

AWARD/CONTRACT		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)		RATING	PAGE OF PAGES 1 53		
2. CONTRACT (Proc. Inst. Ident.) NO. W9127N-04-D-0009		3. EFFECTIVE DATE 25 May 2004		4. REQUISITION/PURCHASE REQUEST/PROJECT NO. W66QKZ-3219-4546			
5. ISSUED BY US ARMY CORPS OF ENGINEER 333 SW FIRST AVE PORTLAND OR 97204-3495		CODE W9127N	6. ADMINISTERED BY (If other than Item 5) US ARMY CORPS OF ENGINEER DAVID A EBNER 503-808-4611 DAVID.A.EBNER@USACE.ARMY.MIL PORTLAND OR		CODE W9127N		
7. NAME AND ADDRESS OF CONTRACTOR (No., street, city, county, state and zip code) ACTUATION TEST EQUIPMENT CO. DOUGLAS ALBRIGHT 3393 EDDIE RD. WINNEBAGO IL 61088				8. DELIVERY [] FOB ORIGIN [X] OTHER (See below)			
				9. DISCOUNT FOR PROMPT PAYMENT N/A			
				10. SUBMIT INVOICES 1 (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN:		ITEM Section G	
CODE 3H4P4		FACILITY CODE					
11. SHIP TO/MARK FOR HDC- PACIFIC BRANCH USACE PORTLAND DISTRICT PO BOX 2946 333 S PORTLAND OR 97208-2946		CODE G220YP0	12. PAYMENT WILL BE MADE BY USAED, PORTLAND C/O USACE FINANCE CENTER, CEFC-AO-P 5722 INTEGRITY DRIVE MILLINGTON TN 38054-5005			CODE FOA-MIL	
13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: [] 10 U.S.C. 2304(c)() [] 41 U.S.C. 253(c)()			14. ACCOUNTING AND APPROPRIATION DATA				
15A. ITEM NO.	15B. SUPPLIES/ SERVICES	15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT		
SEE SCHEDULE							
15G. TOTAL AMOUNT OF CONTRACT						\$160,000.00	
16. TABLE OF CONTENTS							
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CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE							
17. [X] CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return 1 copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)				18. [] AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number _____			
19A. NAME AND TITLE OF SIGNER (Type or print)				20A. NAME AND TITLE OF CONTRACTING OFFICER RALPH P BANSE-FAY / CONTRACTING OFFICER TEL: 503-808-4612 EMAIL: ralph.banse-fay@usace.army.mil			
19B. NAME OF CONTRACTOR		19C. DATE SIGNED		20B. UNITED STATES OF AMERICA 		20C. DATE SIGNED 26-May-2004	
BY _____ (Signature of person authorized to sign)				BY _____ (Signature of Contracting Officer)			

Section B - Supplies or Services and Prices

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001		160,000	Dollars, U.S.	\$1.00	\$160,000.00 NTE
	Time & Materials: Development & delivery of a prototype Type 1 Optimizer Index Test Box per the Statement of Work.				
	PURCHASE REQUEST NUMBER: W66QKZ-3219-4546				
				TOTAL ESTIMATED PRICE	\$160,000.00 NTE
				CEILING PRICE	\$160,000.00 NTE
	Funded Amount				\$160,000.00
	FOB: Destination				

ITEM NO	SUPPLIES/SERVICES	MAX QUANTITY	UNIT	UNIT PRICE	MAX AMOUNT
0002		320	Each	\$10,667.00	\$3,413,440.00
OPTION	Firm, fixed-price: ITB Complete Systems per the Section B Schedule.				
				MAX NET AMT	\$3,413,440.00
	Funded Amount				\$0.00
	FOB: Destination				

ITEM NO	SUPPLIES/SERVICES	MAX QUANTITY	UNIT	UNIT PRICE	MAX AMOUNT
0003		320	Each	\$2,300.00	\$736,000.00
OPTION	FFP: ITB Software Only per the Section B Schedule.				
				MAX NET AMT	\$736,000.00
	Funded Amount				\$0.00
	FOB: Destination				

NOTES

B-1. CONTRACT TIME PERIODS.

B-1.1 Effective Period. This contract shall be in effect from the date of award through 31 MAY 2009, or until all items ordered hereunder are accepted for delivery, whichever is later.

B-1.2 Ordering Period. Orders may be placed under this contract from date of award through 31 MAY 2009, the Ordering Period.

B-2. ORDERING LIMITS.

B-2.1 Ordering Ceiling (OC). The Ordering Ceiling (OC) is 320 ea. total units, which is the sum of all orders under both option Line Items. For example, for the first order, either Line Item (LI) could be exercised for all 320 ea. units, in which case the other LI could not be exercised, because the sum of all orders for both LIs would exceed the 320. ea OC. Any combinations of the listed quantities for both LIs is acceptable, up to the OC. The Government is not obligated to buy or fund the OC nor the award amount of this contract. Each Order will obligate funds on an individual basis, as the Government deems appropriate.

B-2.2 Minimum Order. There is no minimum order amount.

B-2.2 Ordering Ceiling limits Ordering Period. During the Ordering Period the Government may:

a. order complete units under Line Item 0002, as often as desired but limited by the OC, in any of the increments listed in the appropriate Schedule. The contractor is not required to fulfill that amount of any order which exceeds the OC.

b. order software units under Line Item 0003, as often as desired but limited by the OC, in any of the increments listed in the appropriate Schedule. The contractor is not required to fulfill that amount of any order which exceeds the OC.

B-3. CONDITIONS FOR EXERCISING OPTIONS.

The Government may or may not in its sole discretion unilaterally exercise any Option without advance notice at any time during an ordering period. The government is not in any way obligated to purchase any units whatsoever under Line Items 0002 and/or 0003.

B-4. TRAVEL AND TRANSPORTATION.

All contractor travel and transportation authorized hereunder will be paid according to the Dept. of Defense Joint Travel Regulations for Civilians applicable at the time the cost is incurred.

B-4.1 Authorized Travel Area. The Contractor shall not be reimbursed for any travel beyond the boundaries of the Portland District, unless specifically authorized by the Contracting Officer.

B-5. PROPOSAL PART OF CONTRACT.

B-5.1 The Contractor's Resource Allotment Estimate for LI 0001, a T&M LI, is set forth at Section J.

LI 0003, SOFTWARE DISCOUNT SCHEDULE

The following Schedule applies to the purchase of software under Line Item 0003.

Software Price Schedule	
Each	\$/Unit
1 to 20	\$2,300
40	\$2,070
60	\$1,955
80	\$1,886
100	\$1,829
120	\$1,778
140	\$1,732
160	\$1,691
180	\$1,656
200	\$1,628
220	\$1,605
240	\$1,587
260	\$1,576
280	\$1,571
300	\$1,568
320	\$1,564

LI 0002, COMPLETE SYSTEMS

Each complete system under Line Item 0002 shall consist of a minimum of the following integrated, assembled components:

Hardware

- 1 Computer
- 1 NI 6036E
- 1 SCC-2345 Enclosure
- 1 SCC-LP01 25 Hz Filters
- 1 SCC-CI20 4-20Ma Input
- 1 cable sets for I/O boards
- 1 Instrument Hookup wire
- 10 to 10' wc differentials

Software

- 1 PaperPort
- 1 AutoSketch
- 1 ATECo HydroSoft

LABOR RATES

Mr. Albright's fully burdened labor rate is \$117.66 / hour,
and his Technician/Assistant's fully burdened rate is \$82.14 / hour.

Section C - Descriptions and Specifications

AMENDED STATEMENT OF WORK A TYPE 1 OPTIMIZER (INDEX TEST BOX)

PART 1 GENERAL

1.1 BACKGROUND.

Type 1 optimization refers to the software and equipment to conduct automatic, unattended, index tests on Kaplan hydraulic turbines. An index test is a relative efficiency test performed to determine the shape of the optimum efficiency profile and the optimum cam curve to be inputted to the governor or control unit. A cam curve denotes the relation between the angle of the blades on the runner and the opening of the wicket gates, for a given head. This contract is intended to produce a working, prototype Type 1 Optimizer and validate the operational concept of the unit to conduct automatic, unattended, index tests on Kaplan hydraulic turbines.

