

(iii) may terminate this contract for default as provided in the clause of this contract entitled "Termination." Failure to agree to the amount of any such increased cost to be charged to the Contractor or to such reduction in, or repayment of, the fixed cost shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) Notwithstanding the provisions of paragraph (b) hereof, the Government may at any time require the correction or replacement by the Contractor, without cost to the Government, of supplies or lots of supplies which are defective in material, or workmanship, or otherwise not in conformity with the requirements of this contract, if such defects or failures are due to fraud, lack of good faith or willful misconduct on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who have supervision or direction of (i) all or substantially all of the Contractor's business, or (ii) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (iii) a separate and complete major industrial operation in connection with the performance of this contract. Fraud, lack of good faith or willful misconduct on the part of any of such supervisory personnel shall be deemed to include the selection of individual employees or the retention of employees after any of such supervisory personnel has reason to believe that such employees are habitually careless or otherwise unqualified.

(d) Corrected supplies or replaced supplies shall be subject to the provisions of this clause in the same manner and to the same extent as supplies originally delivered under this contract.

(e) The Contractor shall make its records of all inspection work available to the Government during the performance of this contract and for such longer period as may be specified in this contract.

(f) Except as provided in this clause and as may be provided in the Schedule, the Contractor shall have no obligation or liability to correct or replace supplies or lots of supplies which at the time of delivery are defective in material or workmanship or otherwise not in conformity with the requirements of this contract.

(g) Except as otherwise provided in the Schedule, the Contractor's obligation to correct or replace Government-furnished property (which is property in the possession of or acquired directly by the Government and delivered or otherwise made available to the Contractor) shall be governed by the provisions of the clause of this contract entitled "Government Property."

6. ASSIGNMENT OF CLAIMS

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U. S. Code 203, 41 U. S. Code 15), if this contract provides for payments aggregating \$1,000 or more, claims for monies due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or assignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Notwithstanding any provisions of this contract, payments to an assignee of any monies due or to become due under this contract shall not to the extent provided in said Act, as amended, be subject to reduction or set-off.

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

RECORDS

(a) (1) The Contractor agrees to maintain books, records, documents and other evidence pertaining to the costs and

expenses of this contract (hereinafter collectively called the "records") to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies and services, and reimbursement is claimed under the provisions of this contract. The Contractor's accounting procedures and practices shall be subject to the approval of the Contract-Audit Division of the Comptroller of the Navy: *Provided, however,* That no material change will be required to be made in the Contractor's accounting procedures and practices if they conform to generally accepted accounting practices and if the costs properly applicable to this contract are readily ascertainable therefrom.

(2) The Contractor agrees to make available at the office of the Contractor at all reasonable times during the period set forth in subparagraph (4) below any of the records for inspection, audit or reproduction by any authorized representative of the Department or of the Comptroller General.

(3) In the event the Comptroller General or any of his duly authorized representatives determines that his audit of the amounts reimbursed under this contract as transportation charges will be made at a place other than the office of the Contractor, the Contractor agrees to deliver, with the reimbursement voucher covering such charges or as may be otherwise specified within any such voucher, to such representative as may be designated for that purpose through the Contract-Audit Division of the Comptroller of the Navy such documentary evidence in support of transportation costs as may be required by the Comptroller General or any of his duly authorized representatives.

(4) Except for documentary evidence delivered to the Government pursuant to subparagraph (3) above, the Contractor shall preserve and make available its records for a period of six years (unless a longer period of time is provided by applicable statute) from the date of the voucher or invoice submitted by the Contractor after the completion of the work under the contract and designated by the Contractor as the "completion voucher" or "completion invoice" or, in the event this contract has been completely terminated, from the date of the termination settlement agreement: *Provided, however,* That records which relate to (A) "Disputes," (B) litigation or the settlement of claims arising out of the performance of this contract, or (C) costs or expenses of the Contractor as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall be retained by the Contractor until such appeals, litigation, claims, or exceptions have been disposed of, but in no event for less than the six-year period mentioned above.

(5) Except for documentary evidence delivered pursuant to subparagraph (3) above, and the records described in the proviso of subparagraph (4) above, the Contractor may in fulfillment of its obligation to retain its records as required by this clause substitute photographs, microphotographs or other authentic reproductions of such records, after the expiration of two years following the last day of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Contracting Officer with the concurrence of the Comptroller General or his duly authorized representative.

(6) The provisions of this paragraph (a), including this subparagraph (6), shall be applicable to and included in each subcontract hereunder which is on a cost, cost-plus-a-fixed-fee, time-and-material or labor-hour basis.

(b) The Contractor further agrees to include in each of his subcontracts hereunder, other than those set forth in subparagraph (a) (6) above, a provision to the effect that the subcontractor agrees that the Comptroller General or the Department, or any

of their duly authorized representatives, shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor involving transactions related to the subcontract. The term "subcontract," as used in this paragraph (a) only, excludes (1) purchase orders not exceeding \$1,000 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

8. SUBCONTRACTS

(a) The Contractor shall give advance notification to the Contracting Officer of any proposed subcontract hereunder which (i) is on a cost or cost-plus-a-fixed-fee basis, or (ii) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total estimated cost of this contract.

(b) The Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which (i) is on a cost or cost-plus-a-fixed-fee basis, or (ii) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total estimated cost of this contract, or (iii) provides for the fabrication, purchase, rental, installation or acquisition, of any item of industrial facilities, or of special tooling having a value in excess of \$1,000, or (iv) is on a time-and-material or labor-hour basis. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (b).

(c) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(d) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost.

(e) The Contractor shall give the Contracting Officer immediate notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any subcontractor or vendor which, in the opinion of the Contractor, may result in litigation, related in any way to this contract with respect to which the Contractor may be entitled to reimbursement from the Government.

9. UTILIZATION OF SMALL BUSINESS CONCERNS

(a) It is the policy of the Government as declared by the Congress that a fair proportion of the purchases and contracts for supplies and services for the Government be placed with small business concerns.

(b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

10. TERMINATION

(a) The performance of work under the contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, (1) whenever the Contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten days (or such longer periods as the Contracting Officer may specify) after receipt from the Contracting Officer of a notice specifying the default, or (2) whenever for any reason the Contracting Officer shall determine that such termination is in the best interests of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract is terminated, and the date upon which such termination

becomes effective. If, after notice of termination of this contract for default under (1) above, it is determined that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of the clause of this contract relating to excusable delays, the Notice of Termination shall be deemed to have been issued under (2) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(b) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall (1) stop work under the contract on the date and to the extent specified in the Notice of Termination; (2) place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination; (4) assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts; (5) with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the amount of which would be reimbursable in whole or in part, in accordance with the provisions of this contract; (6) transfer title (to the extent that title has not already been transferred) and, in the manner, to the extent, and at the times directed by the Contracting Officer, deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of, the performance of the work terminated by the Notice of Termination, (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Government, and (iii) the jigs, dies, and fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract; (7) use its best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer (6) of this paragraph; *Provided, however,* That the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer. And *provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the Contractor under this contract or shall otherwise be paid to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer 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 Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor in which the Government has or may acquire an interest. The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of the fixed-fee, or any item of reimbursable cost, under this clause. At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same, provided that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

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

(d) Subject to the provisions of paragraph (c), the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid (including an allowance for the fixed-fee) to the Contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (d) above, as to the amounts with respect to costs and fixed-fee, or as to the amount of the fixed-fee, to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer shall determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amount determined as follows:

(1) If the settlement includes cost and fixed-fee

(i) There shall be included therein all costs and expenses reimbursable in accordance with this contract, not previously paid to the Contractor for the performance of this contract prior to the effective date of the Notice of Termination, and such of these costs as may be approved of or as directed by the Contracting Officer. *Provided, however,* That the Contractor shall proceed as rapidly as practicable to discontinue such costs.

