

CHARTER PARTY
OF THE
MOTOR VESSEL EGABRAG

OFFICIAL NO. 572,028

This Charter Party is made on November 17, 1978, by and between U.S. Oceanography, Inc., a California corporation with principal place of business in San Diego, California, hereinafter referred to as "Owner," and Holmes & Narver, Inc., a California corporation with principal place of business in Orange, California, as principal and acting in its capacity as prime contractor to the U.S. Department of Energy, under its Contract Number EY-76-C-08-0020, hereinafter referred to as "Charterer."

WITNESSETH:

ARTICLE I

DESCRIPTION OF VESSEL

Owner is the sole owner of the Motor Vessel EGABRAG, Official No. 572,028, which together with her machinery, equipment, boats, apparel, furnishings, furniture, and all appurtenances hereunder appertaining, is hereinafter called "the vessel."

ARTICLE II

CHARTER PERIOD, OPTION TO EXTEND

Owner agrees to let and Charterer agrees, subject to the provisions hereinafter contained, to hire the exclusive use of the vessel for the term commencing on the date the vessel departs from the Port of San Diego, California, for the purposes of this charter which is expected to be approximately December 16, 1978, or thereabouts. The term of the charter shall terminate on September 16, 1979, unless extended as herein provided.

Should Charterer not exercise its option to extend said term of the charter as herein provided, said vessel shall be returned to the Port of San Diego, California, not later than September 15, 1979.

Charterer shall have the option to extend said initial term of the charter for a period of one (1) year from September 15, 1979. Said option to renew shall be exercised by Charterer giving Owner written notice of its exercise of said option not less than thirty (30) days prior to the expiration of the initial charter period.

At the expiration of the first extended term, Charterer is given the right to extend said term for an additional period of one (1) year upon giving written notice to Owner of its exercise of said option not later than thirty (30) days prior to September 15, 1980.

At the expiration of the second extended term, Charterer is given the right to extend said term for an additional period of one (1) year upon giving written notice to Owner of its exercise of said option not later than thirty (30) days prior to September 15, 1981.

ARTICLE III

HIRE FOR VESSEL

Charterer agrees to pay the Owner hire for the vessel and its crew in the sum of \$46,000.00 per month for each month of the term of the initial period of the charter. The first month's hire shall be paid to Owner one (1) calendar month after the commencement of the term of said charter as hereinabove provided and like monthly payments shall be made each month thereafter, the last month's hire being prorated should the term of the hire terminate prior to the end of one (1) full calendar month.

The hire for additional terms of the charter shall be negotiated between Owner and Charterer and in the event said parties are unable to agree upon the amount of the monthly hire for the extended term or terms, Owner may, at its option, terminate this charter. It is agreed that if the hire is not determined and agreed upon on or before the fifteenth day preceding the expiration of the initial or any extended term, Owner may then exercise its right to terminate the charter.

ARTICLE IV

DELIVERY AND REDELIVERY

It is contemplated that immediately upon the execution of this charter, the vessel must be converted to fit it for the intended use of the charter and in order to accommodate the desires and needs of the Charterer. The scope of the work as to conversions, modifications, and changes is stated on Attachment A to this Charter Party. Said vessel shall be fitted to accommodate 12 scientific personnel to be brought aboard by Charterer. Owner agrees to use his best efforts to prepare the vessel for departure from the Port of San Diego, California, on or about December 16, 1978.

It is agreed that the Charterer will pay to the Owner the amount of \$50,000.00 as full payment for the conversion, modifications, and changes stated on Attachment A. Payment for all such modifications and changes made in accordance with Attachment A shall be paid by Charterer in addition to all other sums herein provided. The total payment for such work shall be made to Owner prior to the departure of said vessel from the Port of San Diego, California, as hereinabove provided.

ARTICLE V

CONDITION OF VESSEL AND SURVEY

Owner warrants that the vessel on delivery to the Charterer shall be seaworthy, clean, tight, staunch, strong, and well and sufficiently tackled, appareled,

furnished, and equipped and in good running condition and repair and fit for her said intended service.

Upon the completion of the conversion of said vessel as hereinabove provided, said vessel shall be surveyed by a marine surveyor appointed by Owner and accepted by Charterer and Charterer shall at said time be entitled to board said vessel and fully inspect the same. Should Charterer fail to be satisfied with the condition of said vessel and should such objections be reasonable, Owner shall have a reasonable time to correct any such deficiencies even though such may cause a delay in the departure of said vessel under the terms of the charter.

Charterer agrees that upon the redelivery of said vessel to Owner at the Port of San Diego, California, upon the termination of this charter or any extended term, Charterer will at its cost and expense cause said vessel to be reconverted to its condition at the commencement of the charter and as necessary remove the modifications and conversions theretofore made in order to accomplish that result. Charterer's liability to the Owner for the cost of reconversion shall not exceed the amount of \$15,000.00.

Upon redelivery of said vessel to the Port of San Diego, California, it shall again be surveyed. Charterer agrees, at its expense, to repair any damage to said vessel occurring during the term of the charter as a result of the fault or negligence of the Charterer or its employees or agents. All other repairs to said vessel shall be at the expense of the Owner.

ARTICLE VI

DUTY TO PROVIDE CREW, FOOD, WATER, AND PETROLEUM PRODUCTS

Charterer shall provide all food and water necessary while the vessel is away from the Port of Kwajalein during the term of the charter for the members of the crew aboard the vessel, as well as all research personnel placed aboard said vessel by Charterer.

Charterer shall also provide at its cost all required petroleum products including, but not limited to, fuel oil, lube oil, and outboard motor gasoline.

While said vessel is in Kwajalein Harbor, Marshall Islands, Charterer shall provide the vessel with berthing facilities and shore power.

ARTICLE VII

USE OF VESSEL

Said vessel is chartered for the purpose of conducting OCEANOGRAPHIC RESEARCH in the area hereinafter designated.

During the term of the charter, the vessel shall operate only in an area within a radius of 500 miles from Kwajalein Harbor, Marshall Islands, except as is necessary to proceed from San Diego, California, to said destination and return.

It is further agreed that Charterer shall not require said vessel to be in operation for more than an average of twenty (20) days per month computed each quarter during the term of the charter. By way of explanation, it is the intention that the crew of the vessel shall not be required to operate said vessel more than twenty (20) days per month; however, it is understood that on some occasions, trips of a long time will be required and thus, the total number of days will be averaged out over each quarter.

ARTICLE VIII

DISABILITY OF VESSEL

In the event that the vessel shall be disabled, damaged, or delayed by breakdown of machinery, fire, grounding, collision, or other cause not attributable to the negligence of Charterer or its employees, then, in that event, the prorata daily charter rate computed on a monthly basis shall be immediately suspended until such time as the vessel again becomes available for Charterer's use. Further, in the event that the vessel is lost or damaged, or otherwise disabled, and the disability is such that the vessel cannot be repaired within forty-five (45) days following such disability, Charterer at its election may terminate the charter forthwith.

ARTICLE IX

MAINTENANCE

Owner shall, at its own expense, maintain the vessel excluding special equipment placed aboard by Charterer during the term of the charter. With respect to Charterer's equipment, Owner agrees that its crew shall assist Charterer in the maintenance of such equipment and shall provide to Charterer the use of Owner's machinery and equipment for that purpose.

ARTICLE X

COSTS OF SURVEYS

The necessary survey prior to commencement of the charter shall be paid for by Owner and the survey conducted upon the return of the vessel shall be paid by Charterer, not to exceed \$500.00 per survey.

ARTICLE XI

INSURANCE

Owner shall procure hull and protection indemnity insurance. The amount of the hull insurance shall be designated by the Owner and the protection indemnity insurance shall have limits of \$1,000,000.00. Owner shall, in addition to the above insurance, procure an umbrella policy for the Owner's and vessel's protection in the amount of \$1,000,000.00.

Charterer shall be solely responsible for any damage to Charterer's equipment provided the same is not caused by reason of the negligence of Owner or Owner's agents or employees.

ARTICLE XII

INDEMNITY

Charterer shall hold Owner harmless from any and all claims for injuries or death suffered by any of its personnel or those research personnel brought aboard the vessel by Charterer which shall not be the result of fault or negligence on the part of Owner or Owner's agents or employees.

Owner shall hold Charterer harmless from any and all claims for injuries or death suffered by any of Owner's personnel which shall not be the result of fault or negligence on the part of Charterer or its agents or employees.

ARTICLE XIII

TAXES

The Owner has included in its price all applicable federal, state, and local taxes and duties. The Charterer will pay all taxes levied on the vessel by the Trust Territories of the Pacific Islands or its political subdivisions. Charterer shall also pay any port charges, wharfage, pilot fees, or duties.

ARTICLE XIV

ATTORNEY'S FEES

In the event that either party to this Agreement shall commence an action to enforce the terms thereof, the prevailing party shall be awarded court costs and reasonable attorney's fees.

ARTICLE XV

ASSIGNMENT

Neither party to this Agreement shall have the power or right to assign their interest herein to any person, firm, or corporation without first securing the written consent of the other party and any such assignment so made without such consent shall be null and void.

ARTICLE XVI

MANNING

The Owner shall at all times man the vessel with personnel competent to perform the tasks assigned to them.

ARTICLE XVII

SAFETY AT SEA

Operation of the vessel and the safety of it, and the personnel aboard it, are and shall remain the sole and complete responsibility of the Owner and the Captain of the vessel.

ARTICLE XVIII

SCHEDULING AND ROUTING

The Charterer's authorized representative shall determine sailing times, destinations, and intermediate stops for all voyages subject to the provisions of Article XVII, Safety at Sea. The vessel's Captain will route the voyages to accommodate the requirements of the Charterer by the most direct routes available, taking into consideration the safety of the vessel and its personnel.

ARTICLE XIX

TERMINATION

If the Charterer exercises the right to terminate the Charter Party under Article 14, Termination, of the General Provisions, it is agreed that such termination will be effective only after the vessel is returned to the Port of San Diego, California, and redelivered to the Owner. Notwithstanding the termination of the Charter Party under the said Article 14, Termination, of the General Provisions, the Charterer shall pay the cost of the survey pursuant to Charter Party Article X, Cost of Surveys, and for the reconversion costs pursuant to Charter Party Article V, Condition of Vessel and Survey.

ARTICLE XX

GENERAL PROVISIONS

The attached General Provisions, consisting of Articles 1 through 56 on 56 pages, are incorporated into this agreement for all purposes.

It is agreed that Owner shall have no responsibility for the breach of Articles 47, 48, 49, and 50 of the General Provisions by personnel placed aboard the vessel by Charterer.

In the General Provisions, wherever the word "Subcontractor" appears, it shall mean "Owner" and wherever the word "Contractor" appears, it shall mean "Charterer."

ARTICLE XXI

CAPTIONS

The captions of the articles of this Charter Party are for convenience only and shall not be construed as in any way limiting, altering, or modifying the provision hereof.

IN WITNESS WHEREOF, the parties hereunto have executed this Charter Party on the day and year first above set forth.

U.S. OCEANOGRAPHY

HOLMES & NARVER, INC.

By: Charles E. Otterman
Charles E. Otterman, President

By: [Signature]

Title: General Manager, PTD
Charterer

Approved by the U.S. Department of Energy

[Signature]

Attachment A

Scope of work to be performed prior to sailing for the conversion of the vessel to meet operational requirements.