1.2 POINTS OF CONTACT.

Project Manager:	Rod Wittinger, 503.808.4280
Product Coordinator:	Wayne Todd, 503.808.4278
HDC Contact:	Lee Sheldon, 503.808.4298
Administration:	Leslie Conklin, 503.808.4815
Contract Administrator:	David Ebner, 503.808.4611 George Williams, 503.808.4615

1.3 HDC ADDRESSES.

Street Address:	Mailing Address:
USAED PORTLAND Hydroelectric Design Center Robert Duncan Plaza 333 S.W. First Ave., 8 th Floor Portland, Oregon 97204-3495	USAED PORTLAND Hydroelectric Design Center P.O. Box 2946 Portland, Oregon 97208-2946

1.4 REFERENCES.

The contractor will coordinate efforts to conduct the prototype demonstration with the US Army Corps of Engineers Product Coordinator using the following references as guidelines:

American Society of Mechanical Engineers (ASME),
Power Test Code (PTC) 18 (latest revision)

International Electro-technical Commission (ETC),
Publication 41 (latest revision)

References are available upon request from the Product Coordinator.

1.5 MATERIALS AND INFORMATION TO BE PROVIDED TO THE GOVERNMENT.

- 1.5.1 Licensing as detailed in the Optimizer Special License Agreement in Section J of this Contract and in various clauses.
- 1.5.2 All data developed in performance of this contract that relates to operation of the McNary Dam Kaplan turbine is proprietary to the U.S. Government. The contractor does not gain or retain rights to operational data, except as specified in the Optimizer Special License Agreement in Section J of this Contract. See also DFAR 252.227-7013, DFAR 252.227-7025. All deliverables specified in 1.7.2.

1.6 GENERAL REQUIREMENTS.

The Contractor will provide all administration, plant, facilities, equipment, computer programming, design, labor, travel and work required to develop, test, manufacture, provide, install, proof of concept shop and field test, document and provide monthly progress reports, interim reports, and final reports for a prototype Index Test Box at McNary Dam for a Kaplan turbine unit.

1.7 DELIVERY.

- 1.7.1 The Contractor shall use a serialized transmittal letter to accompany all reports and other deliverables to the Hydro-Electric Design Center (HDC), Portland District. Facsimile and e-mail communications shall use the date and time of transmission as a reference.
- 1.7.2 Deliverables:
- 1.7.2.1 One prototype, complete, stand alone, demonstration Type 1 Optimizer single, independent system also known as an Index Test Box (ITB), which is removable and portable, that operates a Kaplan unit through the existing control system and collects the necessary data for prototype Kaplan cam analysis and development. Operates unattended and provides data in a standard format for analysis of blade to gate relationships versus as found operational parameters in a format consistent with existing Government equipment, processes and procedures.
- 1.7.2.2 A complete prototype source code listing for any code developed under this contract. Reference the Optimizer Special License Agreement in Sec. J, FAR 52.227-14, DFAR 252.227-7014, DFAR 252.227-7013, DFAR 252.227-7016, DFAR 252.227-7019. Any pre-developed code shall be as a self-contained module and identified by form, fit and function, including inputs and outputs.
- 1.7.2.3 A complete prototype parts list with drawings.
- 1.7.2.4 An instruction manual, including installation, operation and maintenance of the prototype, Type 1 Optimizer.
- 1.7.2.5 Any required software and hardware to reduce and analyze the recorded test data and present the results in a standard format, with engineering units as customarily used in the US. Reference FAR 52.227-14, DFAR 252.227-7014, DFAR 252.227-7013, DFAR 252.227-7016, DFAR 252.227-7019, DFAR 252.227-7037
- 1.7.2.6 A data storage capability that will allow the historical compilation of performance data on each generating unit in a powerhouse.
- 1.7.2.7 Demonstration of the prototype both independently and on an operating Kaplan unit, both with and without fish screens.
- 1.7.3 Reports and progress reports. Letter progress reports are to be submitted on at least a monthly basis. These shall list work accomplished, problems encountered, and work remaining. Milestone accomplishment letter reports shall also be submitted with each billing statement.
- 1.7.4 Additional, complete, programmed Index Test Boxes as specified herein.

PART 2 PRODUCTS**2.1 WORD PROCESSOR SYSTEMS.**

The Contractor shall use MS Word 2000 for all typed documents delivered to HDC. The Contractor shall use CDs for all submittals and deliveries to HDC. If an earlier version of Word is used, it shall be coordinated in advance and approved by the Government prior to use.

PART 3 EXECUTION

3.1 PROTECTION.

The Contractor shall make every effort to protect the electronic data generated to create the "deliverables" from system errors, erasures, damage, read/write failures, viruses, etc. The Contractor shall maintain a backup file of all work items at the close of each working day.

3.2 (reserved).

3.3 SCOPE OF WORK.

3.3.1 Compatibility:

3.3.1.1 The prototype Type 1 Optimizer shall be compatible with the electronic control units on the turbine-generators at the McNary powerhouse.

3.3.1.2 The prototype Type 1 Optimizer shall be designed and developed so that it is capable of being integrated into the existing Generic Data Acquisition and Control system (GDACS) system with a minimal amount of modification.

3.3.2 Inputs and Outputs:

3.3.2.1 It is the Contractor's responsibility to assess the type and quality of data or signal inputs available from the already installed powerhouse instrumentation.

3.3.2.2 The outputs of the prototype Type 1 Optimizer are to be a data field and resulting relative efficiency profile with a corresponding cam curve at two-foot intervals of gross head. The outputs shall be observable on the device and be provided in electronic formats suitable for subsequent analysis on computer.

3.3.3 Proof of Concept Demonstration:

3.3.3.1 The contractor is to supervise, participate in and assist in the Government's installation of the prototype Type 1 Optimizer at the McNary powerhouse.

3.3.3.2 After installation, the contractor is to demonstrate the prototype Type 1 Optimizer by having it conduct a complete index test at a single head, both with and without fish screens, and reduce and analyze the recorded test data to produce the specified outputs.

3.4 PERFORMANCE PERIOD / MILESTONES.

3.4.1 The Contractor shall furnish all of the items discussed in paragraph DELIVERY by the end of the performance period of May 31, 2005.

3.4.2 The following interim milestones shall be used as a gauge in establishing progress payments to the Contractor. The milestone schedule may be changed by mutual agreement of the Contractor and the U.S. Government.

3.4.2.1 Initial trip to Portland to meet with the government for design and development discussions. This initial meeting will document and demonstrate items developed prior to award of the contract. The initial trip will also include field trip(s) to McNary to evaluate powerhouse instrumentation signal inputs and install a prototype Index Test Box with only the data collection part of it enabled. Only the existing powerhouse instrumentation will be used by the Index Test Box. Verification of the accuracy of the already installed powerhouse instrumentation is not part of this Statement of Work.

3.4.2.2 Other field trips to McNary as needed for development and continued testing.

3.4.2.3 Submission of a preliminary prototype design.

- 3.4.2.4 Submission of a complete set of prototype drawings and parts list.
- 3.4.2.5 Submission of a prototype instruction manual, including installation, operation and maintenance instructions.
- 3.4.2.6 Delivery of one prototype complete, stand-alone, Type 1 Optimizer, Index Test Box FOB to McNary powerhouse as follows:
- 3.4.2.7 Completion of supervising the installation of a prototype Type 1 Optimizer, Index Test Box,
- 3.4.2.8 Demonstration of the prototype Type 1 Optimizer, Index Test Box, first as an independent bench test and then on an operating Kaplan unit, both with and without fish screens,
- 3.4.2.9 Delivery of the prototype Type 1 Optimizer source code listing developed under this contract, and a final report specifying objectives achieved, knowledge developed during the project and recommendations.
- 3.4.2.10 Additional, complete, programmed Index Test Boxes as called out in the Line Items.

