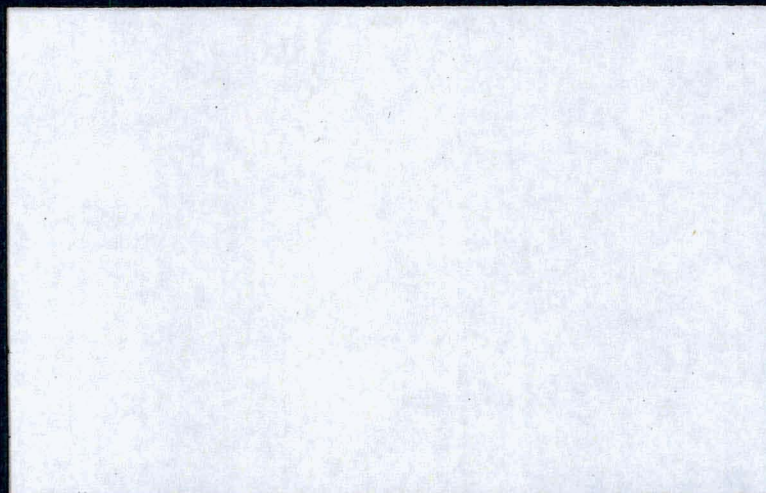
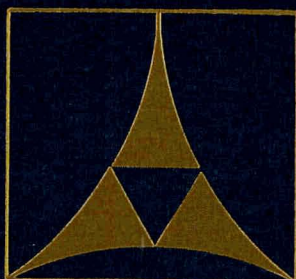


# Industrial Fuel Gas Demonstration Plant Program



Prepared For  
The Department of Energy  
Under Contract ET-77-C-01-2582



MEMPHIS LIGHT, GAS AND WATER DIVISION  
P.O. BOX 430, MEMPHIS, TENNESSEE 38101

In Association with  
FOSTER WHEELER ENERGY CORPORATION  
INSTITUTE OF GAS TECHNOLOGY  
DELTA REFINING COMPANY

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PMD 79-3079

**MASTER**

# Industrial Fuel Gas Demonstration Plant Program

DOE/ET/13046--T51

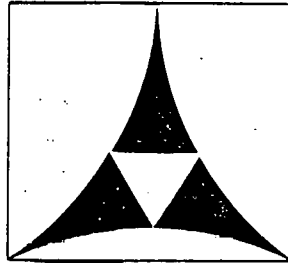
BID PACKAGES FOR MATERIALS

(DELIVERABLE No. 28)

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P.O. BOX 430, MEMPHIS, TENNESSEE 38145

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MEMPHIS INDUSTRIAL FUEL GAS  
DEMONSTRATION PLANT PROJECT

BID PACKAGES FOR MATERIALS  
(Deliverable #28)

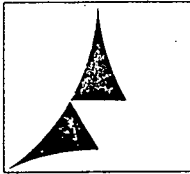
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MEMPHIS LIGHT, GAS & WATER DIVISION  
P.O. Box 430  
MEMPHIS, TENNESSEE 38101

PREPARED FOR THE  
U. S. DEPARTMENT OF ENERGY  
ASSISTANT SECRETARY OF FOSSIL ENERGY

UNDER CONTRACT DE-AC02-77ET13406  
(FORMERLY CONTRACT ET-77-C-01-2582)



MEMPHIS LIGHT, GAS AND WATER DIVISION

December 12, 1979  
Letter No. ME-98F

U. S. Department of Energy  
Projects Management Division, Dr. R. W. Laza  
9800 South Cass Avenue  
Argonne, Illinois 60439

Attention: Dr. Peter Lui

Subject: MLGW Reference No. 8802  
DOE Reference No. 2582  
BID PACKAGES FOR MATERIALS  
DELIVERABLE NO. 28

Gentlemen:

Enclosed is Deliverable No. 28, "Bid Package for Materials", which has been prepared as part of our Phase I work.

We request your approval.


Very truly yours,

  
R. W. Gray  
Program Manager

RWG:RJS:au  
Enclosure.

cc: J. Gannon (6)

MLGW/DOE INDUSTRIAL FUEL GAS  
DEMONSTRATION PLANT PROGRAM

 FOSTER WHEELER  
BID PACKAGES FOR MATERIALS  
DELIVERABLE NO. 28

BID PACKAGES FOR MATERIALS

DELIVERABLE NO. 28

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**MLGW/DOE INDUSTRIAL FUEL GAS  
DEMONSTRATION PLANT PROGRAM**

**FW FOSTER WHEELER**  
BID PACKAGES FOR MATERIALS  
DELIVERABLE NO. 28

Section 1.0

INTRODUCTION

The United States Department of Energy (DOE) awarded a contract to Memphis Light, Gas and Water Division (MLGW) which requires MLGW to perform process analysis, design, procurement, construction, testing, operation and evaluation of a plant which will demonstrate the feasibility of converting high sulfur bituminous coal to industrial fuel gas with a heating value of  $300 \pm 30$  Btu per standard cubic foot (SCF). The demonstration plant is to be based on the U-Gas process, with its product gas to be used in commercial applications in Memphis, Tennessee.

In order to perform this work, MLGW has established an industrial team, which includes:

- MLGW - Memphis Light, Gas and Water Division, Memphis, Tenn.  
The prime contractor and distributor of the industrial fuel gas.
- FWEC - Foster Wheeler Energy Corporation, Livingston, N.J.  
The engineer-construction manager.
- IGT - Institute of Gas Technology, Chicago, Illinois.  
The process developer.
- DRC - Delta Refining Company, Memphis, Tenn.  
To provide operating experience.

The contract specifies that the work is to be conducted in three phases. The phases are:

- Phase I - Program Development and Conceptual Design
- Phase II - Demonstration Plant Final Design, Procurement and Construction
- Phase III - Demonstration Plant Operation

Included within Task VI (Materials, Agreements, and Licenses for the Demonstration Plant), Phase I activities, was the preparation of bid packages for material. This document describes the contents of such bid packages.



**MLGW/DOE INDUSTRIAL FUEL GAS  
DEMONSTRATION PLANT PROGRAM**

**F** FOSTER WHEELER  
BID PACKAGES FOR MATERIALS  
DELIVERABLE NO. 28

Section 2.0

BID PACKAGE REQUIREMENTS

Fixed-price supply type bid packages for materials and/or service, essentially are comprised of two parts; namely:

- (1) A technical requisition of the material, equipment, or service to be supplied.
- (2) Commercial and legal requirements, normally referred to as "terms and conditions."

Requisitions, providing technical requirements, for all equipment items identified for the Industrial Fuel Gas Demonstration Plant may be found in the twelve volumes of the "Demonstration Plant Mechanical Design." The requisitions have been included within separate sections of the design report, sorted by appropriate plant unit. Combined with any General Notes Requisitions and the necessary FWEC Job Standards, these various item requisitions provide all technical information for the prospective vendor to furnish his bid.

The "terms and conditions" (boiler plate) to be included in the bid package identify all the contractual requirements which will be imposed upon the bidder. These requirements cover the conditions he must meet to bid on the particular item as well as the clauses to be included within the eventual purchase order/subcontract. A typical package of such "terms and conditions" are included under Section 3.0.

**MLGW/DOE INDUSTRIAL FUEL GAS  
DEMONSTRATION PLANT PROGRAM**

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BID PACKAGES FOR MATERIALS  
DELIVERABLE NO. 28

Section 3.0

TERMS AND CONDITIONS

The following documents comprise the "terms and conditions" to be included within fixed-price supply subcontract bid packages:

- (1) Instructions to Bidders
- (2) Certificate of Independent Price Determination
- (3) General Conditions dated 12 October, 1979
- (4) Appendix B - Additional Terms & Conditions
- (5) Appendix C - Representations & Certifications
- (6) Appendix D - Small Business Representation
- (7) Appendix E - Minority Business Representation
- (8) Appendix F - Certification of Clean Water and Air Act
- (9) Late Bids, Modification of Bids, or Withdrawal of Bids

The clauses identified are those required by Federal Procurement and Department of Energy Regulations for such procurements. They have been modified to indicate the proper organizations as appropriate.

Combined with the Material Requisitions, provided in the Demonstration Plant Mechanical Design (Task III) Report, any General Notes Requisitions, and necessary FWEC Job Standards these documents meet the requirements of Deliverable 28 (Appendix A) of our contract.

REQUEST  
FOR  
PRICE

THIS IS  
NOT  
AN ORDER

FOSTER WHEELER ENERGY CORPORATION

110 SOUTH ORANGE AVENUE  
LIVINGSTON, N.J. 07039

SHEET 1 OF 1

DATE

INQUIRY NO.

SHOW THIS NUMBER ON  
QUOTE AND CORRESPONDENCE

QUOTATION REQUESTED BY

INSTRUCTIONS TO BIDDERS

1. Furnish Quotations on or before close of business \_\_\_\_\_.
2. Submit Quotations in original and \_\_\_\_\_ copies for \_\_\_\_\_  
\_\_\_\_\_ as described in Requisitions listed in 12 below.
3. Quote firm price for material, required drawings and Instruction Manuals on a  
FOB jobsite \_\_\_\_\_  
basis.

Freight must be shown as a separate item on the quotation for the purpose of bid/proposal evaluation. Bids received which quote a price and contain a price escalation provision, with a ceiling (usually expressed in terms of a maximum percentage increase) above which the price will not escalate, will be evaluated on the maximum possible escalation of the quoted base price. Bids which contain escalation with no ceiling shall be rejected unless a clear basis for evaluation exists.

4. No telegraphic bids will be accepted.
5. Quote the best delivery FOB jobsite using date of order placement as basis. If multiple items are inquired, Vendor must give a schedule of delivery dates for all items offered, commencing from the date of order placement. Quotation must indicate promised drawing commitment to FWEC and the Vendors required return date for the approval of drawings, if applicable.
6. Bids are to be valid for 60 days after bid due date. Vendor may quote a reduction in price for award within 30 days of bid opening.
7. Prices must be quoted on a per item basis, and may be awarded on a per item basis. The list price, Trade discounts and net price for all items must be shown explicitly in the quotation. A discount, if any, for the purchase of more than one item should be stated separately.
8. The Bidder is cautioned that the base bid must set forth full, accurate and complete information as required by this invitation to bid (including attachments). Any exceptions are to be clearly stated.
9. Alternates to the requested invitation are acceptable, however the alternates must be clearly identified as such. Base case must be quoted in strict accordance with the inquiry documents.