1. Clean and remove all material from #1 and #2 compartments.
2. Remove existing ships freezer and lube oil tank from #1 compartment.
3. Install plywood flooring over existing deck in both #1 and #2 compartments.
4. Install floor covering in #1 and #2 compartments.
5. Install A/C (approximately 3 tons), utilizing commercially available equipment.
6. Fabricate dog-house forward port side adjoining existing head for protection of A/C.
7. Remove 3 hatch coaming, main deck, and replace it with soft hatches or bolt ons.
8. Lag #1 and #2 compartments.
9. Remove bunks and compressor from forward area.
10. Install dog-house and staircase for access to #1 compartment.
11. Penetrate #2, 3, and 4 water tight bulkheads, install stuffing tubes and feeder cables from 30KW generator.
12. Install 2 commercially available fiberglass shower stalls adjoining starboard forward stair case in #1 compartment. Plumb one as head and one as shower - Install one sink.
13. Install hot water heater in #1 compartment.
14. Remove existing stern canopy - replace with steel deck. Install gangway to deck.
15. Install canopy over entire boat deck area.
16. Install tables and seating for 12 people on boat deck.
17. Contract for fabrication of two small landing barges.

GENERAL PROVISIONS
FOR
SERVICE SUBCONTRACTS

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HOLMES & NARVER, INC.

GENERAL PROVISIONS
FOR
SERVICE SUBCONTRACTS

ARTICLE 1 - DEFINITIONS

- a. The term "Contractor" as used herein means Holmes & Narver, Inc.
- b. The term "Administration" as used herein means the Energy Research and Development Administration or any duly authorized representative thereof.
- c. The term "Government" as used herein means the United States of America, and includes the Administration as agent of the Government.
- d. The term "Subcontractor" as used herein means the corporation, partnership, individual, or other entity which signs this Subcontract.
- e. The term "Contracting Officer" as used herein means the person assigned by the Administration to administer the Contractor's Prime Contract ~~47(29-2)-20~~ ^{FTG-C-08-0020} or his authorized representative acting within the limits of his authority.
- f. The term "Subcontract" as used herein shall include these general provisions, any special conditions, specifications, drawings, and other documents attached and made a part hereof.

ARTICLE 2 - DRAWINGS, DESIGNS, SPECIFICATIONS

- a. All drawings, sketches, designs, design data, specifications, notebooks, technical and scientific data, photographs, negatives, reports, findings, recommendations, data, and memoranda of every description relating thereto, as well as all copies of the foregoing relating to the ~~work~~ ^{DELETE} or any part thereof, shall be subject to inspection by the Contractor and the Administration at all reasonable times. The Subcontractor and its lower-tier subcontractors, vendors, and/or suppliers shall afford the Contractor and the Administration proper facilities for such inspection. The aforementioned items shall be the property of the Government, shall be useable by the Government for any purpose whatsoever without any claim ~~of~~ ^{DELETE} the part of the Subcontractor or lower-tier subcontractors for additional compensation, and shall be delivered to the Contractor, or otherwise disposed of by the Subcontractor or its lower-tier subcontractors and vendors as the Contractor may from time to time direct during the progress of the work or in any event as the Contractor or the Administration shall direct upon completion or termination of this Subcontract.
- b. Unless otherwise authorized by the Contractor or the Administration, the Subcontractor shall insert this Article, including ~~this~~ ^{DELETE} paragraph b, in all its subcontracts and purchase orders under this Subcontract. The terms

"Vendors" and "Purchase Orders" as used in this Article shall be deemed to include purchases only to the extent that such purchases involve special design or development for this Subcontract.

ARTICLE 3 - CHANGES

The Contractor may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this Subcontract, in the definition of services to be performed, and the time (i.e., hours of the day, days of the weeks, etc.) and place of performance thereof. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Subcontract, whether changed or not changed by any such order, an equitable adjustment shall be made in the Subcontract price or delivery schedule, or both, and the Subcontract shall be modified in writing accordingly. Any claim by the Subcontractor for adjustment under this Article must be asserted within 30 days from the date of receipt by the Subcontractor of the notification of change, PROVIDED, however, that the Contractor, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this Subcontract. Where the cost of property made obsolete or excess as a result of a change is included in the Subcontractor's claim for adjustment, the Contractor shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the Article of this Subcontract entitled "Disputes." However, nothing in this Article shall excuse the Subcontractor from proceeding with the Subcontract as changed.

ARTICLE 4 - CONDITIONS AFFECTING THE WORK

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

ARTICLE 5 - INSPECTION OF SERVICES

- a. All services (which term throughout this Article includes services performed, material furnished or utilized in the performance of services, and workmanship in the performance of services) shall be subject to inspection and test by the Contractor, to the extent practicable at all times and places during the term of the Subcontract. All inspections by the Contractor shall be made in such a manner as not to unduly delay the work.
- b. If any services performed hereunder are not in conformity with the requirements of this Subcontract, the Contractor shall have the right

to require the Subcontractor to perform the services again in conformity with the requirements of the Subcontract, at no additional increase in total Subcontract amount. When services to be performed are of such a nature that the defect cannot be corrected by reperformance of the services, the Contractor shall have the right to:

1. Require the Subcontractor to immediately take all necessary steps to ensure future performances of the services in conformity with the requirements of the subcontract; and
2. Reduce the subcontract price to reflect the reduced value of the services performed.

In the event the Subcontractor fails promptly to perform the services again or to take necessary steps to ensure future performance of the services in conformity with the requirements of the Subcontract, the Contractor shall have the right to either (1) by subcontract or otherwise have the services performed in conformity with the Subcontract requirements and charge to the Subcontractor any cost occasioned to the Contractor that is directly related to the performance of such services; or (2) terminate this Subcontract for default as provided in the Article of this Subcontract entitled "Default."

- c. The Subcontractor shall provide and maintain an inspection system acceptable to the Contractor covering the services to be performed hereunder. Records of all inspection work by the Subcontractor shall be kept complete and available to the Contractor during the term of this Subcontract and for such longer period as may be specified elsewhere in this Subcontract.

ARTICLE 6 - SUPERINTENDENCE BY SUBCONTRACTOR

The Subcontractor shall give its personal superintendence to the work or have a competent foreman or superintendent, satisfactory to the Contractor, on the work at all times during progress, with authority to act for the Subcontractor.

ARTICLE 7 - PERMITS

Except as otherwise directed by the Contractor, the Subcontractor shall procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under this Subcontract is performed.

ARTICLE 8 - OTHER SUBCONTRACTS

The Contractor may undertake or award other subcontracts for additional work, and the Subcontractor shall fully cooperate with such other subcontractors and the Contractor's employees and carefully fit its own work to such additional work as may be directed by the Contractor. The Subcontractor shall not commit or permit any act which will interfere with the performance of work by any other subcontractor or by the Contractor's employees, or other Administration-authorized personnel.

ARTICLE 9 - PATENT INDEMNITY

~~DELETE - NOT APPLICABLE~~

The Subcontractor agrees to indemnify the Contractor and the Government, its officers, agents, servants and employees against liability of any kind (including costs and expenses incurred) for the use of any invention or discovery and for the infringement of any Letters Patent (not including liability, arising pursuant to Section 183, Title 35 (1952) U.S. Code, prior to the issuance of Letters Patent) occurring in the performance of this Subcontract or arising by reason of the use or disposal by or for the account of the Contractor or the Government of items manufactured or supplied or construction performed under this Subcontract.

ARTICLE 10 - LIABILITY FOR DAMAGES

The Subcontractor shall be responsible for all injuries or damage to persons or property that occurs as a result of the fault or negligence of the Subcontractor, or its agents, servants, or employees in connection with the performance of the work under this Subcontract; shall be responsible for work performed until completion and final acceptance of the work; and shall protect, defend, indemnify, and hold harmless the Contractor and the Administration and its officers and employees from and against all claims or suits based upon any such injury or damage.

ARTICLE 11 - INSURANCE

- a. The Subcontractor shall maintain at its own expense the following insurance:
1. Workmen's Compensation and Employer's Liability to meet statutory liability limits in the jurisdiction wherein the work is to be performed.
 2. Comprehensive General Liability, Bodily Injury and Property Damage which shall include automobile coverages.
 3. Such other insurance which Contractor may require from time to time as will furnish reasonable protection against claims which may arise from operations under this Subcontract, whether such operations be by the Subcontractor or others whose services are engaged by the Subcontractor or anyone directly or indirectly employed by either of them.

The liability limits of all insurance required herein, except Workmen's Compensation and Employer's Liability shall be not less than \$100,000 Bodily Injury, any one accident per person and \$300,000 Bodily Injury aggregate per accident; and \$100,000 Property Damage any one accident or occurrence. Liability limits greater than the minimum amounts stated herein shall be provided by the Subcontractor as may be required by the Contractor to furnish reasonable protection based upon the scope of the work involved in the Subcontract.

- b. Certificates of Insurance evidencing that the requirements of this Article have been met shall be furnished to Contractor before work is commenced with respect to performance under this Subcontract. The insurance requirement pursuant to the provisions of this Article shall be in such form and for such periods of time as Contractor may require or approve, and with insurers approved by Contractor. Provisions shall be made for ten days advance written notice by mail to Contractor of change in or cancellation of such insurance.
- c. In the event the Subcontractor fails to furnish such certificates prior to the commencing of work or to continue to maintain such insurance during the performance of the Subcontract, Contractor shall have the right to withhold any payments or partial payments required to be made under this Subcontract; and shall have the right to continue withholding any or all of said payments so long as the Subcontractor has not complied with the requirements of this Article.
- d. On Subcontracts involving blasting or other hazardous operations, the Subcontractor insurance shall specifically state that all blasting or such other hazardous operations are fully covered.

ARTICLE 12 - INDEMNIFICATION, LIENS, AND CLAIMS

Subcontractor shall indemnify and save harmless the Contractor and the Administration from all claims, demands, causes of action, or suits of whatsoever nature arising out of the services, labor, and materials furnished by Subcontractor, or its lower-tier subcontractors, under this Subcontract.

Subcontractor shall immediately pay and discharge (or shall provide security sufficient and satisfactory in itself, to immediately pay and discharge), its laborers, materialmen, or other creditors, or those of its lower-tier subcontractors, for the payment of any obligation, or alleged obligation, it or any of its lower-tier subcontractors may have, in aid of the enforcement of which a lien or right of any kind is established, or is attempted to be established, upon or against the work or the real property upon which the work is situated.

The Contractor may, as a condition precedent to any payment under this Subcontract, require Subcontractor to submit complete waivers and releases of any and all claims of any person, firm, or corporation. Such releases must be submitted covering all such claims as a condition precedent to final payment.