3.5 MEETING AND TELEPHONE MINUTES/RECORDS.

The Contractor shall include in the design workbook a copy of all meeting minutes and telephone conversations. Records shall be made at the time they occur and shall be assembled and collated in the workbook.

Principal Engineer.

The contractor must obtain the Contracting Officer's (CO) approval to change the principal engineer, Douglas J. Albright. The contractor shall advise the CO if the principal engineer will, or plans to, devote substantially less effort to the work than anticipated.

Section E - Inspection and Acceptance

INSPECTION AND ACCEPTANCE TERMS

Supplies/services will be inspected/accepted at:

CLIN All CLINS	INSPECT AT In situ	INSPECT BY GOV	ACCEPT AT After install & successful testing	ACCEPT BY Government
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CLAUSES INCORPORATED BY REFERENCE

52.246-6	Inspection--Time-And-Material And Labor-Hour	MAY 2001
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CLAUSES INCORPORATED BY FULL TEXT

252.246-7000 MATERIAL INSPECTION AND RECEIVING REPORT (MAR 2003)

(a) At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a material inspection and receiving report in the manner and to the extent required by Appendix F, Material Inspection and Receiving Report, of the Defense FAR Supplement.

(b) Contractor submission of the material inspection and receiving information required by Appendix F of the Defense FAR Supplement by using the Wide Area WorkFlow-Receipt and Acceptance (WAWF-RA) electronic form (see paragraph (b)(1) of the clause at 252.232-7003) fulfills the requirement for a material inspection and receiving report (DD Form 250).

(End of clause)

Section F - Deliveries or Performance

DELIVERY INFORMATION:

CLIN 0001 will be delivered according to the Statement of Work.

Any Orders under the Option CLINS will specify a delivery location; time will be negotiated.

CLAUSES INCORPORATED BY REFERENCE

52.242-15	Stop-Work Order	AUG 1989
52.247-34	F.O.B. Destination	NOV 1991

Section G - Contract Administration Data

CLAUSES INCORPORATED BY FULL TEXT

52.000-4006 CONTRACT ADMINISTRATOR

Contract will be administered by:

Department of the Army, Portland District
Corps of Engineers
P. O. Box 2946
Attn: CENWP-EC-CR-A, Leslie Conklin
Portland, Oregon 97208-2946

Telephone: 503.808.4815

52.000.4007 INVOICE SUBMITTAL:

Original to:

US Army Corps of Engineers, Portland District
ATTN: Eleanore V. Collins
PO Box 2946
Portland, OR 97208-2946

Section H - Special Contract Requirements

CLAUSES INCORPORATED BY FULL TEXT

52.202-4002 UNAUTHORIZED INSTRUCTIONS FROM GOVERNMENT OR OTHER PERSONNEL (MAY 95) PARC 92-4

The Contractor shall not accept instruction issued by any person employed by the U.S. Government or otherwise, other than the Contracting Officer or the authorized representative of the Contracting Officer acting within the limits of his authority.

52.228-4005 INSURANCE—WORK ON A GOVERNMENT INSTALLATION (JAN 1990 DEV)

a. The Contractor shall, at its own expense, provide and maintain during the entire performance period of this contract, at least the kinds and minimum amounts of insurance required by this Clause as follows:

TYPE	AMOUNT
1) Workman's Compensation and Employer's Liability (including Federal Longshoremen . and Harbor Worker's Insurance)	As legally required by the State wherein the work is being performed.
2) Comprehensive General Liability Insurance	Personal Injury Liability: \$1 million per person \$2 million per occurrence Property Damage (may be included in general aggregate limits or combined single unit coverage): \$1 million per occurrence
3) Automobile Liability	Personal Injury Liability: \$1 million per person \$2 million per occurrence Property Damage (may be included in general aggregate limits or combined single unit coverage): \$1 million per occurrence

4) If single general aggregate limits or combined single unit coverage is obtained for General Liability and/or Automobile Liability coverage, minimum amounts shall be the sum of the personal injury and property damage coverage required above. Umbrella Form Excess Liability insurance coverage shall be added to general liability and automobile liability coverage to determine if minimum insurance limits are met.

5) If work is to be performed in railroad right-of-way, see paragraph titled ADDITIONAL REQUIREMENTS FOR RAILROAD PROTECTION in Section 01010 of SECTION C. (THIS APPLIES TO CONSTRUCTION CONTRACTS ONLY)

b. Before commencing work under this contract, the Contractor shall certify to the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe, or (2) until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

c. The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

d. "Government Installation" for this clause includes government vessels.

52.236-4004 SAFETY REQUIREMENTS

In accordance with the contract clause "Accident Prevention", the Architect-Engineer shall comply with the applicable portions of the U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of contract award, and all the latest OSHA standards for the work covered in this contract. Copies of EM 385-1-1 will be made available upon contract award.

52.236-4010 TESTIMONY IN JUDICIAL PROCEEDINGS (MAY 95) PARC 92-4

The Architect-Engineer may be required to furnish competent personnel to attend conferences and to furnish expert testimony relating to any of the data or reports furnished under this contract. When required, arrangements for these services and payment therefor will be made by representatives of either the Corps of Engineers or the Department of Justice.

52.236-4011 COMPLIANCE WITH APPLICABLE LAWS

The Architect-Engineer shall be responsible that his employees strictly observe the laws of the United States or other governing bodies affecting all operations at all sites. This shall include regulations imposed by military installations. The Architect-Engineer shall comply with all applicable laws under which he is operating including those concerning the inspection and operation of equipment and the licensing of engineers, land surveyors, pilots, mechanics and other personnel required under this contract.

(END OF CLAUSE)

Section I - Contract Clauses

CLAUSES INCORPORATED BY REFERENCE

52.202-1 Alt I	Definitions (Dec 2001) --Alternate I	MAY 2001
52.203-3	Gratuities	APR 1984
52.203-5	Covenant Against Contingent Fees	APR 1984
52.203-6	Restrictions On Subcontractor Sales To The Government	JUL 1995
52.203-7	Anti-Kickback Procedures	JUL 1995
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	JAN 1997
52.203-10	Price Or Fee Adjustment For Illegal Or Improper Activity	JAN 1997
52.203-12	Limitation On Payments To Influence Certain Federal Transactions	JUN 2003
52.204-4	Printed or Copied Double-Sided on Recycled Paper	AUG 2000
52.209-6	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment	JUL 1995
52.215-2	Audit and Records--Negotiation	JUN 1999
52.215-21 Alt IV	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data--Modifications (Oct 1997) - Alternate IV	OCT 1997
52.219-8	Utilization of Small Business Concerns	OCT 2000
52.222-3	Convict Labor	JUN 2003
52.222-21	Prohibition Of Segregated Facilities	FEB 1999
52.222-26	Equal Opportunity	APR 2002
52.222-35	Equal Opportunity For Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	DEC 2001
52.222-36	Affirmative Action For Workers With Disabilities	JUN 1998
52.222-37	Employment Reports On Special Disabled Veterans, Veterans Of The Vietnam Era, and Other Eligible Veterans	DEC 2001
52.232-17	Interest	JUN 1996
52.232-25	Prompt Payment	OCT 2003
52.233-1 Alt I	Disputes (Jul 2002) - Alternate I	DEC 1991
52.236-23	Responsibility of the Architect-Engine Contractor	APR 1984
52.236-24	Work Oversight in Architect-Engine Contracts	APR 1984
52.236-25	Requirements for Registration of Designers	JUN 2003
52.242-1	Notice of Intent to Disallow Costs	APR 1984
52.242-3	Penalties for Unallowable Costs	MAY 2001
52.242-13	Bankruptcy	JUL 1995
52.242-14	Suspension of Work	APR 1984
52.243-1 Alt III	Changes--Fixed Price (Aug 1987) - Alternate III	APR 1984
52.243-1 Alt V	Changes--Fixed-Price (Aug 1987) - Alternate V	APR 1984
52.243-3	Changes--Time-And-Material Or Labor-Hours	SEP 2000
52.243-6	Change Order Accounting	APR 1984
52.244-6	Subcontracts for Commercial Items	APR 2003
52.245-5 Dev	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) Deviation	JUN 2003
52.249-6 Alt IV	Termination (Cost Reimbursement) (Sep 1996) - Alternate IV	SEP 1996
52.253-1	Computer Generated Forms	JAN 1991

CLAUSES INCORPORATED BY FULL TEXT

52.215-8 ORDER OF PRECEDENCE--UNIFORM CONTRACT FORMAT (OCT 1997)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- (a) The Schedule (excluding the specifications).
- (b) Representations and other instructions.