(ii) There shall be included therein so far as not included under (i) above, the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b) (5) above, which are properly chargeable to the terminated portion of the contract.

(iii) There shall be included therein the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory. *Provided, however,* That if the termination is for default of the Contractor there shall not be included any amounts for the preparation of the Contractor's settlement proposal.

(iv) There shall be included therein a portion of the fixed-fee payable under the contract determined as follows:

(A) In the event of the termination of this contract for the convenience of the Government and not for the default of the Contractor, there shall be paid a percentage of the fee equivalent to the percentage of the completion of work contemplated by the contract, less fixed-fee payments previously made hereunder.

(B) In the event of the termination of this contract for the default of the Contractor, the total fixed-fee payable shall be such proportionate part of the fee (or, if this contract calls for articles of

different types, of such part of the fee as is reasonably allocable to the type of article under consideration) as the total number of articles delivered to and accepted by the Government bears to the total number of articles of a like kind called for by this contract. If the amount determined under this paragraph is less than the total payment of fixed-fee theretofore made to the Contractor, the Contractor shall repay to the Government the excess amount.

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

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

(g) In arriving at the amount due the Contractor under this clause there shall be deducted (1) all unliquidated advance or other unliquidated payments theretofore made to the Contractor, (2) any claim which the Government may have against the Contractor in connection with this contract, and (3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(h) In the event of a partial termination, the portion of the fixed-fee which is payable with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the Contractor and the Contracting Officer, and such adjustment shall be evidenced by an amendment to this contract.

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

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

11. EXCUSABLE DELAYS

Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to

perform is caused by the failure of a subcontractor to perform or make progress, and if such failure arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be deemed to be in default, unless (1) the supplies or services to be furnished by the subcontractor were obtainable from other sources, (2) the Contracting Officer shall have ordered the contractor in writing to procure such supplies or services from such other sources, and (3) the Contractor shall have failed to comply reasonably with such order. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of such failure and, if he shall determine that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Government under the clause hereof entitled "Termination."

12. DISPUTES

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: *Provided*, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

13. BUY AMERICAN ACT

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

- (i) "components" means those articles, materials, and supplies, which are directly incorporated in the end products;
- (ii) "end products" means those articles, materials, and supplies, which are to be acquired under this contract for public use; and
- (iii) a "domestic source end product" means (A) an unmanufactured end product which has been mined or produced in the United States and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For the purposes of this (a) (iii) (B), components of foreign origin of the same type or kind as the products referred to in (b) (ii) or (iii) of this clause shall be treated as components mined, produced, or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:

- (i) which are for use outside the United States;
- (ii) which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;
- (iii) as to which the Secretary determines the domestic preference to be inconsistent with the public interest; or

- (iv) as to which the Secretary determines the cost to the Government to be unreasonable.

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

14. CONVICT LABOR

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

15. EIGHT-HOUR LAW OF 1912—OVERTIME COMPENSATION

This contract, to the extent that it is of a character specified in the Eight-Hour Law of 1912, as amended (40 U. S. Code 324-326) and is not covered by the Walsh-Healey Public Contracts Act (41 U. S. Code 35-45), is subject to the following provisions and exceptions of said Eight-Hour Law of 1912, as amended, and to all other provisions and exceptions of said Law:

No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the Contractor or any subcontractor contracting for any part of said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this clause. The wages of every laborer and mechanic employed by the Contractor or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of eight hours per day; and work in excess of eight hours per day is permitted upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this clause a penalty of five dollars shall be imposed for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this clause, and all penalties thus imposed shall be withheld for the use and benefit of the Government.

16. WALSH-HEALEY PUBLIC CONTRACTS ACT

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

17. NONDISCRIMINATION IN EMPLOYMENT

(a) In connection with the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of the nondiscrimination clause.

(b) The Contractor further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

18. NOTICE TO THE GOVERNMENT OF LABOR DISPUTES

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

19. GOVERNMENT PROPERTY

- (a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished Property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished Property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished Property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor and shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provisions affected by such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event that Government-furnished Property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either return such property at the Government's expense or otherwise dispose of the property or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provision affected by the return or disposition, or the repair or modification, in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished Property or delivery of such property in a condition not suitable for its intended use.
- (b) Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government, whichever first occurs. All Government-furnished property, together with all property acquired by the Contractor title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as "Government Property."
- (c) Title to the Government Property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government Property, or any part thereof, be or become a fixture or lose its identity as personally by reason of affixation to any realty. The Contractor shall maintain adequate property control records of the Government Property and shall identify the Government Property as such in accordance with the requirements of the "Manual for Control of Government Property in Possession of Contractors" (Appendix B, Armed Services Procurement Regulation), as in effect on the date of the contract, which Manual is hereby incorporated by reference and made a part of this contract.
- (d) The Government Property provided or furnished pursuant to the terms of this contract shall, unless otherwise provided herein, be used only for the performance of this contract.
- (e) The Contractor shall maintain and administer in accordance with sound industrial practice, a program, for the maintenance, repair, protection and preservation of Government Property so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all appropriate directions or instructions of the Contracting Officer may prescribe as reasonably necessary for the protection of Government Property.
- (f) (i) The Contractor shall not be liable for any loss of or damage to Government Property, or for expenses

- incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto) (A) which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the Contractor's business, or (ii) all or substantially all of the Contractor's operations at any one plant or formed, or (iii) a separate and complete major industrial operation in connection with the performance of this contract; or (B) which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in subparagraph (A) above, (i) to maintain and administer, in accordance with sound industrial practice, a program for maintenance, repair, protection and preservation of Government Property as required by paragraph (e) hereof, or (ii) to take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under paragraph (e) hereof; or (C) for which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule; or (D) which results from a risk expressly required to be insured under this contract, but only to the extent of the insurance so required to be actually procured and maintained, or to the extent of insurance or (E) which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement: *Provided That*, if more than one of the above exceptions shall be applicable in any case, not be limited by any other exception. This clause shall not be construed as relieving a subcontractor from liability for loss or destruction of or damage to Government Property in its possession or control, except to the extent that the subcontractor, with the prior approval of the Contracting Officer, may provide for the relief of the subcontractor from such liability. In the absence of such approval, the subcontractor shall contain appropriate provisions requiring the return of all Government Property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.
- (ii) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government Property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provision of this contract.
- (iii) Upon the happening of loss or destruction of or damage to the Government Property, the Contractor shall notify the Contracting Officer thereof, and shall communicate hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has designated that no such organization be employed), shall take all reasonable steps to protect the Government Property from further damage, separate the damaged and undamaged Government Property, put all the Government Property in the best possible order, and furnish to the Contracting Officer a statement of (A) the lost, destroyed and damaged Government Property, (B) the time and origin of the loss, destruction or damage, (C) all known interests in commingled property of which the Government Property is a part, and (D) the insurance, if any, covering any part of or interest in such commingled property. The Contractor shall make repairs and renovations of the damaged Government Property or take such other action, as the Contracting Officer directs.
- (iv) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction

of or damaged to the Government Property, it shall use the proceeds to repair, renovate or replace the Government Property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where the subcontractor has not been relieved from liability for any loss or destruction of or damage to Government Property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government Property for the benefit of the Government.

- * (v) In the event any aircraft are to be furnished under this contract, any loss or destruction of, or damage to, such aircraft or other Government Property occurring in connection with operations of said aircraft will be governed by the clause of this contract captioned "Flight Risks," to the extent such clause is, by its terms, applicable.

(g) The Government shall at all reasonable times have access to the premises where any of the Government Property is located.

(h) The Government Property shall remain in the possession of the Contractor for such period of time as is required for the performance of this contract unless the Contracting Officer determines that the interests of the Government require removal of such property. In such case the Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of Government Property. In any such instance, the contract may be amended to accomplish an equitable adjustment in the terms and provisions thereof.

(i) Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit to the Contracting Officer in a form acceptable to him, inventory schedules covering all items of the Government Property not consumed in the performance of this contract, or not theretofore delivered to the Government, and shall deliver or make such other disposal of such Government Property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by the contract or shall be paid in such manner as the Contracting Officer may direct. The foregoing provisions shall apply to scrap from Government Property provided, however, that the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of cutting and processing waste, such as chips, cuttings, borings, turnings, and to short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account therefor as a part of general overhead and other reimbursable cost in accordance with the Contractor's established accounting procedures.

(j) Unless otherwise provided herein, the Government shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of the Contractor's plant or any portion thereof which is affected by the removal of any Government Property.

(k) Directions of the Contracting Officer and communications of the Contractor issued pursuant to this clause shall be in writing.

*For use where applicable.

20. INSURANCE—LIABILITY TO THIRD PERSONS

(a) The Contractor shall procure and thereafter maintain workmen's compensation, employer's liability, comprehensive general liability (bodily injury) and comprehensive automobile liability (bodily injury and property damage) insurance, with respect to the performance under this contract, and such other insurance as the Department may from time to time require with respect to performance under this contract. *Provided*, That the Contractor in fulfillment of its obligation to procure workmen's compensation

insurance may, with the approval of the Department and pursuant to statutory authority, maintain a self-insurance program. All insurance required pursuant to the provisions of this paragraph shall be in such form, in such amounts, and for such periods of time, as the Department may from time to time require or approve, and with insurers approved by the Department.

(b) The Contractor agrees, to the extent and in the manner required by the Department, to submit for the approval of the Department any other insurance maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement hereunder.

(c) The Contractor shall be reimbursed: (1) for the portion allocable to this contract of the reasonable cost of insurance as required or approved pursuant to the provisions of this clause, and (2) for liabilities to third persons for loss of or damage to property (other than property (A) owned, occupied or used by the Contractor or rented to the Contractor or (B) in the care, custody, control of the Contractor), or for death or bodily injury, not controlled by insurance or otherwise, arising out of the performance of this contract, whether or not caused by the negligence of the Contractor, its agents, servants or employees, provided such liabilities are represented by final judgments or by settlements approved in writing by the Government, and expenses incidental to such liabilities, except liabilities (1) for which the Contractor is otherwise responsible under the express terms of the clause or (2) with respect to clauses, if any, specified in the Schedule, or (3) which results in insurance as approved by the Department or (4) which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who has supervision or direction of (1) all or substantially all of the Contractor's business, or (2) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (3) a separate and complete major industrial operation in connection with the performance of this contract. The foregoing shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required to be submitted for approval or required to be procured and maintained pursuant to the provisions of this clause, provided such cost would constitute Allowable Cost under the clause of this contract entitled "Allowable Cost, Fixed Fee and Payment."

(d) The Contractor shall give the Government or its representatives immediate notice of any suit or action filed, or prompt notice of any claim made, against the Contractor arising out of the performance of this contract, the cost and expense of which may be reimbursable to the Contractor under the provisions of this contract, and the risk of which is then uninsured or in which the amount claimed exceeds the amount of coverage. The Contractor shall furnish immediately to the Government copies of all pertinent papers received by the Contractor. If the amount of the Contractor's liability claimed exceeds the amount of coverage, the Contractor shall authorize representatives of the Government to collaborate with counsel for the insurance carrier, if any, in settling or defending such claim. If the liability is not insured or covered by the Contractor, if required by the Government, and authorized representatives of the Government to settle or defend any such claim and to represent the Contractor in or take charge of such litigation in connection therewith. *Provided*, however, That any litigation in connection therewith be associated with the representatives of the Government in the settlement or defense of any such claim or litigation.

21. OFFICIALS NOT TO BENEFIT

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

22. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained

by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

23. GRATUITIES

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

(b) In the event this contract is terminated as provided in paragraph (a) hereof, the Government shall be entitled (1) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor, it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

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

24. SOVIET-CONTROLLED AREAS

If acceptance under this contract is to take place outside the United States, its Territories, its possessions, or Puerto Rico, the following clause shall apply:

(a) The Contractor shall not acquire for use in the performance of this contract any supplies or services originating from sources within Soviet-controlled areas, as listed in the Schedule of this contract, or from Hong Kong or Macao, without the written approval of the Contracting Officer.

(b) The Contractor agrees to insert the provisions of this clause, including the Soviet-controlled areas listed in the Schedule and this subparagraph (b), in all subcontracts hereunder.

25. RENEGOTIATION

(a) To the extent required by law this contract is subject to the Renegotiation Act of 1951 (P.L. 82d Cong., 65 Stat. 7) as amended (P.L. 764, 83d Cong., 68 Stat. 1116; P.L. 216, 84th Cong., 69 Stat. 447), and to any subsequent act of Congress providing for the renegotiation of contracts. Nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of Congress heretofore or hereafter enacted. Subject to the foregoing this contract shall be deemed to contain all the provisions required by Section 104 of the Renegotiation Act of 1951, and by any other act, without subsequent contract amendment specifically incorporating such provisions.