ARTICLE 13 - DEFAULT

- a. The Contractor may, subject to the provisions of paragraph c below, by written notice of default to the Subcontractor, terminate the whole or any part of this Subcontract in any one of the following circumstances:
1. If the Subcontractor fails to ~~make delivery of the supplies~~ or to perform the services within the time specified herein or any extension thereof; or

2. If the Subcontractor fails to perform any of the other provisions of this Subcontract, or so fails to make progress as to endanger performance of this Subcontract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contractor may authorize in writing) after receipt of notice from the Contractor specifying such failure.
- b. In the event the Contractor terminates this Subcontract in whole or in part as provided in paragraph a of this Article, the Contractor may procure, upon such terms and in such manner as the Contractor may deem appropriate, supplies or services similar to those so terminated, and the Subcontractor shall be liable to the Contractor for any excess costs for such similar supplies or services: PROVIDED, that the Subcontractor shall continue the performance of this subcontract to the extent not terminated under the provisions of this Article.
- c. Except with respect to defaults of lower-tier subcontractors, the Subcontractor shall not be liable for any excess costs if the failure to perform the Subcontract arises out of causes beyond the control and without the fault or negligence of the Subcontractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor. If the failure to perform is caused by the default of a lower-tier subcontractor, and if such default arises out of causes beyond the control of both the Subcontractor and the lower-tier subcontractor, and without the fault or negligence of either of them, the Subcontractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the lower-tier subcontractor were obtainable from other sources in sufficient time to permit the Subcontractor to meet the required delivery schedule.
- d. If this Subcontract is terminated as provided in paragraph a of this Article, the Contractor, in addition to any other rights provided in this Article, may require the Subcontractor to transfer title and deliver to the Contractor, in the manner and to the extent directed by the Contractor: 1) any completed supplies; and 2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the Subcontractor has specifically produced or specifically acquired for the performance of such part of this Subcontract as has been terminated; and the Subcontractor shall, upon direction of the Contractor, protect and preserve property in possession of the Subcontractor in which the Contractor has an interest. Payment for completed supplies delivered to and accepted by the Contractor shall be at the Subcontract price. Payment for manufacturing materials delivered to and accepted by the Contractor and for the protection and preservation of property shall be in an amount agreed upon by the Subcontractor and Contractor; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the Article of this Subcontract entitled "Disputes." The Contractor may withhold from

amounts otherwise due the Subcontractor for such completed supplies or manufacturing materials such sum as the Contractor determines to be necessary to protect the Contractor against loss because of outstanding liens or claims of former lien holders.

- e. If, after notice of termination of this Subcontract under the provisions of this Article, it is determined for any reason that the Subcontractor was not in default under the provisions of this Article, or that the default was excusable under the provisions of this Article, the rights and obligations of the parties shall, if the Subcontract contains an Article providing for termination for convenience of the Contractor, be the same as if the notice of termination had been issued pursuant to such Article. If, after notice of termination of this Subcontract under the provisions of this Article, it is determined for any reason that the Subcontractor was not in default under the provisions of this Article, and if this Subcontract does not contain an Article providing for termination for convenience of the Contractor, the Subcontract shall be equitably adjusted to compensate for such termination and the Subcontract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the Article of this Subcontract entitled "Disputes."
- f. The rights and remedies of the Contractor provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Subcontract.
- g. As used in paragraph c. of this Article, the terms "Subcontractor" and "Subcontractors" mean Subcontractor(s) at any tier.

ARTICLE 14 - TERMINATION

- a. The performance of work under this Subcontract may be terminated, in whole or from time to time in part, by the Contractor in accordance with this Article. Termination of work hereunder shall be effected by delivery to the Subcontractor of a Notice of Termination specifying the extent to which performance of work under the Subcontract is terminated, and date upon which such termination becomes effective.
- b. After receipt of a Notice of Termination and except as otherwise directed by the Contractor, the Subcontractor shall:
 - 1. Stop work under the Subcontract on the date and to the extent specified in the Notice of Termination;
 - 2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portions of the work under the Subcontract as may not be terminated;
 - 3. Terminate all orders and subcontracts to the extent that they relate to the performance of any work terminated by the Notice of Termination;
 - 4. Assign to the Contractor, in the manner, and to the extent directed by the Contractor, all of the right, title, and interest of his Subcontractor under the orders or subcontracts so terminated;

5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts subject to the approval or ratification of the Contractor to the extent he may require, which approval or ratification shall be final for all the purposes of this Article;
 6. Transfer title and deliver to the Contractor in the manner, to the extent, and at the times directed by the Contractor: 1) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination; and 2) the completed or partially completed plans, drawings, information, and other property which, if the Subcontract had been completed, would be required to be furnished to the Contractor;
 7. Use his best efforts to sell, in the manner, to the extent, at the time, and at the price or prices directed or authorized by the Contractor, any property of the types referred to in 6 above: PROVIDED, however, that the Subcontractor: 1) shall not be required to extend credit to any purchaser; and 2) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contractor: AND PROVIDED FURTHER, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Contractor to the Subcontractor under this Subcontract or shall otherwise be credited to the price or cost of the work covered by this Subcontract or paid in such other manner as the Contractor may direct;
 8. Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and
 9. Take such action as may be necessary or as the Contractor may direct for protection and preservation of the property related to this Subcontract which is in the possession of the Subcontractor and in which the Contractor or the Government has or may acquire an interest.
- c. After receipt of a Notice of Termination, the Subcontractor shall submit to the Contractor his termination claim, in the form and with the certification prescribed by the Contractor. Such claim shall be submitted promptly but not later than six (6) months from the effective date of termination. Upon failure of the Subcontractor to submit his termination claim within the time allowed, the Contractor may determine, on the basis of information available to him, the amount, if any, due to the Subcontractor with respect to the termination and such determination shall be final. After the Contractor has made a determination under this paragraph, he shall pay the Subcontractor the amount so determined.
- d. Subject to the provisions of paragraph c, the Subcontractor and the Contractor may agree upon the whole or any part of the amount or amounts to be paid to the Subcontractor by reason of the total or partial termination of work pursuant to this Article, which amount or amounts may include a

reasonable allowance for profit on work done and the Contractor shall pay the agreed amount or amounts: PROVIDED, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Subcontract price as reduced by the amount of payments otherwise made and as further reduced by the Subcontract price of work not terminated. Nothing in paragraph e below prescribing the amount to be paid to the Subcontractor in the event of the failure of the Subcontractor and the Contractor to agree upon the whole amount to be paid to the Subcontractor by reason of the termination of work pursuant to this Article, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Subcontractor pursuant to this paragraph d.

- e. In the event of the failure of the Subcontractor and the Contractor to agree as provided in paragraph d upon the whole amount to be paid to the Subcontractor by reason of the termination of work pursuant to this Article, the Contractor, but without duplication of any amounts agreed upon in accordance with paragraph d, shall pay to the Subcontractor the following amounts:
1. For completed supplies accepted by the Contractor (or sold or acquired as provided in paragraph b 7 above) and not theretofore paid for, forthwith a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the Subcontract, appropriately adjusted for any saving of freight or other charges;
 2. In respect of the work terminated as permitted by this Article, the total (without duplication of any items) of:
 - (a) The cost of such work, including initial costs and preparatory expenses allocable thereto, exclusive of any costs attributable to supplies paid or to be paid for under 1 above; and
 - (b) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph b 5 above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under this Subcontract, which amount shall be included in the cost on account of which payment is made under (a) above; and
 - (c) A sum, as profit on (a) above, determined by the Contractor pursuant to paragraph 1-8.303 of the Federal Procurement Regulations (41 CFR 1-8.303), in effect as of the date of execution of this Subcontract, to be fair and reasonable: PROVIDED, However, that if it appears that the Subcontractor would have sustained a loss on the entire Subcontract had it been completed, no profit shall be included or allowed under this subdivision (c) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

3. The reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Subcontract and for the termination and settlement of lower-tier subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of the property allocable to this Subcontract.

The total sum to be paid to the Subcontractor under 1 and 2 above shall not exceed the total Subcontract price as reduced by the amount of payments otherwise made and as further reduced by the Subcontract price of work not terminated. Except for normal spoilage and except to the extent that the Contractor or the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Subcontractor under 1 and 2(a) above the fair value as determined by the Contractor of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Contractor or to a purchaser pursuant to paragraph b 7.

- f. The obligation of the Contractor to make any payments under this Article shall be subject to deductions with respect to: 1) all unliquidated advance or other payments on account theretofore made to the Subcontractor applicable to the terminated portion of this Subcontract; 2) any claim which the Contractor may have against the Subcontractor, in connection with this Subcontract; and 3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things retained by the Subcontractor or sold, and not otherwise recovered by or credited to the Contractor.
- g. If the termination hereunder be partial, prior to the settlement of the terminated portion of this Subcontract, the Subcontractor may file with the Contractor a request in writing that an equitable adjustment be made in the price or prices specified in the Subcontract for the work in connection with the continued portion not terminated by the Notice of Termination, and the appropriate equitable adjustment shall be made in such price or prices.
- h. The Contractor may, from time to time, under such terms and conditions as he may prescribe, make partial payments and payments on account against costs incurred by the Subcontractor with respect to the terminated portion of the Subcontract, whenever in the opinion of the Contractor the aggregate of such payments shall be within the amount to which the Subcontractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed upon or determined to be due under this Article, such excess shall be payable by the Subcontractor to the Contractor upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Subcontractor to the date on which such excess is repaid: PROVIDED, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Subcontractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contractor by reason of the circumstances.

- i. For the purpose of paragraphs c and e above, the amounts of the payments to be made by the Contractor to the Subcontractor shall be determined in conformity with the policies and principles set forth in Part 1-8 of the Federal Procurement Regulations (41 CFR 1-8), in effect at the date of this Subcontract. Unless otherwise provided for in this Subcontract, or by applicable statute, the Subcontractor for a period of three years after final settlement under the Subcontract shall make available to the Contractor and the Government at all reasonable times at the office of the Subcontractor all his books, records, documents, or other evidence bearing on the costs and expenses of the Subcontractor under the Subcontract and in respect of the termination of work hereunder or, to the extent approved by the Government, photographs, microphotographs, or other authentic reproductions thereof.

ARTICLE 15 - DISPUTES

- a. Except as otherwise provided in this Subcontract, any dispute concerning a question of fact arising under this Subcontract which is not disposed of by agreement shall be decided by the Administration's Contracting Officer for the Prime Contractor's Contract AT(29-2)-20, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor and Subcontractor. The decision of the Contracting Officer shall be final and conclusive unless within 30 days from the date of receipt of such copy the Subcontractor mails or otherwise furnishes to the Contractor 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 Article, the Subcontractor 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 Subcontractor shall proceed diligently with the performance of the Subcontract and in accordance with the Contractor's decision.
- b. This "Disputes" Article does not preclude consideration of law questions in connection with decisions provided for in paragraph a above: PROVIDED, that nothing in this Subcontract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

ARTICLE 16 - PAYMENT TO SUBCONTRACTORS

- a. All payments to the Subcontractor will ~~be~~ made on a submitted invoice basis.
- b. The Contractor may make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contractor, on estimates approved by the Contractor.
- c. Upon completion and acceptance of all work, the amount due the Subcontractor under this Subcontract shall be paid ~~upon~~ the presentation of a properly

executed voucher, and after the Subcontractor shall have furnished the Contractor with a release of all claims against the Contractor arising by virtue of this Subcontract, other than claims in stated amounts as may be specifically excepted by the Subcontractor from the operation of the release.

If the Subcontractor's claim to amounts payable under the Subcontract has been assigned under the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), a release may also be required of the Subcontractor's assignee.

ARTICLE 17 - SUSPENSION OF WORK

- a. The Contractor may order the Subcontractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the Contractor or the Government.
- b. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Contractor in the administration of this Subcontract, or by his failure to act within the time specified in this Subcontract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this Subcontract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the Subcontract modified in writing accordingly. However, no adjustment shall be made under this Article for any suspension, delay, or interruption to the extent: 1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Subcontractor; or 2) for which an equitable adjustment is provided for or excluded under any other provision of this Subcontract.
- c. No claim under this Article shall be allowed: 1) for any costs incurred more than 20 days before the Subcontractor shall have notified the Contractor in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and 2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the Subcontract.

