

DAHC94-94-D-0003

SECTION I
CONTRACT CLAUSES

I.1 FAR 52.252-2 - FAR Text Reference 52.107(b)

CLAUSES INCORPORATED BY REFERENCE
(JUN 1988)

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.

(End of Clause)

NOTE: AVAILABILITY OF TEXT OF CLAUSES

The full text of any clause which is incorporated herein by reference will be made available upon request to: US Army Information Systems Selection and Acquisition Agency, 2461 Eisenhower Avenue, Room 272, Alexandria, VA 22331-0700. The Federal Acquisition Regulation (FAR), and the Department of Defense (DOD) FAR Supplement, are available for purchase from the Superintendent of Documents, Government Printing Office, Washington, DC.

I.2 FEDERAL ACQUISITION REGULATION (FAR) CLAUSES INCORPORATED BY REFERENCE

	NUMBER	FAR TEXT REFERENCE	TITLE	DATE
I.2.1	52.202-1	2.201	Definitions	SEP 1991
I.2.2	52.203-1	3.102-2	Officials Not to Benefit	APR 1984
I.2.3	52.203-3	3.202	Gratuities	APR 1984
I.2.4	52.203-5	3.404(c)	Covenant Against Contingent Fees	APR 1984
I.2.5	52.203-6	3.503-2	Restrictions on Subcontractor Sales to the Government	JUL 1985
I.2.6	52.203-7	3.502-3	Anti-Kickback Procedures	OCT 1988
I.2.7	52.203-10	3.104-10(c)	Price or Fee Adjustment for Illegal or Improper Activity	SEP 1990
I.2.8	52.203-12	3.808(b)	Limitation on Payments to Influence Certain Federal Transactions	JAN 1990
I.2.9	52.208-1	8.203-1(a)	Required Sources for Jewel Bearings and Related Items	APR 1984
I.2.10	52.209-3	9.308-1(a)	First Article Approval-- Contractor Testing	SEP 1989

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(a): one unit, Items 0019AA,
0019BA, 0020AA, and 0021AA, 30 days
(b): 45 calendar days from the
date of the delivery order;
PM, AIT, Bldg. 601, Fort
Belvoir, VA 22060-5895;
Contract No. DAHC94-94-D-0003;
Item No. XXXX; 30 days

I.2.11	52.209-6	9.409(b)	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment	NOV 1992
I.2.12	52.210-5	10.011(e)	New Material	APR 1984
I.2.13	52.210-7	10.011(g)(1)	Used or Reconditioned Material Residual Inventory, and Former Government Surplus Property	APR 1984
I.2.14	52.215-1	15.106-1(b)	Examination of Records by Comptroller General	FEB 1993
I.2.15	52.215-2	15.106-2(b)	Audit - Negotiation	FEB 1993
I.2.16	52.215-23	15.804-8(b)	Price Reduction for Defective Cost or Pricing Data - Modifications	DEC 1991
I.2.17	52.215-25	15.804-8(d)	Subcontractor Cost or Pricing Data - Modifications	DEC 1991
I.2.18	52.215-26	15.812-2(a)	Integrity of Unit Prices	APR 1991
I.2.19	52.215-33	15.406-3(b)	Order of Precedence	JAN 1986
I.2.20	52.216-18	16.505(a)	Ordering (a): date of award through date of expiration of contract term	APR 1984
I.2.21	52.216-19	16.505(b)	Delivery-Order Limitation (a): \$500.00 (b)(1): \$500,000 (b)(2): \$10,000,000 (b)(3): 3 days (d): 5 days	APR 1984
I.2.22	52.216-22	16.505(e)	Indefinite Quantity (d): 90 days past expiration of the contract term	APR 1984
I.2.23	52.217-9	FIRMR 201-39	Option to Extend Term of Contract	MAR 1989