(b) The Contractor agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts, as that term is defined in Section 103g, of the Renegotiation Act of 1951 or in any subsequent act of Congress providing for the renegotiation of contracts.

26. MILITARY SECURITY REQUIREMENTS

(a) The provisions of this clause shall apply to the extent that this contract involves access to information classified "Confidential" including "Confidential—Modified Handling Authorized" or higher.

(b) The Government shall notify the Contractor of the security classification of this contract and the elements thereof, and of any subsequent revisions in such security classification, by the use of a Security Requirements Check List (DD Form 254), or other written notification.

(c) To the extent the Government has indicated as of the date of this contract or thereafter indicates security classification under this contract as provided in paragraph (b) above, the Contractor shall safeguard all classified elements of this contract and shall provide and maintain a system of security controls within its own organization in accordance with the requirements of:

(1) the Security Agreement (DD Form 441), including the Department of Defense Industrial Security Manual for Safeguarding Classified Information as in effect on date of this contract, and any modification to the Security Agreement for the purpose of adopting the Manual to the Contractor's business; and

(2) any amendments to said Manual made after the date of this contract, notice of which has been furnished to the Contractor by the Security Office of the Military Department having security cognizance over the facility.

(d) Representatives of the Military Department having security cognizance over the facility and representatives of the contracting Military Department shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the Contractor in complying with the security requirements under this contract. Should the Government, through these representatives, determine that the Contractor is not complying with the security requirements of this contract, the Contractor shall be informed in writing by the Security Office of the cognizant Military Department of the proper action to be taken in order to effect compliance with such requirements.

(e) If, subsequent to the date of this contract, the security classifications or security requirements under this contract are changed by the Government as provided in this clause, and if such change causes an increase or decrease in the estimated cost of performance of this contract, the estimated cost and fixed fee shall, to the extent appropriate, be subject to an equitable adjustment. Any such equitable adjustment shall be accomplished in the manner set forth in the "Changes" clause in this contract.

(f) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (f) but excluding paragraph (e) of this clause. The Contractor may insert in any such subcontract, and in lieu of paragraph (e) of this clause, provisions which permit equitable adjustments to be made in the subcontract price or in the estimated cost and fixed fee of the subcontract (as appropriate to the type of subcontract involved) on account of changes in security classifications or requirements made under the provisions of this clause subsequent to the date of the subcontract involved.

(g) The Contractor also agrees that it shall determine that any subcontractor proposed by it for the furnishing of supplies and services which will involve access to classified information in the Contractor's custody has been granted an appropriate facility security clearance, which is still in effect, prior to being accorded access to such classified information.

27. FILING OF PATENT APPLICATIONS

(a) Before filing or causing to be filed a patent application disclosing any subject matter of this contract, which subject matter is classified "Secret" or higher, the Contractor shall, citing the thirty (30) day provision below, transmit the proposed application to the Contracting Officer for determination whether, for reasons of national security, such application should be placed under an order of secrecy or sealed in accordance with provisions of 35 U.S.C. 181-188 or the issuance of a patent should be otherwise delayed under pertinent statutes or regulations; and the Contractor shall observe any instructions of the Contracting Officer with respect to the manner of delivery of the patent application to the U.S. Patent Office for filing, but the Contractor shall not be denied the right to file such patent application. If the Contractor shall not have given any such instructions within the thirty (30) days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) The Contractor shall furnish to the Contracting Officer, at the time of or prior to the time when the Contractor files or causes to be filed a patent application disclosing any subject matter of this contract, which subject matter is classified "Confidential," a copy of such application for determination whether, for reasons of national security, such application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent statutes or regulations.

(c) In filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter.

29. NOTICE AND ASSISTANCE REGARDING PATENT INFRINGEMENT

The provisions of this clause shall be applicable only if the amount of this contract exceeds \$5,000.

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any suit against the Government, or any claim against the Government made before suit has been instituted, on account of any alleged patent infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except in those cases in which the Contractor has agreed to indemnify the Government against the claim being asserted.

29. REPORTING OF ROYALTIES

The provisions of this clause shall be applicable only if the amount of the contract is in excess of \$50,000.

(a) The Contractor shall report in writing (in quadruplicate) to the Contracting Officer as soon as practicable after execution of this contract whether or not any royalties in excess of \$250 have been paid or are to be paid by the Contractor directly to any person or firm in connection with the performance of this contract. If royalties in excess of \$250 have been paid or are to be paid to any person or firm, the report shall include the following items of information with respect to such royalties (including the initial \$250):

- (1) The name and address of each licensor to whom royalties in excess of \$250 have been paid or are to be paid.
- (2) The patent numbers, patent application serial numbers (with filing dates), or other identification of the basis for such royalties.
- (3) The manner of computing the royalties consisting of (i) a brief identification of each royalty-bearing unit or process, (ii) the total amount of royalties, and (iii) the percentage rate or dollars and cents amount of royalties on each such unit or process: *Provided*, That if the royalties cannot be computed in terms of units or dollars and cents value, then other data showing the manner in which the Contractor computes the royalties.

(b) In lieu of furnishing a report under paragraph (a), the Contractor may furnish a single, consolidated report for each accounting period of the Contractor during which the Contractor has contracts with the Government, provided the Contractor has requested and obtained the prior written approval of the Assistant Chief of Naval Research for Patents. Such consolidated report shall be furnished, when the furnishing thereof has been approved, in the number of copies as approved, as soon as practicable after the close of the accounting period covered by the report. Such consolidated accounting practice and shall include, for the accounting period, the total amount of royalties accruing to each licensor at a rate in excess of \$1,000 per annum on the Contractor's overall business, together with (i) the name and address of each such licensor, (ii) the patent numbers, patent application serial numbers (with filing dates), or other identification of the

basis for such royalties, (iii) a brief description of the subject matter of the license under which royalties are charged, (iv) the percentage rate or unit amount, or if the royalties do not accrue by rate or unit amount, such other data showing the manner by which the royalties accrue to licensor, and (v) an estimate or approximation (without detailed accounting) of the portion of such royalties that may be attributable to Government contracts. The Contractor shall, if requested by the Government, furnish at Government expense a more detailed allocation of such royalty payments attributable to Government contracts.

(c) In the event that the Contractor requests written approval to furnish consolidated reports under paragraph (b) above, the Assistant Chief of Naval Research for Patents shall promptly consider the request and furnish to the Contractor a letter stating whether or not the request is approved and, notwithstanding any such approval, the Contracting Officer shall have the right to question any such subsequently furnished report as to accuracy or completeness of data and to ask for additional information. The Contractor shall furnish a copy of such letter of approval to the Contracting Officer administering this contract.