(c) Contract clauses.

(d) Other documents, exhibits, and attachments.

(e) The specifications.

(End of clause)

52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)

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

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

(c) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at (FAR) 2.101 to exceed the dollar amount set forth in 13.000 of the Federal Acquisition Regulation (FAR).

(End of clause)

52.227-3 PATENT INDEMNITY (APR 1984)

(a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.

(b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor, (2) an infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or (3) a claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

(End of clause)

52.227-11 PATENT RIGHTS--RETENTION BY THE CONTRACTOR (SHORT FORM) (JUN 1997)

(a) Definitions.

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(2) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(3) "Nonprofit organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational

organization qualified under a state nonprofit organization statute.

(4) "Practical application" means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(5) "Small business firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) "Subject invention" means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(b) Allocation of principal rights. The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention disclosure, election of title, and filing of patent application by Contractor. (1) The Contractor will disclose each subject invention to the Federal agency within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within 2 years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within 1 year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure election, and filing under subparagraphs (c)(1), (2), and (3) of this clause may, at the discretion of the agency, be granted.

(d) Conditions when the Government may obtain title. The Contractor will convey to the Federal agency, upon written request, title to any subject invention--

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that the agency may only request title within 60 days after learning of the failure of the Contractor to disclose or elect within the specified times.

(2) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country.

(3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum rights to Contractor and protection of the Contractor right to file. (1) The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and agency regulations, if any, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) Contractor action to protect the Government's interest. (1) The Contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) of this clause and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor will notify the Federal agency of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by (identify the Federal agency). The Government has certain rights in the invention."

(g) Subcontracts. (1) The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The Contractor will include in all other subcontracts, regardless of tier, for experimental, developmental, or

research work the patent rights clause required by Subpart 27.3.

(3) In the case of subcontracts, at any tier, the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) Reporting on utilization of subject inventions. The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(i) Preference for United States industry. Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in rights. The Contractor agrees that, with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request the Federal agency has the right to grant such a license itself if the Federal agency determines that--

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special provisions for contracts with nonprofit organizations. If the Contractor is a nonprofit organization, it agrees that--

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions as the Contractor;

(2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(4).

(l) Communications.

Per USACE regs. and policy.

(End of clause)

52.227-14 RIGHTS IN DATA--GENERAL (JUN 1987)

(a) Definitions. "Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.

"Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

"Form, fit, and function data," as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

"Limited rights," as used in this clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this clause.

"Limited rights data," as used in this clause, means data (other than computer software) that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications thereof.

"Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of such computer software.

"Restricted rights," as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

"Technical data," as used in this clause, means data (other than computer software) which are of a scientific or technical nature.

"Unlimited rights," as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of rights.

(1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in--

- (i) Data first produced in the performance of this contract;
- (ii) Form, fit, and function data delivered under this contract;
- (iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and
- (iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to--

- (i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;
- (ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;
- (iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (c)(1) of this clause.

(c) Copyright.

(1) Data first produced in the performance of this contract. Unless provided otherwise in paragraph (d) of this clause, the Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

(2) Data not first produced in the performance of this contract. The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in subparagraph (g)(3) of this clause if included in this contract or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

(3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, publication and use of data.

(1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract.

(2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(e) Unauthorized marking of data.

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the Contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Contractor a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in subparagraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) This paragraph (e) does not apply if this contract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard agency subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.

(4) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by this paragraph (e) from bringing a claim under the Contract Disputes Act, including pursuant to the Disputes clause of this contract, as applicable, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) Omitted or incorrect markings.

(1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor--

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also (i) permit correction at the Contractor's expense of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(g) Protection of limited rights data and restricted computer software.

(1) When data other than that listed in subdivisions (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this contract and qualify as either limited rights data or restricted computer software, if the Contractor desires to continue protection of such data, the Contractor shall withhold such data and not furnish them to the Government under this contract. As a condition to this withholding, the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.

(2) Reserved.

(3) Reserved.

(h) Subcontracting. The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.

Relationship to patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.
(End of clause)

52.232-7 PAYMENTS UNDER TIME AND MATERIALS AND LABOR HOUR CONTRACTS (DEC 2002)

The Government will pay the Contractor as follows upon the submission of invoices or vouchers approved by the Contracting Officer:

(a) Hourly rate. (1) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer), to the Contracting Officer or designee. The Contractor shall substantiate vouchers by evidence of actual payment and by individual daily job timecards, or other substantiation approved by the Contracting Officer. Promptly after receipt of each substantiated voucher, the Government shall, except as otherwise provided in this contract, and subject to the terms of (e) of this section, pay the voucher as approved by the Contracting Officer.

(2) Unless otherwise prescribed in the Schedule, the Contracting Officer shall withhold 5 percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed \$50,000. The amounts withheld shall be retained until the execution and delivery of a release by the Contractor as provided in paragraph (f) of this section.

(3) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the Contracting Officer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(b) Materials and subcontracts. (1) The Contracting Officer will determine allowable costs of direct materials in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract. Direct materials, as used in this clause, are those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product.

(2) The Contractor may include reasonable and allocable material handling costs in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with the Contractor's usual accounting practices consistent with Subpart 31.2 of the FAR.

(3) The Government will reimburse the Contractor for supplies and services purchased directly for the contract when the Contractor--

(i) Has made payments of cash, checks, or other forms of payment for these purchased supplies or services; or

(ii) Will make these payments determined due--

(A) In accordance with the terms and conditions of a subcontract or invoice; and

(B) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government.

(4)(i) The Government will reimburse the Contractor for costs of subcontracts that are authorized under the subcontracts clause of this contract, provided that the costs are consistent with paragraph (b)(5) of this clause.

(ii) The Government will limit reimbursable costs in connection with subcontracts to the amounts paid for supplies and services purchased directly for the contract when the Contractor has made or will make payments determined due of cash, checks, or other forms of payment to the subcontractor--

(A) In accordance with the terms and conditions of a subcontract or invoice; and

(B) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government.

(iii) The Government will not reimburse the Contractor for any costs arising from the letting, administration, or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under paragraph (a)(1) of this clause.

(5) To the extent able, the Contractor shall--

(i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify the Contracting Officer and give the reasons. The Contractor shall give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The Contractor shall not deduct from gross costs the benefits lost without fault or neglect on the part of the Contractor, or lost through fault of the Government.

(c) Total cost. It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during performing this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performing this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(d) Ceiling price. The Government shall not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in

writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(e) Audit. At any time before final payment under this contract the Contracting Officer may request audit of the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the Contractor as the "completion voucher" or "completion invoice" and substantiating material, and upon compliance by the Contractor with all terms of this contract (including, without limitation, terms relating to patents and the terms of (f) and (g) of this section), the Government shall promptly pay any balance due the Contractor. The completion invoice or voucher, and substantiating material, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(f) Assignment. The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Contractor.

(2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 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.

(3) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(g) Refunds. The Contractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Contractor or any assignee, that arise under the materials portion of this contract and for which the Contractor has received reimbursement, shall be paid by the Contractor to the Government. The Contractor and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, an assignment to the Government of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to the Contracting Officer.

