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B-171594
7-19-73

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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RELEASED

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JUL 19 1973

The Honorable Thaddeus J. Dulski
Chairman, Committee on Post Office
and Civil Service
House of Representatives

[U.S. Postal Service Contract for Construction of Bulk Mail Facility]

Dear Mr. Chairman:

Your letter dated March 12, 1973, requested that we prepare a detailed report on the $18 million contract awarded by the U.S. Postal Service to the Blount Brothers Corporation for constructing a bulk-mail facility in Des Moines, Iowa. You asked that our report contain (1) the prequalifying guidelines used by both the Postal Service and the Corps of Engineers, Department of the Army, (2) the bidding procedure, (3) the number of bidders, their names, and the amounts bid by each, (4) the reason the contract was awarded to the corporation, and (5) a copy of the contract. You also requested our opinion as to whether section 207 of title 18, United States Code, applied to the Postal Service and, if so, whether there was a violation of that law with respect to the contract award.

BACKGROUND

On March 11, 1971, Postmaster General Winton M. Blount, who was Postmaster General from January 1969 through October 1971, announced that the Postal Service would establish a National Bulk Mail System (NBMS) consisting of 21 bulk-mail facilities (BMFs) and 12 auxiliary service facilities specifically designed to handle bulk mail. (See enc. I.) The Postmaster General announced that one of the BMFs would be in the Des Moines area. These facilities will process only bulk mail, such as parcels, sacks of nonpreferential second-class mail (weekly magazines and newspapers), and third-class mail (advertising circulars). Preferential mail (letters) will be processed in separate facilities.

The Postal Service said that NBMS would (1) use modern machine-sorting techniques to process bulk mail, (2) enable the massing of mail for long-distance transportation,

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(3) improve service to customers, and (4) reduce overall costs. The Postal Service plans to invest about $1 billion to build NBMS and expects to reduce operating costs by about $300 million a year after it is fully implemented in 1975.

The Postal Service classified the 21 BMFs by size--2 large, 5 medium, and 14 small. A small BMF is planned for Des Moines. (See enc. II.)

The 14 small BMFs were designed as modular units to facilitate design standardization and to simplify future expansion, if needed. In May 1971 the Postal Service told the contractor designing the small BMFs to include the modular concept in his designs. Mr. Blount was the Postmaster General at the time the decision was made to design the small BMFs as modular units.

Each of the small BMFs is to be constructed on the basis of the amount of mechanization needed to meet the expected processing requirements. The mechanized equipment in a BMF will consist primarily of parcel- and sack-sorting units. The same type of mechanized equipment will be used in each of the 14 small BMFs; however, the quantity of certain items will vary depending on a facility's processing requirements. Each of the small BMFs will be L-shaped and will vary in length, depending on the amount of mechanization to be installed. The modular concept for BMFs will enable the Postal Service to expand a BMF if its future processing requirements exceed constructed capacity.

POSTAL SERVICE-CORPS OF ENGINEERS RELATIONSHIP

In 1969 the Postal Service began to develop plans for a major construction and modernization program to upgrade its mail-handling capabilities. The Postmaster General stated that, at that time, the Postal Service did not have the necessary capability to handle this program on a timely basis. Therefore, on September 26, 1970, after passage of the Postal Reorganization Act of 1970 (39 U.S.C. 101), he requested the Corps to provide real estate, design, and construction supervision services for the Postal Service's program.

On March 11, 1971, the Postal Service entered into two 3-year agreements with the Army for transferring postal building site acquisition and construction responsibilities to the Corps. One agreement, signed by the Postmaster General and the Secretary of the Army, covered basic principles and policies. The second agreement, signed by the Postmaster General and the Chief of Engineers, established the responsibilities, terms, and conditions under which the Corps would furnish the required site acquisition and construction services. The second agreement also provided that the Corps establish controls over its operations to insure that its costs would not exceed 5.5 percent of the total design, construction, and mechanization costs.

On May 20, 1971, a third agreement, signed by an Assistant Postmaster General and the Director of Military Construction, Corps of Engineers, transferred responsibility for the small postal facilities construction program, including lease construction, to the Corps for an indefinite period. A fourth agreement dated June 28, 1971, transferred responsibility for the Postal Service's leased and rented facilities to the Corps.

On February 2, 1973, Postmaster General E. T. Klassen announced that the Office of Management and Budget (OMB) had directed the Corps to end, by June 30, 1974, its participation in the Postal Service's major construction and modernization program, including NBMS. OMB further directed the Corps to end, by June 30, 1973, its participation in all other real estate services. OMB directed the Corps to cease participating in the Postal Service's activities as part of a general cutback in the Corps' responsibilities.

BLOUNT BROTHERS CORPORATION

This corporation was the successful bidder on the general contract for constructing a BMF in Des Moines. It is the successor to the partnership, Blount Brothers Construction Company, formed in Tuskegee, Alabama, in 1946 by Winton M. Blount, W. Houston Blount, and Mrs. Clara Blount. Winton M. Blount was its president and chairman of the board of directors until January 1969, when he was appointed Postmaster

General. He then resigned his position with the corporation and placed his shares of stock in a trust that included a provision that the corporation could not bid on any Federal construction projects.

On March 1, 1971, Blount, Inc., Montgomery, Alabama, acquired all the corporation's outstanding capital stock and thus became the parent company of the corporation and its subsidiaries. Mr. Blount resigned as Postmaster General on October 29, 1971, and the trust in which he had placed his shares of stock was subsequently dissolved. He currently serves as a member of the board of directors of Blount, Inc., and was recently elected chairman of the executive committee by the board of directors.

BIDDING PROCEDURES FOLLOWED BY THE CORPS FOR BMFs

The agreements between the Postal Service and the Corps provide that the Corps follow its usual procedures in contracting for postal facilities construction. Corps' procedures provide for procurement by formal advertising to insure that all firms compete on an equal basis for a contract award. But where the work is considered highly complex or of extreme urgency and timely completion is considered essential, the Corps' procedures provide that prospective bidders be prequalified. Bidders' prequalifications are used to limit the bidding to firms of proven competence, thereby assuring the Government that urgent projects will be awarded only to contractors with a record of prompt and efficient performance.

On April 6, 1972, the Chief of Engineers approved the use of prequalification procedures to qualify bidders for the construction of 18 BMFs, including the Des Moines BMF. He stated in his April 6, 1972, letter to the Division Engineer of the Corps' Kansas City District that bidders' prequalifications were necessary because of the size and complexity of the 18 BMFs and because of the need to insure NBMS' prompt and efficient completion. Prompt completion was considered necessary to enable the Postal Service to realize more quickly

the $300 million annual savings. A Corps official told us that prequalification procedures were not used in awarding the construction contracts for BMFs in Chicago, New York, and Washington, D.C., because these contracts had already been or were about to be awarded when the use of prequalification procedures was approved.

The Corps designated its Kansas City District to prequalify firms that were interested in bidding on 1 or more of the 18 BMFs. To expedite the prequalification process, the Corps required prospective bidders for 1 or more of the first 13 BMFs, including the Des Moines BMF, to submit their prequalification statements by July 15, 1972. Prospective bidders for one or more of the remaining five BMFs were to submit their statements by November 15, 1972.

The Corps' prequalification procedures require an evaluation of each prospective bidder in:

Performance--Must have a record of prompt and quality construction performance.

Management--Must have an adequate staff of experienced managerial, engineering, and supervisory personnel vested with adequate authority and available for commitment to the job.

Labor relations--Must have a satisfactory labor relations record.

Equipment--Must have ownership of or ready access to facilities and equipment required for performance of the work.

Financial standing--Must have adequate financial resources and an adequate financial history to meet trade obligations and State and Federal tax liabilities.

Experience record--Must have experience in work of a magnitude and complexity comparable to the work under consideration and have demonstrated the capability to handle the planned work.

Business history--Must have a record of business and financial ability and integrity.

Administration--Must have a satisfactory contract administration record.

For each area prospective bidders are rated acceptable, marginal, or unacceptable. The corporation was rated acceptable in all areas.

A Corps official said that the Corps had announced in numerous trade journals and newspapers the prequalification procedures that were to be followed if a firm desired to bid on the construction of one or more of the 18 BMFs. In a letter dated April 12, 1973, the Deputy District Engineer of the Corps' Kansas City District told us that it had received prequalification statements from 162 prospective bidders, of which 85 had been approved as qualified bidders.

In May 1972 the corporation requested prequalification as a prime contractor for all 18 BMFs. On July 31, 1972, the Corps told the corporation that it had been prequalified to bid on BMFs. According to Corps records, 47 firms, including the corporation, were prequalified to bid on the Des Moines BMF.

We considered whether it would have been proper for the Postal Service to direct the Corps to eliminate the corporation as a bidder for the BMFs because of Mr. Blount's previous position as Postmaster General. The Deputy General Counsel, Postal Service's Law Department, told us that, in his opinion, if the Corps or the Postal Service had not allowed the corporation to bid, the corporation would have had grounds for bringing a legal suit against the Postal Service. He said, however, that the outcome of such a suit could not be predicted.

AWARD OF CONSTRUCTION CONTRACT FOR DES MOINES BMF

To expedite construction of the BMFs, design and construction were separated into three phases: phase I consisted of foundations and rough grading; phase II consisted of structural steel procurement and erection; and phase III consisted of general construction work, mechanization, and finishing. The contract awarded to the corporation for the Des Moines BMF was for phase III construction. (See enc. III.)

As noted earlier, 47 firms were prequalified to bid on the Des Moines BMF. The Corps invited bids from these firms on January 2, 1973; however, only five firms submitted bids. The firms were asked to bid on either or both of two construction schedules--one for construction to be completed in 590 calendar days, and the other for completion in 620 calendar days. The following chart lists the five firms and their bid amounts. (See enc. IV.)