(d) After payment of eighty percent (80%) of the amount of this contract, as from time to time amended, further payment shall be withheld until a reserve of either (i) ten percent (10%) of such amount or (ii) \$5,000, whichever is less, shall have been set aside, such reserve or the balance thereof to be retained until the Contractor shall have furnished to the Contracting Officer the report called for by paragraph (a) hereof or the copy of the letter approving the Contractor's request to furnish the report under paragraph (b): *Provided*, That no amount shall continue to be withheld from payment for the causes specified in this paragraph (d) if the Contracting Officer shall find that the Contractor has not been furnished a letter as required by paragraph (c) within a reasonable time after making written request to submit a single, consolidated report under the provisions of paragraph (b) of this clause, and *Provided further*, That the Contracting Officer may, in his discretion, order payment to be withheld in the amount and manner above provided if the report called for by paragraph (a) is unsatisfactory or if the Assistant Chief of Naval Research for Patents notifies the Contracting Officer that the report called for by paragraph (b) is due but has not been received, or if re-ceived, is found to be unsatisfactory. No amount shall be withheld under this paragraph when the minimum amount specified by this paragraph is being withheld under other provisions of this contract. The withholding of any amount or subsequent payment thereof to the Contractor shall not be construed as a waiver of any right accruing to the Government under this contract.

30. AUTHORIZATION AND CONSENT

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

ADDITIONAL GENERAL PROVISIONS

BuWeps Supplement CR-S (Jan 60)

31. ALLOWABLE COST, FIXED FEE, AND PAYMENT

(a) For the performance of this contract, the Government shall pay to the Contractor:

(1) the cost thereof (hereinafter referred to as "allowable cost") determined by the Contract-Audit Division of the Comptroller of the Navy to be allowable in accordance with--

(A) Part 2 of Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract; and

(B) the terms of this contract; and

(ii) such fixed fee, if any, as may be provided for in the Schedule.

(b) Once each month (or at more frequent intervals, if approved by the Contract-Audit Division of the Comptroller of the Navy, the Contractor may submit to an authorized representative of the Contract-Audit Division of the Comptroller of the Navy, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute allowable cost.

(c) Promptly after receipt of each invoice or voucher the Government shall, subject to the provisions of (d) below, make payment thereon as approved by the Contract-Audit Division of the Comptroller of the Navy. Payment of the fixed fee, if any, shall be made to the Contractor as specified in the Schedule; provided, however, that after payment of eighty-five percent (85%) of the fixed fee set forth in the Schedule, further payment on account of the fixed fee shall be withheld until a reserve of either fifteen percent (15%) of the total fixed fee, or one hundred thousand dollars (\$100,000), whichever is less, shall have been set aside.

(d) At any time or times prior to final payment under this contract the Contract-Audit Division of the Comptroller of the Navy may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contract-Audit Division of the Comptroller of the Navy, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(e) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including, without limitation, the provisions relating to patents and the provisions of (f) below); the Government shall promptly pay to the Contractor any balance of allowable cost, and any part of the fixed fee, which has been withheld pursuant to (c) above or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no

event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

(f) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government, under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

- (i) an assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and
- (ii) a release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions--
 - (A) specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;
 - (B) claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract: Provided, That such claims are not known to the Contractor on the date of the execution of the release; And provided further, That the Contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and
 - (C) claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

(g) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at its expense or without cost to the Government.

32. INSPECTION OF SUPPLIES AND CORRECTION OF DEFECTS

(a) All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by the Government, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies, fabricating methods, and special tooling hereunder. The Government, through any authorized representative, may inspect the plant or plants of the Contractor or of any of its subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work. Except as otherwise provided in this contract, acceptance of any supplies or lots of supplies shall be made as promptly as practicable after delivery thereof and shall be deemed to have been made no later than sixty (60) days after the date of such delivery, if acceptance has not been made earlier within such period.

(b) At any time during performance of this contract, but not later than six (6) months (or such other period as may be provided in the Schedule) after acceptance of the supplies or lots of supplies last delivered in accordance with the requirements of this contract, the Government may require the Contractor to remedy by correction or replacement, as directed by the Contracting Officer, any supplies or lots of supplies which at the time of delivery thereof are defective in material or workmanship or otherwise not in conformity with the requirements of this contract. Except as otherwise provided in paragraph (c) hereof, the cost of any such replacement or correction shall be included in Allowable Cost determined as provided in the clause of this contract entitled "Allowable Cost, Fixed Fee and Payment," but no additional fee shall be payable with respect thereto. Such supplies or lots of supplies shall not be tendered thereafter for acceptance unless the former requirement of correction is disclosed. If the Contractor fails to proceed with reasonable promptness to replace or correct such supplies or lots of supplies, the Government (i) may by contract or otherwise replace or correct such supplies and charge to the Contractor any increased cost occasioned the Government thereby, or may reduce any fixed fee payable under this contract (or require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (ii) in the case of supplies not delivered, may require the delivery of such supplies, and shall have the right to reduce any fixed fee payable under this contract (or to require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (iii) may terminate this contract for default as provided in the clause of this contract entitled "Termination." Failure to agree to the amount of any such increased cost to be charged to the Contractor or to such reduction in, or repayment of, the fixed fee shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) Notwithstanding the provisions of paragraph (b) hereof, the Government may at any time require the correction or replacement by the Contractor, without cost to the Government, of supplies or lots of supplies which are defective in material or workmanship, or otherwise not in conformity with the requirements of this contract, if such defects or failures are due to fraud, lack of good faith or willful misconduct on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who have supervision or

direction of (i) all or substantially all of the Contractor's business, or (ii) all substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (iii) a separate and complete major industrial operation in connection with the performance of this contract. Fraud, lack of good faith or willful misconduct on the part of any of such supervisory personnel shall be deemed to include the selection of individual employees or the retention of employees after any of such supervisory personnel has reason to believe that such employees are habitually careless or otherwise unqualified.

(d) Corrected supplies or replaced supplies shall be subject to the provisions of this clause in the same manner and to the same extent as supplies originally delivered under this contract.

(e) The Contractor shall ~~make~~ its records of all inspection work available to the Government during the performance of this contract and for such longer period as may be specified in this contract.

(f) Except as provided in this clause and as may be provided in the Schedule, the Contractor shall have no obligation or liability to correct or replace supplies or lots of supplies which at the time of delivery are defective in material or workmanship or otherwise not in conformity with the requirements of this contract.

(g) Except as otherwise provided in the Schedule, the Contractor's obligation to correct or replace Government-furnished property (which is property in the possession of or acquired directly by the Government and delivered or otherwise made available to the Contractor) shall be governed by the provisions of the clause of this contract entitled "Government Property."