DOE Contract  
FWEC Contract

Requested by:

10. The quotation shall include a priced list of Spare Parts recommended for one (1) year operation for each item of equipment. Where no spare parts are recommended for one (1) year's operations the quotation should so state.
11. The quotation shall also include: net prices, terms of payment, estimated shipping weight, means of shipment, shipping point and applicable Federal, State and local taxes.
12. The following documents, attached, unless noted otherwise, will be an integral part of any purchase order resulting from this inquiry. Successful vendor will be required to comply with all these documents.
  - (a) Material Requisition:
  - (b) General Notes Requisitions:
  - (c) Job Standards & Specifications:
  - (d) Certificate of Independent Price Determination
  - (e) General Conditions dated 12 October, 1979
  - (f) Appendix B - Additional Terms & Conditions
  - (g) Appendix C - Representations & Certifications
  - (h) Appendix D - Small Business Representation
  - (i) Appendix E - Minority Business Representation
  - (j) Appendix F - Certification of Claim Water and Air Act
  - (k) Late bids, modification of bids, or withdrawal of bids

Vendor is required to execute and return with their quotation the documents listed under letters (g), (h), (i) and (j).
13. Vendor must clearly state any and all exceptions to the Specifications, Terms and Conditions, and all the above listed requirements.
14. Vendor must state location and contract expiration date of the shop proposed for the work.
15. Quote price breakdown as follows:

Inquiry No.

Page 3 of 3

Requested by:

16. PLEASE ACKNOWLEDGE RECEIPT OF THIS INQUIRY AND ADVISE IF YOU WILL SUBMIT A QUOTATION BY PROMPTLY RETURNING THE ENCLOSED BLUE "ACKNOWLEDGEMENT" SLIP.

Address all quotations and correspondence to: Foster Wheeler Energy Corporation  
110 South Orange Avenue  
Livingston, New Jersey 07039

Purchasing Dept.

Process Plants Division  
Telephone Number (201) 533-

DOE Contract  
FWEC Contract

LATE BIDS, MODIFICATIONS OF BIDS, OR WITHDRAWAL OF BIDS

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and either:

(1) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of bids (e.g. a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th or earlier); or

(2) It was sent by mail (or telegram if authorized) and it is determined by the Management Contractor that the late receipt was due solely to mishandling by the Management Contractor after receipt at the Management Contractor's installation.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in (a) above. A bid may also be withdrawn in person by a bidder or his authorized representative, provided his identity is made known and he signs a receipt for the bid, but only if the withdrawal is made prior to the exact time set for receipt of bids.

(c) The only acceptable evidence to establish:

(1) The date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. Postal Service postmark on the wrapper or on the original receipt from the U.S. Postal Service. If neither postmark shows a legible date, the bid, modification, or withdrawal shall be deemed to have been mailed late. (The term "postmark" means a printed, stamped, or otherwise placed impression that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. Postal Service)

(2) The time of receipt at the Management Contractor's installation is the time date stamp of such installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.

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

CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

- (a) By submission of this bid or proposal, each bidder or offeror certifies, and in the case of a joint bid or proposal each party thereto certifies as to its own organization, that in connection with this procurement:
- (1) The prices in this bid or proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or offeror or with any competitor;
  - (2) Unless otherwise required by law, the prices which have been quoted in this bid or proposal have not been knowingly disclosed by the bidder or offeror and will not knowingly be disclosed by the bidder or offeror prior to opening, in the case of a bid, or prior to award, in the case of a proposal, directly or indirectly to any other bidder or offeror or to any competitor; and
  - (3) No attempt has been made or will be made by the bidder or offeror to induce any other person or firm to submit or not to submit a bid or proposal for the purpose of restricting competition.
- (b) Each person signing this bid or proposal certifies that:
- (1) He is the person in the bidder's or offeror's organization responsible within that organization for the decision as to the prices being bid or offered herein and that he has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or
  - (2) (i) He is not the person in the bidder's or offeror's organization responsible within that organization for the decision as to the prices being bid or offered herein but that he has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above, and as their agent does hereby so certify; and (ii) he has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above.



- (c) This certification is not applicable to a foreign bidder or offeror submitting a bid or proposal for a contract which requires performance or delivery outside the United States, its possessions, and Puerto Rico.
- (d) A bid or proposal will not be considered for award where (a) (1), (a) (3), or (b) above has been deleted or modified. Where (a) (2) above has been deleted or modified, the bid or proposal will not be considered for award unless the bidder or offeror furnishes with the bid or proposal a signed statement which sets forth in detail the circumstances of the disclosure and the head of the agency, or his designee, determines that such disclosure was not made for the purpose of restricting competition.



## FOSTER WHEELER CORPORATION APPENDIX B

The following additional terms and conditions shall be applicable to the above Purchase Order.

1. **Scope.** The term "work" as used herein refers to performance and results of performance of Seller's obligations under the contract of which the above Purchase Order and this Appendix are a part and is intended to include all services, supervision, labor, materials, equipment, use of facilities, transportation, loading and unloading, storage, permits and licenses of a temporary nature, and every other thing, tangible or intangible, required for or to be used in timely completion of Seller's obligations in accord with the contract terms, all of which Seller agrees to provide for the consideration stated without additional expense to Purchaser or its Customer.

2. **Responsibility for Work, Materials and Equipment.** Until receipt of written final acceptance from Purchaser and without regard to legal ownership, Seller shall be responsible for and bear all risks of damage to or loss of completed work or work in progress, equipment and materials (including those delivered to Seller by Purchaser or its Customer) at the job site or elsewhere to be incorporated in or used in connection with the work. At its expense Seller shall repair or replace promptly any such work, material or equipment damaged or lost from any cause prior to receipt of such written final acceptance. Seller shall make regular inspections of all such work, materials and equipment and take necessary measures to prevent corrosion, erosion or damage from the elements.

3. **Liability and Indemnity.** (a) Seller shall be responsible for and make good to Purchaser's satisfaction any loss or damage to Purchaser's or its Customer's property, or property for which either is responsible caused by acts or omissions of Seller, its suppliers, subcontractors, agents or employees, whether negligent or otherwise.

(b) Seller shall indemnify Purchaser and its Customer against liability, loss or expense, including attorneys' fees, arising out of claims (i) for damages or other compensation on account of personal injury (including death resulting therefrom) occurring while in the employ of Seller, its suppliers, subcontractors or agents, or (ii) for damages caused or alleged to have been caused in whole or in part by acts or omissions of Seller, its suppliers, subcontractors, agents or employees, whether negligent or otherwise, or (iii) based or said to be based on any transaction or agreement with Seller, its suppliers, subcontractors, agents or employees.

(c) Upon written request of Purchaser or its Customer, Seller shall undertake defense of and otherwise be responsible for disposition of any action or proceeding brought against Purchaser or its Customer based on a claim described in (b) above and pay all expenses in connection therewith including any final judgment or award rendered in such action or proceeding.

4. **Insurance** (a) Without limiting Seller's liability under this contract or otherwise, until receipt of final written acceptance of the work, Seller shall maintain the following insurance:

(i) **Workmen's Compensation and Occupational Disease Insurance** in accord with the laws of all states in which Seller may be required to pay compensation, and Employer's Liability Insurance with a total limit of not less than Five Hundred Thousand Dollars (\$500,000).

(ii) **Comprehensive General Liability, including Contractor's Protective, Contractual Liability and Completed Operations Liability** with limits (a) for personal injury of not less than Five Hundred Thousand Dollars (\$500,000) for any one person, and not less than One Million Dollars (\$1,000,000) for any one occurrence and (b) for property damage of not less than Five Hundred Thousand Dollars (\$500,000) for any one occurrence and not less than One Million Dollars (\$1,000,000) in the aggregate.

(iii) **Automobile Liability Insurance** applicable to all vehicles used by the Seller in the performance of the work, with limits (a) for bodily injury of not less than Five Hundred Thousand Dollars (\$500,000) for any one person, and not less than One Million Dollars (\$1,000,000) for any one occurrence and (b) for property damage of not less than Five Hundred Thousand Dollars (\$500,000) for any one occurrence.

(iv) Such Additional Insurance as Purchaser may require from time to time in writing to Seller. Should Purchaser require additional insurance subsequent to acceptance of this contract by Seller, the net cost thereof shall be an addition to the contract price.

(b) Policies providing insurance required hereunder shall contain an endorsement against cancellation except on ten (10) days prior written notice to Purchaser. Seller shall furnish

## PURCHASE ORDER NO.

Purchaser with certificates or other acceptable evidence that insurance required hereunder has been effected. Seller, its suppliers, subcontractors, agents, and employees shall not commence work hereunder or enter premises owned or controlled by Purchaser or its Customer until requirements of this section have been met.

(c) Suppliers and subcontractors of Seller whose employees will enter premises occupied or controlled by Purchaser or its Customer shall be required to provide the same insurance required of Seller and to furnish the same certificates or other evidence thereof to Purchaser.

(d) In the event Seller or any supplier or subcontractor of Seller fails to provide insurance required hereunder or if such insurance shall expire or be canceled, without waiving its remedy under the above Purchase Order or otherwise, Purchaser may, but shall not be required to, obtain such insurance for Seller's account.

(e) Notwithstanding any trade practice or custom, neither Seller nor any subcontractor or supplier of Seller shall be entitled to the benefit of any insurance Purchaser or its Customer have in effect or which either might have obtained.

5. **Taxes.** On request, Seller shall furnish Purchaser with proof of Seller's registration under, and compliance with, state and local sales and use tax laws that apply to the work. Seller shall pay, and hold Purchaser harmless from, any such taxes (including penalties and interest) of any taxing jurisdiction, which Seller is required to collect, self-assess or otherwise pay.

6. **Delays.** Neither Purchaser nor its Customer shall be liable to Seller for additional expense or damages, direct, indirect, consequential or otherwise caused by or arising out of delays or Seller's inability to proceed with the work, however caused.

7. **General Conditions.** (a) **Rules and Regulations.** Seller, its employees, subcontractors, and suppliers shall promptly comply with and observe all directions, rules, and regulations of Purchaser or its Customer relating to control of the work, safety, fire prevention, housekeeping, maintenance and protection of the work and premises, delivery and storage of materials, ingress and egress to the premises, parking, employee conduct, public relations, and handling of labor disputes. Upon request of Purchaser or its Customer, Seller will bar or cause the removal from the premises of any person or thing Purchaser or its Customer believes might impede the orderly progress of the work in a safe and efficient manner.

(b) **Order of Performance.** Seller and its subcontractors shall proceed with the work at all times in accord with Purchaser's order of performance.

(c) **Assumption of Field Conditions.** Except as expressed in documents constituting the contract of which this Appendix is a part, Purchaser and its Customer make no representation as to the site or conditions which may exist there from time to time and affect the work, and Seller agrees to accept the same whether or not Seller had knowledge thereof prior to entering into this contract.

(d) **No Customer Contact.** Seller shall not communicate with or accept instructions from Purchaser's Customer except with Purchaser's written approval.

(e) **Labor Relations.** Seller is responsible for proper building trade and craft assignments and prompt settlement of jurisdictional disputes resulting from such assignments. Seller, its subcontractors, agents and employees shall comply with Purchaser's Construction Labor Relations Policy and Procedure and with the Purchaser's and its Customer's rules and regulations. Seller's selection of supervisory employees and craft labor shall be subject to Purchaser's approval.

(f) **Inspection and Testing.** When specific inspections or tests are required, Seller shall give Purchaser reasonable notice of the time for such inspection or testing and provide facilities therefore. If work to be inspected or tested has been covered without Purchaser's approval, if required by Purchaser it shall be uncovered and recovered at Seller's expense.