Firm	Schedule I (590 days)	Schedule II (620 days)
Blount Brothers Corporation 4520 Executive Park Drive Montgomery, Alabama 36111	$18,179,000	No bid
Haas and Haynie (a limited partnership) and Montgomery, Ross, Fischer, Inc. (sponsor)--joint venture P.O. Pac, 109th Street Urbandale, Iowa 50322	No bid	$19,100,000
Paschen Contractors, Inc. (sponsor) 2739 N. Elston Avenue Chicago, Illinois 60647, and Gust. K. Newberg Construction Co. 2040 N. Ashland Avenue Chicago, Illinois 60614 --joint venture	19,687,000	19,597,000
Donovan Construction Co. 1080 Montreal Avenue St. Paul, Minnesota 55102	No bid	19,750,000
Sharp Brothers Contracting Co. 1014 East 19th Street Kansas City, Missouri 64108	No bid	20,986,934

The corporation's bid on schedule I was $1,508,000 lower than the other contractors' bids on schedule I and $921,000 lower than the contractor with the lowest bid on schedule II. The Postal Service has estimated that the Des Moines BMF will reduce operating costs by about $600,000 a month when it becomes operational. Therefore, the earlier completion date under schedule I is advantageous to the Postal Service.

The contract was awarded to the corporation on February 23, 1973. According to a Corps official, the corporation was awarded the contract because it was the lowest bidder and would complete the construction 30 days earlier than others. This official said that the Corps followed its procedures in awarding the contract and that the Postal Service was not involved in the contract award decision.

The contract provides that the corporation pay liquidated damages to the Government if the various items of work are not completed within the time specified in the contract. The maximum damages that may be assessed under this contract are $7,000 a day.

The corporation, to protect the interests of the Government and the firms supplying labor and materials for work on the Des Moines BMF, obtained performance and payment bonds as required by Corps regulations. The performance bond for this contract is $18,179,000 (the contract award price) and protects the Government's interest up to that amount in the event of contractor default. The payment bond is $2,500,000 and protects the firms supplying material and labor.

In addition to bidding on the Des Moines BMF, the corporation previously bid on the Denver; Jacksonville, Florida; Memphis; Greensboro, North Carolina; and Cincinnati BMFs but was not the lowest bidder on any of these facilities and thus was not awarded any contracts. Corps officials said that, if the corporation had any prior information or had any advantages over the other bidders, it should have been the lowest bidder on one or more of the other facilities.

After the award of the contract for the Des Moines BMF, the corporation, in a joint venture with Markward Karafilis, was awarded the general construction contract for the Detroit BMF. Further, on May 8, 1973, the corporation, in a joint venture with B. Bornstein and Son, Inc., was awarded the general construction contract for the Philadelphia BMF. The contract award amounts were $22,420,000 and $23,193,000 for the Detroit and Philadelphia BMFs, respectively.

COMPLIANCE WITH TITLE 18, UNITED STATES CODE

Section 410 of the Postal Reorganization Act makes inapplicable to the Postal Service many of the laws applicable to the Post Office Department. However, section 410(b)(2) specifically provides that all provisions of title 18 of the United States Code dealing with the Postal Service, the mails, and officers or employees of the U.S. Government be applicable to the Postal Service.

Accordingly, the conflict-of-interest provisions of 18 U.S.C. 207 concerning present and former officers and employees of the Government are applicable to the Postal Service. However, because the conflict-of-interest statutes are criminal in nature, the interpretation and the enforcement thereof are functions of the Attorney General and the courts. Consequently, we believe it is not appropriate for us to express an opinion as to whether or not the actions of Mr. Blount constituted a violation of this law.

As agreed with your office, we did not ask the Postal Service or the Corps to review this report; however, we discussed the facts pertaining to the contract award to the corporation with Postal Service and Corps officials, and they agreed with the accuracy of the facts. We do not plan to distribute this report further unless you agree or publicly announce its contents.

Sincerely yours,

Comptroller General
of the United States

NETWORK CONFIGURATION: ■ 21 Bulk Mail Facilities

• 12 Auxiliary Service Facilities

ENCLOSURE I

ENCLOSURE II

BULK-MAIL FACILITIES BY SIZE

AND THEIR AUXILIARY SERVICE FACILITIES

LARGE:

- New York, New York
- Chicago, Illinois

MEDIUM:

- Dallas, Texas
  - Oklahoma City, Oklahoma
  - Houston, Texas
- Los Angeles, California
  - Phoenix, Arizona
- Philadelphia, Pennsylvania
- Pittsburgh, Pennsylvania
  - Buffalo, New York
- Springfield, Massachusetts
  - Portland, Maine

SMALL:

- Atlanta, Georgia
- Cincinnati, Ohio
- Denver, Colorado
  - Billings, Montana
  - Salt Lake City, Utah
  - Albuquerque, New Mexico
- Des Moines, Iowa
  - Sioux Falls, South Dakota
- Detroit, Michigan
- Greensboro, North Carolina
- Jacksonville, Florida
  - Miami, Florida
- Kansas City, Kansas
- Memphis, Tennessee
  - New Orleans, Louisiana
- Minneapolis-St. Paul, Minnesota
  - Fargo, North Dakota
- St. Louis, Missouri
- San Francisco, California
- Seattle, Washington
- Washington, D.C.

ENCLOSURE III

[illegible] RECORD CONTRACT FILE

STANDARD FORM 23
JANUARY 1961 EDITION
GENERAL SERVICES ADMINISTRATION
FED PROC REG (41 CFR) 1-16.401

CONSTRUCTION CONTRACT
(See instructions on reverse)

CONTRACT NO
DACW41-73-C-9019

DATE OF CONTRACT
73 FEB 23

NAME AND ADDRESS OF CONTRACTOR
Blount Bros. Corporation
4520 Executive Park Drive
P. O. Box 949
Montgomery, Alabama 36111

CHECK APPROPRIATE BOX
- [ ] Individual
- [ ] Partnership
- [ ] Joint Venture
- [X] Corporation, incorporated in the State of Delaware

DEPARTMENT OR AGENCY
U. S. Army Engineer District, Kansas City

CONTRACT FOR *(Work to be performed)*
Construction of United States Post Office Facility
Bulk Mail Center, Phase III (Schedule I)

PLACE
Des Moines, Iowa

CONTRACT PRICE *(Express in words and figures)* EIGHTEEN MILLION ONE HUNDRED SEVENTY NINE THOUSAND DOLLARS AND NO CENTS ($18,179,000.00)--Total. Contract prices shall be as itemized on Page 3.

ADMINISTRATIVE DATA *(Optional)*

Payment to be made by: Disbursing Officer
U. S. Army Engineer District, Kansas City

Appropriation No.: 96-18X4020 Postal Service Fund, Trf to CoE,
Civil Project 2-6P-189950-C-217 PAN 7DM

The United States of America (hereinafter called the Government), represented by the Contracting Officer executing this contract, and the individual, partnership, joint venture, or corporation named above (hereinafter called the Contractor), mutually agree to perform this contract in strict accordance with the General Provisions, and the following designated specifications, schedules, drawings, and conditions: Specifications entitled "SPECIFICATIONS FOR CONSTRUCTION OF UNITED STATES POST OFFICE FACILITY BULK MAIL CENTER, PHASE III DES MOINES, IOWA," dated 2 January 1973, Serial No. DACW41-73-B-9006; Amendments Nos. 0001, 0002, 0003, 0004, 0005, and 0006 thereto, dated 29 and 30 January, 5, 8, 10, and 13 February 1973, respectively; and drawings listed in Paragraph SP-3 of the aforementioned specifications.

$18,179,000.00
Amount Obligated

LEGAL REVIEW [illegible]

The amount shown [illegible]

LEGAL REVIEW [illegible]

[illegible]

WORK SHALL BE STARTED in accordance with Paragraph SP-1 of the contract specifications.

WORK SHALL BE COMPLETED in accordance with Paragraph SP-1 of the contract specifications.

23-103

Incl 1

Alterations. The following alterations were made in this contract before it was signed by the parties hereto:

General Provision 5 (d) (1) is amended by inserting the word "unforeseeable" before the word "causes" and by deleting the phrase "other than normal weather" after the word "causes" wherever it appears.

General Provision, Clause 69 "Payment of Interest On Contractors' Claims" is hereby deleted.

In witness whereof, the parties hereto have executed this contract as of the date entered on the first page hereof.

THE UNITED STATES OF AMERICA

By W. R. Needham
W. R. NEEDHAM
Colonel, Corps of Engineers
Contracting Officer
(Official title)

CONTRACTOR

BLOUNT BROS. CORPORATION
(Name of Contractor)

By John A. Caddell
(Signature)
John A. Caddell
President
(Title)

INSTRUCTIONS

1. The full name and business address of the Contractor must be inserted in the space provided on the face of the form. The Contractor shall sign in the space provided above with his usual signature and typewrite or print his name under the signature.

2. An officer of a corporation, a member of a partnership, or an agent signing for the Contractor shall place his signature and title after the word "By" under the name of the Contractor. A contract executed by an attorney or agent on behalf of the Contractor shall be accompanied by two authenticated copies of his power of attorney or other evidence of his authority to act on behalf of the Contractor.