(h) Interim payments. (1) Interim payments made prior to the final payment under the contract are contract financing payments. Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act.

(2) The designated payment office will make interim payments for contract financing on the 30th day after the designated billing office receives a proper payment request. In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(End of clause)

52.232-11 EXTRAS (APR 1984)

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefore have been authorized in writing by the Contracting Officer.

(End of clause)

52.239-1 PRIVACY OR SECURITY SAFEGUARDS (AUG 1996)

(a) The Contractor shall not publish or disclose in any manner, without the Contracting Officer's written consent, the details of any safeguards either designed or developed by the Contractor under this contract or otherwise provided by the Government.-

(b) To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of Government data, the Contractor shall afford the Government access to the Contractor's facilities, installations, technical capabilities, operations, documentation, records, and databases.-

(c) If new or unanticipated threats or hazards are discovered by either the Government or the Contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party.

(End of clause)

52.244-4 SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS (ARCHITECT-ENGINEER SERVICES) (AUG 1998)

Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Contractor shall obtain the Contracting Officer's written consent before making any substitution for these subcontractors, associates, or consultants.

(End of clause)

52.246-1 CONTRACTOR INSPECTION REQUIREMENTS (APR 1984)

The Contractor is responsible for performing or having performed all inspections and tests necessary to substantiate that the supplies or services furnished under this contract conform to contract requirements, including any applicable technical requirements for specified manufacturers' parts. This clause takes precedence over any Government inspection and testing required in the contract's specifications, except for specialized inspections or tests specified to be performed solely by the Government.

(End of clause)

52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

acqnet.gov

for DOD clauses go to:

<http://www.acq.osd.mil/dpap/dfars/index.htm>

(End of clause)

252.201-7000 CONTRACTING OFFICER'S REPRESENTATIVE (DEC 1991)

(a) "Definition. Contracting officer's representative" means an individual designated in accordance with subsection 201.602-2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the contracting officer to perform specific technical or administrative functions.

(b) If the Contracting Officer designates a contracting officer's representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the contracting officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

(End of clause)

252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES (MAR 1999)

(a) Definitions. As used in this clause—

(1) "Arising out of a contract with the DoD" means any act in connection with—

(i) Attempting to obtain;

(ii) Obtaining, or

(iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

(2) "Conviction of fraud or any other felony" means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which sentence has been imposed.

(3) "Date of conviction" means the date judgment was entered against the individual.

(b) Any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from serving--

(1) In a management or supervisory capacity on any DoD contract or first-tier subcontract;

(2) On the board of directors of any DoD contractor or first-tier subcontractor;

(3) As a consultant, agent, or representative for any DoD contractor or first-tier subcontractor; or

(4) In any other capacity with the authority to influence, advise, or control the decisions of any DoD contractor or subcontractor with regard to any DoD contract or first-tier subcontract.

(c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than 5 years from the date of conviction.

(d) 10 U.S.C. 2408 provides that a defense contractor or first-tier subcontractor shall be subject to a criminal penalty of not more than \$500,000 if convicted of knowingly—

(1) Employing a person under a prohibition specified in paragraph (b) of this clause; or

(2) Allowing such a person to serve on the board of directors of the contractor or first-tier subcontractor.

(e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as—

(1) Suspension or debarment;

(2) Cancellation of the contract at no cost to the Government; or

(3) Termination of the contract for default.

(f) The Contractor may submit written requests for waiver of the prohibition in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify—

(1) The person involved;

(2) The nature of the conviction and resultant sentence or punishment imposed;

(3) The reasons for the requested waiver; and

(4) An explanation of why a waiver is in the interest of national security.

(g) The Contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation, except those for commercial items or components.

(h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial of Federal Benefits Office, U.S. Department of Justice, telephone (202) 616-3507.
(End of clause)

252.204-7000 DISCLOSURE OF INFORMATION (DEC 1991)

(a) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless--

- (1) The Contracting Officer has given prior written approval; or
- (2) The information is otherwise in the public domain before the date of release.

(b) Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its request to the Contracting Officer at least 45 days before the proposed date for release.

(c) The Contractor agrees to include a similar requirement in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime contractor to the Contracting Officer.
(End of clause)

252.204-7003 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)

The Contractor's procedures for protecting against unauthorized disclosure of information shall not require Department of Defense employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to the contractor.

(End of clause)

252.204-7004 REQUIRED CENTRAL CONTRACTOR REGISTRATION ALTERNATE A (NOV 2003)

(a) Definitions. As used in this clause--

"Central Contractor Registration (CCR) database" means the primary Government repository for contractor information required for the conduct of business with the Government.

"Commercial and Government Entity (CAGE) code" means--

(1) A code assigned by the Defense Logistics Information Service (DLIS) to identify a commercial or Government entity; or

(2) A code assigned by a member of the North Atlantic Treaty Organization that DLIS records and maintains in the CAGE master file. This type of code is known as an "NCAGE code."

"Data Universal Numbering System (DUNS) number" means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

"Data Universal Numbering System +4 (DUNS+4) number" means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see Subpart 32.11 of the Federal Acquisition Regulation) for the same parent concern.

"Registered in the CCR database" means that--

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database;

(2) The Contractor's CAGE code is in the CCR database; and

(3) The Government has validated all mandatory data fields and has marked the records "Active."

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS +4" followed by the DUNS or DUNS +4 number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number--

(i) If located within the United States, by calling Dun and Bradstreet at 1-866-705-5711 or via the Internet at <http://www.dnb.com>; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company Physical Street Address, City, State, and Zip Code.

(iv) Company Mailing Address, City, State and Zip Code (if separate from physical).

(v) Company Telephone Number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g)(1)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12 of the FAR; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the

contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423, or 269-961-5757.
(End of clause)

252.209-7004 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of \$25,000 with a firm, or subsidiary of a firm, that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country. The notice must include the name of the proposed subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.
(End of clause)

252.223-7004 DRUG-FREE WORK FORCE (SEP 1988)

(a) Definitions.

(1) "Employee in a sensitive position," as used in this clause, means an employee who has been granted access to classified information; or employees in other positions that the Contractor determines involve national security; health or safety, or functions other than the foregoing requiring a high degree of trust and confidence.

(2) "Illegal drugs," as used in this clause, means controlled substances included in Schedules I and II, as defined by section 802(6) of title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

(b) The Contractor agrees to institute and maintain a program for achieving the objective of a drug-free work force. While this clause defines criteria for such a program, contractors are encouraged to implement alternative approaches comparable to the criteria in paragraph (c) that are designed to achieve the objectives of this clause.

(c) Contractor programs shall include the following, or appropriate alternatives:

(1) Employee assistance programs emphasizing high level direction, education, counseling, rehabilitation, and coordination with available community resources;

(2) Supervisory training to assist in identifying and addressing illegal drug use by Contractor employees;

(3) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues;

(4) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis. Employee drug testing programs shall be established taking account of the following:

(i) The Contractor shall establish a program that provides for testing for the use of illegal drugs by employees in sensitive positions. The extent of and criteria for such testing shall be determined by the Contractor based on considerations that include the nature of the work being performed under the contract, the employee's duties, and efficient use of Contractor resources, and the risks to health, safety, or national security that could result from the failure of an employee adequately to discharge his or her position.

(ii) In addition, the Contractor may establish a program for employee drug testing--

(A) When there is a reasonable suspicion that an employee uses illegal drugs; or

(B) When an employees has been involved in an accident or unsafe practice;

(C) As part of or as a follow-up to counseling or rehabilitation for illegal drug use;

(D) As part of a voluntary employee drug testing program.

(iii) The Contractor may establish a program to test applicants for employment for illegal drug use.

(iv) For the purpose of administering this clause, testing for illegal drugs may be limited to those substances for which testing is prescribed by section 2.1 of subpart B of the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (53 FR 11980 (April 11, 1988), issued by the Department of Health and Human Services.