(g) **Overtime and Additional Expense Authorization.** No overtime or other additional expense shall be chargeable to Purchaser's or its Customer's account without the approval in writing of Purchaser and execution of a change order to this Purchase Order. Overtime payments when authorized will be limited to overtime wage premiums actually paid, without profit or overhead. Under all circumstances, time spent by Seller's employees traveling between plant entrances and work locations shall be for Seller's account.



## FOSTER WHEELER ENERGY CORPORATION

### APPENDIX C

Seller, as to all outstanding subcontracts heretofore issued to it by the Buyer for the furnishing of supplies and/or services and as to all such subcontracts which may hereafter be issued at any time during the current calendar year, agrees that the following provisions are and shall be a part of all such past and/or future subcontracts, to be binding upon the Seller to the same extent as if such provisions were incorporated into each such subcontract and recited therein. As used in this Appendix, the term "subcontract" includes the term "purchase order" and all other agreements effectuating purchase of supplies and/or services by Foster Wheeler Energy Corporation, herein referred to as "Buyer".

**EQUAL OPPORTUNITY CLAUSE.** Seller agrees that during the performance of this subcontract, unless the same is exempt from such requirements by the provisions of Executive Order 11246 and its implementing rules, regulations and orders of the Secretary of Labor:

- (1) The Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Seller 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 Seller 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.
- (2) The Seller will, in all solicitations or advertisements for employees placed by or on behalf of the Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The Seller 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 Seller's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The Seller will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The Seller will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the Seller's noncompliance with the nondiscrimination clauses of this subcontract or with any of such rules, regulations, or orders, this subcontract may be canceled, terminated or suspended in whole or in part and the Seller may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The Seller will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Seller 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 Seller becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Seller may request the United States to enter into such litigation to protect the interests of the United States.

**REPORTS.** Seller certifies that it has previously participated in subcontracts subject to the "Equal Opportunity Clause" and has filed all reports due under the applicable Government filing requirements or, in the alternative, that such obligation does not apply as Seller does not have 50 employees or a subcontract with Buyer which involves \$50,000 or more. Seller, if it has 50 or more employees and receives a subcontract of \$50,000 or more from the Buyer, agrees to file annually, on or before the 31st day of March, complete and accurate reports on Government Standard Form 100, Equal Employment Opportunity, Employer Information Report EEO-1, in accordance with the requirements of 41 CFR 60-1.7.

**AFFIRMATIVE ACTION COMPLIANCE PROGRAM.** Prior to 120 days after receipt of any subcontract in the amount of \$50,000 or more from Buyer, Seller, if he has 50 or more employees and is not otherwise exempt under 41 CFR 60-1, agrees to have developed for each of his establishments a written affirmative action compliance program as called for in 41 CFR 60-1.40. Seller will also require his lower-tier subcontractors who have 50 or more employees and receive a subcontract of \$50,000 or more and who are not otherwise exempt under 41 CFR 60-1 to establish written affirmative action compliance programs in accordance with 41 CFR 60-1.40.

**CERTIFICATION OF NONSEGREGATED FACILITIES.** Seller certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments and that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex or national origin cannot result. Seller further certifies that it neither requires such segregated use by written or oral policies nor tolerate such use by employee custom. Seller further assures that its employees are not assigned to perform their services at any location, under its control, where the facilities are segregated. The term "facilities" shall include, at a minimum, those rooms, areas and items specified in 41 CFR 60-1.3. Seller understands that its failure to conform to the standards established in this certification is a violation of the Equal Opportunity Clause. Seller agrees that, prior to the award of any non-exempt subcontract exceeding \$10,000, it will: (a) obtain from each proposed subcontractor a Certification of Nonsegregated Facilities in form substantially the same as the certification printed above, (b) require each proposed subcontractor to obtain a similar certification from each of its proposed subcontractors, and (c) retain copies of such certifications until required by the Buyer or the contracting agency.

**EQUAL EMPLOYMENT COMPLIANCE.** The Seller certifies and represents that, to the best of its knowledge and belief, except as noted below, up to the date of this contract no written notice such as a show cause letter, a letter indicating probable cause, or any other formal written notification citing specific deficiencies, has been received by the Seller from any Federal Government agency or representative thereof that the Seller or any of its divisions or affiliates or known first-tier subcontractors is in violation of any of the provisions of Executive Order 11246 of September 24, 1965, Executive Order 11375 of October 13, 1967, or rules and regulations of the Secretary of Labor 41 CFR 60 and specifically as to not having an acceptable affirmative action program or being in noncompliance with any other aspect of the Equal Employment Opportunity Program. It is further agreed that should there be any change in the status or circumstances between this date and date of expiration of this contract or any extension thereof, the Contracting Officer will be notified promptly.

\_\_\_\_\_  
SELLER

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

APPENDIX D

SMALL BUSINESS REPRESENTATION

The undersigned prospective contractor represents that he ( ) is, ( ) is not, a Small Business concern. A Small Business concern for the purpose of Government Procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is quoting on Government contracts and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the Small Business Administration (see code of Federal Regulations, Title 13, Part 121, as amended, which contains detailed industry definitions and related procedures). If the quoter is a small business concern and is not the manufacture of the supplies offered, he also represents that all supplies to be furnished hereunder ( ) will, ( ) will not, be manufactured or produced by a small business concern in the United States, its possession, or Puerto Rico.

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

Contractor: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPENDIX E

MINORITY BUSINESS ENTERPRISES REPRESENTATION

The undersigned prospective contractor represents that he

( ) is, ( ) is not,

a minority business enterprise. A minority business enterprise is defined as a "business, at least 50 percent of which is owned by minority group members or, in case of publicly owned businesses, at least 51 percent of the stock of which is owned by minority group members." For the purpose of this definition, minority group members are Negroes, Spanish-speaking American persons, American-Orientals, American-Indians, American-Eskimos, and American-Aleuts.

Contractor: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPENDIX F

CERTIFICATION FOR CLEAN WATER AND AIR ACT

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

The undersigned prospective contractor certifies as follows:

- (a) Any facility to be utilized in the performance of this proposed contract has \_\_\_\_\_, has not \_\_\_\_\_, been listed on the Environmental Protection Agency List of Violating Facilities.
- (b) He will promptly notify the contracting officer, prior to award, of the receipt of any communication from the Director, Office of Federal Activities, Environmental Protection Agency, indicating that any facility which he proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities.
- (c) He will include substantially this certification including this paragraph (c), in every nonexempt subcontract.

Contractor: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CERTIFICATE OF CURRENT COST OR PRICING DATA

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

(Date)

\_\_\_\_\_  
(Firm)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date of Execution)



DATE

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GENERAL PROVISIONS  
SUPPLY CONTRACTS

1.0 GENERAL

1.0.1 CONTRACT: This purchase order is expressly limited to and made conditional on the Contractor's acceptance of and assent to the General Provisions set forth herein. The contract between Management Contractor and Contractor consists of the terms written on the face hereof, these printed terms and conditions, the detailed specifications and drawings, the appendices referred to in paragraphs 1.0.5, and 1.0.6 and those referred to on the face hereof. In the event of conflict between the terms written on the face hereof and these printed terms and conditions, the terms written on the face hereof shall prevail. Except as provided in the preceding sentence. It is a condition of the contract that provisions printed or otherwise contained in any quotation, acknowledgement, shipping document or other instrument which are inconsistent with or in addition to the terms and conditions of this purchase order shall be of no force or effect. The contract as described above contains the entire agreement between Management Contractor and Contractor, which agreement shall not be modified orally or by failure of either party to enforce its right hereunder.

1.0.2 WARRANTY: Contractor warrants to Management Contractor and its Customer that each item furnished hereunder and any component part thereof will be in conformity with the specifications in all respects, new, unless otherwise specified, of the best quality of its respective kind, free from faulty workmanship, material or design (except to the extent furnished by Management Contractor or its Customer) and if of Contractor's design, sufficient to fulfill any operating conditions specified by Management Contractor.

Contractor shall replace or repair any item or component part thereof found not to be in conformity with the preceding paragraph provided Management Contractor or its Customer notifies Contractor of such nonconformity within 1 year after use or within 18 months after delivery, whichever first occurs. In the event Contractor fails to proceed diligently to so replace or repair within a reasonable time after receipt of such notice, Management Contractor or its Customer may undertake or complete such replacement or repair for Contractor's account.

1.0.3 PROPRIETARY RIGHTS: If the items to be supplied hereunder have been designed in accordance with specifications or data furnished or originated by Management Contractor or its Customer, such items shall not be reproduced except with the approval of Management Contractor or its Customer and all drawings, photographs, data, and other written material or information supplied in connection therewith shall at all times remain the property of Management Contractor or its Customer and be returned promptly upon written request.

1.0.4 LIENS: Contractor agrees to deliver the items to be supplied hereunder free and clear of all liens, encumbrances and claims of laborers or materialmen and Management Contractor may withhold payment pending receipt of evidence in form and substance satisfactory to it of the absence of such liens, claims and encumbrances.

1.0.5 WORK ON MANAGEMENT CONTRACTOR'S OR CUSTOMER'S PREMISES: When Contractor will send its employees on premises occupied or controlled by Management Contractor or its Customer, additional and supplementary terms and conditions in Appendix B, which is attached hereto, shall apply.

1.0.6 EQUAL OPPORTUNITY CLAUSE: If this purchase order is for an amount in excess of \$10,000, the Equal Opportunity Clause provided for by Executive Order 11246 and its implementing rules and regulations shall be a part of the contract. If the purchase order is for an amount in excess of \$50,000, Appendix C, which is attached hereto, must be executed by Contractor and returned to Management Contractor.

1.0.7 INSPECTION: This material is subject to inspection prior to shipment. See "General Notes" and/or material requisition for specifications. You are to notify Foster Wheeler Corporation, in writing, ten (10) days prior to inspection at the following address: \* "for orders originating from our Houston, Texas office one (1) copy of inspection notice is to be sent to the following address:\*\*

\*Mr. M.E. Marchetti, Chief Inspector  
Foster Wheeler Energy Corporation  
110 South Orange Avenue  
Livingston, New Jersey 07039

\*\*Mr. E.N. Brode, Inspector  
Foster Wheeler Energy Corporation  
P.O. Box 22395  
Houston, Texas 77027

1.0.8 MATERIALS: Must be new and of domestic origin unless stated otherwise in order.

1.0.9 REQUEST FOR EXTRAS: A. Revisions affecting price or delivery must be brought to the attention of Purchasing Department Attention: (Buyer named in order) giving full details of extras and credits. B. Contractor must submit separate details of additions and deletions after receipt of revised specifications (and/or drawings), and claims for extras must be latest specification (and/or drawing revision) and quotation listed in order. Management Contractor may elect to accumulate all extras and credits until final request for extra (per item) is revised. C. Contractor shall not invoice for extra until approved by receipt of formal change order; he may, however, render for original order amount (per item) upon shipment. D. Engineering Department approval of substitutions requested by Contractor does not constitute authorization of extra charges. E. Overtime work, special routing, etc., requested by Expediting/Inspection Department to expedite delivery, if for Management Contractor's account, must have prior written approval of Purchasing Department; otherwise claims will be rejected.