☆ U.S. GOVERNMENT PRINTING OFFICE 1960 OF—572720—46

Contract No. DACW41-73-C-9019

UNIT PRICE SCHEDULE

	Item No.	Description	Unit Price	Amount Schedule I
	1	All work in connection with construction of the Process Building including utilities to points 5 feet outside the building lines but exclusive of work already under contract and Item No. 2 below, complete, as shown on the drawings and specified.	lump sum	$8,273,335.00
	2	All work in connection with installation of the mechanized bulk mail processing system, complete, as shown on the drawings and specified.	lump sum	7,000,000.00
	3	All work in connection with construction of the Vehicle Maintenance Facility including utilities to points 5 feet outside the building lines but exclusive of work already under contract, complete, as shown on the drawings and specified.	lump sum	200,000.00
	4	All work in connection with construction of the Gate House including utilities to points 5 feet outside the building lines but exclusive of work already under contract, complete, as shown on the drawings and specified.	lump sum	50,000.00
	5	All work in connection with construction of the Pump House and Water Reservoir including utilities to points 5 feet outside the structure lines but exclusive of work already under contract, complete, as shown on the drawings and specified.	lump sum	100,000.00
	6	Additional field office facilities for Postal Service (see section 1E, paragraph 4 for description)	lump sum	50,000.00
**	6A	Relocation of Electrical Service	lump sum	5,665.00
	7	All other work, but excluding work already under contract.	lump sum	2,500,000.00
			Total $	18,179,000.00

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GENERAL PROVISIONS
(Construction Contract)
Issued By: Department of the Army, Corps of Engineers

(General Provisions 1 through 23 and 24 through 31 are those prescribed by the General Services Administration in Standard Form 23-A, Oct 1969 edition, and Standard Form 19-A, Apr 1965 edition, respectively, as amended pursuant to the latest revisions of the Armed Services Procurement Regulation and Engineer Contract Instructions, ER 1180-1-2.)

1.1 DEFINITIONS

(The following clause is applicable if the procurement instrument identification number is prefixed by the letters "DACW")

(a) The term "head of the agency" or "Secretary" as used herein means the Secretary of the Army, and the term "his duly authorized representative" means the Chief of Engineers, Department of the Army, or an individual or board designated by him.

(b) The term "Contracting Officer" as used herein means the person executing this contract on behalf of the Government and includes a duly appointed successor or authorized representative. (ASPR 7-602.1 and ECI 7-070)

1.2 DEFINITIONS (1964 JUN)

(The following clause is applicable if the procurement instrument identification number is prefixed by the letters "DACA")

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

(b) The term "Contracting Officer" as used herein means the person executing this contract on behalf of the Government and includes a duly appointed successor or authorized representative. (ASPR 7-602.1)

2. SPECIFICATIONS AND DRAWINGS (1964 JUN)

The Contractor shall keep on the work a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy either in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at his own risk and expense. The Contracting Officer shall furnish from time to time such detail drawings and other information as he may consider necessary, unless otherwise provided. (ASPR 7-602.2)

3. CHANGES (1968 FEB)

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

(i) in the specifications (including drawings and designs),

(ii) in the method or manner of performance of the work,

(iii) in the Government-furnished facilities equipment, materials, services, or site, or

(iv) directing acceleration in the performance of the work.

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

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

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

(e) If the Contractor intends to assert a claim for an equitable adjustment under this clause, he must, within 30 days after receipt of a written change order under (a) above or the furnishing of a written notice under (b) above, submit to the Contracting Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the Government. The statement of claim hereunder may be included in the notice under (b) above.

(f) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract. (ASPR 7-602.3)

4. DIFFERING SITE CONDITIONS (1968 FEB)

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

adjustment shall be made and the contract modified in writing accordingly.

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

(c) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract. (ASPR 7-602.4)

5. TERMINATION FOR DEFAULT - DAMAGES FOR DELAY - TIME EXTENSIONS (1969 AUG)

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

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

(1) The delay in the completion of the work arises from causes other than normal weather beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from causes other than normal weather beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers, and

(2) The Contractor, within 10 days from the beginning of any such delay (unless the Contracting Officer grants a further period of time before the date of final payment under the contract), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in the "Disputes" clause of this contract.

(e) If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the Government, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

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

(g) As used in paragraph (d)(1) of this clause, the term "subcontractors or suppliers" means subcontractors or suppliers at any tier. (ASPR 7-602.5 and 8-709(b))

6. DISPUTES (1964 JUN)

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the head of the agency involved. The decision of the head of the agency or his duly authorized representative for the determination of such appeals shall be final and conclusive. This provision shall not be pleaded in any suit involving a question of fact arising under this contract as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged: *Provided, however*, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of questions of law in connection with decisions provided for in paragraph (a) above. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law. (ASPR 7-602.6(a))

7. PAYMENTS TO CONTRACTOR (1964 JUN)

(The last two sentences of paragraph (c) of the following clause are applicable only where the contract amount exceeds $1,000,000 and the time of performance exceeds one year)

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

(b) The Government will make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on

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

(c) In making such progress payments, there shall be retained 10 percent of the estimated amount until final completion and acceptance of the contract work. However, if the Contracting Officer, at any time after 50 percent of the work has been completed, finds that satisfactory progress is being made, he may authorize any of the remaining progress payments to be made in full. Also, whenever the work is substantially complete, the Contracting Officer, if he considers the amount retained to be in excess of the amount adequate for the protection of the Government, at his discretion, may release to the Contractor all or a portion of such excess amount. Furthermore, on completion and acceptance of each separate building, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made therefor without retention of a percentage. Where the time originally specified for completion of this contract exceeds one year, the Contracting Officer, at any time after 50 percent of the work has been completed, if he finds that satisfactory progress is being made, may reduce the total amount retained from progress payments to an amount not less than 10 percent of the estimated value of the work remaining to be done under the contract or 1-1/2 percent of the total contract amount, whichever is the higher. In computing the total contract amount, for the purposes of the preceding sentence, the contract amount for any separate building, public work, or other division of the contract on which the price is stated separately in the contract and on which payment has been made in full, including retained percentage thereon under this clause shall be excluded.

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

(e) Upon completion and acceptance of all work, the amount due the Contractor under this contract shall be paid upon the presentation of a properly executed voucher and after the Contractor shall have furnished the Government with a release, if required, of all claims against the Government arising by virtue of this contract, other than claims in stated amounts as may be specifically excepted by the Contractor from the operation of the release. If the Contractor's claim to amounts payable under the contract has been assigned under the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), a release may also be required of the assignee. (ASPR 7-602.7(a) and (b))

8. ASSIGNMENT OF CLAIMS (1964 JUN)

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

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer. (ASPR 7-602.8)

9. MATERIAL AND WORKMANSHIP (1964 JUN)

(a) Unless otherwise specifically provided in this contract, all equipment, material, and articles incorporated in the work covered by this contract are to be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in this contract, reference to any equipment, material, article, or patented process, by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and the Contractor may, at his option, use any equipment, material, article, or process which, in the judgment of the Contracting Officer, is equal to that named. The Contractor shall furnish to the Contracting Officer for his approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature, and rating of the machinery and mechanical and other equipment which the Contractor contemplates incorporating in the work. When required by this contract or when called for by the Contracting Officer, the Contractor shall furnish the Contracting Officer for approval full information concerning the material or articles which he contemplates incorporating in the work. When so directed, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles installed or used without required approval shall be at the risk of subsequent rejection.

(b) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may, in writing, require the Contractor to remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable. (ASPR 7-602.9)

10. INSPECTION AND ACCEPTANCE (1964 JUN)

(a) Except as otherwise provided in this contract, inspection and test by the Government of material and workmanship required by this contract shall be made at reasonable times and at the site of the work, unless the Contracting Officer determines that such inspection or test of material which is to be incorporated in the work shall be made at the place of production, manufacture, or shipment of such material. To the extent specified by the Contracting Officer at the time of determining to make off-site inspection or test, such inspection or test shall be conclusive as to whether the material involved conforms to the contract requirements. Such off-site inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the Government after acceptance of the completed work under the terms of paragraph (f) of this clause, except as hereinabove provided.

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

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

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

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

(f) Unless otherwise provided in this contract, acceptance by the Government shall be made as promptly as practicable after completion and inspection of all work required by this contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud or as regards the Government's rights under any warranty or guarantee. (ASPR 7-602.11)

11. SUPERINTENDENCE BY CONTRACTOR (1964 JUN)

The Contractor shall give his personal superintendence to the work or have a competent foreman or superintendent, satisfactory to the Contracting Officer, on the work at all times during progress, with authority to act for him. (ASPR 7-602.12)

12. PERMITS AND RESPONSIBILITIES (1964 JUN)

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal, State, and municipal laws, codes, and regulations, in connection with the prosecution of the work. He shall be similarly responsible for all damages to persons or property that occur as a result of his fault or negligence. He shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. He shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction thereof which theretofore may have been accepted. (ASPR 7-602.13)

13. CONDITIONS AFFECTING THE WORK (1964 JUN)

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the work without additional expense to the Government. The Government assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this contract, unless such understanding or representations by the Government are expressly stated in the contract. (ASPR 7-602.14)

14. OTHER CONTRACTS (1964 JUN)

The Government may undertake or award other contracts for additional work, and the Contractor shall fully cooperate with such other contractors and Government employees and carefully fit his own work to such additional work as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Government employees. (ASPR 7-602.15)

15. PATENT INDEMNITY (1964 JUN)

Except as otherwise provided, the Contractor agrees to indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any Letters Patent of the United States (except Letters Patent issued upon an application which is now or may hereafter be, for reasons of national security, ordered by the Government to be kept secret or otherwise withheld from issue) arising out of the performance of this contract or out of the use or disposal by or for the account of the Government of supplies

furnished or construction work performed hereunder. (ASPR 7-602.16)

16. ADDITIONAL BOND SECURITY (1949 JUL)

If any surety upon any bond furnished in connection with this contract becomes unacceptable to the Government, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the Government, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government and of persons supplying labor or materials in the prosecution of the work contemplated by this contract. (ASPR 7-103.9)

17. COVENANT AGAINST CONTINGENT FEES (1958 JAN)

The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee. (ASPR 7-103.20)

18. OFFICIALS NOT TO BENEFIT (1964 JUN)

No Member of Congress or resident Commissioner shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit. (ASPR 7-602.19)

19. BUY AMERICAN ACT (1966 OCT)

(a) *Agreement.* In accordance with the Buy American Act (41 U.S.C. 10a-10d), the Contractor agrees that only domestic construction material will be used (by the Contractor, subcontractors, materialmen, and suppliers) in the performance of this contract, except for nondomestic construction material listed in the "Nondomestic Construction Materials" clause, if any, of this contract.