ARTICLE 18 - RENEGOTIATION

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

- a. This Subcontract is subject to the Renegotiation Act of 1951 (50 U.S.C. App. 1211 et seq.), as amended, and to any subsequent act of Congress providing for the renegotiation of subcontracts. Nothing contained in this Article shall impose any renegotiation obligation with respect to this Subcontract or any lower-tier subcontract hereunder which is not imposed by an act of Congress heretofore or hereafter enacted. Subject to the foregoing, this Subcontract shall be deemed to contain all the provisions

required by Section 104 of the Renegotiation Act of 1951, and by any such other act, without subsequent subcontract amendment specifically incorporating such provisions.

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

ARTICLE 19 - ASSIGNMENT OF CLAIMS

- a. Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15) if this Subcontract provides for payments aggregating \$1,000 or more, claims for monies due or to become due the Subcontractor from the Contractor under this Subcontract 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 Subcontract and not already paid and shall not be made to more than one party, except that 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 Subcontract, payments to assignee of any monies due or to become due under this Subcontract shall not, to the extent provided in said Act, as amended, be subject to reduction or setoff.
- b. In no event shall copies of this Subcontract or of any plans, specifications or other similar documents relating to work under this Subcontract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this Subcontract or any other person not entitled to receive the same; PROVIDED, that a copy of any part or all of this Subcontract so marked may be furnished or any information contained therein may be disclosed to such assignee upon the prior written authorization of the Administration.

ARTICLE 20 - FEDERAL, STATE, AND LOCAL TAXES

- a. Except as may be otherwise provided in this Subcontract, the Subcontract price includes all applicable federal, state, and local taxes and duties.
- b. Nevertheless, with respect to any Federal Excise Tax or duty on the transactions or property covered by this Subcontract, if a statute, court decision, written ruling, or regulation takes effect after the Subcontract date, and:
 1. Results in the Subcontractor 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 Subcontract price shall be increased by the amount of such tax or duty or rate increase: PROVIDED, that the Subcontractor, if requested by the Contractor, warrants in writing that no amount for such newly imposed Federal Excise Tax or duty or rate increase was included in the Subcontract price as a contingency reserve or otherwise; or

2. Results in the Subcontractor not being required to pay or bear the burden of, or in its 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 Subcontract price, the Subcontract price shall be decreased by the amount of the relief, refund, or drawback, or that amount shall be paid to the Contractor, as directed by the Contractor. The Subcontract price shall be similarly decreased if the Subcontractor, through its fault or negligence or its failure to follow instructions of the 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 adjustment pursuant to paragraph b above will be made under this Subcontract unless the aggregate amount thereof is or may reasonably be expected to be over \$100.
- d. As used in paragraph b above, the term "Subcontract date" means the date set for the bid opening, or if this is a negotiated Subcontract, the date of this Subcontract. As to additional supplies or services procured by modification to this Subcontract, the term "Subcontract date" means the date of such modification.
- e. Unless there does not exist any reasonable basis to sustain an exemption, the Contractor, upon request of the Subcontractor, without further liability, agrees, except as otherwise provided in this Subcontract, to furnish evidence appropriate to establish exemption from any tax which the Subcontractor warrants in writing was excluded from the Subcontract price. In addition, the Contractor may furnish evidence to establish exemption from any tax that may, pursuant to this Article, give rise to either an increase or decrease in the Subcontract price. Except as otherwise provided in this Subcontract, evidence appropriate to establish exemption from duties will be furnished only at the discretion of the Contractor.
- f. The Subcontractor shall promptly notify the Contractor of matters which will result in either an increase or decrease in the Subcontract price, and shall take action with respect thereto as directed by the Contractor.

ARTICLE 21 - EXAMINATION OF RECORDS BY COMPTROLLER GENERAL

- a. This Article is applicable if the amount of this Subcontract exceeds \$2,500 and was entered into by means of negotiation, including small business restricted advertising, but is not applicable if this Subcontract was entered into by means of formal advertising.
- b. The Subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under this Subcontract or such lesser time specified in either Appendix M of the Armed Services Procurement Regulation or the Federal Procurement Regulations Part 1-20, as appropriate, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Subcontractor involving transactions related to this Subcontract.

- c. The Subcontractor further agrees to include in all his lower-tier subcontracts hereunder a provision to the effect that the lower-tier subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under the Subcontract or such lesser time specified in either Appendix M of the Armed Services Procurement Regulation or the Federal Procurement Regulations Part 1-20, as appropriate, have access to and the right to examine any directly pertinent books, documents, papers, and records of such lower-tier subcontractor, involving transactions related to the Subcontract. The term "subcontract" as used in this Article excludes: 1) purchase orders not exceeding \$2,500; and 2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.
- d. The periods of access and examination described in b and c above, for records which relate to: 1) appeals under the "Disputes" Article of this Subcontract; 2) litigation or the settlement of claims arising out of the performance of this Subcontract; or 3) costs and expenses of this Subcontract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

ARTICLE 22 - PRIORITIES, ALLOCATIONS, AND ALLOTMENTS

The Subcontractor shall follow the provisions of DMS Regulation 1 and all other applicable regulations and orders of the Bureau of Domestic Commerce, Department of Commerce, in obtaining controlled materials and other products and materials needed to fill this Subcontract.

ARTICLE 23 - PROPERTY

- a. The performance schedules set forth in this Subcontract are based upon the expectation that any Government-furnished property referred to in the Specifications of this Subcontract will be delivered on or before the date it is reasonably required. In the event that such Government-furnished property is not delivered to the Subcontractor by such time, the Contractor shall, if requested by the Subcontractor, determine if any delay has been occasioned the Subcontractor thereby, and if so shall grant a reasonable extension of time for completion of performance. The Contractor shall not be liable to the Subcontractor for damages or loss of profit by reasons of any delay in delivery of said Government-furnished property, except that in case of such delay, upon written request of the Subcontractor, an equitable adjustment shall be made in the performance schedule of this Subcontract, or price, or both, and in other contractual provisions affected thereby, in accordance with the procedures provided for in the Article entitled "Changes."
- b. Title to all Government-furnished property shall remain in the Government. Title thereto shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall any such property, or any part thereof, be or become a fixture or lose its identity

as personalty by reason of affixation to any realty. The Subcontractor shall maintain adequate property control records of such property consistent with good business practice and as may be prescribed by the Contractor; and shall cause all such property to be clearly marked (if not so marked) to show that it is property of the Government.

- c. Government-furnished property shall be used only for the performance of this Subcontract.
- d. The Subcontractor shall, in accordance with sound industrial practice and without additional cost to the Contractor or the Government, maintain in operating condition, repair, protect, and preserve such Government-furnished property until disposed of by the Subcontractor in accordance with this Article. Should any replacement of any such property become necessary during the term of this Subcontract other than by reason of the negligence or fault of the Subcontractor, the same shall be made by the Subcontractor at the direction of the Contractor and for the account of the Administration and the title thereto shall vest in the Government and any delay occasioned thereby shall be considered an excusable delay under this Subcontract.
- e. Unless otherwise provided in this Subcontract, the Subcontractor assumes the risk of and shall be responsible for any loss of or damage to Government-furnished property in its possession, except for reasonable wear and tear and except to the extent that such property is consumed in the performance of this Subcontract.
- f. The Contractor and the Government shall at all times have access to the premises wherein any Government-furnished property is located.
- g. Upon the completion of this Subcontract, the Subcontractor shall submit, in a form acceptable to the Contractor, inventory schedules covering all items of Government-furnished property not consumed in the performance of this Subcontract (including any resulting scrap), or not theretofore delivered to the Contractor, and shall hold the same at no charge to the Contractor or the Administration for a period of sixty days, unless the period of time is extended by mutual agreement. At the expiration of such period or upon the Contractor's earlier order the Subcontractor shall dismantle, prepare for shipment and shall store or deliver said property to the Contractor on cars or trucks at Subcontractor's plant at the expense of the Contractor, or make such other disposal of said property as may be directed by the Contractor. The net proceeds of any such disposal shall be credited to the Subcontract price or shall be paid over as the Contractor may direct.

ARTICLE 24 - SECURITY

- a. Subcontractor's duty to safeguard Restricted Data, Formerly Restricted Data, and other classified information. The Subcontractor shall, in accordance with the Energy Research and Development Administration's security regulations and requirements, be responsible for safeguarding Restricted Data, Formerly Restricted Data, and other classified information and protecting against sabotage, espionage, loss and theft, the classified documents and

material in the Subcontractor's possession in connection with the performance of work under this Subcontract. Except as otherwise expressly provided in this Subcontract, the Subcontractor shall, upon completion or termination of this Subcontract, transmit to the Contractor any classified matter in the possession of the Subcontractor or any person under the Subcontractor's control in connection with performance of this Subcontract. If retention by the Subcontractor of any classified matter is required after the completion or termination of the Subcontract and such retention is approved by the Contractor, the Subcontractor will complete a certificate of possession to be furnished to the Energy Research and Development Administration or the Contractor specifying the classified matter to be retained. The certification shall identify the items and types or categories of matter retained, the conditions governing the retention of the matter and the period of retention, if known. If retention is approved by the Contractor or the Energy Research and Development Administration, the security provisions of the Subcontract will continue to be applicable to the matter retained.

- b. Regulations. The Subcontractor agrees to conform to all security regulations and requirements of the Administration and the Contractor.
- c. Definition of Restricted Data. The term "Restricted Data," as used in this Article means all data concerning: 1) design, manufacture, or utilization of atomic weapons; 2) the production of special nuclear material; or 3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954.
- d. Definition of Formerly Restricted Data. The term "Formerly Restricted Data," as used in this Article means all data removed from the Restricted Data category under Section 142 d of the Atomic Energy Act of 1954, as amended.
- e. Security clearance of personnel. The Subcontractor shall not permit any individual to have access to Restricted Data, Formerly Restricted Data, or other classified information, except in accordance with the Atomic Energy Act of 1954, as amended, and the Administration's regulations or requirements applicable to the particular type or category of classified information to which access is required.
- f. Criminal liability. It is understood that disclosure of Restricted Data, Formerly Restricted Data, or other classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any Restricted Data, Formerly Restricted Data, or any other classified matter that may come to the Subcontractor or any person under the Subcontractor's control in connection with work under this Subcontract, may subject the Subcontractor, its agents, employees, or lower-tier subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. Sections 793 and 794; and Executive Order 11652, as amended.)
- g. Subcontracts and purchase orders. Except as otherwise authorized in writing by the Contractor, the Subcontractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this Subcontract.

ARTICLE 25 - CLASSIFICATION

In the performance of the work under this Subcontract, the Subcontractor shall assign classifications to all documents, material, and equipment originated or generated by the Subcontractor in accordance with classification guidance furnished to the Subcontractor by the Contractor. Every subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material, or equipment shall include a provision to the effect that in the performance of such subcontract or purchase order, the Subcontractor, its lower-tier subcontractor or supplier, shall assign classifications to all such documents, material, and equipment in accordance with classification guidance furnished to such subcontractor or supplier by the Subcontractor.