1.0.10 FEDERAL, STATE, AND LOCAL TAXES

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

- (b) Nevertheless, with respect to any Federal excise tax or duty on the transactions or properly covered by the contract. If a statute, court decision, written ruling, or regulation takes effect after the contract date and -
- (1) Results in the Contractor being required to pay or bear the burden of any such Federal excise tax or duty or increase in the rate thereof which would not otherwise have been payable on such transactions or property, the contract price shall be increased by the amount of such tax or duty or rate increase: Provided, that the Contractor if requested by the Management 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 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 Management Contractor. The contract price shall be similarly decreased if the Contractor, through his fault or negligence or his failure to follow instructions of the Management Contractor, is required to pay or bear the burden of, or does not obtain a refund or drawback of any such Federal excise tax or duty.
- (c) No adjustments pursuant to paragraph (b) above will be made under this contract unless the aggregate amount thereof is or may reasonably be expected to be over \$100.
- (d) As used in paragraph (b) above, the term "contract date" means the date set for the bid opening, or if this is a negotiated contract, the date of this contract. As to additional supplies or services procured by modification on this contract, the term "contract date" means the date of such modification.
- (e) Unless there does not exist any reasonable basis to sustain an exemption, the Management Contractor, upon request of the Contractor, without further liability, agrees as otherwise provided in this contract, to furnish evidence appropriate to establish exemption from any tax which the Contractor warrants, in writing was excluded from the contract price. In addition, the Management Contractor may furnish evidence to establish exemption from any tax that may, pursuant to this clause, give rise to either an increase or decrease in the contract price. Except as otherwise provided in this contract, evidence appropriate to establish exemption from duties will be furnished only at the discretion of the Management Contractor.
- (f) The Contractor shall promptly notify the Management Contractor 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 Management Contractor.

1.0.11 VARIATION IN QUANTITY

No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

THE FOLLOWING GENERAL CONDITIONS SHALL APPLY TO ALL ORDERS CONTAINING GENERAL NOTES:

- 1.0.12 GENERAL NOTES: As contained in body of material requisition or referenced in separate requisition, are an integral part of order.
- 1.0.13 DRAWINGS AND MECHANICAL CATALOG DATA: A. All requirements expressed in "General Notes" such as drawings, spare parts quotations, reports, certificates, other mechanical catalog data, etc., must be formally acknowledged and incorporated in Vendor's shop order. B. These requirements must be met before the order shall be considered complete, and receipt must be in evidence before final payment is made. Final invoices received before all documents are in our hands are subject to return.
- 1.0.14 CORRESPONDENCE: A. All correspondence must be in triplicate, and addressed to the office which originated the purchase order (except as noted in Paragraph 1.0.7). B. Quotations, order "acknowledgements", and correspondence pertaining to requests for extras, changes in delivery, and other commercial or legal matter must be addressed to the Purchasing Department which originated order, Attention: (Buyer named in order). C. Technical queries, transmittal of drawings, mechanical catalog data, and other correspondence pertaining strictly to technical matters, must be addressed to Engineering Department, Attention (Engineer designated in "General Notes"), with one (1) additional copy of correspondence only to the Purchasing Department, Attention: (Buyer named in Order).

IN ADDITION TO THE PRECEDING GENERAL CONDITIONS THE FOLLOWING SHALL APPLY TO ALL ORDERS COVERING FABRICATED EQUIPMENT/MATERIALS SUCH AS VESSELS, EXCHANGERS, HEATERS, BOILERS, PIPING, STRUCTURAL STEEL, ETC.

- 1.0.15 REVISIONS, RELEASES AND APPROVALS: A. Upon receipt of original order, fabricator shall proceed in accordance with instructions contained therein. B. After issuance of original order, fabricator shall proceed in accordance with instructions contained in change orders and/or transmittal letters (and attachments thereto). Transmittal letters will be mailed directly to fabricator by Management Contractor's Engineering Department.
- 1.0.16 REQUESTS FOR "ENGINEERING CHARGES": A. Fabricator's engineering or drafting time required to effect normal changes shall not be for Management Contractor's account.

NOTE: A. "NORMAL" changes include (1) all revisions made before detail drawings (per item) are completed, approved and released to shop fabrication, and (2) addition of clips and other attachments before or after release of details to shop.

NOTE: B. Charges for abnormal engineering or drafting (charges other than as noted above) if for Management Contractor's account, must be presented to the Purchasing Department, Attention: (Buyer named in order) for approval before extra costs are incurred; otherwise, claims for extras will be rejected.

1.0.17 RESPONSIBILITY FOR SUPPLIES: Except as otherwise provided in this contract, (i) the Contractor shall be responsible for the supplies covered by this contract until they are delivered at the designated delivery point regardless of the point of inspection (ii) after delivery to the Management Contractor at the designated point and prior to acceptance by the Management Contractor or rejection and given notice thereof by the Management Contractor, the Management Contractor shall be responsible for the loss or destruction of or damage to the supplies only if such loss, destruction, or damage results from the negligence of officers, agents or employees of the Management Contractor acting within the scope of their employment; and (iii) the Contractor shall bear all risks as to rejected supplies after notice of rejection except that the Management Contractor shall be responsible for the loss, or destruction of, or damage to the supplies only if such loss, destruction, or damage results from the gross negligence of officers, agents, or employees of the Management Contractor acting within the scope of their employment.

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

- (a) The term "Management Contractor" shall mean the Foster Wheeler Energy Corporation.
- (b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer, and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.
- (c) Except as otherwise provided in this contract, the term "subcontracts" includes purchase orders under this contract.
- (d) The term "DOE" means the Department of Energy or any duly authorized representative thereof, including the Contracting Officer, except for the purposes of deciding an appeal under the clause entitled "Disputes".
- (e) The term "Contract" which means Management Contractor's purchase order to the Contractor.
- (f) "Contractor" which means Seller.

1.2 ASSIGNMENT AND SUBCONTRACTING: Neither this order nor any rights, obligations, or monied due hereunder are assignable or transferable (as security for advances or otherwise) without Management Contractor's prior written consent, and except as to purchases of raw materials or standard commercial articles or parts, Contractor shall not subcontract any major portion of the work encompassed by this order without Management Contractor's prior written approval. Management Contractor shall not be required to recognize any assignment order subcontract made without its prior written consent.



1.3 ORDER OF PRECEDENCE: In the event of an inconsistency between provisions of this contract, the inconsistency shall be resolved by giving precedence in the following order:

- (a) The schedule;
- (b) The General Provisions;
- (c) Other provisions of the contract, whether incorporated by reference or otherwise and,
- (d) The specifications, including the Statement of Work.

1.4 DISPUTES:

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

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

## 2.0 ADJUSTMENTS

2.1 CHANGES: The Management Contractor may, at any time, by a written order and without notification to the sureties, if any, make changes in or additions to drawings and specifications, issue additional

instructions, require modified or additional work or services all within the general scope of the contract, and change the place of or method of shipment. If any such change causes an increase or decrease in the cost of, or the time required for, performance, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change: PROVIDED, HOWEVER, that the Management Contractor, if he decides that the facts justify any such action may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". However, nothing in the clause shall excuse the Contractor from proceeding with the contract as changed.

2.2 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA: (This clause is applicable if this contract is of a Proprietary or a Single/Sole source nature and the contract value exceeds \$100,000). If any price including profit or fee, negotiated in connection with this purchase order contract or any cost reimbursable under this purchase order contract was increased by any significant sums because:

- (a) The Contractor furnished cost or pricing data which was not accurate, complete and current as certified in the Contractor's Certificate of Current Cost or Pricing Data;
- (b) A subcontractor, pursuant to the clause of this purchase order contract entitled "Subcontractor Cost or Pricing Data" or "Subcontractor Cost or Pricing Data--Price Adjustments" or any subcontract clause therein required, furnished cost or pricing data which was not accurate, complete and current as certified in the subcontractor's Certificate of Current Cost or Pricing Data;
- (c) A subcontractor or prospective subcontractor furnished cost or pricing data which was required to be accurate, complete and current and to be submitted to support a subcontract cost estimate furnished by the Contractor but which was not accurate, complete and current as of the date certified in the Contractor's Certificate of Current Cost or Pricing Data; or
- (d) The Contractor or a subcontractor or prospective subcontractor furnished any data, not within (a), (b), or (c) above, which was not accurate as submitted;

The price or cost shall be reduced accordingly and the purchase order contract shall be modified in writing as may be necessary to reflect such reduction. However, any reduction in the purchase order 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 not 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 purchase order contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the Contractor may wish to include a clause in each subcontract requiring the subcontractor to appropriately indemnify the Contractor. It is also expected that any subcontractor subject to such indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors.)

2.3 SUBCONTRACTOR COST OR PRICING DATA--PRICE ADJUSTMENTS: (This clause is applicable if this contract is of a Proprietary or a Single/Sole source nature and the contract value exceeds \$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 purchase order contract which involves aggregate increase and/or decreases in costs plus applicable profits expected to exceed \$100,000. The requirements of this clause shall be limited to such contract modifications.
- (b) The Contractor shall require subcontractors hereunder to submit, actually or by specific identification in writing, or cost or pricing data under the following circumstances:
  - (1) Prior to award of any subcontract, the amount of which is expected to exceed \$100,000 when entered into;
  - (2) Prior to the pricing of any subcontract modification which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed \$100,000;

except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

- (c) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the certificate by the Management Contractor to the Government, that to the best of their knowledge and belief the cost and pricing data submitted under (b) above is accurate, complete, and current as of the date of 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 hereunder which exceeds \$100,000 when entered into.

2.4 AUDIT:

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

- (b) Cost or pricing data. If the Contractor submitted cost or pricing data in connection with the pricing of this purchase order 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 purchase order 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 advertise purchase order 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 computations and projections used therein.
- (c) Availability. The materials described in (b) above, shall be made available at the office of the Contractor, at all reasonable times, for inspection, audit or reproduction, until the expiration of 3 years from the date of final payment under this purchase order contract or such lesser time specified in Part 1-20 of the Federal Procurement Regulations (41 CFR Part 1-20) and for such longer period, if any, as is required by applicable statute, or by other clauses of this contract, or by (1) and (2) below.
- (1) If this purchase order contract is completely or partially terminated, the records relating to the work terminated shall be made available for a period of 3 years from the date of any resulting final settlement.
- (2) Records which relate to appeals under the "Disputes" clause of this purchase order contract, or litigation or the settlement of claims arising out of the performance of this purchase order contract, shall be made available until such appeals, litigation, or claims have been disposed of.
- (d) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (d) in all subcontracts hereunder except altered as necessary for proper identification of the contracting parties and the Contracting Officer under the Government prime contract.