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

(c) *Domestic component.* A component shall be considered to have been "mined, produced, or manufactured in the United States" (regardless of its source in fact) if the article, material, or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. (ASPR 7-602.20)

20. CONVICT LABOR (1949 MAR)

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor. (ASPR 7-104.17)

21. EQUAL OPPORTUNITY (1972 AUG)

(The following clause is applicable unless this contract is exempt under the rules, regulations and relevant orders of the Secretary of Labor (41 CFR, Chapter 60). Exemptions include contracts and subcontracts (i) not exceeding $10,000, and (ii) under which work is performed outside the United States and no recruitment of workers within the United States is involved.)

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

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

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

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

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

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

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

Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law

(g) The Contractor will include the provisions of paragraphs (a) through (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, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States. (ASPR 7–103.18(a))

22. UTILIZATION OF SMALL BUSINESS CONCERNS (1958 JAN)

(The following clause is applicable if this contract is in excess of $5,000)

(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 Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract. (ASPR 7–104.14(a))

23. SUSPENSION OF WORK (1968 FEB)

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

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

(c) No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order) and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the contract. (ASPR 7–602.46)

24. DAVIS–BACON ACT (40 U.S.C. 276a to a–7) (1972 FEB)

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

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

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

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

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

(d) The Contracting Officer shall require that any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination decision and which is to be employed under the contract shall be classified or reclassified conformably to the wage determination decision and shall report the action taken to the Secretary of Labor. If the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers or mechanics, including

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apprentices and trainees, to be used, the Contracting Officer shall submit the question, together with his recommendation, to the Secretary of Labor for final determination.

(e) In the event it is found by the Contracting Officer that any laborer or mechanic employed by the Contractor or any subcontractor directly on the site of the work covered by this contract has been or is being paid at a rate of wages less than the rate of wages required by paragraph (a) of this clause, the Contracting Officer may (i) by written notice to the Government Prime Contractor terminate his right to proceed with the work, or such part of the work as to which there has been a failure to pay said required wages and (ii) prosecute the work to completion by contract or otherwise, whereupon such Contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

(f) Paragraphs (a) through (e) of the clause shall apply to this contract to the extent that it is (i) a prime contract with the Government subject to the Davis–Bacon Act or (ii) a subcontract also subject to the Davis–Bacon Act under such prime contract. (ASPR 7–602.23(a)(i))

25. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (40 U.S.C. 327–333) (1972 FEB)

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

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

(b) In the event of any violation of the provisions of paragraph (a), the Contractor shall be liable to any affected employee for any amounts due, and to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) in the sum of $10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight (8) hours or in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by paragraph (a). (ASPR 7–602.23(a)(ii))

26. APPRENTICES AND TRAINEES (1972 FEB)

(a) Apprentices shall be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, United States Department of Labor; or, if no such recognized agency exists in a State, under a program registered with the aforesaid Bureau of Apprenticeship and Training. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subparagraph (b) of this clause, who is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Contractor shall furnish written evidence of the registration of his program and apprentices as well as of the ratios allowed and the wage rates required to be paid thereunder for the area of construction, prior to using any apprentices in the contract work. "Apprentice" means a person employed and individually registered in a bona fide apprenticeship program registered with the United States Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or a person in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Council to be eligible for probationary employment as an apprentice.

(b) Trainees shall be permitted to work as such when they are bona fide trainees employed pursuant to a program approved by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. "Trainee" means a person receiving on–the–job training in a construction occupation under a program which is approved (but not necessarily sponsored) by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, and which is reviewed from time to time by the Manpower Administration to insure that the training meets adequate standards.

(c) The Contractor shall make a diligent effort to hire for performance of work under this contract a number of apprentices or trainees, or both, in each occupation, which bears to the average number of the journeymen in that occupation to be employed in the performance of the contract the applicable ratio as set forth in paragraph (c)(6) of this clause.

(1) The Contractor shall assure that twenty–five per cent (25%) of such apprentices or trainees in each occupation are in their first year of training, where feasible. Feasibility here involves a consideration of
   - (i) the availability of training opportunities for first year apprentices,
   - (ii) the hazardous nature of the work for beginning workers and
   - (iii) excessive unemployment of apprentices in their second and subsequent years of training.

(2) The Contractor shall, during the performance of the contract, to the greatest extent possible, employ the number of apprentices or trainees necessary to meet currently the requirements of paragraphs (c) and (c)(1) of this clause.

(3) The Contractor shall maintain records of employment on this contract by trade of the number of apprentices and trainees, apprentices and trainees in first year of training, and of journeymen, and the wages paid and hours of work of such apprentices, trainees and journeymen. In addition, the Contractor who claims compliance based on the criterion set forth in paragraph (4)(ii) of this clause

shall maintain such records of employment on all his construction work in the same labor market area, both public and private, during the performance of this contract.

(4) The Contractor will be deemed to have made a "diligent effort" as required by paragraph (c) if during the performance of this contract, he accomplishes at least one of the following three objectives:

(i) the Contractor employs under this contract a number of apprentices and trainees by craft, at least equal to the ratios established in accordance with paragraph (6) of this clause, or

(ii) the Contractor employs, on all his construction work, both public and private, in the same labor market area, an average number of apprentices and trainees by craft at least equal to the ratios established in accordance with paragraph (6) of this clause, or

(iii) the Contractor

(A) if covered by a collective bargaining agreement, before commencement of any work on the project, has given written notice to all joint apprenticeship committees, the local U.S. Employment Security Office, local chapter of the Urban League, Workers Defense League, or other local organizations concerned with minority employment, and the Bureau of Apprenticeship and Training Representatives, U.S. Department of Labor for the locality of the work,

(B) if not covered by a collective bargaining agreement, has given written notice to all of the groups stated above, except joint apprenticeship committees, and will in addition notify all non-joint apprenticeship sponsors in the labor market area;

(C) has employed all qualified applicants referred to him through normal channels (such as the Employment Service, the Joint Apprenticeship Committees, and where applicable, minority organizations and apprentice outreach programs who have been delegated this function) at least up to the number of such apprentices and trainees required by paragraph (6) of this clause,

(D) notice, as referred to herein, will include at least the Contractor's name and address, job site address, value of the contract, expected starting and completion dates, the estimated average number of employees in each occupation to be employed over the duration of the contract work, and a statement of his willingness to employ a number of apprentices and trainees at least equal to the ratios established in accordance with paragraph (6) of this clause. A copy of this notice shall be furnished to the Contracting Officer upon request

(5) The Contractor shall supply, to the Contracting Officer, and to the Secretary of Labor, a report at three month intervals during performance of the contract and after completion of contract performance a statement describing steps taken toward making a diligent effort and containing a breakdown by craft, of hours worked and wages paid for first year apprentices and trainees, other apprentices and trainees, and journeymen.

(6) The applicable ratios of apprentices and trainees to journeymen in any occupation for the purpose of this clause shall be as follows:

(i) In any occupation the applicable ratio of apprentices and trainees to journeymen shall be equal to the predominant ratio for the occupation in the area where the construction is being undertaken, set forth in collective bargaining agreements, or other employment agreements, and available through the Bureau of Apprenticeship and Training Representative, U.S. Department of Labor for the locality of the work

(ii) For any occupation for which no ratio is found, the ratio of apprentices and trainees to journeymen shall be determined by the contractor in accordance with the recommendations set forth in the Standards of the National Joint Apprentice Committee for the occupation, which are on file at offices of the U.S. Department of Labor's Bureau of Apprenticeship and Training

(iii) For any occupation for which no such recommendations are found the ratio of apprentices and trainees to journeymen shall be at least one apprentice or trainee for every five journeymen

NOTE. Paragraphs (a) and (b) of this clause apply to contracts in excess of $2,000; in addition, paragraph (c) applies to contracts in excess of $10,000. (ASPR 7-602.23(a)(iii))

27. PAYROLLS AND BASIC RECORDS (1969 JUN)

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

(b) The Contractor shall submit weekly a copy of all payrolls to the Contracting Officer. The Government Prime Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The copy shall be accompanied by a statement signed by the Contractor indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor, and that the classifications set forth for each laborer or mechanic conform with the work he performed. Weekly submission of the "Statement of Compliance" required under this contract and the Copeland Regulations of the Secretary of Labor (29 CFR, Part 3) shall satisfy the requirement for submission of the above statement. The Contractor shall submit also a copy of any approval by the Secretary of Labor with respect to fringe benefits which is required by paragraph (c) of the clause entitled "Davis-Bacon Act."