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(a) 15 days
(c) 10 years

I.2.24	52.219-8	19.708(a)	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns	FEB 1990
I.2.25	52.219-9	19.708(b)(1)	Small Business and Small Disadvantaged Business Subcontracting Plan	JAN 1991
I.2.26	52.219-13	19.902	Utilization of Woman-Owned Small Businesses	AUG 1986
I.2.27	52.219-16	19.708(b)(2)	Liquidated Damages - Small Business Subcontracting Plan	AUG 1989
I.2.28	52.220-3	20.302(a)	Utilization of Labor Surplus Area Concerns	APR 1984
I.2.29	52.220-4	20.302(b)	Labor Surplus Area Subcontracting Program	APR 1984
I.2.30			RESERVED	
I.2.31	52.222-20	22.610(b)	Walsh-Healey Public Contracts Act	APR 1984
I.2.32	52.222-26	22.810(e)	Equal Opportunity	APR 1984
I.2.33	52.222-28	22.810(g)	Equal Opportunity Preaward Clearance of Subcontracts	APR 1984
I.2.34	52.222-29	22.810(h)	Notification of Visa Denial	APR 1984
I.2.35	52.222-35	22.1308(a)	Affirmative Action for Special Disabled and Vietnam Era Veterans	APR 1984
I.2.36	52.222-36	22.1408(a)	Affirmative Action for Handicapped Workers	APR 1984
I.2.37	52.222-37	22.1308(b)	Employment Report on Special Disabled Veterans and Veterans of the Vietnam Era	JAN 1988
I.2.38	52.223-2	23.105(b)	Clean Air and Water	APR 1984
I.2.39	52.223-6	23.505(c)	Drug-Free Work-place	JUL 1990
I.2.40	52.225-10	25.605(a)	Duty-Free Entry	APR 1984
I.2.41	52.225-11	25.704	Restrictions on Certain	MAY 1992

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Foreign Purchases				
I.2.42	52.227-1	27.201-2(a)	Authorization and Consent	APR 1984
I.2.43	52.227-2	27.202-2	Notice and Assistance Regarding Patent and Copyright Infringement	APR 1984
I.2.44	52.228-5	28.310	Insurance-Work on a Government Installation	SEP 1989
I.2.45	52.229-3	29.401-3	Federal, State and Local Taxes	JAN 1991
I.2.46	52.229-5	29.401-5	Taxes-Contracts Performed in U.S. Possessions or Puerto Rico	APR 1984
I.2.47	52.229-6	29.402-1(a)	Taxes-Foreign Fixed Price Contracts	JAN 1991
I.2.48	52.232-1	32.111(a)(1)	Payments	APR 1984
I.2.49	52.232-8	32.111(c)(1)	Discounts for Prompt Payment	APR 1989
I.2.50	52.232-9	32.111(c)(2)	Limitation on Withholding of Payments	APR 1984
I.2.51	52.232-11	32.111(d)(2)	Extras	APR 1984
I.2.52	52.232-17	32.617(a)	Interest	JAN 1991
I.2.53	52.232-18	32.705-1(a)	Availability of Funds	APR 1984
I.2.54	52.232-23	32.806(a)(1)	Assignment of Claims	JAN 1986
I.2.55	52.232-25	32.908(c)	Prompt Payment	SEP 1992
I.2.56	52.232-28	32.908(d)	Electronic Funds Transfer Payment Methods	APR 1989
I.2.57	52.233-1	33.215	Disputes - Alternate I	DEC 1991
I.2.58	52.233-3	33.106(b)	Protest After Award	AUG 1989
I.2.59	52.237-2	37.110(b)	Protection of Government Buildings, Equipment and Vegetation	APR 1984
I.2.60	52.237-3	37.110(c)	Continuity of Services	JAN 1991
I.2.61	52.243-1	43.205(a)(1)	Changes-Fixed Price	AUG 1987
I.2.62	52.243-1	43.205(a)(2)	Changes-Fixed Price, Alternate I	APR 1984
I.2.63	52.244-1	44.204(a)(3)	Subcontracts (Fixed Price	APR 1991