2.5 EXAMINATION OF RECORDS BY COMPTROLLER GENERAL:

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

- (b) The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under this contract or such lesser time as specified in the Federal Procurement Regulations Part 1-20, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.
  - (c) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under the subcontract or such lesser time as specified in the Federal Procurement Regulations Part 1-20, 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 purchase orders not exceeding \$2500.
  - (d) The periods of access and examination described in (b) and (c) above, for records which related to (1) appeals under the "Disputes" clause of this contract, (2) litigation or the settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigations, claims, or exceptions have been disposed of.
  - (e) Nothing in this contract shall be deemed to preclude any audit by the General Accounting Office of any transaction under this contract.
- 2.6 PRICING OF ADJUSTMENTS: When costs are a factor in any determination of a contract price adjustment pursuant to the "CHANGES" clause or any other provision of this contract, such costs shall be in accordance with the contract cost principles and procedures in Part 1-15 of the Federal Procurement regulations as supplemental or modified by DOE-PR-9-15 (41 CFR 9-15) in effect on the date of this contract.
- 2.7 COST ACCOUNTING STANDARDS: (This clause is applicable if this contract is of a Proprietary or a Single/Sole source and this contract value exceeds \$100,000.)
- (a) Unless the Cost Accounting Standards Board, or the General Services Administration in the case of nondefense contracts, has prescribed rules or regulations exempting the Contractor or this contract from standards, rules, and regulations promulgated pursuant to 50 U.S.C. App. 2168 (P.L. 91-379, August 15, 1970), or other statutory authority, the Contractor, in connection with this contract shall:

- (1) By submission of a Disclosure Statement, disclose in writing his cost accounting practices as required by regulations of the Cost Accounting Standards Board. The required disclosures must be made prior to contract award unless the Contracting Officer provides a written notice to the Contractor authorizing postaward submission in accordance with regulations of the Cost Accounting Standards Board. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain this Cost Accounting Standards clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement will not be released outside of the Government.
- (2) Follow consistently the cost accounting practices disclosed pursuant to (1), above, in accumulating and reporting contract performance cost data concerning this contract. If any change in disclosed practices is made for purposes of any contract or subcontract subject to Cost Accounting Standards Board requirements, the change must be applied prospectively to this contract, and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a) (4) or (a) (5), below, as appropriate.
- (3) Comply with all Cost Accounting Standards in effect on the date of award of this contract or if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any Cost Accounting Standard which hereafter becomes applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.
- (4) (A) Agree to an equitable adjustment as provided in the Changes clause of this contract, if any) if the contract cost is affected by a change which, pursuant to (3) above, the Contractor is required to make to his established cost accounting practices whether such practices are covered by a Disclosure Statement or not.  
  
(B) Negotiate with the Contracting Officer to determine the terms and conditions under which a change to either a disclosed cost accounting practice or an established cost accounting practice, other than a change under (4) (A), above, may be made. A change to a practice may be proposed by either the Government or the Contractor, provided, however, that no agreement may be made under this provision that will increase costs paid by the United States.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if he or a subcontractor fails to comply with an applicable Cost Accounting Standard or to follow any practice disclosed pursuant to subparagraphs (a)(1) and (a)(2), above, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the rate determined by the Secretary of the Treasury pursuant to P.L. 92-41, 85 Stat. 97, or 7 percent per annum, whichever is less, from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable Cost Accounting Standard, rule, or regulation of the Cost Accounting Standards Board and as to any cost adjustment demanded by the United States such failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(c) The Contractor shall permit any authorized representatives of the head of the agency, of the Cost Accounting Standards Board, or of the Comptroller General of the United States to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which he enters into the substance of this clause except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that this requirement shall apply only to negotiated subcontracts in excess of \$100,000 where the price negotiated is not based on: (1) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or (2) Prices set by law or regulation, and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to accept the Cost Accounting Standards clause by reason of 331.30(b) of Title 4, Code of Federal Regulations (4 CFR 331.30 (b)) or 1-3.1203 (a)(2) of Title 41, Code of Federal Regulations (41 CFR 1-3.1203 (a)(2)).

However, if this is a contract with an agency which permits subcontractors to appeal final decisions of the Contracting Officer directly to the head of the agency or his duly authorized representative, then the Contractor shall include the substance of paragraph (b) as well.

NOTE: (1) Subcontractors shall be required to submit their Disclosure Statements to the Contractor. However, if a subcontractor has previously submitted his Disclosure Statement to a Government Contracting Officer he may satisfy that requirement by certifying to the Contractor the date of such Statement and the address of the Contracting Officer.



NOTE: (2) In any case where a subcontractor determines that the Disclosure Statement information is privileged and confidential and declines to provide it to his Contractor or higher tier subcontractor, the Contractor may authorize direct submission of that subcontractor's Disclosure Statement to the same Government offices to which the Contractor was required to make submission of his Disclosure Statement. Such authorization shall in no way relieve the Contractor of liability as provided in paragraph (a) (5) of this clause. In view of the foregoing and since the contract may be subject to adjustment under this clause by reason of any failure to comply with rules, regulations, and standards of the Cost Accounting Standards Board in connection with covered subcontracts, it is expected that the 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 do not conflict with the duties of the Contractor under its contract with the Government. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification to be submitted by his subcontractors.

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

2.8 ADMINISTRATION OF COST ACCOUNTING STANDARDS: (This clause is applicable if this contract is of a proprietary or a Single/Sole source and this contract value exceeds \$100,000.)

For the purpose of administering Cost Accounting Standard in accordance with this contract, the Contractor shall:

- (a) Submit to the cognizant contracting officer a description of the accounting change and the general dollar magnitude of the change to reflect the sum of all increases and the sum of all decreases for all contracts containing the Cost Accounting Standards clause:
  - (1) For any change in cost accounting practices required to comply with a new Cost Accounting Standards requirements under paragraphs (a) (3) and (a) (4) (A) of the clause of this contract entitled "Cost Accounting Standards" within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring such change;

(2) For any change to cost accounting practices proposed in accordance with paragraph (a) (4) (B) of the clause of this contract entitled "Cost Accounting Standards" not less than 60 days (or such other date as may be mutually agreed to) prior to the effective date of the proposed change; or

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

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

(c) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with paragraphs (a) (4) and (a) (5) of the clause of this contract entitled "Cost Accounting Standards."

(d) Include the substance of this clause in all negotiated subcontracts containing the clause entitled "Cost Accounting Standards." In addition, include a provision in these subcontracts which will require such subcontractors, within thirty (30) days after receipt of award, to submit the following information to the contracting officer cognizant of the subcontractor's facility:

(1) Subcontractor's name and subcontract number;

(2) Dollar amount and date of award;

(3) Name of Contractor making the award; and

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

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

(1) When the Cost Accounting Standards clause and this clause are included in subcontracts, the term "contracting officer" shall be suitably altered to identify the purchaser.

### 3.0 PAYMENT

3.1 PAYMENTS: The contractor shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by the Management Contractor when the amount due on such deliveries so warrants: or, when requested by the Contractor, payment for accepted partial deliveries shall be made whenever such payments would equal or exceed \$1,000 or 50 percent of the total amount of this contract.

### 3.2 ASSIGNMENT OF CLAIMS:

- (a) Pursuant to the provisions of the Assignment of Claims Act of 1940 as amended (31 U.S.C. 203, 21 U.S.C. 15), if this contract provides for payments aggregating \$1,000 or more, claims for monies due or to become due the Contractor from the Management Contractor under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payments to an assignee of any monies due or to become due under this contract shall not, to the extent provided in said Act, as amended be subject to reduction or 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 Claim 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 or 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 Management Contractor.

3.3 PROGRESS PAYMENTS (Total Costs): The following article applies if progress payments are requested and are applicable:

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

- (a) Computation of amounts. (1) Unless a smaller amount is requested, each progress payment shall be (i) 80 percent of the amount of the Contractor's total costs (except that this percentage shall be 85 percent if the Contractor is a small Business concern) incurred under this contract, except as provided herein with respect to cost of pension contributions, plus (ii) the amount of progress payments to subcontractors as provided in (j) below; all less the sum of previous progress payments. With respect to costs of pension contributions, when pension contributions are paid by the Contractor to the requirement fund less frequently than quarterly accruals of the costs or these pension contributions shall be excluded from the Contractor's total costs for progress payment purposes until such costs are paid. If pension contributions are paid on a quarterly or more frequent basis, accruals of the costs of these pension contributions may be included in the Contractor's total costs for progress payment purposes provided that the pension contributions are paid to the retirement fund within 30 days after the close of the period covered by the payment. If payments are not made to the fund within such 30 days period, pension contributions costs shall be excluded from the Contractor's total costs for progress payment purposes until payment therefore has been made. (2)\*\*\* (3) The amount of unliquidated progress payments shall not exceed the lesser of (i) 80 percent of the costs (except that this percentage shall be 85% if the Contractor is a small business concern) mentioned in (a) (1) (i) of this clause plus any unliquidated progress payments mentioned in item (a)(1)(ii) both of which are applicable only to the supplies and services not yet delivered and invoiced to any accepted by the Management Contractor or (ii) 80 percent (except that this percentage shall be 85 percent if the Contractor is a small business concern) of the total contract price of supplies and services not yet delivered and invoiced to and accepted by the Management Contractor less unliquidated advance payments. (4) The aggregate amount of progress payments made shall not exceed 80 percent of the total contract price (except that this percentage shall be 85 percent if the Contractor is a small business concern). (5) If at any time a progress payment of the unliquidated progress payments exceed the amount permitted by paragraph (a) of this clause, the Contractor shall pay the amount of such excess to the Management Contractor upon demand.
- (b) Liquidation. Except as provided in the clause entitled "Termination for Convenience of the Management Contractor all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress, the amount of unliquidated progress payments, or 80 percent (except that this percentage shall be 85 percent if the Contractor is a small business concern) see 41 CFR 1-30.512-2 for citation of lower percentages

for this paragraph (b) and for (a)(3)(ii) of the gross amount invoiced whichever is less. Repayment to the Management Contractor required by a retroactive price reduction will be made after recalculating liquidations and payments on past invoices at the reduced and adjusting the unliquidated progress payments accordingly.