(c) The Contractor shall make the records required under this clause available for inspection by authorized representatives of the Contracting Officer and the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. (ASPR 7-602.23(a)(iv))

28. COMPLIANCE WITH COPELAND REGULATIONS (1964 JUN)

The Contractor shall comply with the Copeland Regulations of the Secretary of Labor (29 CFR, Part 3) which are incorporated herein by reference. (ASPR 7-602.23(a)(v))

29. WITHHOLDING OF FUNDS (1972 FEB)

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

(b) If any Contractor fails to pay any laborer or mechanic including any apprentice or trainee employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Government Prime Contractor, take such action as may be necessary to cause suspension of any further payments or advances until such violations have ceased. (ASPR 7-602.23(a)(vi))

30. SUBCONTRACTS (1972 FEB)

The Contractor agrees to insert the clauses hereof entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act – Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Regulations," "Withholding of Funds," "Subcontracts," and "Contract Termination – Debarment" in all subcontracts. The term "Contractor" as used in such clauses in any subcontract shall be deemed to refer to the subcontractor except in the phrase "Government Prime Contractor." (ASPR 7-602.23(a)(vii))

31. CONTRACT TERMINATION – DEBARMENT (1972 APR)

A breach of the clauses hereof entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act – Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Regulations," "Withholding of Funds," and "Subcontracts" may be grounds for termination of the contract, and for debarment as provided in 29 CFR 5.6. (ASPR 7-602.23(a)(viii))

32. CONTRACTOR INSPECTION SYSTEM (1964 NOV)

The Contractor shall (i) maintain an adequate inspection system and perform such inspections as will assure that the work performed under the contract conforms to contract requirements, and (ii) maintain and make available to the Government adequate records of such inspections. (ASPR 7-602.10(a))

33. GRATUITIES (1952 MAR)

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

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

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract. (ASPR 7-104.16)

34. SMALL BUSINESS SUBCONTRACTING PROGRAM (MAINTENANCE, REPAIR AND CONSTRUCTION) (1967 JUN)

(The following clause is applicable if this contract is in excess of $500,000)

(a) The Contractor agrees to establish and conduct a small business subcontracting program which will enable small business concerns to be considered fairly as subcontractors, including suppliers, under this contract In this connection, the Contractor shall designate an individual to (i) maintain liaison with the Government on small business matters, and (u) administer the Contractor's Small Business Subcontracting Program.

(b) Notwithstanding the instructions on DD Form 1140-1, prior to completion of the contract and as soon as the final information is available, the Contractor shall submit a one-time completed DD Form 1140-1 to the Government addressees prescribed thereon. The DD Form 1140-1 shall show the prime contract number in lieu of identifying a quarterly report period. This subparagraph (b) is not applicable if the Contractor is a small business concern.

(c) The Contractor further agrees (i) to insert the "Utilization of Small Business Concerns" clause in subcontracts which offer substantial subcontracting opportunities, and (ii) to insert in each such subcontract exceeding $500,000 a clause conforming substantially to the language of this clause except that subcontractors shall submit DD Form 1140-1 direct to the Government addressees prescribed on the Form. The Contractor will notify the Contracting Officer of the name and address of each subcontractor that will be required to submit a report on DD Form 1140-1. (ASPR 7-602.26(b))

35. FEDERAL, STATE, AND LOCAL TAXES (1971 NOV)

(a) Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties.

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

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

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

(c) Paragraph (b) above shall not be applicable to social security taxes or to any other employment tax.

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

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

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

(g) The Contractor shall promptly notify the Contracting Officer of matters which will result in either an increase or decrease in the contract price, and shall take action with respect thereto as directed by the Contracting Officer. (ASPR 7-103.10(a))

36. RENEGOTIATION (1959 OCT)

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

(b) The Contractor agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts, as that term is defined in section 103g of the Renegotiation Act of 1951, as amended. (ASPR 7-103.13(a))

37. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (1971 NOV)

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

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

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

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

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

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

case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

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

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

(vii) use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above; *provided*, however, that the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and *provided further* that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

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

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

At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same; *provided*, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

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

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

(e) In the event of the failure of the Contractor and the Contracting Officer to agree, as provided in paragraph (d), upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, pay to the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):

(i) with respect to all contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of – –

(A) the cost of such work;

(B) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph (b)(v) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of Work under this contract, which amounts shall be included in the cost on account of which payment is made under (A) above; and

(C) a sum, as profit on (A) above, determined by the Contracting Officer pursuant to 8-303 of the Armed Services Procurement Regulation, in effect as of the date of execution of this contract, to be fair and reasonable; *provided*, however, that if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(ii) the reasonable cost of the preservation and protection of property incurred pursuant to paragraph (b)(ix), and any other reasonable cost incidental to termination of work under this contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under this contract.

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

(f) Costs claimed, agreed to, or determined pursuant to (c), (d), and (e) hereof shall be in accordance with Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract.

(g) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the Contracting Officer under paragraph (c) or (e) above, except that if the Contractor has failed to submit his claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

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

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

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

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor shall – from the effective date of termination until the expiration of three years after final settlement under this contract – preserve and make available to the Government at all reasonable times at the office of the Contractor but without direct charge to the Government, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof (ASPR 7-103.21(b) & 7-602.29(a))

38. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (1965 JAN)

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

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each

notice or claim of atent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

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

(c) This clause shall be included in all subcontracts. (ASPR 7-103.23)

39. AUTHORIZATION AND CONSENT (1964 MAR)

The Government hereby gives its authorization and consent (without prejudice to any rights of indemnification) for all use and manufacture, in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any invention described in and covered by a patent of the United States (i) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract, or (ii) utilized in the machinery, tools, or methods the use of which necessarily results from compliance by the Contractor or the using subcontractor with (a) specifications or written provisions now or hereafter forming a part of this contract, or (b) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clauses, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted. (ASPR 7-103.22)

40. COMPOSITION OF CONTRACTOR (1965 JAN)

If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder (ASPR 7-602.32)

41. SITE INVESTIGATION (1965 JAN)

The Contractor acknowledges that he has investigated and satisfied himself as to the conditions affecting the work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides or similar physical conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the work. The Contractor further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from information presented by the drawings and specifications made a part of this contract. Any failure by the Contractor to acquaint himself with the available information will not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the work. The Government assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the Government. (ASPR 7-602.33)

42. PROTECTION OF EXISTING VEGETATION, STRUCTURES, UTILITIES, AND IMPROVEMENTS (1965 JAN)

(a) The Contractor will preserve and protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the site of work which is not to be removed and which does not unreasonably interfere with the construction work. Care will be taken in removing trees authorized for removal to avoid damage to vegetation to remain in place. Any limbs or branches of trees broken during such operations or by the careless operation of equipment, or by workmen, shall be trimmed with a clean cut and painted with an approved tree pruning compound as directed by the Contracting Officer.

(b) The Contractor will protect from damage all existing improvements or utilities at or near the site of the work, the location of which is made known to him, and will repair or restore any damage to such facilities resulting from failure to comply with the requirements of this contract or the failure to exercise reasonable care in the performance of the work. If the Contractor fails or refuses to repair any such damage promptly, the Contracting Officer may have the necessary work performed and charge the cost thereof to the Contractor. (ASPR 7-602.34)

43. OPERATIONS AND STORAGE AREAS (1965 JAN)

(a) All operations of the Contractor (including storage of materials) upon Government premises shall be confined to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by his operations.

(b) Temporary buildings (storage sheds, shops, offices, etc.) may be erected by the Contractor only with the approval of the Contracting Officer, and shall be built with labor and materials furnished by the Contractor without expense to the Government. Such temporary buildings and utilities shall remain the property of the Contractor and shall be removed by him at his expense upon the completion of the work. With the written consent of the Contracting Officer, such buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways or construct and use such temporary roadways as may be authorized by the Contracting Officer. Where materials are transported in the prosecution of the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State or local law or regulation. When it is necessary to cross curbings or sidewalks, protection against damage shall be provided by the Contractor and any damaged roads, curbings, or sidewalks shall be repaired by, or at the expense of the Contractor. (ASPR 7-602.35)

44. MODIFICATION PROPOSALS - PRICE BREAKDOWN (1968 APR)

The Contractor, in connection with any proposal he makes for a contract modification, shall furnish a price breakdown, itemized as required by the Contracting Officer. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract, and overhead costs, as well

as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification therefor shall also be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by the date specified by the Contracting Officer. (ASPR 7-602.36)

45. SUBCONTRACTORS (1972 FEB)

Within seven days after the award of any subcontract either by himself or a subcontractor, the Contractor shall deliver to the Contracting Officer a statement setting forth the name and address of the subcontractor and a summary description of the work subcontracted. The Contractor shall at the same time furnish a statement signed by the subcontractor acknowledging the inclusion in his subcontract of the clauses of this contract entitled "Equal Opportunity," "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act – Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Regulations," "Withholding of Funds," "Subcontracts" and "Contract Termination – Debarment." Nothing contained in this contract shall create any contractual relation between the subcontractor and the Government. (ASPR 7-602.37)

46. USE AND POSSESSION PRIOR TO COMPLETION (1965 JAN)

The Government shall have the right to take possession of or use any completed or partially completed part of the work. Such possession or use shall not be deemed an acceptance of any work not completed in accordance with the contract. While the Government is in such possession, the Contractor, notwithstanding the provisions of the clause of this contract entitled "Permits and Responsibilities," shall be relieved of the responsibility for loss or damage to the work other than that resulting from the Contractor's fault or negligence. If such prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment in the contract price or the time of completion will be made and the contract shall be modified in writing accordingly. (ASPR 7-602.39)

47. CLEANING UP (1965 JAN)

The Contractor shall at all times keep the construction area, including storage areas used by him, free from accumulations of waste material or rubbish and prior to completion of the work remove any rubbish from the premises and all tools, scaffolding, equipment, and materials not the property of the Government. Upon completion of the construction the Contractor shall leave the work and premises in a clean, neat and workmanlike condition satisfactory to the Contracting Officer. (ASPR 7-602.40)

48. ADDITIONAL DEFINITIONS (1965 JAN)

(a) Wherever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "ordered," "designation," or "prescription," of the Contracting Officer is intended and similarly the words "approved," "acceptable," "satisfactory" or words of like import shall mean "approved by" or "acceptable to," or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(b) Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provided complete in place", that is "furnished and installed." (ASPR 7-602.41)

49. ACCIDENT PREVENTION (1967 JUN)

(a) In order to provide safety controls for protection to the life and health of employees and other persons; for prevention of damage to property, materials, supplies, and equipment; and for avoidance of work interruptions in the performance of this contract, the Contractor shall comply with all pertinent provisions of Corps of Engineers Manual, EM 385-1-1, dated 1 March 1967, entitled "General Safety Requirements", as amended, and will also take or cause to be taken such additional measures as the Contracting Officer may determine to be reasonably necessary for the purpose.