(d) Contractors shall adopt appropriate personnel procedures to deal with employees who are found to be using drugs illegally. Contractors shall not allow any employee to remain on duty or perform in a sensitive position who is found to use illegal drugs until such times as the Contractor, in accordance with procedures established by the Contractor, determines that the employee may perform in such a position.

(e) The provisions of this clause pertaining to drug testing program shall not apply to the extent that are inconsistent with state or local law, or with an existing collective bargaining agreement; provided that with respect to the latter, the Contractor agrees those issues that are in conflict will be a subject of negotiation at the next collective bargaining session.

(End of clause)

252.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (FEB 2003)

(a) Definitions. As used in this clause--

(1) Component means any item supplied to the Government as part of an end product or of another component.

(2) End product means supplies delivered under a line item of this contract.

(b) The Contractor shall deliver under this contract only such of the following items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico:

(1) Food.

(2) Clothing.

(3) Tents, tarpaulins, or covers.

(4) Cotton and other natural fiber products.

(5) Woven silk or woven silk blends.

(6) Spun silk yarn for cartridge cloth.

(7) Synthetic fabric, and coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics.

(8) Canvas products.

- (9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).
- (10) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing fibers, yarns, fabrics, or materials listed in this paragraph (b).
- (c) This clause does not apply--
- (1) To items listed in section 25.104(a) of the Federal Acquisition Regulation (FAR), or other items for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at U.S. market prices;
- (2) To end products incidentally incorporating cotton, other natural fibers, or wool, for which the estimated value of the cotton, other natural fibers, or wool--
- (i) Is not more than 10 percent of the total price of the end product; and (ii) Does not exceed the simplified acquisition threshold in FAR part 2;
- (3) To foods that have been manufactured or processed in the United States, its possessions, or Puerto Rico, regardless of where the foods (and any component if applicable) were grown or produced, except that this clause does apply to fish, shellfish, or seafood manufactured or processed in the United States and fish, shellfish, or seafood contained in foods manufactured or processed in the United States;
- (4) To chemical warfare protective clothing produced in the countries listed in subsection 225.872-1 of the Defense FAR Supplement; or
- (5) To fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but does apply to the synthetic or coated synthetic fabric itself), if--
- (i) The fabric is to be used as a component of an end product that is not a textile product. Examples of textile products, made in whole or in part of fabric, include--
- (A) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);
- (B) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;
- (C) Upholstered seats (whether for household, office, or other use); and
- (D) Parachutes (Federal Supply Class 1670); or
- (ii) The fibers and yarns are para-aramid fibers and yarns manufactured in the Netherlands.
(End of clause)

252.227-7000 NON-ESTOPPEL. (OCT 1966)

The Government reserves the right at any time to contest the enforceability, validity, scope of, or the title to any patent or patent application herein licensed without waiving or forfeiting any right under this contract.
(End of clause)

252.227-7025 LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS. (JUN 1995)

- (a)(1) For contracts requiring the delivery of technical data, the terms "limited rights" and "Government purpose rights" are defined in the Rights in Technical Data--Noncommercial Items clause of this contract.
- (2) For contracts that do not require the delivery of technical data, the terms "government purpose rights" and "restricted rights" are defined in the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this contract.

(3) For Small Business Innovative Research program contracts, the terms "limited rights" and "restricted rights" are defined in the Rights in Noncommercial Technical Data and Computer Software--Small Business Innovative Research (SBIR) Program clause of this contract.

(b) Technical data or computer software provided to the Contractor as Government furnished information (GFI) under this contract may be subject to restrictions on use, modification, reproduction, release, performance, display, or further disclosure.

(1) GFI marked with limited or restricted rights legends. The Contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends or computer software received with restricted rights legends only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any person.

(2) GFI marked with government purpose rights legends. The Contractor shall use technical data or computer software received from the Government with government purpose rights legends for government purposes only. The Contractor shall not, without the express written permission of the party whose name appears in the restrictive legend, use, modify, reproduce, release, perform, or display such data or software for any commercial purpose or disclose such data or software to a person other than its subcontractors, suppliers, or prospective subcontractors or suppliers, who require the data or software to submit offers for, or perform, contracts under this contract. Prior to disclosing the data or software, the Contractor shall require the persons to whom disclosure will be made to complete and sign the non-disclosure agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement (DFARS).

(3) GFI marked with specially negotiated license rights legends. The Contractor shall use, modify, reproduce, release, perform, or display technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license and, prior to release or disclosure, the intended recipient has completed the non-disclosure agreement at DFARS 227.7103-7. The Contractor shall modify paragraph (1)(c) of the non-disclosure agreement to reflect the recipient's obligations regarding use, modification, reproduction, release, performance, display, and disclosure of the data or software.

(c) Indemnification and creation of third party beneficiary rights. The Contractor agrees--

(1) To indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of technical data or computer software received from the Government with restrictive legends by the Contractor or any person to whom the Contractor has released or disclosed such data or software; and

(2) That the party whose name appears on the restrictive legend, in addition to any other rights it may have, is a third party beneficiary who has the right of direct action against the Contractor, or any person to whom the Contractor has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of technical data or computer software subject to restrictive legends.

(End of clause)

252.227-7028 TECHNICAL DATA OR COMPUTER SOFTWARE PREVIOUSLY DELIVERED TO THE GOVERNMENT (JUN 1995)

The Offeror shall attach to its offer an identification of all documents or other media incorporating technical data or computer software it intends to deliver under this contract with other than unlimited rights that are identical or substantially similar to documents or other media that the Offeror has produced for, delivered to, or is obligated to deliver to the Government under any contract or subcontract. The attachment shall identify--

(a) The contract number under which the data or software were produced;

(b) The contract number under which, and the name and address of the organization to whom, the data or software were most recently delivered or will be delivered; and

(c) Any limitations on the Government's rights to use or disclose the data or software, including, when applicable, identification of the earliest date the limitations expire.

(End of clause)

252.227-7037 VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA. (SEP 199)

(a) Definitions. The terms used in this clause are defined in the Rights in Technical Data--Noncommercial Items clause of this contract.

(b) Contracts for commercial items--presumption of development at private expense. Under a contract for a commercial item, component, or process, the Department of Defense shall presume that a Contractor's asserted use or release restrictions are justified on the basis that the item, component, or process was developed exclusively at private expense. The Department shall not challenge such assertions unless information the Department provides demonstrates that the item, component, or process was not developed exclusively at private expense.

(c) Justification. The Contractor or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under the contract or subcontract. Except under contracts for commercial items, the Contractor or subcontractor shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a challenge under paragraph (e) of this clause.

(d) Prechallenge request for information. (1) The Contracting Officer may request the Contractor or subcontractor to furnish a written explanation for any restriction asserted by the Contractor or subcontractor on the right of the United States or others to use technical data. If, upon review of the explanation submitted, the Contracting Officer remains unable to ascertain the basis of the restrictive marking, the Contracting Officer may further request the Contractor or subcontractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the Contractor or subcontractor to justify the validity of any restrictive marking on technical data delivered or to be delivered under the contract or subcontract (e.g., a statement of facts accompanied with supporting documentation). The Contractor or subcontractor shall submit such written data as requested by the Contracting Officer within the time required or such longer period as may be mutually agreed.

(2) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (d)(1) of this clause, or any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking and that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer shall follow the procedures in paragraph (e) of this clause.

(3) If the Contractor or subcontractor fails to respond to the Contracting Officer's request for information under paragraph (d)(1) of this clause, and the Contracting Officer determines that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer may challenge the validity of the marking as described in paragraph (e) of this clause.

(e) Challenge.

(1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive marking is warranted, the Contracting Officer shall send a written challenge notice to the Contractor or subcontractor asserting the restrictive markings. Such challenge shall--

(i) State the specific grounds for challenging the asserted restriction;

(ii) Require a response within sixty (60) days justifying and providing sufficient evidence as to the current validity of the asserted restriction;

(iii) State that a DoD Contracting Officer's final decision, issued pursuant to paragraph (g) of this clause, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same Contractor or subcontractor (or any licensee of such Contractor or subcontractor) to which such notice is being provided; and

(iv) State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (f) of this clause.

