontractor will include the provisions of this clause in every lower-tier subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to the Act, so that such provisions will be binding upon each lower-tier Subcontractor or vendor. The Subcontractor will take such action with respect to any lower-tier 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.

36.0 UTILIZATION OF MINORITY BUSINESS ENTERPRISES

(This clause is applicable if the subcontract is in excess of \$10,000.)

- (a) It is the policy of the Government as declared by the Congress that minority business enterprises shall have the maximum practicable opportunity to participate in the performance of Prime Contractor contracts.
- (b) The Subcontractor agrees to use his best efforts to carry out this policy in the award of his lower-tier subcontracts to the fullest extent consistent with the efficient performance of this subcontract. As used in this subcontract, 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-Indians, American-Eskimos, and American Aleuts. Subcontractors may rely on written representations by subcontractors of lower tier regarding their status as minority business enterprises in lieu of an independent investigation.

37.0 PAYMENT OF INTEREST ON SUBCONTRACTOR'S CLAIMS

- (a) If an appeal is filed by the Subcontractor from a final decision of the Contracting Officer under the "Disputes" article of this subcontract, denying a claim arising under this subcontract, simple interest on the amount of the claim finally determined owed by the Contractor shall be payable to the Subcontractor. 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 Subcontractor furnishes to the Contracting Officer his written appeal under the "Disputes" article of this subcontract, to the date of (i) a final judgement by a court of competent jurisdiction, or (ii) mailing to the Subcontractor 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 paragraph (a) above, (i) interest shall be applied only from the date payment was due, if such date is later than the filing of appeal, and (ii) interest shall not be paid for any period of time that the Contracting Officer determines the Subcontractor has unduly delayed in pursuing his remedies before a board of contract appeals or a court of competent jurisdiction.

38.0 DISCOUNTS

Time for computing discounts offered by the subcontractor shall be computed from the date the subcontractor's invoice is received at the contractor's facility. Payment shall be deemed to have been made for purposes of earning the discount on the date of the mailing of the contractor's check.



Field Engineering Corporation

Grand Junction Operations

TERMS AND CONDITIONS

FOR

SUBCONTRACTS

(ADDENDUM)

"BEST EFFORTS" CLAUSE

(Applicable to all Solicitations and Contracts over \$10,000)

Utilization of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

- 1.0 It is the policy of the United States and the Department of Energy 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 the Department.
- 2.0 The Subcontractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this subcontract. The Subcontractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the Department of Energy and the Contractor as may be necessary to determine the extent of the Subcontractor's compliance with this clause.
- 3.0 As used in this subcontract, the term "small business concern" shall mean a small business as defined pursuant to Section 3 of the Small Business Act (15 U.S.C 632) and relevant regulations promulgated pursuant thereto including §1-1701 of the Federal Procurement Regulations. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern
 - (a) 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
 - (b) whose management and daily business operations are controlled by one or more of such individuals.

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

- 4.0 Contractors acting in good faith may rely on written representatives by their Subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.