(b) The Contractor will maintain an accurate record of, and will report to the Contracting Officer in the manner and on the forms prescribed by the Contracting Officer, exposure data and all accidents resulting in death, traumatic injury, occupational disease, and damage to property, materials, supplies and equipment incident to work performed under this contract.

(c) The Contracting Officer will notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately take corrective action. Such notice, when delivered to the Contractor or his representative at the site of the work, shall be deemed sufficient for the purpose. If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

(d) Compliance with the provisions of this article by subcontractors will be the responsibility of the Contractor.

(e) Prior to commencement of the work the Contractor will:

(1) submit in writing his proposals for effectuating this provision for accident prevention;

(2) meet in conference with representatives of the Contracting Officer to discuss and develop mutual understandings relative to administration of the over-all safety program. (ASPR 7-602.42(a) & (b))

50. GOVERNMENT INSPECTORS (1965 JAN)

The work will be conducted under the general direction of the Contracting Officer and is subject to inspection by his appointed inspectors to insure strict compliance with the terms of the contract. No inspector is authorized to change any provision of the specifications without written authorization of the Contracting Officer, nor shall the presence or absence of an inspector relieve the Contractor from any requirements of the contract. (ASPR 7-602.43)

51. RIGHTS IN SHOP DRAWINGS (1966 APR)

(Applicable to all contracts calling for the delivery of shop drawings.)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor subcontractor or any lower tier subcontractor pursuant to a construction contract, showing in detail (i)

the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier. (ASPR 7-602.47)

52. NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (1958 SEP)

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

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract hereunder as to which a labor dispute may delay the timely performance of this contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify his next higher tier subcontractor, or the prime contractor, as the case may be, of all relevant information with respect to such dispute. (ASPR 7-104.4)

53. CONTRACT PRICES - BIDDING SCHEDULE (1968 APR)

(The following clause is applicable to contracts containing unit prices)

Payment for the various items listed in the Bidding Schedule shall constitute full compensation for furnishing all plant, labor, equipment, appliances, and materials, and for performing all operations required to complete the work in conformity with the drawings and specifications. All costs for work not specifically mentioned in the Bidding Schedule shall be included in the contract prices for the items listed. (ASPR 7-603.5)

54. EXAMINATION OF RECORDS BY COMPTROLLER GENERAL (1971 MAR)

(a) This clause is applicable if the amount of this contract exceeds $2,500 and was entered into by means of negotiation, including small business restricted advertising, but is not applicable if this contract was entered into by means of formal advertising.

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

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

(d) The periods of access and examination described in (b) and (c) above for records which relate to (i) appeals under the "Disputes" clause of this contract, (ii) litigation or the settlement of claims arising out of the performance of this contract, or (iii) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims or exceptions have been disposed of. (ASPR 7-104.15)

55. PRIORITIES, ALLOCATIONS, AND ALLOTMENTS (1971 APR)

(The following clause is applicable to rateable contracts)

The Contractor shall follow the provisions of DMS Reg. 1 and all other applicable regulations and orders of the Bureau of Domestic Commerce in obtaining controlled materials and other products and materials needed to fill this order. (ASPR 7-104.18)

56. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA – PRICE ADJUSTMENTS (1970 JAN)

(The following clause is applicable if this contract is in excess of $100,000)

(a) This clause shall become operative only with respect to any modification of this contract which involves aggregate increases and/or decreases in costs plus applicable profits in excess of $100,000 unless the modification is priced on the basis of adequate competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The right to price reduction under this clause is limited to defects in data relating to such modification.

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

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

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

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

(iv) the Contractor or a subcontractor or prospective subcontractor furnished any data, not within (i), (ii) or (iii) above, which was not accurate, as submitted;

the price shall be reduced accordingly and the contract

shall be modified in writing as may be necessary to reflect such reduction. However, any reduction in the contract price due to defective subcontract data of a prospective subcontractor, when the subcontract was not subsequently awarded to such subcontractor, will be limited to the amount (plus applicable overhead and profit markup) by which the actual subcontract, or actual cost to the Contractor if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor, *provided* the actual subcontract price was not affected by defective cost or pricing data.

Note: Since the contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the contractor. However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the contractor and the subcontractor, *provided* that they are consistent with ASPR 23-203 relating to Disputes provisions in subcontracts. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors. (ASPR 7-104.29(b))

57. INTEREST (1972 MAY)

Notwithstanding any other provision of this contract, unless paid within thirty (30) days, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code) shall bear interest from the date due until paid and shall be subject to adjustments as provided by Part 6 of Appendix E of the Armed Services Procurement Regulation, as in effect on the date of this contract. The interest rate per annum shall be the interest rate in effect which has been established by the Secretary of the Treasury pursuant to Public Law 92-41; 85 STAT 97 for the Renegotiation Board, as of the date the amount becomes due as herein provided. Amounts shall be due upon the earliest one of (i) the date fixed pursuant to this contract; (ii) the date of the first written demand for payment, consistent with this contract, including demand consequent upon default termination; (iii) the date of transmittal by the Government to the Contractor of a proposed supplemental agreement to confirm completed negotiations fixing the amount; or (iv) if this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or in connection with a negotiated pricing agreement not confirmed by contract supplement. (ASPR 7-104.39)

58. AUDIT BY DEPARTMENT OF DEFENSE (1971 APR)

(The following clause is applicable unless this contract was entered into by formal advertising and is not in excess of $100,000)

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

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

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

(d) *Reports.* If the Contractor is required to furnish Cost Information Reports (CIR) or Contract Fund Status Reports (CFSR), the Contracting Officer or his representatives shall have the right to examine books, records, documents, and supporting materials, for the purpose of evaluating (i) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports, and (ii) the data reported.

(e) *Availability.* The materials described in (b), (c) and (d) above shall be made available at the office of the Contractor, at all reasonable times, for inspection, audit, or reproduction, until the expiration of three years from the date of final payment under this contract or such lesser time specified in Appendix M of the Armed Services Procurement Regulation, and for such longer period, if any, as is required by applicable statute, or by other clauses of this contract, or by (1) and (2) below:

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

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

(f) The Contractor shall insert a clause containing all the provisions of this clause including this paragraph (f), in all subcontracts hereunder, except altered as necessary for proper identification of the contracting parties and the Contracting Officer under the Government prime contract. (ASPR 7-104.41(a))

59. SUBCONTRACTOR COST OR PRICING DATA – PRICE ADJUSTMENTS (1970 JAN)

(The following clause is applicable if this contract is in excess of $100,000)

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

(b) The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances: (i) prior to the award of any subcontract the amount of which is expected to exceed $100,000 when entered into, (ii) prior to the pricing of any subcontract modification which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $100,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

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

(d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract which exceeds $100,000. (ASPR 7-104.42(b))

60.1 GOVERNMENT-FURNISHED PROPERTY (SHORT FORM) (1964 NOV)

(The following clause is applicable when Government Property having an acquisition cost of $25,000 or less is furnished to or acquired by the Contractor)

(a) The Government shall deliver to the Contractor, for use only in connection with this contract, the property described in the schedule or specifications (hereinafter referred to as "Government-furnished property"), at the times and locations stated therein. If the Government-furnished property, suitable for its intended use, is not so delivered to the Contractor, the Contracting Officer shall, upon timely written request made by the Contractor, and if the facts warrant such action, equitably adjust any affected provision of this contract pursuant to the procedures of the "Changes" clause hereof.

(b) Title to Government-furnished property shall remain in the Government. The Contractor shall maintain adequate property control records of Government-furnished property in accordance with sound industrial practice.

(c) Unless otherwise provided in this contract, the Contractor, upon delivery to him of any Government-furnished property, assumes the risk of, and shall be responsible for, any loss thereof or damage thereto except for reasonable wear and tear, and except to the extent that such property is consumed in the performance of this contract.

(d) The Contractor shall, upon completion of this contract, prepare for shipment, deliver f.o.b. origin, or dispose of all Government-furnished property not consumed in the performance of this contract or not theretofore delivered to the Government, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or paid in such other manner as the Contracting Officer may direct. (ASPR 7-104.24(f))

60.2 GOVERNMENT PROPERTY (FIXED PRICE) (1968 SEP)

(The following clause is applicable when Government Property having an acquisition cost in excess of $25,000 is furnished to or acquired by the Contractor)

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

(b) *Changes in Government-furnished Property.*

(1) By notice in writing, the Contracting Officer may (i) decrease the property provided or to be provided by the Government under this contract, or (ii) substitute other Government-owned property for property to be provided by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of property covered by such notice.

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

for in the "Changes" clause of this contract.