(2) The Contracting Officer shall extend the time for response as appropriate if the Contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(3) The Contractor's or subcontractor's written response shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601, et seq.), and shall be certified in the form prescribed at 33.207 of the Federal Acquisition Regulation, regardless of dollar amount.

(4) A Contractor or subcontractor receiving challenges to the same restrictive markings from more than one Contracting Officer shall notify each Contracting Officer of the existence of more than one challenge. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer initiating the first in time unanswered challenge after consultation with the Contractor or subcontractor and the other Contracting Officers, shall formulate and distribute a schedule for responding to each of the challenge notices to all interested parties. The schedule shall afford the Contractor or subcontractor an opportunity to respond to each challenge notice. All parties will be bound by this schedule.

(f) Final decision when Contractor or subcontractor fails to respond. Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice, other than a failure to respond under a contract for commercial items, the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause of this contract pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the time period of paragraph (e)(1)(ii) or (e)(2) of this clause. Following issuance of the final decision, the Contracting Officer will comply with the procedures in paragraphs (g)(2) (ii) through (iv) of this clause.

(g) Final decision when Contractor or subcontractor responds.

(1) if the Contracting Officer determines that the Contractor or subcontractor has justified the validity of the restrictive marking, the Contracting Officer shall issue a final decision to the Contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive marking. This final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(2)(i) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting Officer shall issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause of this contract. Notwithstanding paragraph (e) of the Disputes clause, the final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(ii) The Government agrees that it will continue to be bound by the restrictive marking of a period of ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (g)(2)(i) of this clause. The Contractor or subcontractor agrees that, if it intends to file suit in the United States Claims Court it will provide a notice of intent to file suit to the Contracting Officer within ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (g)(2)(i) of this clause. If the Contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the ninety (90)-day period, the Government may cancel or ignore the restrictive markings, and the failure of the Contractor or subcontractor to take the required action constitutes agreement with such Government action.

(iii) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the Contracting Officer within ninety (90) days from the issuance of the final decision under paragraph (g)(2)(i) of this clause. The Government will no longer be bound, and the Contractor or subcontractor agrees that the Government may strike or ignore the restrictive markings, if the Contractor or subcontractor fails to file its suit within one (1) year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Claims Court, the Contractor or subcontractor agrees that the agency may, following notice to the Contractor or subcontractor, authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(iv) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes Act until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, following notice to the Contractor that urgent or compelling circumstances will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the Contractor or subcontractor agrees that the agency may authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(h) Final disposition of appeal or suit. (1) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is sustained--

(i) The restrictive marking on the technical data shall be cancelled, corrected or ignored; and

(ii) If the restrictive marking is found not to be substantially justified, the Contractor or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.

(2) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is not sustained--

(i) The Government shall continue to be bound by the restrictive marking; and

(ii) The Government shall be liable to the Contractor or subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor or subcontractor in defending the marking, if the challenge by the Government is found not to have been made in good faith.

(i) Duration of right to challenge. The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the Contractor or subcontractor. During the period within three (3) years of final payment on a contract or within three (3) years of delivery of the technical data to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data--

(1) Is publicly available;

(2) Has been furnished to the United States without restriction; or

(3) Has been otherwise made available without restriction. Only the Contracting Officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes "validation" as addressed in 10 U.S.C. 2321.

(j) Decision not to challenge. A decision by the Government, or a determination by the Contracting Officer, to not challenge the restrictive marking or asserted restriction shall not constitute "validation."

(k) Privity of contract. The Contractor or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings. However, this clause neither creates nor implies privity of contract between the Government and subcontractors.

(l) Flowdown. The Contractor or subcontractor agrees to insert this clause in contractual instruments with its subcontractors or suppliers at any tier requiring the delivery of technical data, except contractual instruments for commercial items or commercial components.

(End of clause)

252.227-7039 PATENTS--REPORTING OF SUBJECT INVENTIONS (APR. 1990)

The Contractor shall furnish the Contracting Officer the following:

(a) Interim reports every twelve (12) months (or such longer period as may be specified by the Contracting Officer)

from the date of the contract, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no such inventions.

(b) A final report, within three (3) months after completion of the contracted work, listing all subject inventions or stating that there were no such inventions.

(c) Upon request, the filing date, serial number and title, a copy of the patent application and patent number, and issue data for any subject invention for which the Contractor has retained title.

(d) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(End of clause)

252.235-7010 Acknowledgment of Support and Disclaimer. (MAY 1995)

(a) The Contractor shall include an acknowledgment of the Government's support in the publication of any material based on or developed under this contract, stated in the following terms: This material is based upon work supported by the US Army Corps of Engineers, Portland District under Contract No. W9127N-04-D-0009.

(b) All material, except scientific articles or papers published in scientific journals, must, in addition to any notices or disclaimers by the Contractor, also contain the following disclaimer: Any opinions, findings and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the US Army Corps of Engineers.

PIL 2003-06, Security Contract Language for all Corps of Engineers' Unclassified Contracts (19 Feb 03)

All Contractor employees (U.S. citizens and Non- U.S. citizens) working under this contract (*to include grants, cooperative agreements and task orders*) who require access to Automated Information Systems (AIS), (stand alone computers, network computers/systems, e-mail) shall, at a minimum, be designated into an ADP-III position (non-sensitive) in accordance with DoD 5220-22-R, Industrial Security Regulation. The investigative requirements for an ADP-III position are a favorable National Agency Check (NAC), SF-85P, Public Trust Position. The contractor shall have each applicable employee complete a SF-85P and submit to Security Officer within three (3) working days after award of any contract or task order, and shall be submitted prior to the individual being permitted access to an AIS. Contractors that have a commercial or government entity (CAGE) Code and Facility Security Clearance through the Defense Security Service shall process the NACs and forward visit requests/results of NAC to the Security Officer. For those contractors that do not have a CAGE Code or Facility Security Clearance, the Security Office will process the investigation in coordination with the Contractor and contract employees. All correspondence for the Security Officer shall be sent to

USACE, PORTLAND DISTRICT
Security Office
PO Box 2946
Portland, OR 97208-2946

In accordance with Engineering Regulation, ER 380-1-18, Section 4, foreign nationals who work on Corps of Engineers' contracts or task orders shall be approved by the HQUSACE Foreign Disclosure Officer or higher before beginning work on the contract/task order. This regulation includes subcontractor employees. (NOTE: exceptions to the above requirement include foreign nationals who perform janitorial and/or ground maintenance services.) The contractor shall submit to the Division/District Contract Office, the names of all foreign nationals proposed for performance under this contract/task order, along with documentation to verify that he/she was legally admitted into the United States and has authority to work and/or go to school in the US. Such documentation may include a US passport, Certificate of US citizenship (INS Form N-560 or N-561), Certificate of Naturalization (INS Form N-550 or N-570), foreign passport with I-551 stamp or attached INS Form I-94 indicating employment authorization, Alien Registration Receipt Card with photograph (INS Form I-151 or I-551), Temporary Resident Card (INS Form I-688), Employment Authorization Card (INS Form I-688A), Reentry Permit (INS Form I-327), Refugee Travel Document (INS Form I-571), Employment Authorization Document issued by the INS which contains a photograph (INS Form I-688B).

Classified contracts require the issuance of a DD Form 254 (Department of Defense Contract Security Classification Specification).

(End of Clause)

Section J - List of Documents, Exhibits and Other Attachments

OPTIMIZER SPECIAL LICENSE AGREEMENT

1. Notwithstanding any other provision of this contract, the Contractor grants the Federal Government a non-exclusive, fully paid-up, special license as follows. The Contractor acknowledges that the Government has need of special rights as listed herein for this research and development effort. The Contractor also acknowledges that the Government has, in addition, such other data and information rights as are identified and/or specified elsewhere in this contract.