RECORDS

- (a)(1) The Contractor agrees to maintain books, records, documents and other evidence pertaining to the costs and expenses of this contract (hereinafter collectively called the "records") to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies and services, and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this contract. The Contractor's accounting procedures and practices shall be subject to the approval of the Contract-Audit Division of the Comptroller of the Navy: Provided, however, That no material change will be required to be made in the Contractor's accounting procedures and practices if they conform to generally accepted accounting practices and if the costs properly applicable to this contract are readily ascertainable therefrom.
- (2) The Contractor agrees to make available at the office of the Contractor at all reasonable times during the period set forth in subparagraph (4) below any of the records for inspection, audit or reproduction by any authorized representative of the Department or of the Comptroller General.
- (3) In the event the Comptroller General or any of his duly authorized representatives determines that his audit of the amounts reimbursed under this contract as transportation charges will be made at a place other than the office of the Contractor, the Contractor agrees to deliver, with the reimbursement voucher covering such charges or as may be otherwise

specified within two years after reimbursement of charges covered by any such voucher, to such representative as may be designated for that purpose through the Contract-Audit Division of the Comptroller of the Navy such documentary evidence in support of transportation costs as may be required by the Comptroller General or any of his duly authorized representatives.

- (4) Except for documentary evidence delivered to the Government pursuant to subparagraph (3) above, the Contractor shall preserve and make available its records for a period of three years (unless a longer period of time is provided by applicable statute or by any other clause in this contract) from the date of the voucher or invoice submitted by the Contractor after the completion of the work under the contract and designated by the Contractor as the "completion voucher" or "completion invoice" or, in the event this contract has been completely terminated, from the date of the termination settlement agreement; provided, however, that records which relate to (A) appeals under the clause of this contract entitled "Disputes", (B) litigation or the settlement of claims arising out of the performance of this contract, or (C) costs or expenses of the contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall be retained by the Contractor until such appeals, litigation, claims, or exceptions have been disposed of, but in no event for less than the three-year period mentioned above.
- (5) Except for documentary evidence delivered pursuant to subparagraph (3) above, and the records described in the proviso of subparagraph (4) above, the Contractor may in fulfillment of its obligation to retain its records as required by this clause substitute photographs, microphotographs or other authentic reproductions of such records, after the expiration of two years following the last day of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Contracting Officer with the concurrence of the Comptroller General or his duly authorized representative.
- (6) The provisions of this paragraph (a), including this subparagraph (6), shall be applicable to and included in each subcontract hereunder which is on a cost, cost-plus-a-fixed-fee, time-and-material or labor-hour basis.
 - (b) The Contractor further agrees to include in each of his subcontracts hereunder, other than those set forth in subparagraph (a)(6) above, a provision to the effect that the subcontractor agrees that the Comptroller General or the Department, or any of their duly authorized representatives, shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor involving transactions related to the subcontract. The term "subcontract," as used in this paragraph (b) only, excludes (i) purchase orders not exceeding \$2,500 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

34. TERMINATION

(a) The performance of work under the contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part:

(i) whenever the Contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten days (or such longer periods as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default; or

(ii) whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government.

Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this contract for default under (i) above, it is determined that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of the clause of this contract relating to excusable delays, the Notice of Termination shall be deemed to

have been issued under (ii) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

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

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

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

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

(iv) assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(v) with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this contract;

(vi) transfer title (to the extent

that title has not already been transferred) and, in the manner, to the extent, and at the times directed by the Contracting Officer, deliver to the Government (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Government, and (C) the jigs, dies, and fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the Contractor has been or will be reimbursed under this contract;

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

(viii) complete performance of such part of the work as shall not have been

terminated by the Notice of Termination; and

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

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

(c) After receipt of a Notice of Termination, the Contractor shall submit

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

(d) Subject to the provisions of paragraph (c), and subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid (including an allowance for the fee) to the Contractor by reason of the total or partial termination of work pursuant to this clause.

The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (d), as to the amounts with respect to costs and fee, or as to the amount of the fee, to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amount determined as follows:

(i) if the settlement includes cost and fee--

(A) there shall be included therein all costs and expenses reimbursable in accordance with this contract, not previously paid to the Contractor for the performance of this contract prior to the effective date of the Notice of Termination, and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by the Contracting Officer; provided, however, that the Contractor shall proceed as rapidly as practicable to discontinue such costs;

(B) there shall be included therein so far as not included under (A) above, the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(v) above, which

are properly chargeable to the terminated portion of the contract;

(C) there shall be included therein the reasonable costs of settlement, including accounting, legal clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory; provided, however, that if the termination is for default of the Contractor there shall not be included any amounts for the preparation of the Contractor's settlement proposal; and

(D) there shall be included therein portion of the fee payable under the contract determined as follows--

(I) in the event of the termination of this contract for the convenience of the Government and not for the default of the Contractor, there shall be paid a percentage of the fee equivalent to the percentage of the completion of work contemplated by the contract, less fee payments previously made hereunder; or

(II) in the event of the termination of this contract for the default of the Contractor, the total fee payable shall be such proportionate part of the fee (or, if this contract calls for articles of different types, of such part of the fee as is reasonably allocable to the type of article under consideration) as the total number of articles delivered to and accepted by the Government bears to the total number

of articles of a like kind called for by this contract; if the amount determined under this subparagraph (I) is less than the total payment theretofore made to the Contractor, the Contractor shall repay to the Government the excess amount; or

(ii) if the settlement includes only the fee, the amount thereof will be determined in accordance with subparagraph (i)(D) above.

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

(g) In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advance or other payments theretofore made to the Contractor, applicable to the terminated portion of this contract, (ii) any claim which the Government may have against the Contractor in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things

acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(h) In the event of a partial termination, the portion of the fee which is payable with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the Contractor and the Contracting Officer, and such adjustment shall be evidenced by an amendment to this contract.

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

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

35. DISPUTES

(a) Except as otherwise provided in this contract, any dispute (other than a dispute as to the allowability of any cost) concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his 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 paragraph, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) A written notice by the cognizant Government Auditor finding that any

amount set forth in any of the Contractor's invoices or public vouchers and statements of costs does not constitute allowable cost shall be final and conclusive unless within 60 days from the date of receipt of a copy of the notice the Contractor mails or otherwise furnishes to the cognizant Government Auditor a written appeal addressed to the Director, Contract Audit Division, Office of the Comptroller of the Navy, Washington, D. C. Any dispute as to the allowability of any cost arising under this contract by written appeal from the Auditor's finding and which is not disposed of by agreement shall be decided by the Director, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Director shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Director a written appeal addressed to the Secretary. The decision of the Secretary or his 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 proceeding in an appeal to the Secretary under this paragraph, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the

contract and in accordance with the cognizant Government Auditor's or the Director's decision, as the case may be.

(c) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraphs (a) and (b) above: Provided, that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

36. BUY AMERICAN ACT

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

(i) "components" means those articles, materials, and supplies, which are directly incorporated in the end products;

(ii) "end products" means those articles, materials, and supplies, which are to be acquired under this contract for public use; and

(iii) a "domestic source end product" means (A) an unmanufactured end product which has been mined or produced in the United States and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For the purposes of this (a)(iii)(B), components of foreign origin of the same type or kind as the products referred to in (b)(ii) or (iii) of this clause shall, except as provided in (c) of this clause, be treated as components mined, produced, or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:

(i) which are for use outside the United States;

(ii) which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(iii) as to which the Secretary determines the domestic preference to be inconsistent with the public interest; or

(iv) as to which the Secretary determines the cost to the Government to be unreasonable.