(c) *Title.* Title to all property furnished by the Government shall remain in the Government. In order to define the obligations of the parties under this clause, title to each item of facilities, special test equipment, and special tooling (other than that subject to a "Special Tooling" clause) acquired by the Contractor for the Government pursuant to this contract shall pass to and vest in the Government when its use in the performance of this contract commences, or upon payment therefor by the Government, whichever is earlier, whether or not title previously vested. All Government-furnished property, together with all property acquired by the Contractor title to which vests in the Government under this paragraph, is subject to the provisions of this clause and is hereinafter collectively referred to as "Government property." Title to Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(d) *Property Administration.* The Contractor shall comply with the provisions of Appendix B, Armed Services Procurement Regulation, as in effect on the date of the contract, which is hereby incorporated by reference and made a part of this contract. Material to be furnished by the Government shall be ordered or returned by the Contractor, when required, in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation) as in effect on the date of this contract, which Manual is hereby incorporated by reference and made a part of this contract.

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

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

(g) *Risk of Loss.* Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss of or damage to Government property provided under this contract upon its delivery to him or upon passage of title thereto to the Government as provided in paragraph (c) hereof, except for reasonable wear and tear and except to the extent that such property is consumed in the performance of this contract.

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

(i) *Final Accounting and Disposition of Government Property.* Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property not consumed in the performance of this contract (including any resulting scrap) or not theretofore delivered to the Government, and shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid in such other manner as the Contracting Officer may direct.

(j) *Restoration of Contractor's Premises and Abandonment.* Unless otherwise provided herein, the Government:

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

(ii) has no obligation to the Contractor with regard to restoration or rehabilitation of the Contractor's premises, neither in case of abandonment (paragraph (j) (i) above), disposition on completion of need or of the contract (paragraph (i) above), nor otherwise, except for restoration or rehabilitation costs which are properly included in an equitable adjustment under paragraph (b) above.

(k) *Communications.* All communications issued pursuant to this clause shall be in writing or in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation). (ASPR 7-104.24(a))

61. DISPUTES CONCERNING LABOR STANDARDS (1965 JAN)

Disputes arising out of the labor standards provisions of this contract shall be subject to the Disputes clause except to the extent such disputes involve the meaning of classifications or wage rates contained in the wage determination decision of the Secretary of Labor or the applicability of the labor provisions of the contract which questions shall be referred to the Secretary of Labor in accordance with the procedures of the Department of Labor. (ASPR 7-603.26)

62. VARIATIONS IN ESTIMATED QUANTITIES (1968 APR)

Where the quantity of a pay item in this contract is an estimated quantity and where the actual quantity of such pay item varies more than fifteen percent (15%) above or below the estimated quantity stated in this contract, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred fifteen percent (115%) or below eighty-five percent (85%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the

Contracting Officer shall, upon receipt of a written request for an extension of time within ten (10) days from the beginning of such delay, or within such further period of time which may be granted by the Contracting Officer prior to the date of final settlement of the contract, ascertain the facts and make such adjustment for extending the completion date as in his judgment the findings justify. (ASPR 7-603.27)

63. PROGRESS CHARTS AND REQUIREMENTS FOR OVERTIME WORK (1965 JAN)

(a) The Contractor shall within 5 days or within such time as determined by the Contracting Officer, after date of commencement of work, prepare and submit to the Contracting Officer for approval a practicable schedule, showing the order in which the Contractor proposes to carry on the work, the date on which he will start the several salient features (including procurement of materials, plant and equipment) and the contemplated dates for completing the same. The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion at any time. The Contractor shall enter on the chart the actual progress at such intervals as directed by the Contracting Officer, and shall immediately deliver to the Contracting Officer three copies thereof. If the Contractor fails to submit a progress schedule within the time herein prescribed, the Contracting Officer may withhold approval of progress payment estimates until such time as the Contractor submits the required progress schedule.

(b) If, in the opinion of the Contracting Officer, the Contractor falls behind the progress schedule, the Contractor shall take such steps as may be necessary to improve his progress and the Contracting Officer may require him to increase the number of shifts, or overtime operations, days of work, or the amount of construction plant, or all of them, and to submit for approval such supplementary schedule or schedules in chart form as may be deemed necessary to demonstrate the manner in which the agreed rate of progress will be regained, all without additional cost to the Government.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this provision shall be grounds for determination by the Contracting Officer that the Contractor is not prosecuting the work with such diligence as will insure completion within the time specified. Upon such determination the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part thereof, in accordance with the clause of the contract entitled "Termination for Default--Damages for Delay--Time Extensions." (ASPR 7-603 48)

64. VALUE ENGINEERING INCENTIVE (1971 MAY)

(a) (1) This clause applies to those cost reduction proposals initiated and developed by the Contractor for changing the drawings, designs, specifications, or other requirements of this contract. This clause does not, however, apply to any such proposal unless it is identified by the Contractor, at the time of its submission to the Contracting Officer, as a proposal submitted pursuant to this clause. Furthermore, if this contract also contains a "Value Engineering Program Requirement" clause, this clause applies to any given value engineering change proposal only to the extent the Contracting Officer affirmatively determines that it resulted from value engineering efforts clearly outside the scope of the program requirement; to the extent the Contracting Officer does not affirmatively so determine, the proposal shall be considered for all purposes as having been submitted pursuant to the Value Engineering Program Requirement clause, even if it was purportedly submitted pursuant to this clause.

(2) The cost reduction proposals contemplated are those that:

(i) would require, in order to be applied to this contract, a change to this contract; and

(ii) would result in savings to the Government by providing a decrease in the cost of performance of this contract, without impairing any of the items' essential functions and characteristics such as service life, reliability, economy of operation, ease of maintenance, and necessary standardized features.

(b) As a minimum, the following information shall be submitted by the Contractor with each proposal:

(i) a description of the difference between the existing contract requirement and the proposed change, and the comparative advantages and disadvantages of each;

(ii) an itemization of the requirements of the contract which must be changed if the proposal is adopted, and a recommendation as to how to make each such change (e.g., a suggested revision);

(iii) an estimate of the reduction in performance costs, if any, that will result from adoption of the proposal, taking into account the costs of development and implementation by the Contractor (including any amount attributable to subcontracts in accordance with paragraph (e) below) and the basis for the estimate;

(iv) a prediction of any effects the proposed change would have on collateral costs to the Government such as Government-furnished property costs, costs of related items, and costs of maintenance and operation;

(v) a statement of the time by which a change order adopting the proposal must be issued so as to obtain the maximum cost reduction during the remainder of this contract, noting any effect on the contract completion time or delivery schedule; and

(vi) the dates of any previous submissions of the proposal, the numbers of the Government contracts under which submitted, and the previous actions by the Government, if known.

(c) (1) Cost reduction proposals shall be submitted to the Procuring Contracting Officer (PCO). When the contract is administered by other than the

procuring activity, a copy of the proposal shall also be submitted to the Administrative Contracting Officer (ACO). Cost reduction proposals shall be processed expeditiously; however, the Government shall not be liable for any delay in acting upon any proposal submitted pursuant to this clause. The Contractor does have the right to withdraw, in whole or in part, any value engineering change proposal not accepted by the Government within the period specified in the proposal. The decision of the Contracting Officer as to the acceptance of any such proposal under this contract (including the decision as to which clause is applicable to the proposal if this contract contains both a "Value Engineering Incentive" and a "Value Engineering Program Requirement" clause) shall be final and shall not be subject to the "Disputes" clause of this contract.

(2) The Contracting Officer may accept, in whole or in part, either before or within a reasonable time after performance has been completed under this contract, any cost reduction proposal submitted pursuant to this clause by giving the Contractor written notice thereof reciting acceptance under this clause. Where performance under this contract has not yet been completed, this written notice may be given by issuance of a change order to this contract. Unless and until a change order applies a value engineering change proposal to this contract, the Contractor shall remain obligated to perform in accordance with the terms of the existing contract. If a proposal is accepted after performance under this contract has been completed, the adjustment required shall be effected by contract modification in accordance with this clause.

(3) If a cost reduction proposal submitted pursuant to this clause is accepted by the Government, the Contractor is entitled to share in instant contract savings, collateral savings, and future acquisition savings not as alternatives, but rather to the full extent provided for in this clause.

(4) Contract modification made as a result of this clause will state that they are made pursuant to it.

(d) If a cost reduction proposal submitted pursuant to this clause is accepted and applied to this contract, an equitable adjustment in the contract price and in any other affected provisions of this contract shall be made in accordance with this clause and the "Termination for Convenience," "Changes," or other applicable clause of this contract. The equitable adjustment shall be established by determining the effect of the proposal on the Contractor's cost of performance, taking into account the Contractor's cost of developing the proposal insofar as such is properly a direct charge not otherwise reimbursed under this contract, and the Contractor's cost of implementing the change including any amount attributable to subcontracts in accordance with paragraph (e) below. When the cost of performance of this contract is decreased as a result of the change, the contract price shall be reduced by the following amount: the total estimated decrease in the Contractor's cost of performance less * percent (*%) of the difference between the amount of such total estimated decrease and any net increase in ascertainable collateral costs to the Government which must reasonably be incurred as a result of application of the cost reduction proposal to this contract. When the cost of performance of this contract is increased as a result of the change, the equitable adjustment increasing the contract price shall be in accordance with the "Changes" clause rather than under this clause, but the resulting contract modification shall state that it is made pursuant to this clause. (1967 JUN)

(e) The Contractor will use his best efforts to include appropriate value engineering arrangements in any subcontract which, in the judgment of the Contractor, is of such a size and nature as to offer reasonable likelihood of value engineering cost reductions. For the purpose of computing any equitable adjustment in the contract price under paragraph (d) above, the Contractor's cost of development and implementation of a cost reduction proposal which is accepted under this contract shall be deemed to include any development and implementation costs of a subcontractor and any value engineering incentive payments to a subcontractor, or cost reduction shares accruing to a subcontractor, which clearly pertain to such proposal and which are incurred, paid, or accrued in the performance of a subcontract under this contract.

(f) Omitted pursuant to ASPR 7-104.44(f).