- (c) Reduction or suspension. The Management Contractor may reduce or suspend progress payments, or liquidate them at a rate higher than the percentage stated in (b) of this clause, or both, whenever he finds upon substantial evidence that the Contractor (i) has failed to comply with any material requirements of this contract (ii) has so failed to make progress or is in such unsatisfactory financial condition, as to endanger performance of this contract, (iii) has allocated inventory to this contract substantially exceeding reasonable requirements, (iv) is delinquent in payment of the costs of performance of this contract in the ordinary course of business (v) has so failed to make progress that the unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract, or (vi) is realizing less profit than the estimated profit used for establishing a liquidation percentage in paragraph (b) if that liquidation percentage is less than the percentage stated in paragraph (a)(1).
- (d) Title. Immediately, upon the date of this contract, title to all parts; materials; inventories; work in progress; special tooling, nondurable (i.e. noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids not considered special tooling; and drawings and technical data (to the extent delivery thereof to the Management Contractor is required by other provisions of this contract); theretofore acquired or produced by the Contractor and allocated or properly chargeable to this contract under sound and generally accepted accounting principles and practices shall forthwith vest in the Management Contractor; and title to all like property thereafter acquired or produced by the Contractor and allocated or properly chargeable to this contract as aforesaid shall forthwith vest in the Management Contractor upon said acquisition, production or allocation. Notwithstanding that title to property is in the Management Contractor through the operation of this clause, the handling and disposition of such property shall be determined by the applicable provisions of the contract such as: The Default clause and paragraph (h) of this clause; Termination for convenience of the Management Contractor clause. Current production scrap may be sold by the Contractor without approval of the Management Contractor and the proceeds shall be credited against the costs of contract performance. With the consent of the Management Contractor and on terms approved by him, the Contractor may acquire or dispose of property to which title is vested in the Management Contractor pursuant to this clause, and in the event, the costs allocable to the property so transferred from this contract shall be eliminated from the costs of contract performance and the Contractor shall repay to the Management Contractor by cash or credit memorandum an amount equal to the

unliquidated progress payments allocable to the property so transferred. Upon completion of performance of all the obligations of the Contractor under this contract, including liquidation of all progress payments hereunder, title to all property (or the proceeds thereof) which had not been delivered to, and accepted by the Management Contractor under this contract or which had not been incorporated in supplies delivered to and accepted by the Management Contractor under this contract and to which title has vested in the Management Contractor under this clause shall vest in the Contractor.

- (e) Risk of Loss. Except to the extent that the Management Contractor shall have otherwise expressly assumed the risk of loss of property, title to which vests in the Management Contractor pursuant to this clause, in the event of the loss, theft or destruction of, or damage to any such property before its delivery to and acceptance by the Management Contractor the Contractor shall bear the risk of loss and shall repay the Management Contractor an amount equal to the unliquidated progress payments based on costs allocable to such loss, destroyed or damaged property.
- (f) Control of cost and property. The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.
- (g) Reports - access to records. Insofar as pertinent to the administration of this clause, the Contractor will (i) furnish promptly such relevant reports, certificates, financial statements, and other information as may be reasonably requested by the Management Contractor, and (ii) give the Government or the Management Contractor reasonable opportunity to examine and verify his books, records, and accounts.
- (h) Special provisions regarding default. If this contract is terminated pursuant to the clause entitled "Default" (i) the Contractor shall, upon demand, pay to the Management Contractor the amounts of unliquidated progress payments and (ii) with respect to all property as to which the Management Contractor elects not to require delivery under the clause entitled "Default" total shall vest in the Contractor upon full liquidation of progress payments, and the Management Contractor shall be liable for no payment except as provided by the "Default" clause.
- (i) Reservations of rights. The rights and remedies of the Management Contractor provided in this clause shall not be exclusive, and are in addition to any other rights provided by law or under this contract. No payment, or vesting of title pursuant to this clause, shall excuse the Contractor from performance of his obligations under this contract, nor constitute a waiver of any of the rights and remedies of the parties under this contract. No delay or failure of the Management Contractor in exercising any right, power, or privilege under this clause shall affect any such right, power, or privilege, nor shall any single or partial exercise thereof preclude or impair any further exercise of any other right, power, or privilege of the Management Contractor.

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

(2) Subcontracts on which progress payments to subcontractors may be included in the base for progress payments pursuant to paragraph (a) of this clause are limited to those subcontracts in which there is expected to be a long "lead time" between the beginning of work and the first delivery approximately 4 months or more for small business concerns and 6 months or more for firms which are not small business concerns and in which the provisions regarding progress payments (i) are substantially similar to and as favorable to the Management Contractor as this "Progress Payments" clause, no more favorable to the subcontractor than this clause is to the Contractor and on a basis of not more than 80 percent of total costs or 85 percent of direct labor and material costs (except that these percentages shall be 85 percent of total costs or 90 percent of direct labor and material costs for those subcontractors which are small business concerns), and (ii) make all rights of the subcontractor with respect to all property to which Management Contractor has title under the subcontract subordinate to the rights of the Management Contractor to require delivery of such property to it in the event of default by the Contractor under this contract or in the event of the bankruptcy or insolvency of the subcontract.

(3) In the event the Contractor fully liquidates such progress payments made by the Management Contractor to him, hereunder and there are progress payments to any subcontractors which are unliquidated, the Contractor shall be subrogated to all the Management Contractor's rights by virtue of such provisions in the subcontract or subcontracts involved as if all such rights had been thereupon assigned and transferred to the Contractor (4) The billings described in (j)(1)(ii) of this clause shall be paid promptly by the Contractor in the ordinary course of business, not later than a reasonable time after payment of equivalent amounts by the Management Contractor to the Contractor.

(4) To facilitate small business participation in subcontracting under this contract the Contractor agrees to provide progress payments to those subcontractors which are small business concerns, in conformity with the standards for customary progress payments stated in 1-30.503 of the Federal Procurement Regulations, as in effect on the date of this contract. The Contractor further agrees that the need for such payments will not be considered as a handicap or adverse factor in the award of subcontracts.

### 3.4 PAYMENT OF INTEREST ON CONTRACTORS CLAIMS:

(a) If an appeal is filed by the Contractor from a final decision of the Contracting Office 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 Management Contractor shall be payable to the Contractor. Such interest shall be at the rate determined by this Secretary of the Treasury pursuant to Public Law 92-41, 85 Stat. 97, from the date the Contractor furnishes to the contracting office his written appeal under the disputes clause of this contract, to the date of (1) a final judgement by a court of competent jurisdiction, or (2) mailing to the Contractor of a supplemental agreement for execution either confirming completed negotiations between the parties or carrying out a decision of a Board of Contract appeal.

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

#### 4.0 PERFORMANCE

- 4.1 INSPECTION: All services, material, and workmanship shall be subject to inspection and test by the Management Contractor to the extent practicable at all times and places. For this purpose, the Contractor shall allow at all times inspectors and other Management Contractor personnel free access to the premises of the Contractor and shall furnish such facilities, supplies and services as may be required for this work. Final acceptance or rejection of the work shall be made as promptly as practicable, except as otherwise provided in this contract; but failure to inspect and/or accept or reject work shall neither relieve the Contractor from responsibility for such work as is not in accordance with contract requirements nor impose liability on the Management Contractor.
- 4.2 NOTICE OF LABOR DISPUTES: Whenever an actual or potential labor dispute is delaying or threatens to delay the performance of the work, the Contractor shall immediately notify the Management Contractor in writing. Such notice shall include all relevant information concerning the dispute and its background.

#### 5.0 TERMINATION

- 5.1 TERMINATION FOR DEFAULT OR FOR CONVENIENCE OF THE MANAGEMENT CONTRACTOR:
  - (a) The performance of work under the contract may be terminated by the Management Contractor in accordance with this clause in whole or from time to time in part:
    - (1) Whenever the Contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance) and shall fail to cure such default within a period of ten days (or such longer period as the Management Contractor may allow) after receipt from the Management Contractor of a notice specifying the default; or



- (2) Whenever for any reason the Management Contractor shall determine that such termination is in the best interest of the Management Contractor.

Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Management Contractor, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this contract for default under (1) above, it is determined for any reason that the Contractor was not in default pursuant to (1), or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of the clause of this contract relating to excusable delays, the Notice of Termination shall be deemed to have been issued under (2) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

- (b) After receipt of a Notice of Termination and except as otherwise directed by the Management Contractor, the Contractor shall:
  - (1) Stop work under the contract on the date and to the extent specified in the Notice of Termination;
  - (2) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;
  - (3) Terminate all orders and subcontract to the extent that they relate to the performance of work terminated by the Notice of Termination;
  - (4) Assign to the Management Contractor, in the manner and to the extent directed by the Management Contractor, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated, in which case the Management Contractor shall have the right in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
  - (5) With the approval or modification of the Management Contractor, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this contract;
  - (6) Transfer title to the Management Contractor (to the extent that title has not already been transferred) and deliver in the manner, at the times, and to the extent directed by the Management Contractor.

- (i) The fabricated or unfabricated parts, work in progress, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination;
  - (ii) The completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, should be required to be furnished to the Management Contractor; and
  - (iii) The jigs, dies, and fixtures and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the Contractor has been or will be reimbursed under this contract;
- (7) Use his best efforts to sell, in the manner, at the times, to the extent and at the price or prices directed or authorized by the Management Contractor, any property of the types referred to in (6) above: Provided, however, that the Contractor:
- (i) shall not be required to extend credit to any Management Contractor, and
  - (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Management Contractor; and provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Management Contractor 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 Management Contractor may direct;
- (8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and
- (9) Take such action as may be necessary, or as the Management Contractor 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 Management Contractor has or may acquire an interest.

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of the fee, or any item of reimbursable cost, under this clause. At any time after expiration of the plant clearance period, as defined in Sub-part I-3.1 of the Federal Procurement Regulations (41 CFP 1-3.1), as the definition may be amended from time to time, the Contractor may submit to the Management Contractor a list certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of

which has been directed or authorized by the Management Contractor, and may request the Management Contractor to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Management Contractor will accept such items and remove them or enter into a storage agreement covering the same: Provided, that the list submitted shall be subject to verification by the Management Contractor 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 Management Contractor his termination claim in the form and with the certification prescribed by the Management Contractor. 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 within such one year period or authorized extension thereof. However, if the Management Contractor 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 Management Contractor may, subject to any review required by the Government's procedures in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.
- (d) Subject to the provisions of paragraph (c), and subject to any review required by the Government's procedures in effect as of the date of execution of this contract, the Contractor and the Management Contractor may agree upon the whole or any part of the amount of amounts to be paid (including an allowance for the fee) to the Contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly and the Contractor shall be paid the agreed amount.
- (e) In the event of the failure of the Contractor and the Management Contractor to agree in whole or in part as provided in paragraph (d), as to the amounts with respect to costs and fee, or as to the amount of the fee to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer shall, subject to any review required by the Government's procedures in effect as of the date of execution of this contract, determine on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amount determined as follows:
  - (1) If the settlement includes cost and fee:
    - (i) There shall be included therein all costs and expenses reimbursable in accordance with this contract not previously paid to the Contractor for the performance

of this contract prior to the effective date of the Notice of Termination, and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by the Contracting Officer. Provided, however that the Contractor shall proceed as rapidly as practicable to discontinue such costs;

- (ii) There shall be included therein so far as not included under (1) above, the cost of settling and paying claims arising out of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b) (3) above, which are properly chargeable to the terminated portion of the contract;
- (iii) There shall be included therein the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory: Provided, however, that if the termination is for default of the Contractor there shall not be included any amounts for the preparation of the Contractor's settlement proposal: and
- (iv) There shall be included therein a portion of the fee payable under the contract determined as follows:
  - A. In the event of the termination of this contract for the convenience of the Management Contractor and not for the default of the contractor, there shall be paid a percentage of the fee equivalent to the percentage of the completion of work contemplated by the contract, but exclusive of subcontract effort included in subcontractor's termination claims, less fee payments previously made hereunder: or
  - B. In the event of the termination of this contract for the default of the Contractor, the total fee payable shall be such proportionate part of the fee (or, if this contract calls for articles of different types, of such part of the fee as is reasonable allocable to the type of article under consideration) as the total number of articles delivered to and accepted by the Management Contractor bears to the total number of articles of a like kind called for by this contract.