(c) Any component mined, produced, or manufactured in Canada, but not set forth in the list of Canadian supplies excepted by the Secretary and maintained pursuant to paragraph 6-105.5(a) of the Armed Services Procurement Regulations shall be treated as a component mined, produced, or manufactured outside the United States, for the purpose of (a)(iii)(B) above, unless such component is to be incorporated in an end product to be delivered under this contract which is on such list, or is an item on the list set forth in paragraph 6-105 of the Armed Services Procurement Regulations, or is otherwise determined to be nonavailable as set forth in (b)(ii) above.

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

37. NOTICE TO THE GOVERNMENT OF LABOR DISPUTES

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

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

38. GOVERNMENT PROPERTY

(a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-Furnished Property"). The delivery or performance

dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished Property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished Property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor and shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provisions affected by such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes". In the event that Government-furnished Property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt thereof notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provision affected by the return or disposition, or the repair or modification, in accordance with the procedures provided for in the clause of

this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished Property or delivery of such property in a condition not suitable for its intended use.

(b) Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under the contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government, in whole or in the percentage prevailing by reason of the clause of the contract entitled "Allowable Cost, Fixed Fee and Payment," whichever first occurs. All Government-furnished Property, together with all property acquired by the Contractor title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as "Government Property."

(c) Title to the Government Property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government Property, or any

part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty. The Contractor shall comply with the provisions of the "Manual for Control of Government Property in Possession of Contractors" (Appendix B, Armed Services Procurement Regulation), as in effect on the date of the contract, which Manual is hereby incorporated by reference and made a part of this contract.

(d) The Government Property provided or furnished pursuant to the terms of this contract shall, unless otherwise provided herein, be used only for the performance of this contract.

(e) The Contractor shall maintain and administer in accordance with sound industrial practice, a program, for the maintenance, repair, protection and preservation of Government Property so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all appropriate directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of Government Property.

(f)(1) The Contractor shall not be liable for any loss of or damage to the Government Property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto) (A) which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who has supervision or direction of (I) all or

substantially all of the Contractor's business, or (II) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (III) a separate and complete major industrial operation in connection with the performance of this contract; or (B) which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in subparagraph (A) above, (I) to maintain and administer, in accordance with sound industrial practice, the program for maintenance, repair, protection and preservation of Government Property as required by paragraph (e) hereof, or (II) to take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under paragraph (e) hereof; or (C) for which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule; or (D) which results from a risk expressly required to be insured under this contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or (E) which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement; provided that, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception. This clause shall not

be construed as relieving a subcontractor from liability for loss or destruction of or damage to Government Property in its possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, may provide for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government Property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

(ii) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government Property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provision of this contract.

(iii) Upon the happening of loss or destruction of or damage to the Government Property, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has designated that no such organization be employed), shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and

furnish to the Contracting Officer a statement of (A) the lost, destroyed and damaged Government Property, (B) the time and origin of the loss, destruction or damage, (C) all known interests in commingled property of which the Government Property is a part, and (D) the insurance, if any, covering any part of or interest in such commingled property. The Contractor shall make repairs and renovations of the damaged Government Property or take such other action as the Contracting Officer directs.

(iv) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government Property, it shall use the proceeds to repair, renovate or replace the Government Property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where the subcontractor has not been relieved from liability for any loss or destruction of or damage to Government Property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government Property for the benefit of the Government.

(v) In the event any aircraft are to be furnished under this contract, any loss or destruction of, or damage to, such aircraft or other Government Property occurring in connection with operations of said aircraft will be governed by the clause of this contract captioned "Flight Risks," to the extent such clause is, by its terms, applicable.

(g) The Government shall at all reasonable times have access to the premises where any of the Government Property is located.

(h) The Government Property shall remain in the possession of the Contractor for such period of time as is required for the performance of this contract unless the Contracting Officer determines that the interests of the Government require removal of such property. In such case the Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of Government Property. In any such instance, the contract may be amended to accomplish an equitable adjustment in the terms and provisions thereof.

(i) Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit to the Contracting Officer in a form acceptable to him, inventory schedules covering all items of the Government Property not consumed in the performance of this contract, or not theretofore delivered to the Government, and shall deliver or make such other disposal of such Government Property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall

be credited to the cost of the work covered by the contract or shall be paid in such manner as the Contracting Officer may direct. The foregoing provisions shall apply to scrap from Government Property provided, however, that the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account therefor as a part of general overhead or other reimbursable cost in accordance with the Contractor's established accounting procedures.

(j) Unless otherwise provided herein, the Government shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of the Contractor's plant or any portion thereof which is affected by the removal of any Government Property.

(k) Directions of the Contracting Officer and communications of the Contractor issued pursuant to this clause shall be in writing.

39. RENEGOTIATION

(a) To the extent required by law, this contract is subject to the Renegotiation Act of 1951 (50 U.S.C. App. 1211, et seq.), as amended, and to any subsequent act of Congress providing for the renegotiation of Contracts. Nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcon-

tract hereunder which is not imposed by an act of Congress heretofore or hereafter enacted. Subject to the foregoing this contract shall be deemed to contain all the provisions required by Section 104 of the Renegotiation Act of 1951, and by any such other act, without subsequent contract amendment specifically incorporating such provisions.

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

40. NOTICE AND ASSISTANCE REGARDING PATENT INFRINGEMENT

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

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any suit against the Government, or any claim against the Government made before suit has been instituted, on account of any alleged patent infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except in those cases in which the Contractor has agreed to indemnify the Government against the claim being asserted.

41. ADDITIONAL DEFINITION

As used throughout this contract, the term "Department" means the Department of the Navy.

42. PAYMENT OF ROYALTIES

Payments by the Contractor of any sum for royalties or patent rights not included in the ordinary purchase price of standard commercial supplies shall not constitute items of Allowable Cost hereunder, unless and until approved by the Contracting Officer. Reimbursement to the Contractor on account of any such payments shall not be construed as an admission by the Government of the enforceability, validity or scope of, or title to any of the patents involved, nor shall any such reimbursement constitute a waiver of any rights or defenses respecting such patents.

43. UTILIZATION OF CONCERNS IN LABOR SURPLUS AREAS

It is the policy of the Government to place supply contracts with suppliers who will perform such contracts substantially in areas of current labor surplus where this can be done, consistent with the efficient performance of the contract, at prices no higher than are obtainable elsewhere. The Contractor agrees to use its best efforts to place its subcontracts in accordance with this policy. In complying with the foregoing and with paragraph (b) of the clause of this contract entitled "Utilization of Small Business Concerns", the Contractor in placing its subcontracts shall observe the following order of preference: (i) small business concerns in labor surplus areas; (ii) other

concerns in labor surplus areas;
(iii) small business concerns not in labor surplus areas.