(g) (1) A cost reduction proposal identical to one submitted under any other contract with the Contractor or another contractor may also be submitted under this contract.

(2) If the Contractor submits under this clause a proposal which is identical to one previously received by the Contracting Officer under a different contract with the Contractor or another contractor for substantially the same items and both proposals are accepted by the Government, the Contractor shall share instant contract savings realized under this contract, pursuant to paragraph (d) of this clause, but he shall not share collateral or future savings pursuant to paragraphs (f) and (j) (if included) of this clause.

(h) The Contractor may restrict the Government's right to use any sheet of a value engineering proposal or of the supporting data, submitted pursuant to this clause, in accordance with the terms of the following legend if it is marked on such sheet:

> This data furnished pursuant to the Value Engineering clause of contract
> shall not be disclosed outside the Government, or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering proposal submitted under said clause. This restriction does not limit the Government's right to use information contained in this data if it is or has been obtained, or is otherwise available, from the Contractor or from another source, without limitations. If such a proposal is accepted by the Government under said contract after the use of this data in such an evaluation, the Government shall have the right to duplicate, use, and disclose any data reasonably necessary to the full utilization of such proposal as accepted, in any manner and for any purpose whatsoever, and have others so do.

In the event of acceptance of a value engineering proposal, the Contractor hereby grants to the Government all rights to use, duplicate or disclose, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so, any data reasonably necessary to fully utilize such proposal.

(i) (1) For purposes of sharing under paragraph (d) above, the term "instant contract" shall not include any supplemental agreements to or other modifications of the instant contract, executed subsequent to acceptance of the particular value engineering change proposal, by which the Government increases the quantity of any item or adds any

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*Fifty percent (50%) for the first two approved proposals, fifty-five percent (55%) for the next two approved proposals, and sixty percent (60%) for all other approved proposals.

item, nor shall it include any extension of the instant contract through exercise of an option (if any) provided under this contract after acceptance of the proposal. Such supplemental agreements, modifications, and extensions shall be considered "future contracts" within paragraph (j) (if included) of this clause.

(2) If this contract is an estimated requirements or other indefinite quantity type contract, the term "instant contract" for purposes of sharing under paragraph (d) above shall include only those orders actually placed by the Government up to the time the particular value engineering change proposal is accepted. All orders placed subsequent to the acceptance of the particular change proposal shall be considered "future contracts" within paragraph (j) (if included) of this clause.

(3) If this clause is included in a basic ordering agreement, the "instant contract" for purposes of sharing under paragraph (d) above shall be the order under which the particular value engineering change proposal is submitted. Other orders under the same agreement shall be considered either "existing contracts" (if awarded prior to acceptance of the proposal) or "future contracts" (if awarded after acceptance of the proposal), within paragraph (j) (if included) of this clause.

(4) If this contract is a multi-year contract, the "instant contract" shall be the entire contract for the total multi-year quantity.

(j) Omitted pursuant to ASPR 1-1703.3(a)(1). (ASPR 7-104.44(a), (c), (e)(i) and (f))

65. PRICING OF ADJUSTMENTS (1970 JUL)

When costs are a factor in any determination of a contract price adjustment pursuant to the "Changes" clause or any other provision of this contract, such costs shall be in accordance with Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract. (ASPR 7-103.26)

66. LISTING OF EMPLOYMENT OPENINGS FOR VETERANS (1971 NOV)

(This clause is applicable pursuant to 41 CFR 50-250 if this contract is for $10,000 or more and will generate 400 or more man-days of employment.)

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

(2) Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source of effort and shall involve only the normal obligations which attach to the placing of a bona fide job order but does not require the hiring of any job applicant referred by the employment service system.

(3) The periodic reports required by paragraph (1) above shall be filed at least quarterly with the appropriate local office or, where the Contractor has more than one establishment in a State, with the central office of that State employment service. Such reports shall indicate for each establishment the number of individuals who were hired during the reporting period and the number of hires who were veterans who served in the Armed Forces on or after August 5, 1964, and who received other than a dishonorable discharge. The Contractor shall maintain copies of the reports submitted until the expiration of one year after final payment under the contract, during which time they shall be made available, upon request, for examination by any authorized representatives of the Contracting Officer or of the Secretary of Labor.

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

(5) This clause does not apply (i) to the listing of employment openings which occur outside of the 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands; and (ii) contracts with state and local governments.

(6) This clause does not apply to openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer-union arrangement for that opening.

(7) As used in this clause:

(i) "All employment openings" include, but are not limited to, openings which occur in the following job categories: production and nonproduction; plant and office; laborers and mechanics; supervisory and nonsupervisory; technical; and executive, administrative, and professional openings which are compensated on a salary basis of less than $18,000 per year. This term includes full-time employment, temporary employment of more than three (3) days' duration, and part-time employment.

(ii) "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 of the establishment where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

(iii) "Openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement," means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) or outside of a special hiring arrangement which is part of the customary and traditional employment relationship which exists between the Contractor and representative of its employees and includes any openings which the Contractor proposes to fill from regularly established "recall" or "rehire" lists or from union hiring halls.

(iv) "Man-day of employment" means any day during which an employee performs more than one hour of work.

(8) The Contractor agrees to place this clause (excluding this paragraph (8)) in any subcontract directly under this contract *provided*, such subcontract is for $10,000 or more and will generate 400 or more man-days of employment. (ASPR 7-103.27)

67. UTILIZATION OF MINORITY BUSINESS ENTERPRISES (1971 NOV)

(a) It is the policy of the Government that Minority Business Enterprises shall have the maximum practicable opportunity to participate in the performance of Government contracts.

(b) The Contractor agrees to use his best efforts to carry out this policy in the award of his subcontracts to the fullest extent consistent with the efficient performance of this contract. As used in this contract, the term "minority business enterprise" means a business, at least 50 percent of which is owned by minority group members or, in case of publicly-owned businesses, at least 51 percent of the stock of which is owned by minority group members. For the purposes of this definition, minority group members are Negroes, Spanish-speaking American persons, American-Orientals, American-Indians, American Eskimos, and American Aleuts. Contractors may rely on written representations by subcontractors regarding their status as minority business enterprises in lieu of an independent investigation. (ASPR 7-104.36(a))

68. MINORITY BUSINESS ENTERPRISES SUBCONTRACTING PROGRAM (1971 NOV)

(The following clause is applicable if this contract is in excess of $500,000)

(a) The Contractor 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 contract. In this connection, the Contractor shall:

(1) Designate a liaison officer who will administer the Contractor'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 enterprise subcontracting opportunities.

(6) Cooperate with the Contracting Officer in any studies and surveys of the Contractor's minority business enterprises procedures and practices that the Contracting Officer 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 (not more often than quarterly) as the Contracting Officer may prescribe.

(b) The Contractor further agrees to insert, in any subcontract hereunder which may exceed $500,000 provisions which shall conform substantially to the language of this clause, including this paragraph (b), and to notify the Contracting Officer of the names of such subcontractors. (ASPR 7-104.36(b))

69. PAYMENT OF INTEREST ON CONTRACTORS' CLAIMS (1972 MAY)

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

(b) Notwithstanding (a) above, (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 Contractor has unduly delayed in pursuing his remedies before a Board of Contract Appeals or a court of competent jurisdiction. (ASPR 7-104.82)

70. STABILIZATION OF PRICES, RENTS, WAGES, AND SALARIES (1972 AUG)

(a) By Executive Order No. 11640, dated January 26, 1972, the President further implemented his stabilization program and confirmed and ratified all orders, regulations, circulars, or other directives issued and all other actions taken pursuant to Executive Order No. 11615, as amended and Executive Order No 11627, as amended. The Contractor represents that to the best of his knowledge and belief he is in complete compliance with Executive Order No. 11640, as amended, if applicable. Further, the Contractor warrants that insofar as Executive Order No. 11640, as amended, is applicable, the amounts invoiced under this contract will not exceed the lower of (1) the contract price, or (2) the maximum levels established in accordance with the order.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in all subcontracts for supplies or services issued under this contract. (DPC 103)

SUMMARY OF BIDS FOR CONSTRUCTION

OF DES MOINES BMF

Description of bid item	Schedule	Bidders and bid amount: Blount Brothers Corporation	Haas & Haynie, and Montgomery, Ross, Fisher, Inc.	Paschen Contractors, Inc., and Gust K. Newberg Construction Co.	Donovan Construction Co.	Sharp Brother Contracting Co.
Item 1: All work connected with construction of Process Building	I	$ 8,273,335	$ -	$10,687,000	$ -	$ -
	II	-	9,668,000	10,597,000	10,464,335	10,285,000
Item 2: All work connected with installation of mechanized system	I	7,000,000	-	7,100,000	-	-
	II	-	7,000,000	7,100,000	7,200,000	8,314,185
Item 3: All work connected with construction of vehicle maintenance facility	I	200,000	-	200,000	-	-
	II	-	180,335	200,000	120,000	143,108
Item 4: All work connected with construction of Gate House	I	50,000	-	40,000	-	-
	II	-	50,000	40,000	70,000	50,656
Item 5: All work connected with construction of pump house and water reservoir	I	100,000	-	150,000	-	-
	II	-	146,000	150,000	50,000	126,994
Item 6: Additional field office facilities	I	50,000	-	24,000	-	-
	II	-	50,000	24,000	40,000	39,580
Item 6A: Relocation of electrical service	I	5,665	-	5,665	-	-
	II	-	5,665	5,665	5,665	5,665
Item 7: All other work not already under contract	I	2,500,000	-	1,480,335	-	-
	II	-	2,000,000	1,480,335	1,800,000	2,021,746
Total	I	$18,179,000	-	$19,687,000	-	-
	II	-	$19,100,000	$19,597,000	$19,750,000	$20,986,934