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

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

- (f) Costs claimed, agreed to, or determined pursuant to paragraphs (c) (d), and (e) of this clause shall be in accordance with the contract cost principles and procedures in Part 1-13 of the Federal Procurement Regulations (4) CRR 1-15) 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 Management Contractor 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 Management Contractor shall pay to the Contractor the following:
  - (1) If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or
  - (2) if an appeal has been taken, the amount finally determined on such appeal.
- (h) In arriving at the amount due the Contractor under this clause there shall be deducted (1) all unliquidated advance or other payments theretofore made to the Contractor, applicable to the terminated parties of this contract, (2) any claim which the Management Contractor may have against the Contractor in connection with this contract, and (3) 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 Management Contractor.
- (i) In the event of a partial termination, the portion of the fee which is payable with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the Contractor and the Management Contractor, and such adjustment shall be evidenced by an amendment to this contract.
- (j) The Management Contractor may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the Management Contractor the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess shall be payment by the Contractor to the Management Contractor upon demand, together with interest computed at the

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

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

- 5.2 EXCUSABLE DELAYS: Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if such failure causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the failure of a subcontractor to perform or make progress and if such failure arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be deemed to be in default, unless (a) the supplies or services to be furnished by the subcontractor were obtainable from other sources, (b) the Management Contractor shall have ordered the Contractor in writing to procure such supplies or services from such other sources, and (c) the Contractor shall have failed to comply reasonably with such order. Upon request of the Contractor, the Management Contractor shall ascertain the facts and extent of such failure and, if he shall determine that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Management Contractor under the clause hereof entitled Termination of Default or for Convenience of the Management Contractor. (As used in this clause, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.)

## 6.0 PATENTS

- 6.1 PATENT INDEMNITY: If the amount of this contract is in excess of \$10,000, the Contractor shall indemnify the Management Contractor its officers, agents, and employees against liability, including costs, for infringement of any United States letter patent (except letters patent issued upon and application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) arising out of the manufacture or delivery of supplies or out of construction, alteration, modification, or repair of real

property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Management Contractor of such supplies or construction work. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been afforded such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defence thereof; and further, such indemnity shall not apply to:

- (i) An infringement resulting from compliance with specific written instructions of the Contracting Officer or the Management Contractor directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor;
- (ii) An infringement resulting from addition to, or change in, such supplies or components furnished or construction work performed with addition or change made subsequent to delivery or performance by the Contractor; or
- (iii) A claimed infringement which is settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

6.2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT:  
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 Management Contractor, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.
- (b) In the event of any claim or suit against the Management Contractor on accounting 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 Management Contractor when requested by the Management Contractor, 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 Management Contractor except where the Contractor has agreed to indemnify the Management Contractor.
- (c) This clause shall be included in all subcontracts.

6.3 REPORTING OF ROYALTIES: If the contract is in an amount which exceeds \$10,000 and if any royalty payments are directly involved in the contract or are reflected in the contract price to the Management Contractor, the Contractor agrees to report in writing to the Administration (Assistant General Counsel for Patents) during the performances of this contract and prior to its completion or final settlement the amount of any royalties or other payments paid or to be paid by it

directly to others in connection with the performance of this contract together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit identification of the patents or other basis on which the royalties are to be paid. The approval of the Management Contractor or the Administration of any individual payments or royalties shall not stop the Government or the Management Contractor at any time from contracting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.

## 7.0 SOCIO-ECONOMIC

### 7.1 BUY AMERICAN ACT:

- (a) In acquiring end products, the Buy American Act (41 U.S. Code 10-a-d) provides that the Government give preference to domestic source end products. For the purpose of this clause:
  - (i) "Components" means those articles, materials and supplies, which are directly incorporated in the end products;
  - (ii) "End products" means those articles, materials and supplies, which are to be acquired under this contract for public use; and
  - (iii) A "domestic source end product" means (A) an unmanufactured end product which has been mined or produced in the United States and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For the purposes of this (a)(iii)(b), components of foreign origin of the same type or kind as the products referred to in (b)(ii) or (iii) of this clause shall be treated as components mined, produced, or manufactured in the United States.
- (b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:
  - (i) Which are for use outside the United States
  - (ii) Which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;
  - (iii) As to which the Administration determines the domestic preference to be inconsistent with the public interest; or
  - (iv) As to which the Administration determines the cost to the Government to be unreasonable.



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

7.2 CLEAN AIR AND WATER: (Applicable only if the contract exceeds \$100,000, or the Management Contractor has determined that orders under an indefinite quantity contract in any one year will exceed \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1957c-8(c)(i) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c) and is listed by EPA or the contract is not otherwise exempt).

(a) The Contractor agrees as follows:

- (1) To comply with all the requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 1857, et seq., as amended by Pub. L. 91-604) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq., as amended by Pub. L. 91-604) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500), respectively relating to inspection, monitoring entry, reports, and information as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the aware of this contract.
- (2) That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this Contract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing.
- (3) To use his best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed.
- (4) To insert the substance of the provisions of this clause into any nonexempt subcontract, including this paragraph (a) (4).

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

- (1) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604).
- (2) The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500).
- (3) The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable

implementation procedure or plan under section 111(c) or section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d)), or an approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).

- (4) The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act as required by section 307 of the Water Act (33 U.S.C. 1317).
- (5) The term "compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an air or water pollution control agency in accordance with the requirements of the Air Act or Water Act and regulations issued pursuant thereto.
- (6) The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a contractor or subcontractor, to be utilized in the performance of a contract or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility except where the Director, Officer of Federal Activities, Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

7.3 COVENANT AGAINST CONTINGENT FEES: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees or bonafide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Management Contractors 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.

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

7.5 UTILIZATION OF MINORITY BUSINESS ENTERPRISES:

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

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

7.6 UTILIZATION OF SMALL BUSINESS CONCERNS:

- (a) It is the policy of the Government as declared by the Congress that a fair proportion of the purchases and contracts for supplies and services for the Government be placed with small business concerns.
- (b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Seller finds to be consistent with the efficient performance of this contract.

7.7 UTILIZATION OF LABOR SURPLUS AREA CONCERNS: (The following clause is applicable if this contract exceeds \$500,000).

- (a) It is the policy of the Government to award contracts to labor surplus area concerns that (1) have been certified by the Secretary of Labor (hereafter referred to as certified-eligible concerns with first or second preferences) regarding the employment of a proportionate number of disadvantaged individuals and have agreed to perform substantially (i) in or near sections of concentrated unemployment or underemployment or in persistent or substantial labor surplus areas or (ii) in other areas of the United States, respectively, or (2) are noncertified concerns which have agreed to perform substantially in persistent or substantial labor surplus areas, where this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use his best efforts to place his subcontracts in accordance with his policy.
- (b) In complying with paragraph (a) of this clause and with paragraph (b) of the clause of this contract entitled "Utilization of Small Business Concerns" the Contractor in placing his subcontracts shall observe the following order of preference: (1) Certified-eligible concerns with a first preference which are also small business concerns; (2) other certified-eligible concerns with a first preference; (3) certified-eligible concerns with a second preference which are also small business concerns; (4) other certified-eligible concerns with a second preference; (5) persistent or substantial labor surplus area concerns which are also small business concerns; (6) other persistent or substantial labor surplus area concerns; and (7) small business concerns which are not labor surplus concerns.

7.8 MINORITY BUSINESS ENTERPRISES SUBCONTRACTING PROGRAM: (Applicable only if this contract exceeds \$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 soliciations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of minority business enterprises.
  - (4) Maintain records showing (i) procedures which have been adopted to comply with the policies set forth in this clause, including the establishment of a source list of minority business enterprises, (ii) awards to minority business enterprises on the source list, and (iii) specific efforts to identify and award contracts to minority business enterprises.
  - (5) Include the Utilization of Minority Business Enterprises clause in subcontracts which offer substantial minority business enterprises subcontracting opportunities.
  - (6) Cooperate with the Management Contractor in any studies and surveys of the Contractor's minority business enterprises procedures and practices that the Management Contractor may from time to time conduct.
  - (7) Submit periodic reports of subcontracting to known minority business enterprises with respect to the records referred to in subparagraph (4) above, in such form and manner and at such time (not more often than quarterly) as the Management Contractor 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 Management Contractor of the names of such subcontractors.

7.9 SMALL BUSINESS SUBCONTRACTING PROGRAM: (Applicable only if this contract exceeds \$500,000).

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

- (1) Designate a liaison officer who will (i) maintain liaison with the Government on small business matters, (ii) supervise compliance with the Utilization of Small Business Concerns clause, and (iii) administer the Contractor's "Small Business Subcontracting Program".
- (2) Provide adequate and timely consideration of the potentialities of small business concerns in all "make-or-buy" decisions.
- (3) Assure that small business concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of small business concerns. Where the Contractor's lists of potential small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
- (4) Maintain records showing (i) whether each prospective subcontractor is a small business concern, (ii) procedures which have been adopted to comply with the policies set forth in this clause, and (iii) with respect to the letting of any subcontract (including purchase orders) exceeding \$10,000, information substantially as follows:
  - (A) Whether the award went to large or small business.
  - (B) Whether less than three or more than two small business firms were solicited.
  - (C) The reason for nonsolicitation of small business if such was the case.
  - (D) The reason for small business failure to receive the award if such was the case when small business was solicited.

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

- (5) Notify the Management Contractor before soliciting bids or quotations on any subcontract (including purchase orders) in excess of \$10,000 if (i) no small business concern is to be solicited, and (ii) the Management Contractor's consent to the subcontract (or ratification) is required by a "Subcontracts" clause in this contract. Such notice will state the Contractor's reasons for nonsolicitation of small business concerns, and will be given as early in the procurement cycle as possible so that the Management Contractor may give SBA timely notice to permit SBA a reasonable period to suggest potentially qualified small business concerns through the Management Contractor. In no case will the procurement action be held up when to do so would, in the Contractor's judgement, delay performance under the contract.
- (6) Include the Utilization of Small Business Concerns clause in subcontracts which offer substantial small business subcontracting opportunities.
- (7) Cooperate with the Management Contractor in any studies and surveys of the Contractor's subcontracting procedures and practices that the Management Contractor may from time to time conduct.
- (8) Submit quarterly reports of subcontracting to small business concerns on either Optional Form 61, Small Business Subcontracting Program Quarterly Report of Participating Large Company on Subcontract Commitments to Small Business Concerns, or such other form as may be specified in the contract. Except as otherwise provided in this contract, the reporting requirements of this subparagraph (8) do not apply to small business contractors, small business subcontractors, educational and nonprofit institutions, and contractors or subcontractors for standard commercial items.
- (b) A "small business concern" is a concern that meets the pertinent criteria established by the Small Business Administration and set forth in 1-1.701 of the Federal Procurement Regulations.
- (c) The Contractor agrees that, in the event he fails to comply with his contractual obligations concerning the small business subcontracting program, this contract may be terminated, in whole or in part, for default.
- (d) The Contractor further agrees to insert, in any subcontract hereunder which may exceed \$500,000 and which contains the Utilization of Small Business Concerns clause, provisions which shall conform substantially to the language of this clause, including this paragraph (d), and to notify the Management Contractor of the names of such subcontracts.