ARTICLE 26 - LABOR

- a. Contract Work Hours and Safety Standards Act--Overtime Compensation. This Subcontract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.
 1. Overtime Requirements. No Subcontractor or lower-tier subcontractor contracting for any part of the Subcontract work which may require or involve the employment of laborers, mechanics, apprentices, trainees, watchmen, and guards shall require or permit any laborer, mechanic, apprentice, trainee, watchman, or guard in any workweek in which he is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer, mechanic, apprentice, trainee, watchman, or guard receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is the greater number of overtime hours.
 2. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the provisions of paragraph 1, the Subcontractor and any lower-tier subcontractor responsible therefor, shall be liable to any affected employee for its unpaid wages. In addition, such Subcontractor and lower-tier subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, apprentice, trainee, watchman, or guard employed in violation of the provisions of paragraph 1 in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph 1.

3. Withholding for Unpaid Wages and Liquidated Damages. The Contractor may withhold from the Subcontractor, from any monies payable on account of work performed by the Subcontractor or lower-tier subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Subcontractor or lower-tier subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph 2.
 4. Subcontracts. The Subcontractor shall insert paragraphs 1 through 4 of this Article in all Subcontracts, and shall require their inclusion in all subcontracts of any tier.
 5. Records. The Subcontractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three years from the completion of the Subcontract.
- b. Equal Opportunity. (The following Article is applicable unless this Subcontract is exempt under the rules, regulations and relevant orders of the Secretary of Labor (41 CFR, Ch. 60).)

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

1. The Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Subcontractor will take affirmative action to ensure that applicants are employed and that employees are treated during 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 Subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices, to be provided by the Contractor, setting forth the provisions of this Equal Opportunity Article.
2. The Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The Subcontractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contractor, advising the labor union or workers' representative of the Subcontractor's commitments under this Equal Opportunity Article, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Subcontractor 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 Subcontractor 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 its books, records, and accounts by the Contractor, the Administration, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 6. In the event of the Subcontractor's noncompliance with the Equal Opportunity Article of this Subcontract or with any of the said rules, regulations, or orders, this Subcontract may be cancelled, terminated, or suspended, in whole or in part, and the Subcontractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 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 Subcontractor will include the provisions of paragraphs 1 through 7 in every lower-tier subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of the Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each lower-tier subcontractor or vendor. The Subcontractor will take such action with respect to any lower-tier subcontract or purchase order as the Contractor may direct as a means of enforcing such provisions, including sanctions for non-compliance; PROVIDED, HOWEVER, that in the event the Subcontractor becomes involved in, or is threatened with, litigation with a lower-tier subcontractor or vendor as a result of such direction by the Contractor, the Subcontractor may request the United States to enter into such litigation to protect the interests of the United States.
- c. Convict Labor. In connection with the performance of work under this Subcontract, the Subcontractor agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082(c)(2)), and Executive Order 11755, December 29, 1973.
 - d. Service Contract Act of 1965, As Amended. This Subcontract, to the extent that it is of the character to which the Service Contract Act of 1965 (79 Stat. 1034, 41 U.S.C. 351) applies, is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor thereunder.
 1. Compensation. Each service employee employed in the performance of this Subcontract by the Subcontractor or any lower-tier subcontractor shall be paid not less than the minimum monetary wage and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or his authorized

representative, as specified in any attachment to this Subcontract. If there is such an attachment, any class of service employees which is not listed therein, but which is to be employed under this Subcontract, shall be classified by the Subcontractor so as to provide a reasonable relationship between such classifications and those listed in the attachment, and shall be paid such monetary wages and furnished such fringe benefits as are determined by agreement of the interested parties, who shall be deemed to be the Contractor, the Subcontractor, and the employees who will perform on the Subcontract or their representatives. If the interested parties do not agree on a classification or reclassification which is, in fact, conformable, the Contractor shall submit the question, together with his recommendation, to the Office of Special Wage Standards, Employment Standards Administration (ESA), of the Department of Labor for final determination. Failure to pay such employees the compensation agreed upon by the interested parties or finally determined by the Administrator or his authorized representative shall be a violation of this Subcontract. No employee engaged in performing work on this Subcontract shall in any event be paid less than the minimum wage specified under Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

2. Adjustment. If, as authorized pursuant to Section 4(d) of the Service Contract Act of 1965, as amended, the term of this Subcontract is more than one year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after one year and not less often than once every two years, pursuant to wage determinations to be issued by the Employment Standards Administration of the Department of Labor as provided in such Act.
3. Obligation to Furnish Prime Benefits. The Subcontractor or lower-tier subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in 29 CFR Part 4, Subparts B and C, and not otherwise.
4. Minimum Wage. In the absence of a minimum wage attachment for this Subcontract, neither the Subcontractor nor any lower-tier subcontractor under this Subcontract shall pay any of his employees performing work under the Subcontract (regardless of whether they are service employees) less than the minimum wage specified by Section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this provision shall relieve the Subcontractor or any lower-tier subcontractor of any other obligation under law or subcontract for the payment of a higher wage to any employee.
5. Obligations Attributable to Predecessor Subcontracts. If this Subcontract succeeds a subcontract, subject to the Service Contract Act 1965, as amended, under which substantially the same services were furnished and service employees were paid wages and fringe benefits

provided for in a collective bargaining agreement, then in the absence of a minimum wage attachment for this Subcontract, neither the Subcontractor nor any lower-tier subcontractor under this Subcontract shall pay any service employee performing any of the Subcontract work less than the wages and fringe benefits, provided for in such collective bargaining agreements, to which such employee would be entitled if employed under the predecessor subcontract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Subcontractor or lower-tier subcontractor under this Subcontract may be relieved of the foregoing obligation unless the Secretary of Labor or his authorized representative determines that the collective bargaining agreement applicable to service employees employed under the predecessor subcontract was not entered into as a result of arm-length negotiations, or finds, after a hearing as provided in Department of Labor regulations, 29 CFR 4.10, that the wages and fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality.

6. Notification to Employees. The Subcontractor and any lower-tier subcontractor under this Subcontract shall notify each service employee commencing work on this Subcontract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this Subcontract, or shall post a notice of such wages and benefits in a prominent and accessible place at the worksite, using such poster as may be provided by the Department of Labor.
7. Safe and Sanitary Working Conditions. The Subcontractor or lower-tier subcontractor shall not permit any part of the services called for by this Subcontract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Subcontractor or lower-tier subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the Subcontractor or lower-tier subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.
8. Records. The Subcontractor and each lower-tier subcontractor performing work subject to the Act shall make and maintain for three years from the completion of the work records containing the information specified in subparagraphs (a) through (e) of this paragraph for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Employment Standards Administration of the U.S. Department of Labor.
 - (a) His name and address.
 - (b) His work classification or classifications, rate or rates of monetary wages and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation.

- (c) His daily and weekly hours so worked.
- (d) Any deductions, rebates, or refunds from his total daily or weekly compensation.
- (e) A list of monetary wages and fringe benefits for those classes of service employees not included in the minimum wage attachment to this Subcontract, but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or his authorized representative pursuant to the Labor Standards clause in paragraph a of this Article. A copy of the report required in paragraph 13(a) of this Article shall be deemed to be such a list.

- 9. Withholding of Payment and Termination of Subcontract. The Contractor shall withhold or cause to be withheld from the Subcontractor under this or any other subcontract with the Contractor such sums as he, or an appropriate officer of the Department of Labor, decides may be necessary to pay underpaid employees. Additionally, any failure to comply with the requirements of this clause relating to the Service Contract Act of 1965 may be grounds for termination of the right to proceed with the Subcontract work. In such event, the Contractor may enter into other subcontracts or arrangements for completion of the work, charging the Subcontractor in default with any additional cost.
- 10. Lower-Tier Subcontractors. The Subcontractor agrees to insert this clause relating to the Service Contract Act of 1965 in all lower-tier subcontracts. The term "Subcontractor" as used in this clause in any lower-tier subcontract shall be deemed to refer to the lower-tier subcontractor.
- 11. Service Employee. As used in this clause relating to the Service Contract Act of 1965, the term "service employee" means guards, watchmen, and any person engaged in a recognized trade or craft, or other skilled mechanical craft, or in unskilled, semiskilled, or skilled manual labor occupations; and any other employee, including a foreman or supervisor in a position having trade, craft, or laboring experience as the paramount requirement; and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or Subcontractor and such persons.
- 12. Comparable Rates. The following classes of service employees expected to be employed under the Subcontract with the Government would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C. 5341 and would, if so employed, be paid not less than the following rates of wages and fringe benefits:

Employee class.	(
	(See Attached Schedule
Monetary Wage--Fringe Benefits.	(



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13. Subcontractor's Report. (a) If there is a wage determination attachment to this Subcontract and one or more classes of service employees which are not listed thereon are to be employed under the Subcontract the Subcontractor shall report to the Contractor the monetary wages to be paid and the fringe benefits to be provided each such class of service employee. Such report shall be made promptly as soon as such compensation has been determined, as provided in paragraph 1 of this Article.
- (b) If wages to be paid or fringe benefits to be furnished any service employees employed by the Subcontractor or any lower-tier subcontractor under the Subcontract are provided for in a collective bargaining agreement which is or will be effective during any period in which the Subcontract is being performed, the Subcontractor shall report such fact to the Contractor, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the Subcontract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the Subcontract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of subcontract performance, such agreements shall be reported promptly after negotiation thereof.
14. Exemptions. This clause relating to the Service Contract Act of 1965 shall not apply to the following:
- (a) Any subcontract for construction, alteration, and/or repair, including painting and decorating of public buildings or public works.
- (b) Any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act (49 Stat. 2036).
- (c) Any subcontract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line, or oil or gas pipeline where published tariff rates are in effect, or where such carriage is subject to rates covered by Section 22 of the Interstate Commerce Act.
- (d) Any subcontract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934.
- (e) Any subcontract for public utility services, including electric light and power, water, steam, and gas.
- (f) Any employment subcontract providing for direct services to the Contractor by an individual or individuals.
- (g) Any services to be furnished outside the United States. For geographic purposes, the "United States" is defined in Section 8(d)

of the Service Contract Act to include any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands, as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, and Johnston Island. It does not include any other territory under the jurisdiction of the United States or any United States base or possession within a foreign country.

15. Special Employees. Notwithstanding any of the provisions in paragraphs 2 through 12 of this Article, relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to Section 4(b) of the Act prior to its amendment by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:
- (a) (1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by Section 2(a)(1) or 2(b)(1) of the Service Contract Act of 1965, without diminishing any fringe benefits or cash payments in lieu thereof required under Section 2(a)(2) of that Act, in accordance with the procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under Section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator.
 - (2) The Administrator will issue certificates under the Service Contract Act of 1965 for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).
 - (3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.
- (b) An employee engaged in an occupation in which he customarily and regularly receives more than \$20 a month in tips may have the amount of his tips credited by his employer against the minimum wage required by Section 2(a)(1) or Section 2(b)(1) of the Act, in accordance with the regulations in 29 CFR Part 531: PROVIDED, however, that the amount of such credit may not exceed \$1 per hour effective May 1, 1974, \$1.05 per hour effective January 1, 1975, and \$1.15 per hour after December 31, 1975.

- e. Workmen's Compensation Insurance (Defense Base Act). The Subcontractor, before commencing performance under this Subcontract, shall provide and thereafter maintain such Workmen's Compensation Insurance or security as is required by the Defense Base Act, as amended (42 U.S.C. 1651 et seq.). The Subcontractor further agrees to insert in all lower-tier subcontracts hereunder to which the Defense Base Act is applicable, an Article similar to this Article, including this sentence, imposing on all such subcontractors a like requirement to comply with the Defense Base Act.