2. BACKGROUND: This procurement is a research and development effort to accelerate development, gain configuration control and test an optimizer device for Kaplan turbines whose usefulness extends not only to enhancing power production, but also assisting the using agencies in meeting environmental requirements applicable to the Columbia River Federal Power System (CRFPS).

3. The Contractor brings to the procurement certain contractor-developed software (hereafter "contractor-pre-developed software").

4. During the course of this procurement and follow-on procurements, if any, the Contractor will co-develop with the Government an optimizer-device (hereafter "co-developed software and hardware").

5. The Government may or may not, at the Government's sole-option, procure additional contractor optimizer-devices. This may be software only or both software and hardware.

6. The Government may also, at its sole option, develop and procure Government optimizer-devices independently with its own resources or in cooperation with third parties.

7. CONTRACTOR RIGHTS:

A. The Contractor will copyright-protect the Contractor's pre-developed software at the onset of this contract in order to document the development status at the time the contract period starts, and will be entitled to such copyright privileges and rights as are conferred by Federal copyright law.

B. The Contractor needs test data to be able to demonstrate Optimizer operability for his commercial marketing purposes. The Government agrees to provide such test data, one time only, that does not reveal specific characteristics or the identification of the tested machine. The Contractor may use this data as often as he likes.

8. JOINT RIGHTS: The Contractor and the Government equally share unlimited rights in all co-developed hardware and software under this contract. To the extent that anything co-developed under this contract is patented, copyrighted, or trademarked, both the Contractor and Government will be equal co-owners of such patents, copyrights, and/or trademarks, and each have full rights under such patents, copyrights, and/or trademarks.

9. GOVERNMENT RIGHTS: The Government has unlimited rights in all co-developed software and hardware and other products developed under this contract with Government-funding. In addition the Government has limited rights in all "contractor-pre-developed software and hardware."

10. ANTICIPATED USES OF THE GOVERNMENT'S LIMITED RIGHTS:

The Government anticipates implementing the software, hardware, and other products, if any, developed under this contract effort to determine the optimum gate-to-blade relation for Kaplan turbines in the Federal hydropower installations within the continental United States.

11. DEFINITIONS:

"Limited rights" as used in this clause means the right of the Government to use, reproduce and distribute the object module of the software to any Federal hydropower installation within the continental United States. This does not include source code.

"Unlimited rights" as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

ATEC RESOURCE ALLOTMENT ESTIMATE

First Trip to Portland and McNary

Includes parts and Labor to build the first 2 Index Test Boxes, and the insurance for the 1 year project.

Three-day trip for meetings in Portland with HDC personnel to present plans meet with COE Engineers to get details of GDACS interface and trip to McNary to inspect powerhouse instrumentation and installation site.

Purchased items

quantity	description	price each	subtotal	8% Handling
2	Computers	\$2,065.00	\$ 4,130.00	\$ 330.40
2	NI 6036E	\$ 745.00	\$ 1,490.00	\$ 119.20
0	DaqCard 6036E	\$ 995.00	\$ -	\$ -
1	SCC-2345 Enclosure	\$ 295.00	\$ 295.00	\$ 23.60
3	SCC-LP01 25 Hz Filters	\$ 295.00	\$ 885.00	\$ 70.80
3	SCC-CI20 4-20Ma Input	\$ 145.00	\$ 435.00	\$ 34.80
1	cable sets for I/O boards	\$ 350.00	\$ 350.00	\$ 28.00
1	1000ft rolls of wire	\$ 150.00	\$ 150.00	\$ 12.00
1	Visual Basic	\$ 750.00	\$ 750.00	\$ 60.00
0	NI FFT	\$ 995.00	\$ -	\$ -
1	PaperPort	\$ 150.00	\$ 150.00	\$ 12.00
1	AutoSketch	\$ 75.00	\$ 75.00	\$ 6.00
1	ATECo HydroSoft	\$2,300.00	\$ 2,300.00	\$ 184.00
0	Viatran submersible	\$ 552.00	\$ -	\$ -
0	0-100 differentials	\$ 850.00	\$ -	\$ -
1	0 to 10' wc differentials	\$ 905.00	\$ 905.00	\$ 72.40
0	0-100 psig transducers	\$ 375.00	\$ -	\$ -

Trip Costs

Per Diem for Portland OR \$130/day

2	round trip tickets	\$ 900.00	\$ 900.00	\$ 900.00
3	perdiem	\$ 900.00	\$ 393.00	\$ 393.00
3	car rental	\$ 35.00	\$ 105.00	
	Labor charges			

Labor hours

	Rate/hr.		
Sr. Engineer	\$ 117.66		
Sr. Technician	\$ 82.14		
Work Description		Doug	Greg
40 Testbox build		\$4,706.40	\$3,285.60
24 trip preparations		\$2,823.84	\$1,971.36
16 Travel hours to and from		\$1,882.56	\$1,314.24
24 Time in Portland/McNary		\$2,823.84	\$1,971.36
24 Trip report on return		\$2,823.84	

insurance

Totals of columns	16,458.48	9,835.56	\$ 7,000.00	\$ 18,915.00	\$ 953.20
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Total of all columns \$ 46,162.24

Second Trip to Portland and McNary

**This trip is to install the first prototype Index Test Box
get some data and demonstrate unit to HDC representative(s).**

quantity	description	each price		
Per Diem for Portland OR \$130/day				
2	round trip tickets	\$ 900.00	\$ 900.00	\$ 900.00
5	perdiem x 2	\$ 131.00	\$ 655.00	\$ 655.00
5	car rental	\$ 35.00	\$ 35.00	
	Labor charges	Rate/hr.		
	Engineering rate	\$ 117.66		
	Technician rate	\$ 82.14		

Hours	Description	Doug	Greg
24	Engineering trip prep	\$ 2,823.84	\$1,971.36
16	Travel to and from	\$ 1,882.56	\$1,314.24
40	Time at site	\$ 4,706.40	\$3,285.60
24	engineering trip report	\$ 2,823.84	
insurance			
	Totals of columns	\$13,826.64	\$8,126.20
	Total for this trip	\$21,952.84	

Third Trip to Portland and McNary

**This trip is to deliver, demonstrate and install the second prototype Index Test Box
supervising this installation by government personnel.**

quantity	description	each price		
Per Diem for Portland OR \$130/day				
2	round trip tickets	\$ 900.00	\$ 900.00	\$ 900.00
12	perdiem x 2	\$ 131.00	\$ 1,572.00	\$ 1,572.00
12	car rental	\$ 35.00	\$ 420.00	
		Rate/hr.		
	Engineering rate/hr.	\$117.66		
	Technician rate/hr.	\$82.14		

Hours	Description	Doug	Greg
24	Engineering trip prep	\$ 2,823.84	\$ 1,971.36
16	Travel to and from	\$ 1,882.56	\$ 1,314.24
56	Time on site	\$ 6,588.96	\$ 4,599.84
24	engineering trip report	\$ 2,823.84	

insurance			
	Totals of columns	\$17,011.20	\$10,357.44
	Total for trip 3		\$27,368.64

Total of all expenses on project.

		\$ Totals
First trip (3 days, Includes materials for 2 test boxes)		46,162.24
second trip (1 week at site, maximum)		21,952.84
third trip (7 days at site, maximum)		27,368.64
administrative and work space	\$110/mo	1,320.00
Doug estimated billing	2 day/mo 11*24*117.66	31,062.24
Greg estimated billing	3 day/mo 11*24*82.14	21,684.96
Code generated for government	day/mo 11*8*117.66	10,354.08
<u>CD Storagecase</u>		<u>100.00</u>
	discount	<u>-5.00</u>
	Projected LI 0001 total	\$160,000.00
	Total LI 0001 Not To	\$160,000.00
	Exceed price:	

(End of Contract - QED)