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			Contracts) Alternate I	
I.2.64	52.246-17	46.710(a)(1)	Warranty of Supplies of a Noncomplex Nature (Alternate I) (b)(1): the periods specified elsewhere in the contract and will commence after delivery (c): 45 days after discovery of the defect.	APR 1984
I.2.65	52.247-63	47.405	Preference for U.S. Flag Air Carriers	APR 1984
I.2.66	52.247-64	47.507(a)	Preference for Privately Owned U.S. Flag Commercial Vessels	APR 1984
I.2.67	52.249-2	49.502(b)(1)(i)	Termination for Convenience of the Government (Fixed-Price)	APR 1984
I.2.68	52.249-8	49.504(a)(1)	Default (Fixed-Price Supply and Service)	APR 1984
I.2.69	52.253-1	53.111	Computer Generation of Forms	JAN 1991
I.3	DEFENSE FEDERAL ACQUISITION INCORPORATED BY REFERENCE		REGULATIONS SUPPLEMENT (DFARS)	CLAUSES
	NUMBER	DFARS TEXT REFERENCE	TITLE	DATE
I.3.1	252.201-7000	201.602-70	Contracting Officer's Representative	DEC 1991
I.3.2	252.203-7000	203.170-4	Statutory Prohibitions on Compensation to Former Department of Defense Employees	DEC 1991
I.3.3	252.203-7001	203.570-5	Special Prohibition on Employment	APR 1993
I.3.4	252.203-7002	203.7002	Display of DOD Hotline Poster	DEC 1991
I.3.5	252.203-7003	203.7108	Prohibition Against Retaliatory Personnel Actions	APR 1992
I.3.6	252.204-7002	204.7104-1 (b)(3)(iv)	Payment for Subline Items Not Separately Priced	DEC 1991
I.3.7	252.204-7003	204.404-70(b)	Control of Government Personnel Work Product	APR 1992
I.3.8	252.205-7000	205.470-2	Provision of Information to Cooperative Agreement Holders	DEC 1991
I.3.9	252.215-7000	215.804-8(1)	Pricing Adjustments	DEC 1991
I.3.10	252.219-7003	219.708(b)(1)	Small Business and Small	APR 1993

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		(A)	Disadvantaged Business Subcontracting Plan (DOD CONTRACTS)	
I.3.11	252.225-7001	225.109(d)	Buy American Act and Balance of Payments Program	JAN 1994
I.3.12	252.225-7002	225.109-70(a)	Qualifying Country Sources as Subcontractors	DEC 1991
I.3.13	252.225-7007	225.407(a)(2)	Trade Agreements Act	JAN 1994
I.3.14	252.225-7008	225.605-70(a)	Supplies to be Accorded Duty- Free Entry <u>NONE</u>	DEC 1991
I.3.15	252.225-7009	225.605-70(b)	Duty-Free Entry--Qualifying Country End Products and Supplies	DEC 1991
I.3.16	252.225-7010	225.605-70(c)	Duty-Free Entry--Additional Provisions	DEC 1991
I.3.17	252.225-7012	225.7002-4(a)	Preference for Certain Domestic Commodities	DEC 1991
I.3.18	252.231-7000	231.100-70	Supplemental Cost Principles	DEC 1991
I.3.19	252.233-7000	233.7001	Certification of Claims and Requests For Adjustment or Relief	APR 1993
I.3.20	252.242.7000	242.570	Postaward Conference	DEC 1991
I.3.21	252.243-7000	243.205-70	Engineering Change Proposals <u>MIL-STD 973</u>	DEC 1991
I.3.22	252.243-7001	243.205-71	Pricing of Contract Modifications	DEC 1991
I.3.23	252.246-7000	246.370	Material Inspection and Receiving Report	DEC 1991
I.3.24	252.247-7023	247.573(b)	Transportation of Supplies by Sea	DEC 1991
I.3.25	252.249-7001	249.7002(c)	Notification of Substantial Impact on Employment	DEC 1991
I.4	CLAUSES IN FULL TEXT			
I.4.1	FAR 52.203-9 - FAR Text Reference 3.104-10(b)			
	REQUIREMENT FOR CERTIFICATE OF PROCUREMENT INTEGRITY - MODIFICATION			
	NOV 1990			

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(a) Definitions. The definitions set forth in FAR 3.104-4 are hereby incorporated in this clause.

(b) The Contractor agrees that it will execute the certification set forth in paragraph (c) of this clause when requested by the Contracting Officer in connection with the execution of any modification of this contract.