ARTICLE 27 - NOTICE OF LABOR DISPUTES

Whenever an actual or potential labor dispute is delaying or threatens to delay the performance of the work, the Subcontractor shall immediately notify the Contractor in writing. Such notice shall include all relevant information concerning the dispute and its background.

ARTICLE 28 - LABOR UNION AGREEMENTS

The Subcontractor shall comply with all the terms and conditions, except those contrary to any applicable state or federal law, contained in any agreement between the Contractor and an international or local labor union which is applicable to work included in this Subcontract. The Contractor's labor agreements with international and local labor unions are not applicable to construction performed outside the territorial limits of any of the fifty states of the United States. A breach of this Article by the Subcontractor shall be sufficient reason for the Contractor to terminate this Subcontract for default or take other action, as provided under the Article herein entitled "Default." The Subcontractor shall insert this Article in each of its subcontracts.

ARTICLE 29 - COVENANT AGAINST CONTINGENT FEES

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

ARTICLE 30 - OFFICIALS NOT TO BENEFIT

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

ARTICLE 31 - BUY AMERICAN ACT

- a. In acquiring end products, the Buy American Act (41 U.S. Code 10a-d) provides that the Government give preference to domestic source end products. For the purpose of this Article:

1. "Components" means those articles, materials, and supplies which are directly incorporated in the end products;
 2. "End products" means those articles, materials, and supplies which are to be acquired under this Subcontract for public use; and
 3. A "domestic source end product" means: (A) an unmanufactured end product which has been mined or produced in the United States; and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For the purposes of this a3(B), components of foreign origin of the same type or kind as the products referred to in b2 or 3 of this Article shall be treated as components mined, produced, or manufactured in the United States.
- b. The Subcontractor agrees that there will be used under this Subcontract (by the Subcontractor, lower-tier subcontractors, materialmen, and suppliers) only domestic source end products, except end products:
1. Which are for use outside the United States;
 2. Which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;
 3. As to which the Administration determines the domestic preference to be inconsistent with the public interest; or
 4. As to which the Administration determines the cost to the Government to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order 10582, dated December 17, 1954.)

ARTICLE 32 - 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 Subcontractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Subcontractor finds to be consistent with the efficient performance of this Subcontract.

ARTICLE 33 - UTILIZATION OF LABOR SURPLUS AREA CONCERNS

(The following Article is applicable if this Subcontract exceeds \$5,000.)

- a. It is the policy of the Contractor and the Government to award subcontracts to labor surplus area concerns that:

1. Have been certified by the Secretary of Labor (hereafter referred to as certified-eligible concerns with first or second preferences) regarding the employment of a proportionate number of disadvantaged individuals and have agreed to perform substantially: 1) in or near sections of concentrated unemployment or underemployment or in persistent or substantial labor surplus areas; or 2) in other areas of the United States respectively, or;
 2. Are noncertified concerns which have agreed to perform substantially in persistent or substantial labor surplus areas, where this can be done consistent with the efficient performance of the Subcontract and at prices no higher than are obtainable elsewhere. The Subcontractor agrees to use his best efforts to place his lower-tier subcontracts in accordance with this policy.
- b. In complying with paragraph a of this Article and with paragraph b of the Article of this Subcontract entitled "Utilization of Small Business Concerns," the Subcontractor in placing his lower-tier 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 area concerns.

ARTICLE 34 - ASSIGNMENT, SUBLETTING, OR SUBCONTRACTING

Neither this Subcontract nor any interest therein or claim thereunder shall be assigned, subcontracted, or transferred by the Subcontractor except as expressly authorized in writing by the Contractor. Any attempted assignment, subcontract, or transfer by the Subcontractor without such written authorization shall be void.

ARTICLE 35 - RELEASE OF INFORMATION

The Subcontractor shall submit for review and approval and secure the written release of the Contractor prior to publication or release of any information concerning this Subcontract or the work covered herein.

ARTICLE 36 - WAIVER OF DELIVERY SCHEDULE

None of the following shall be regarded as an extension, waiver or abandonment of the delivery schedule or a waiver of the Contractor's right to terminate for default: 1) Delay by the Contractor in default terminating; 2) Acceptance of delinquent deliveries; and 3) Acceptance or approval of samples submitted either: a) after a delivery default; or b) in insufficient time for Subcontractor to meet a delivery schedule.

Any Contractor: 1) assistance to Subcontractor, or 2) acceptance of delinquent goods or services, will be solely for the purpose of minimizing damages and is not to be interpreted as: a) a Contractor's intention to condone any delinquency or b) a waiver of any rights the Contractor or the Administration may have under this Subcontract.

ARTICLE 37 - UTILIZATION OF MINORITY BUSINESS ENTERPRISES

The following Article shall be applicable in the event this Subcontract exceeds \$5,000:

- 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 Subcontractor agrees to use his best efforts to carry out this policy in the award of his lower-tier subcontracts to the fullest extent consistent with the efficient performance of this Subcontract. As used in this Subcontract, the term "minority business enterprise" means a business, at least 50 percent of which is owned by minority group members or, in the 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. Subcontractors may rely on written representations by subcontractors regarding their status as minority business enterprises in lieu of an independent investigation.

ARTICLE 38 - LISTING OF EMPLOYMENT OPENINGS ~~DELETE NOT APPLICABLE~~

This Article is applicable pursuant to 41 CFR 50-250 if this Subcontract is for \$2,500 or more.

- a. The Subcontractor 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 Subcontractor which exist at the time of the execution of this Subcontract and those which occur during the performance of this Subcontract, including those not generated by this Subcontract and including those occurring at an establishment other than the one wherein the Subcontract 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 Subcontract is for less than \$10,000 or if it is with a state or local government the reports set forth in paragraphs c and d are not required.

~~DELETE-NOT APPLICABLE~~

- b. Listing of employment openings with the employment service system pursuant to this Article 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 bona fide 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 Subcontractor from any requirements in any statutes, executive orders, or regulations regarding nondiscrimination in employment.
- c. The reports required by paragraph a of this Article shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the Subcontractor 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 Subcontractor shall submit a report within 30 days after the end of each reporting period wherein any performance is made under this Subcontract. The Subcontractor shall maintain copies of the reports submitted until the expiration of one year after final payment under the Subcontract; during which time they shall be made available, upon request, for examination by any authorized representatives of the Contractor, the Administration, or of the Secretary of Labor.
- d. Whenever the Subcontractor becomes contractually bound by the listing provisions of this Article, 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 Subcontractor 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 Subcontractor may advise the state system when it is no longer bound by this Subcontract Article.
- e. This Article does not apply to the listing of employment openings which occur and are filled outside of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.
- f. This Article does not apply to openings which the Subcontractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer-union arrangement for that opening.

DELETED

g. As used in this Article:

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 three 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 office of the federal-state national system of public employment offices with assigned responsibility for serving the area of the establishment where the employment opening is to be filled, including the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.
3. "Openings which the Subcontractor proposes to fill from within his own organization" means employment openings for which no consideration will be given to persons outside the contractor's own organization (including any affiliates, subsidiaries, and parent companies), and includes any openings which the Subcontractor proposes to fill from regularly established "recall" or "rehire" lists.
4. "Openings which the Subcontractor 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 Subcontractor proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the Subcontractor and representatives of his employees.
5. "Disabled veteran" means a person entitled to disability compensation under laws administered by the Veterans Administration for a disability rated at 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 (b) 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 Subcontractor (or any first-tier sub-subcontractor) has failed or refuses



to comply with the provisions of this Subcontract Article 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 there 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 Subcontract and the laws and regulations applicable thereto.

- i. The Subcontractor agrees to place this Article (excluding this paragraph i) in any lower-tier subcontract directly under this Subcontract.

ARTICLE 39 - PRICING OF ADJUSTMENTS

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

ARTICLE 40 - PAYMENT OF INTEREST ON SUBCONTRACTORS' CLAIMS

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

ARTICLE 41 - EMPLOYMENT OF THE HANDICAPPED

(This Article applies to all nonexempt subcontracts which exceed \$2,500 as follows: (1) Part A applies to subcontracts which provide for performance in less than 90 days, (2) Parts A and B apply to subcontracts



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

PART A

DELETE-NOT APPLICABLE

- a. The Subcontractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Subcontractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b. The Subcontractor agrees that, if a handicapped individual files a complaint with the Subcontractor 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 three years the record regarding the complaint and the actions taken.
- c. The Subcontractor 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 Subcontractor 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 Subcontractor's noncompliance with the requirements of this Article, the Subcontract may be terminated or suspended in whole or in part.
- f. This Article shall be included in all lower-tier subcontracts over \$2,500.

PART B

DELETE-NOT APPLICABLE

- g. The Subcontractor 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 P.L. 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.

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- h. The Subcontractor agrees to permit the examination by the Contractor, the Administration, 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 Subcontractor 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 Contractor stating Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment and the rights and remedies available.
 - j. The Subcontractor will notify each labor union or representative of workers with which he has a collective bargaining agreement or other contract 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 Subcontractor 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 Subcontractor agrees to submit a summary report to the Assistant Secretary for Employment Standards, by March 31 of each year during performance of the Subcontract, 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.

ARTICLE 42 - ACCOUNTS, RECORDS, AND INSPECTION

If, under the terms of this Subcontract, the Subcontractor's costs incurred are a factor in determining the amount payable by the Contractor to the Subcontractor, the following clauses are applicable:

- a. Accounts. The Subcontractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting all allowable costs incurred, revenues or other applicable credits, fixed-fee accruals, and the receipt, use, and disposition of all Government property coming into the possession of the Subcontractor under this Subcontract. The system of accounts employed by the Subcontractor shall be satisfactory to the Contractor and the Administration and in accordance with generally accepted accounting principles consistently applied.
- b. Inspection and Audit of Accounts and Records. All books of account and records relating to this Subcontract shall be subject to inspection and audit by the Contractor and Administration at all reasonable times, before

and during the period of retention provided for in d below and the Subcontractor shall afford the Contractor and Administration proper facilities for such inspection and audit.

- c. Audit of Lower-Tier Subcontractor's Records. The Subcontractor also agrees, with respect to any lower-tier subcontracts (including lump-sum or unit-price subcontracts or purchase orders) where, under the terms of the Subcontract, costs incurred are a factor in determining the amount payable to the lower-tier subcontractor, to conduct an audit of the costs of the lower-tier subcontractor in a manner satisfactory to the Contractor or to have the audit conducted by the next higher-tier subcontractor in a manner satisfactory to the Subcontractor, Contractor, and the Administration, except when the Administration elects to waive such audit or approves other arrangements for the conduct of the audit.
- d. Disposition of Records. Except as agreed by the Government and the Subcontractor, all financial and cost reports, books of account and supporting documents, and other data evidencing costs allowable and revenues and other applicable credits under this Subcontract shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the Subcontractor either as the Administration may from time to time direct during the progress of the work or, in any event, as the Administration shall direct upon completion or termination of this Subcontract and final audit of all accounts hereunder. Except as provided in this Subcontract, all other records in the possession of the Subcontractor relating to this Subcontract shall be preserved by the Subcontractor for a period of three years after final payment under this Subcontract or otherwise disposed of in such manner as may be agreed upon by the Government and the Subcontractor.
- e. Reports. The Subcontractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this Subcontract as the Contractor may from time to time require.
- f. Inspections. The Contractor and Administration shall have the right to inspect the work and activities of the Subcontractor under this Subcontract at such time and in such manner as it shall deem appropriate.
- g. Lower-Tier Subcontracts. The Subcontractor further agrees to require the inclusion of provisions similar to those in paragraphs a through this paragraph g of this Article in all lower-tier subcontracts (including lump-sum or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the Subcontract, costs incurred are a factor in determining the amount payable to the Subcontractor.