7.10 LABOR SURPLUS AREA SUBCONTRACTING PROGRAM: (Applicable only if this contract exceeds \$500,000).

- (a) The Contractor agrees to establish and conduct a program which will encourage labor surplus area concerns to compete for subcontracts within their capabilities. In this connection, the Contractor shall:

- (1) Designate a Liaison officer who will (i) maintain Liaison with duly authorized representatives of the Government on labor surplus area matters, (ii) supervise compliance with the Utilization of Concerns in Labor Surplus Areas clause, and (iii) administer the Contractor's "Labor Surplus Area Subcontracting Program".
  - (2) Provide adequate and timely consideration of the potentialities of labor surplus area concerns in all "make-or-buy" decisions;
  - (3) Assure that labor surplus area concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of labor surplus area concerns;
  - (4) Maintain records showing procedures which have been adopted to comply with the policies set forth in this clause. Records maintained pursuant to this clause will be kept available for review by the Government until the expiration of 1 year after the award of this contract or for such longer period as may be required by any other clause of this contract or by applicable law or regulations; and
  - (5) Include the Utilization of Concerns in Labor Surplus Areas clause in subcontracts which offer substantial labor surplus area subcontracting opportunities.
- (b) A "labor surplus area concern" is a concern that (1) has been certified by the Secretary of Labor (hereafter referred to as a certified-eligible concern) regarding the employment of a proportionate number of disadvantage individuals and has agreed to perform substantially in or near sections on concentrated unemployment or underemployment, in persistent or substantial labor surplus areas, or in other areas of the United States or (2) is a noncertified concern which has agreed to perform a substantial proportion of a contract in persistent or substantial labor surplus areas. A certified-eligible concern shall be deemed to have performed a substantial proportion of a contract in or near sections of concentrated unemployment or underemployment, in persistent or substantial labor surplus areas if the costs that the concern will incur on account of manufacturing or production in or near such sections or in such areas (by itself, if a certified concern, or by certified concerns acting as first-tier subcontractors) amount to more than 25 percent of the contract price. A concern shall be deemed to have performed a substantial labor surplus areas (by itself or its first-tier subcontractors) if the costs that the concern will incur on account of production or manufacturing in such areas amount to more than 50 percent of the contract price.

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

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

7.12 LISTING OF EMPLOYMENT OPENINGS: (This clause is applicable pursuant to 41 CFR 50-250 if this contract is for \$10,000 or more).

(a) The Contractor agrees, in order to provide special emphasis to the employment of qualified disabled veterans and veterans of the Vietnam era, that all suitable employment openings of the Contractor which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment other than the one wherein the contract is being performed but excluding those of independently operated corporate affiliates, shall be offered for listing at an appropriate local office of the State employment service system wherein the opening occurs and to provide such reports to such local office regarding employment openings and hires as may be required, provided that if this contract is with a State or local government the reports set forth in paragraphs (c) and (d) are not required.

(b) 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 service or effort and shall involve the normal obligations which attach to the placing of a bonafide job order, including the acceptance of referrals of veterans and nonveterans. This listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants and nothing herein is intended to relieve the Contractor from any requirements in any statutes executive orders, or regulations regarding nondiscrimination in employment.

(c) The reports required by paragraph (a) of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local officer or, where the Contractor has more than one establishment in a State, with the central office of the State employment service. Such reports shall indicate for each establishment (i) the number of individuals who were hired during the reporting period, (ii) the number of those hired who were disabled veterans, and (iii) the number of those hired who were nondisabled veterans of the Vietnam era. The Contractor shall submit a report within 30 days after the end of each reporting period wherein any



performance is made under this contract. The Contractor shall maintain copies of the reports submitted until the expiration of 1 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.

- (d) Whenever the Contractor becomes contractually bound by the listing provisions of this clause, he shall advise the employment service system in each state wherein he 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 system, there is no need to advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.
- (e) This clause does not apply to the listing of employment openings which occur and are filed outside of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.
- (f) This clause does not apply to openings which the Contractor proposes to fill from within his own organization or to all 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 applications outside of his own organization or employer-union arrangement for that opening.
- (g) As used in this clause:
  - (1) "All suitable employment openings" includes, but is not limited to, openings which occur in the following job categories: Production and 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. The term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment. It does not include openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement.
  - (2) "Appropriate office of the State employment service system" means the local officer 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, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

- (3) "Openings which the Contractor proposes to fill from within his own organization" means employment openings for which no consideration will be given to persons outside the Contractor's own organization (including any affiliates, subsidiaries, and parent companies), and includes any openings which the Contractor proposes to fill from regularly established "recall" or "rehire" lists.
- (4) "Opening which the Contractor proposes 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 of a special hiring arrangement, including openings which the Contractor proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the Contractor and representatives of his employees.
- (5) "Disabled veteran" means a person entitled to disability compensation under laws administered by the Veterans Administration for a disability rated (A) 30 percentum or more, or a person whose discharge or release from active duty was for a disability incurred or aggravated in line of duty.
- (6) "Veteran of the Vietnam era" means a person (A) who (i) served on active duty with the Armed Forces for a period of more than 180 days, any part of which occurred after August 5, 1964, and was discharged or released therefrom with other than a dishonorable discharge, or (ii) was discharged or released from active duty for service connected disability if any part of such duty was performed after August 5, 1964, and (5) who was so discharged or released within the 48 months preceding his application for employment covered by this clause.
- (h) If any disabled veteran or veteran of the Vietnam era believes that the Contractor (or any first-tier subcontractor) has failed or refuses to comply with the provisions of this contract clause relating to giving special emphasis in employment to veterans, such veteran may file a complaint with the veterans' employment representative at a local state employment service office who will attempt to informally resolve the complaint and then refer the complaint with a report on the attempt to resolve the matter to the State Office of the Veterans' Employment Service of the Department of Labor. Such complaint shall then be promptly referred through the Regional Manpower Administrator to the Secretary of Labor who shall investigate such complaint and shall take such action thereon as the facts and circumstances warrant consistent with the terms of this contract and the laws and regulations applicable thereto. (i) The Contractor agrees to place this clause (excluding this paragraph (i)) in any subcontract directly under this contract.

7.13 EMPLOYMENT OF THE HANDICAPPED: (This clause applies to all nonexempt contracts and subcontracts which exceed \$2,500 as follows: (1) Part A applies to contracts and subcontracts which provide for performance in less than 90 days, (2) Parts A and B apply to contracts and subcontracts which provide for performance in 90 days or more and the amount of the contract or subcontract is less than

\$500,000, and (3) Parts A, B, and C apply to contracts and subcontracts which provide for performance in 90 days or more and the amount of the contract or subcontract is \$500,000 or more).

PART A

- (a) The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as follows: 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.
- (b) The Contractor agrees that, if a handicapped individual files a complaint with the Contractor that he is not complying with the requirements of the Act, Public Law 93-112, he will (1) investigate the complaint and take appropriate action consistent with the requirements of 20 CFR 741.29 and (2) maintain on file for 3 years, the record regarding the complaint and the actions taken.
- (c) The Contractor agrees that, if a handicapped individual files a complaint with the Department of Labor that he has not complied with the requirements of the Act, (1) he will cooperate with the Department in its investigation of the complaint, and (2) he will provide all pertinent information regarding his employment practices with respect to the handicapped.
- (d) The Contractor agrees to comply with the rules and regulations of the Secretary of Labor in 20 CFR Ch VI, Part 741.
- (e) In the event of the Contractor's noncompliance with the requirements of this clause, the contract may be terminated or suspended in whole or in part.
- (f) This clause shall be included in all subcontracts over \$2,500.

PART B

- (g) The Contractor agrees (1) to establish an affirmative action program, including appropriate procedures consistent with the guidelines and the rules of the Secretary of Labor, which will provide the affirmative action regarding the employment and advancement of the handicapped required by Public Law 93-112. (2) To publish the program in his employee's or personnel handbook or otherwise distribute a copy to all personnel, (3) to review his program on or before March 31 of each year and to make such changes as may be appropriate, and (4) to designate one of his principal officials to be responsible for the establishment and operation of the program.

- (h) The Contractor agrees to permit the examination by appropriate contracting agency officials or the Assistant Secretary for Employment Standards or his designee, of pertinent books, documents, papers, and records concerning his employment and advancement of the handicapped.
- (i) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Assistant Secretary for Employment Standards, provided by the contracting officer stating the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment and the rights and remedies available.
- (j) The Contractor will notify each labor union or representative of workers with which he has a collective bargaining agreement or other contracts understanding, that the Contractor is bound by the terms of section 503 of the Rehabilitation Act, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

#### PART C

- (k) The Contractor agrees to submit a copy of his affirmative action program to the Assistant Secretary for Employment Standards within 90 days after the award to him of a contract or subcontract.
- (l) The Contractor agrees to submit a summary report to the Assistant Secretary for Employment Standards by March 31 of each year during performance of the contract, and by March 31 of the year following completion of the contract, in the form prescribed by the Assistant Secretary, covering employment and complaint experience, accommodations made, and all steps taken to effectuate and carry out the commitments set forth in the affirmative action program.

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

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

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

employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Management Contractor setting forth the provisions of this Equal Opportunity clause.

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

that in the event the Contractor becomes involved in or is threatened with, litigation with a subcontractor or vendor, as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

7.15 COMPLIANCE WITH LAW: Items supplied or services rendered by Contractor under this order must comply with the Occupational Safety and Health Act of 1970 and the standards promulgated thereunder, if applicable, as well as with all other applicable Federal, state and local laws and regulations Contractor agrees to indemnify and save Management Contractor harmless from all expense to Management Contractor by reason of Contractor's failure to comply therein.

7.16 AFFIRMATIVE ACTION COMPLIANCE PROGRAMS:

- (a) Requirements of programs. Each agency or applicant shall require each prime contractor who has 50 or more employees and a contract of \$50,000 or more and each prime contracts shall require each subcontractor who has 50 or more employees and a subcontract of \$50,000 or more to develop a written affirmative action compliance program for each of its establishments, unless the contract or subcontract is exempt (see 1-12.804). A necessary prerequisite to the development of a satisfactory affirmative action compliance program is the identification and analysis of program areas inherent in minority employment and an evaluation of opportunities for utilization of minority group personnel. The contract programs shall provide in detail for specific steps to guarantee equal employment opportunity keyed to the problems and needs of members of minority groups, including when there are deficiencies, the development of specific goals and timetables for the prompt achievement of full and equal employment opportunity. Each contractor shall include in his affirmative action compliance program a table of job classifications. This table should include, but need not be limited to, job titles, principal duties (and auxiliary duties, if any), rate of pay, and where more than one rate of pay applies (because of length of time in the job or other factors), the applicable rates. The affirmative action compliance program shall be signed by an executive official of the contractor.