(c) Certification. As required in paragraph (b) of this clause, the officer or employee responsible for the modification proposal shall execute the following certification:

CERTIFICATE OF PROCUREMENT
INTEGRITY - MODIFICATION (NOV 1990)

(1) I, _____ [Name of certifier] am the officer or employee responsible for the preparation of this modification proposal and hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certification, I have no information concerning a violation or possible violation of subsection 27(a), (b), (d), or (f) of the Office of Federal Procurement Policy Act as amended* (41 U.S.C. 423), (hereinafter referred to as "the Act"), as implemented in the FAR, occurring during the conduct of this procurement (contract and modification number).

(2) As required by subsection 27(e)(1)(B) of the Act, I further certify that to the best of my knowledge and belief, each officer, employee, agent, representative, and consultant of [Name of Offeror] who has participated personally and substantially in the preparation or submission of this proposal has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act, as implemented in the FAR, pertaining to this procurement.

(3) Violations or possible violations: (Continue on plain bond paper if necessary and label Certificate of Procurement Integrity-Modification (Continuation Sheet), ENTER "NONE" IF NONE EXISTS)

[Signature of the officer or employee responsible for the modification proposal and date]

[Typed name of the officer or employee responsible for the modification proposal]

*Subsections 27(a), (b), and (d) are effective on December 1, 1990. Subsection 27(f) is effective on June 1, 1991. THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

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(End of Certification)

(d) In making the certification in paragraph (2) of the certificate, the officer or employee of the competing Contractor responsible for the offer or bid, may rely upon a one-time certification to the competing Contractor, supplemented by periodic training. These certifications shall be obtained at the earliest possible date after and individual required to certify begins employment or association with the contractor. If a contractor decides to rely on a certification executed prior to the suspension of section 27 (i.e., prior to December 1, 1989), the Contractor shall ensure that an individual who has so certified is notified that section 27 has been reinstated. These certifications shall be maintained by the Contractor for a period of 6 years from the date a certifying employee's employment with the company ends or, for an agency, representative, or consultant, 6 years from the date such individual ceases to act on behalf of the contractor.

(e) The certification required by paragraph (c) of this clause is a material representation of fact upon which reliance will be placed in executing this modification.

(End of Clause)

I.4.2 FAR 52.215-32, ALTERNATE I - FAR Text Reference 15.813-7(a)

CERTIFICATION OF COMMERCIAL PRICING
FOR PARTS OR COMPONENTS
JUL 1990

The requirements of this clause shall become operative only for any modifications to this contract involving the furnishing of parts or components, as defined in paragraph (a) of this clause, if awarded as a result of other than full and open competition.

(a) Definitions.

"Lowest commercial price," as used in this clause, means the lowest price at which a sale was made to the general public of a particular part or component. The term does not include the price at which a sale was made to--

- (1) Any agency of the United States;
- (2) Customers located outside the United States; or
- (3) A subsidiary, affiliate, or parent business organization of the contractor, or any other branch of the same business entity.

"Part or component," as used in this clause, means any individual part, component, subassembly, assembly or subsystem integral to a major system, and other property which may be replaced during the service life of the system, and includes spare parts and replenishment spare parts, but does not include packaging or labeling associated with shipment or identification of a part or component.

(b) Submission requirements. The Offeror/Contractor shall execute and submit to the Contracting Officer the following certificate with any offer/proposal as required by FAR 15.813-4 when requested by the Contracting Officer:

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CERTIFICATE OF COMMERCIAL PRICING FOR
PARTS OR COMPONENTS

(1) Unless justified in subparagraph (b)(2) of this clause, by submission of this offer/proposal, the Offeror/Contractor certifies that, to the best of its knowledge and belief, the prices offered for those parts or components (whether or not separately identified) that the Contractor offers for sale are no higher than the lowest commercial price at which such items were sold to the public during the most recent regular monthly, quarterly, or other period for which sales data are reasonably available, provided that in no event shall this period be less than 1-month in duration.

(2) All parts or components for which prices offered are higher than the lowest commercial price referred to in subparagraph (b)(1) of this certificate are identified below (including the amounts by which such offered prices are higher) and a written justification for the differences is attached (list as necessary):

Part or Component	Price Difference
_____	_____
_____	_____
_____	_____

Offer/Proposal No. _____
Time period for sales data _____
Firm _____
Typed name and signature _____
Title _____
Date _____

(End of certificate)

(c) Audit. The Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit all directly pertinent records of sales and related documents, including contract terms and conditions, necessary to verify the validity of any certificate executed in accordance with paragraph (b) of this clause. The Contractor shall make those records, books, data, and documents available for examination, audit, or reproduction until 3 years after the date the certificate set forth in paragraph (b) of this clause is executed. Nothing contained in this clause shall require the submission of cost or pricing data not otherwise required by law or regulation.