Article 43. EXTRAS

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

Article 44. ADDITIONAL BOND SECURITY

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

Article 45. FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT -
PRICE ADJUSTMENT

- (a) The Subcontractor warrants that the prices set forth in this subcontract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this article.
- (b) The minimum prevailing wage determination, including fringe benefits, issued pursuant to the Service Contract Act of 1965 as amended (Public Law 89-286; 79 Stat. 1034), by the Employment Standards Administration of the Department of Labor, current at the beginning of renewal option period shall apply to any renewal of this subcontract. Where no such determination has been made as applied to this subcontract, then the Federal minimum wage as established by Section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. Sec. 201-219) and amendments thereto current at the beginning of each renewal option period, shall apply to any renewal of this subcontract.
- (c) Where, as a result of the Department of Labor determination of minimum prevailing wages and fringe benefits applicable at the beginning of the renewal option period, or when an increased or decreased wage determination is otherwise applied to the contract, or where as a result of any amendment to the Fair Labor Standards Act enacted subsequent to award of this subcontract, affecting minimum wage and whenever such shall become applicable to this subcontract under law, the Subcontractor increases or decreases wages or fringe benefits of employees working on this subcontract to comply with such legislation, the subcontract price or subcontract unit price labor rates will be adjusted to reflect such increases or decreases. Any such adjustment will be limited to increases or decreases in wages or fringe benefits as described above, and

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the concomitant increases or decreases in social security and unemployment taxes and workmen's compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profits.

- (d) The Subcontractor shall notify the Contractor of any increases claimed under this article within thirty (30) days after the effective date of the wage change, unless this period is extended by the Contractor in writing. In the case of any decrease under this article, the Subcontractor shall promptly notify the Contractor of such decrease but nothing herein shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any other relevant data in support thereof, which may reasonably be required by the Contractor. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. Pending agreement on or determination of, any such adjustment and its effective date, the Subcontractor shall continue performance.
- (e) The Contractor, the Administration or their authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers and records of the Subcontract.

Article 46- DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

- (a) The Subcontractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The Subcontractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans status in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- (b) The Subcontractor agrees that all suitable employment openings of the Subcontractor which exist at the time of the execution of this Subcontract and those which occur during the performance of this Subcontract, including those not generated by this Subcontract and including those occurring at an establishment of the Subcontractor other than the one wherein the Subcontract is being performed but excluding those of independently operated corporate affiliates, shall be listed at an appropriate local office of the State employment service system wherein the opening occurs. The Subcontractor further agrees to provide such

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

- (c) Listings of employment openings with the employment service system pursuant to this Article 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 bona fide 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 Subcontractor from any requirements in executive orders or regulations regarding nondiscrimination in employment.
- (d) The reports required by paragraph (b) of this Article shall be filed at least quarterly with the appropriate local office or, where the Subcontractor has more than one hiring location in a State, with the central office of that State employment service. Such reports shall indicate for each hiring location (i) the number of individuals who were hired during the reporting period, (ii) the number of nondisabled veterans of the Vietnam era hired, (iii) the number of disabled veterans of the Vietnam era hired, and (iv) the total number of disabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 U.S.C. 1787. The Subcontractor shall submit a report within 30 days after the end of each reporting period wherein any performance is made on this Subcontract.

The Subcontractor shall maintain at each hiring location copies of the reports submitted until the expiration of one year after final payment under the Subcontract, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the Contractor, the Contracting Officer, or of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment, and placement.

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

- (f) This Article does not apply to the listing of employment openings which occur and are filled outside of the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.
- (g) The provisions of paragraphs (b), (c), (d), and (e) of this Article do not apply to openings which the Subcontractor proposes to fill from within its own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.
- (h) As used in this Article:
- (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 non-supervisory; technical; and executive, administrative, and professional openings that are compensated on a salary basis of less than \$25,000 per year. This term includes full-time employment, temporary employment of more than three days' duration, and part-time employment. It does not include openings which the Subcontractor proposes to fill from within its own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement nor openings in an educational institution which are restricted to students of that institution. Under the most compelling circumstances, an employment opening may not be suitable for listing, including such situations where the needs of the Government cannot reasonably be otherwise supplied, where listing would be contrary to national security, or where the requirement of listing would otherwise not be for the best interest of the Government.
 - (2) "Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.
 - (3) "Openings which the Subcontractor proposes to fill from within its own organization" means employment openings for which no consideration will be given to persons the Subcontractor's organization (including any affiliates, subsidiaries, and parent companies), and includes any openings which the Subcontractor proposes to fill from regularly established "recall" lists.

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- (4) "Openings which the Subcontractor proposes to fill pursuant to a customary and traditional employer-union hiring arrangement" means employment openings which the Subcontractor proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the Subcontractor and representatives of its employees.
- (i) The Subcontractor agrees to comply with the rules, regulation and relevant orders of the Secretary of Labor issued pursuant to the Act.
- (j) In the event of the Subcontractor's noncompliance with the requirements of this Article, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- (k) The Subcontractor agrees to post in conspicuous places available to employees and applicants for employment notices in a form to be prescribed by the Director, provided by or through the Contracting Officer. Such notice shall state the Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veteran and veterans of the Vietnam era for employment, and the rights of applicants and employees.
- (l) The Subcontractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding that the Subcontractor is bound by terms of the Vietnam Era Veteran's Readjustment Assistance Act and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era.
- (m) The Subcontractor will include the provisions of this Article in every lower-tier subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or order of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each lower-tier subcontractor or vendor. The Contractor will take such action with respect to any lower-tier subcontract or purchase order as the Contractor or the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non compliance.

ARTICLE 47. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT
INFRINGEMENT

The provisions of this clause shall be applicable only if the amount of this subcontract exceeds \$10,000.

- a. The subcontractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this subcontract of which the subcontractor has knowledge.
- b. In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this subcontract or out of the use of any supplies furnished or work or services performed hereunder, the subcontractor shall furnish to the Government when requested by the Contracting Officer, all evidence and information in possession of the subcontractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the subcontractor has agreed to indemnify the Government.
- c. This clause shall be included in all lower-tier subcontracts hereunder.

ARTICLE 48. REPORTING OF ROYALTIES

If this subcontract is in an amount which exceeds \$10,000 and if any royalty payments are directly involved in the subcontract or are reflected in the contract price to the Government, the subcontractor agrees to report in writing to the Contractor during the performance of this subcontract 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 subcontract, 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 ERDA of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity, or scope of, or title to, any patent under which a royalty or payments are made.

ARTICLE 49. AUTHORIZATION AND CONSENT

The Government has given its authorization and consent (without prejudice to any rights of indemnification) for all use and manufacture, in the performance of this subcontract or any part hereof or any amendment hereto or any lower-tier subcontract hereunder of any invention described in and covered by a patent of the United States (i) embodied in the structure or composition of any article the delivery of which is accepted by or on behalf of the Government under this subcontract or (ii) utilized in the machinery, tools, or methods the use of which necessarily results from compliance by the subcontractor or the using lower-tier subcontractor with (a) specifications or written provisions now or hereafter forming a part of this subcontract, or (b) specific written instructions given by or on behalf of the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement

of a patent of the United States shall be determined solely by the provisions of the indemnity clauses, if any, included in this subcontract or any lower-tier subcontract hereunder, and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

ARTICLE 50. PATENT INDEMNITY

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

ARTICLE 51. RIGHTS IN TECHNICAL DATA

a. Definitions

- (1) "Technical Data" means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, or demonstration, or engineering work or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial indications in media such as drawings or photographs, text in specifications or related performance or design type documents, or computer software or printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical data as used herein does not include financial reports, cost analyses, and other information incidental to contract administration.
- (2) "Proprietary Data" means technical data which are trade secrets, such as may be included in design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments.
- (3) "Subject Data" means technical data resulting directly from performance of this subcontract and technical data which are specified to be delivered, or which are in fact delivered, pursuant to this subcontract.

- (4) "Unlimited Rights" means rights to use, duplicate, or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to have others do so, without any claim for compensation by the subcontractor.

b. General

The Government shall have:

- (1) Unlimited rights in all Subject Data unless otherwise limited below and
- (2) The right at any time to modify, remove, or ignore any markings on Subject Data not authorized by this subcontract.

c. Copyrights

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

d. Relation to Patents

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

e. Withholding of Proprietary Data

Proprietary data need not be furnished for ~~tests~~ or processes, including minor modifications thereof, which were developed at private expense and which are incorporated as component parts in or to be used with the

product or process being developed or furnished under this subcontract, if in lieu thereof the subcontractor provides the Contracting Officer a list of such items or processes, and furnishes data for the purpose of identifying sources, size, configuration, material and attachment characteristics, functional characteristics and performance requirements ("form fit, and function" data).

f. Inspection Rights

Except as specified in the subcontract schedule for specific items of proprietary data the Contracting Officer's representative, at all reasonable times, may inspect at the subcontractor's facility any proprietary data withheld pursuant to paragraph e. of this clause for the purpose of verifying that such data properly fell within the withholding provision of paragraph e. or to evaluate work performance.

g. Limited Rights in Proprietary Data (Supply Subcontracts)

That portion of the Subject Data delivered under this subcontract which is identified in the subcontract as being "proprietary data" shall not be disclosed outside the Government, or be used, in whole or in part, for procurement or manufacturing purposes without permission of the subcontractor except that such "proprietary data" may be used by the Government or its representatives in connection with emergency repair or overhaul of an item acquired under the subcontract where the item is not procurable commercially so as to enable the timely performance of the overhaul or repair work; provided, however, that any other party receiving the "proprietary data" shall contractually agree to the foregoing use restrictions and to make no other use or disclosure of the "proprietary data." The following legend must be marked on each piece of "proprietary data" so limited either in its entirety or only partially as to its contents at the time of initial delivery to the Contractor or the Government:

LIMITED RIGHTS IN PROPRIETARY DATA

Furnished under Subcontract No. _____ (or Purchase Order No. _____ if applicable) with Holmes & Narver, Inc., under its prime contract with the United States Energy Research and Development Administration and only those portions hereof which are marked (for example, by circling, under-scoring, or otherwise) and indicated as being subject to this legend shall not be disclosed outside the Government nor be disclosed, used, or duplicated, for procurement or manufacturing purposes, except as otherwise authorized by contract, without the permission of _____ . This legend shall be marked on any reproduction hereof in whole or in part.