44. MARKING OF SHIPMENTS

The Contractor shall mark all its shipments under this contract in accordance with the current edition of "Military Standard Marking of Shipments" MIL-STD-129, issued by the Department of Defense. The applicable lot or item number, or both, shall be included in the marking prescribed for each shipment in addition to the contract number.

made on commercial bills of lading with inspection at destination, the Contractor shall on the same day send an air-mail letter to the consignee, which contains the information outlined above.

45. NOTICE OF SHIPMENT

Whenever a shipment of a carload or truckload lot is destined to a consignee located less than 1000 air miles from the point of shipment and is tendered to a carrier hereunder (regardless of whether the shipment is transported under a commercial or Government bill of lading), the Contractor shall send a prepaid telegram to the consignee the same day. The telegram shall include the following information: contract or order number; date of shipment; brief description of the commodity and how packed; weight in pounds and number of pieces; Government or commercial bill of lading number; complete routing including car number(s) and initials if by rail, or number of truckloads if by truck; military route order number if applicable; and ultimate destination if to be transshipped. When consignee is located more than 1000 air miles from the point of shipment and shipments are

46. GENERAL SPECIFICATIONS FOR INSPECTION OF MATERIAL

There is hereby incorporated in and made a part of this contract that edition of "General Specifications for Inspection of Material", issued by the Department of the Navy, which is in effect on the date of this contract.

47. PRIORITIES, ALLOCATIONS AND ALLOTMENTS

The Contractor agrees, in the procurement and use of materials required for the performance of this contract, to comply with the provisions of all applicable rules and regulations of the Business and Defense Services Administration, including Defense Materials System regulations.

48. LIMITATION ON WITHHOLDING OF PAYMENTS

If more than one clause or Schedule provision of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts so withheld at any one time shall not exceed the greatest amount which may be withheld under any one such clause or Schedule provision at that time; provided, that this limitation shall not apply to:

- (i) withholdings pursuant to any clause relating to wages or hours of employees;
- (ii) withholdings not specifically provided for by this contract; and
- (iii) the recovery of overpayments.

49. FEDERAL, STATE, AND LOCAL TAXES

(a) Except as otherwise provided in this contract, taxes (including State and local income taxes) which the Contractor is required to pay and which are paid or accrued in accordance with generally accepted accounting principles are allowable, except for:

- (i) Federal income and excess profits taxes;
- (ii) taxes in connection with financing, refinancing or refunding operations;
- (iii) taxes from which exemptions are available to the Contractor directly or available to the Contractor based on an exemption afforded the Government except when the Contracting Officer determines that the administrative burden incident to obtaining the exemption outweighs the corresponding benefits accruing to the Government; and
- (iv) special assessments on land which represent capital improvements.

(b) Taxes otherwise allowable under (a) above, but upon which a claim of illegality or erroneous assessment exists, are allowable; provided that the Contractor prior to payment of such taxes:

- (i) promptly requests instructions from the Contracting Officer concerning such taxes; and
- (ii) **takes** all action directed by the Contracting Officer arising out of (b)(i) above or an independent decision of the Government as to the existence of a claim of illegality or erroneous assessment, including cooperation with and for the benefit of the Government to (A) determine the legality of such assessment or, (B) secure a refund of such taxes.

Reasonable costs of any such action undertaken by the Contractor at the direction or with the concurrence of the Contracting Officer are allowable. Interest and penalties incurred by a Contractor by reason of the nonpayment of any tax at the direction of the Contracting Officer or by reason of the failure of the Contracting Officer to assure timely direction after prompt request therefor, are also allowable.

(c) Any refund of taxes, interest, or penalties, and any payment to the Contractor of interest thereon, attributable to taxes, interest, or penalties which were allowed as contract costs, shall be credited or paid to the Government in the manner directed by the Government, provided any interest actually paid or credited to a Contractor incident to a refund of tax, interest or penalty shall be paid or credited to the Government only to the extent that such interest accrued over the period during which the Contractor had been reimbursed by the Government for the taxes, interest or penalties.

APPROPRIATION DATA SHEET
JT TYPE
NAVORD FORM 2495 (Rev. 8-55)

APPROPRIATION AND BUREAU CONTROL NO.	EXPENDITURE ACCOUNT	OBJECT CLASS	SUBJECT TASK OR ITEM	ESTIMATED COST	FIXED FEE	AMOUNT
NOas 59-4176-c CN 8539-60 PR CAOR-4-5000-001-1 (PMR)						
17X1319.1912 RDT&E,N Bud. Proj. 61756/32250 Allot 250 Report acct 8932 CAOR-40003/2501/F009-00-030 Job Order 1069002 Reqn 61756/2024/61	96000		3	\$12,631,650.00	\$785,000.00	\$13,416,650.00

Above funds authorized for obligation for the purpose contemplated by the above identified contractual document.


R. A. WICKER
By direction

NAVWEPS 4280/1 (12-59)

CONTRACT NO.

AMENDMENT NO. **NO. 59-4176-c**

CONTROL NUMBER: 8539-60

This negotiated amendment is entered into pursuant to the provisions of 10 U. S. C. 2304(a) (10) and any required determination and findings have been made.

IN WITNESS WHEREOF, the parties hereto have executed this amendment as of the day and year first above written:

THE UNITED STATES OF AMERICA

Signed by Contracting Officer

on _____
subsequent to signing by the
Contractor.

By _____
Contracting Officer
Bureau of Naval Weapons
Department of the Navy

ACCEPTED

WITNESSES:
NOT REQUIRED

THE TRANSPORT COMPANY OF TEXAS
(Contractor)

(1) _____

By _____

(2) _____

TITLE _____

NOTE: In the case of a corporation
witnesses are not required but
certificate below must be completed.

CERTIFICATE
NOT REQUIRED

I, _____, certify that I am
the Secretary of the corporation named as Contractor in the
foregoing amendment; that who signed said amendment on behalf
of the Contractor was then of said corporation; that said
amendment was duly signed for and in behalf of said corporation by authority of its governing body
and is within the scope of its corporate powers.

(Signature of person certifying)

(CORPORATE SEAL)

SCHOOL PRINCIPAL

The School Principal directs the operation of the Elementary and Junior-Senior High School. His qualifications are as follows:

(1) Education: 3½ years State Teachers College, Jacksonville, Alabama, Elementary Education, received B.S. Degree Education, 1 1/3 years Howard College, Birmingham, Alabama. Secondary Education, received B.S. Degree Education, 1 Year University of Idaho-Education, received M.S. Degree Education.

(2) Experience: 3 years elementary teacher, 6 years elementary Principal, 1 year Commandant, Military Academy, Woodland Hill, California, 2 years elementary Junior-Senior High Principal, 2 years high school Principal, 1 year school Superintendent.

(3) Credentials: Standard General Administrators Credentials, State of Washington and Superintendent's Credential, State of Idaho.