ARTICLE 52. CLEAN AIR AND WATER

(Applicable only if the subcontract exceeds \$100,000, or the Contractor has determined that the 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 USC 1857c-8(c)(1)) or the Federal Water Pollution Control Act (33 USC 1319(c)) and is listed by EPA, or the subcontract is not otherwise exempt.)

a. The subcontractor agrees as follows:

- (1) To comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 USC 1857, et seq., as amended by Public Law 91-604), and Section 303 of the Federal Water Pollution Control Act (33 USC 1251, as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Section 114 and Section 303 of the air act and the water act, respectively, and all regulations and guidelines issued thereunder before the award of this subcontract.
- (2) That no portion of the work required by this subcontract will be performed in a facility listed on the Environmental Protection Agency list of violating facilities on the date when this subcontract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing.
- (3) To use his best efforts to comply with clean air standards and clean water standards at the facilities in which the subcontract is being performed.
- (4) To insert the substance of the provisions of this Article in any nonexempt lower-tier subcontract, including this paragraph (4).

b. The terms used in this Article have the following meanings:

- (1) The term "air act" means the Clean Air Act, as amended (42 USC 1857 et seq., as amended by Public Law 91-604).
- (2) The term "water act" means Federal Water Pollution Control Act, as amended (33 USC 1251 et seq., as amended by Public Law 92-500).
- (3) The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the air act or Executive Order 11738, an applicable implementation plan as described in Section 110(d) of the Clean Air Act (42 USC 1857c-5(d)), an approved implementation procedure or plan under Section 111(e) or Section 111(d), respectively, of the air act (42 USC 1857c-6(c) or (d)), or an approved implementation procedure under Section 112(d) of the air act (42 USC 1857c-7(d)).
- (4) The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the water act or contained in a

permit issued to a discharger by the Environmental Protection Agency or by a state under an approved program, as authorized by Section 402 of the water act (33 USC 1342), or by a local government to ensure compliance with pretreatment regulations as required by Section 307 of the water act (33 USC 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 operation: owned, leased, or supervised by a contractor, subcontractor, to be utilized in the performance of a contract or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are colocated in one geographical area.

ARTICLE 53. ADMINISTRATION OF COST ACCOUNTING STANDARDS

For the purpose of administering Cost Accounting Standards requirements under this contract, the Subcontractor 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 Standard in accordance with paragraphs (a) (3) and (a) (4) (A) of the clause of this Subcontract 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 Subcontract entitled "Cost Accounting Standards" not less than 60 days (or such other date as may be mutually agreed to) prior to the effective date of the proposed change; or
 3. For any failure to comply with an applicable Cost Accounting Standard or to follow a disclosed practice as contemplated by paragraph (a) (5) of the clause of this Subcontract 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 Subcontractor.
- 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 lower-tier subcontracts containing the clause entitled "Cost Accounting Standards." In addition, include a provision in these subcontracts which will require such lower-tier subcontractors, within thirty (30) days after receipt of award, to submit the following information to the contracting officer cognizant of the lower-tier 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 lower-tier 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 lower tier subcontract results in making a Cost Accounting Standard(s) effective for the first time this shall also be reported.
- e. In the event an adjustment is required to be made to any lower-tier subcontract hereunder, notify the cognizant contracting officer in writing of such adjustment and agree to an adjustment in the price or estimated cost and fee of this subcontract, as appropriate, based upon the adjustment established under the lower-tier 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.
- f. When the Cost Accounting Standards clause and this clause are included in lower-tier subcontracts, the term "contracting officer" shall be suitably altered to identify the purchaser.

ARTICLE 54. COST ACCOUNTING STANDARDS

- a. Unless the Cost Accounting Standards Board has prescribed rules or regulations exempting the Subcontractor or the Subcontract from standards, rules, and regulations promulgated pursuant to 50 USC App. 2168 (Public Law 91-379, August 15, 1970), the Subcontractor, in connection with this Subcontract, shall:
1. By submission of a Disclosure Statement, disclose in writing its cost accounting practices as required by regulations of the Cost Accounting Standards Board. The required disclosures must be made prior to subcontract award unless the ERDA Contracting Officer provides a written notice to the Subcontractor authorizing postaward submission in accordance with regulations of the Cost Accounting Standards Board. The practices disclosed for this Subcontract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Subcontractor and which contain this Cost Accounting Standards Article. If the Subcontractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement will be protected and 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 Subcontract. 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 Subcontract, and the Disclosure Statement must be amended accordingly. If the subcontract price or cost allowance of this Subcontract is affected by such changes, adjustment shall be made in accordance with subparagraph 4. or 5. below, as appropriate.
 3. Comply with all Cost Accounting Standards in effect on the date of award of this Subcontract or if the Subcontractor has submitted cost or pricing data, the date of final agreement on price as shown on the Subcontractor's signed certificate of current cost or pricing data. The Subcontractor shall also comply with any Cost Accounting Standard which hereafter becomes applicable to a contract or subcontract of the Subcontractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.
 4. (a) Agree to an equitable adjustment as provided in the "Changes" Article of this Subcontract if the subcontract cost is affected by a Disclosure Statement change which the Subcontractor is required to make pursuant to 3. above. If the Subcontractor has not been required to

file a Disclosure Statement but is required pursuant to 3. above to change an established practice, then an equitable adjustment shall similarly be agreed to.

(b) Negotiate with the cognizant Contracting Officer to determine the terms and conditions under which any Disclosure Statement change other than changes under 4.(a) above may be made. A change to a Disclosure Statement may be proposed by either the Government or the Subcontractor; PROVIDED, however, that no agreement may be made under this provision that will increase costs paid by the United States under this Subcontract.

5. Agree to an adjustment of the contract price or cost allowance, as appropriate, if it or a lower-tier subcontractor fails to comply with an applicable Cost Accounting Standard or to follow any practice disclosed pursuant to subparagraphs 1. and 2. above and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the rate determined by the Secretary of the Treasury pursuant to Public Law 92-41, 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 subcontractor or a lower-tier 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" Article of this Subcontract.
- c. The Subcontractor 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 Article.
- d. The Subcontractor shall include in all negotiated lower-tier subcontracts which it enters into the substance of this Article except paragraph b. and shall require such inclusion in all other lower-tier 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.

However, if this is a subcontract which permits lower-tier subcontractors to appeal final decisions of the representative of the ERDA authorized to supervise and administer performance of the Contractor's prime contract directly to the ERDA or its duly authorized representative, then the Subcontractor shall include the substance of paragraph b. as well.

NOTE: In any case where a subcontractor or a lower-tier subcontractor determines that the Disclosure Statement information is privileged and confidential and declines to provide it to its 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 its Disclosure Statement. Such authorization shall in no way relieve the Subcontractor or lower-tier subcontractor of liability as provided in paragraph a.5. of this Article. In view of the foregoing and since the Subcontract or lower-tier subcontract may be subject to adjustment under this Article by reason of any failure to comply with rules, regulations, and standards of the Cost Accounting Standard Board in connection with covered subcontracts, it is expected that the Subcontractor or lower-tier subcontractor may wish to include an Article in each such subcontract requiring the lower-tier subcontractor to appropriately indemnify the Subcontractor. However, the inclusion of such an Article and the terms thereof are matters for negotiation and agreement between the Subcontractor and the lower-tier subcontractor, provided that they do not conflict with the duties of the Subcontractor under its subcontract with the Government.

- e. The terms defined in 331.2 of Part 331 of Title 4, Code of Federal Regulations (4 CFR 331.2) 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."

ARTICLE 55. COST OR PRICING DATA

CERTIFIED COST OR PRICING DATA

- a. 1. The Subcontractor shall require under the situations described in 2. below, unless exempted under the exceptions set forth in 3. below, each lower-tier subcontractor under this Subcontract to submit cost or pricing data and to certify that, to the best of its knowledge and belief, such cost or pricing data are accurate, complete, and current.

2. Except as provided in 3. below, certified cost or pricing data shall be submitted prior to (i) the award of each lower-tier subcontract, the price of which is expected to exceed \$100,000, and (ii) the negotiation of the price of each change or modification to a lower-tier subcontract under this Subcontract for which the price adjustment is expected to exceed \$100,000.
 3. Certified cost or pricing data need not be furnished pursuant to this paragraph a. where (i) the Subcontractor has not been required to furnish cost or pricing data; or (ii) the price or price adjustment is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or the prices set by law or regulation; and the Subcontractor states in writing the basis for applying this exception.
 4. In submitting the cost or pricing data, the lower-tier subcontractor shall use the form of certificate set forth in paragraph b. below and shall certify that the data are accurate, complete, and current. Such certificate and data (actual or identified, as provided in the certificate prescribed below) shall be submitted by lower-tier subcontractors to the next higher-tier subcontractor, as applicable, for retention.
- b. The certificates required by this Article shall be in the form set forth below.

SUBCONTRACTOR'S CERTIFICATE OF CURRENT
COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, cost or pricing data¹ 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 Contractor in support of _____² are accurate, complete, and current as of _____³
(Date)

Firm _____

Name _____

Title _____

4

(Date of Execution)

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

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

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

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

- c. For purposes of verifying that certified cost or pricing data submitted in conjunction with the negotiation of this Subcontract or any subcontract change or other modification involving an amount in excess of \$100,000 were accurate, complete, and current, the Contractor, the ERDA or authorized representatives of either shall, until the expiration of three years from the date of final payment under this Subcontract, have the right to examine those books, records, documents, papers, and other supporting data which involve transactions related to this Subcontract or which will permit adequate evaluation of the cost or pricing data submitted along with the computations and projections used therein.
- d. Whenever the price of any change or other modification to this Subcontract is expected to exceed \$100,000, the Subcontractor agrees to furnish the Contractor certified cost or pricing data, using the certificate set forth in paragraph b. above, unless the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.
- e. The requirement for submission of certified cost or pricing data with respect to any change or other modification does not apply to any lower-tier subcontract change or other modification, at any tier, where the subcontract is firm fixed-price or fixed-price with escalation unless such change or other modification results from a change or other modification to the subcontract, nor does it apply to a lower-tier subcontract change or modification, at any tier, where the subcontract is not firm fixed-price or fixed-price with escalation, unless the price of such change or other modification becomes reimbursable under the subcontract.
- f. The Subcontractor agrees to insert paragraph c. without change⁵ and the substance of paragraphs a., b., d., e., and f. of this Article in each lower-tier subcontract hereunder, in excess of \$100,000, and in each lower-tier subcontract of \$100,000 or less at the time of making a change or other modification thereto in excess of \$100,000.
- g. If the Contractor determines that any price, including profit or fee, negotiated in connection with this Subcontract or any cost reimbursable under this Subcontract was increased by any significant sums because the Subcontractor, or any lower-tier subcontractor pursuant to this Article or any lower-tier subcontract Article herein required, furnished incomplete or inaccurate cost or pricing data or data not current as certified in the Subcontractor's Certificate of Current Cost or Pricing Data, then such price or cost shall be reduced accordingly and the Subcontract shall be modified in writing to reflect such reduction.
- h. Failure of the Contractor and the Subcontractor to agree on any of the matters in paragraph g. above shall be a dispute concerning a question of fact within the meaning of the "Disputes" Article of this Subcontract.

⁵The words "subcontractor" and "lower-tier subcontract" may, however, be changed to describe the contractual relationship in lower-tier subcontracts.

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

ARTICLE 56. EMPLOYMENT OF THE HANDICAPPED

- a. The Subcontractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Subcontractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b. The Subcontractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Rehabilitation Act of 1973, as amended.
- c. In the event of the Subcontractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- d. The Subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor, provided by or through the Contracting Officer. Such notices shall state the Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- e. The Subcontractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Subcontractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- f. The Subcontractor will include the provisions of this clause in every lower-tier subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each lower-tier subcontractor or vendor. The Subcontractor will take such action with respect to any lower-tier subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs, may direct to enforce such provisions, including action for noncompliance.