(d) Price reduction. If any price, including profit or fee negotiated in connection with this contract, or any cost reimbursable under this contract, has increased because the certification in subparagraph (b)(1) of the certificate or the information provided as justification in subparagraph (b)(2) of the certificate was inaccurate,

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incomplete, or misleading, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

I.4.3 FAR 52.223-7 - FAR Text Reference 23.602

NOTICE OF RADIOACTIVE MATERIALS
NOV 1991

(a) The Contractor shall notify the Contracting Officer or designee, in writing, 30 days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall--

(1) Be submitted in writing:

(2) Contain a certification that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and

(3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.

(c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.

(d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

(End of clause)

I.4.4 DFARS 252.227-7013 - DFARS Text Reference 227.403-70(e) and 227.403-77
(b) (2) (i)

RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE

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(OCT 1988)

(a) Definitions.

(1) "Commercial computer software", as used in this clause, means computer software which is used regularly for other than Government purposes and is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices.

(2) "Computer", as used in this clause, means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the data.

(3) "Computer data base", as used in this clause, means a collection of data in a form capable of being processed and operated on by a computer.

(4) "Computer program", as used in this clause, means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/ diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either dependent or machine independent, and may be general-purpose in nature or be designed to satisfy the requirements of a particular user.

(5) "Computer software", as used in this, means computer programs and computer data bases.

(6) "Computer software documentation", as used in this clause, means technical data, including computer listings and printouts, in human readable form which (i) documents the design or details of computer software, (ii) explains the capabilities of the software, or (iii) provides operating instructions for using the software to obtain desired results from a computer.

(7) "Data", as used in this clause, means recorded information, regardless of form or method of the recording.

(8) "Detailed design data", as used in this, means technical data that describes the physical configuration and performance characteristics of an item or component in sufficient detail to ensure that an item or component produced in accordance with the technical data will be essentially identical to the original item or component.

(9) "Detailed manufacturing or process data", as used in this clause, means technical data that describes the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

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(10) "Developed", as used in this clause, means that the item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed", the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component or process be actually reduced to practice within the meaning of Title 35 of the United States Code.

(11) "Developed Exclusively with Government Funds" as used in this clause, means, in connection with an item, component, or process, that the cost of development was directly paid for in whole by the Government or that the development was required as an element of performance under a Government contract or subcontract.

(12) "Development Exclusively at Private Expense", as used in this clause, means, in connection with an item, component, or process, that no part of the cost of development was paid for by the Government and that the development was not required as an element of performance under a Government contract or subcontract. Independent research and development and bid and proposal costs, as defined in FAR 31.205-18 (whether or not included in a formal independent research and development program), are considered to be at private expense. All other indirect costs of development are considered Government funded when development was required for the performance of a Government contract or subcontract. They are considered funded at private expense when development was not required as an element of performance under a Government contract or subcontract.

(13) "Form, fit, and function data", as used in this clause, means technical data that describes the required overall physical, functional, and performance characteristics, (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(14) "Government purpose license rights" (GPLR), as used in this clause, means rights to use, duplicate, or disclose data (and in the SBIR Program, computer software), in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. Government purposes include competitive procurement, but do not include the right to have or permit others to use technical data (and in the SBIR Program, computer software) for commercial purposes.

(15) "Limited rights", as used in this clause, means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party asserting limited rights, be: released or disclosed outside the Government; used by the

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Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software; or used by a party other than the Government, except that the Government may release or disclose technical data by such persons, if--

(i) Such release, disclosure, or use--

(A) is necessary for emergency repair and overhaul; or

(B) is a release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the Government and is required for evaluational or informational purposes;

(ii) Such release, disclosure, or use is made subject to a prohibition that the person to whom the data is released or disclosed may not further release, disclose, or use such data; and

(iii) The contractor or subcontractor asserting the restriction is notified of such release, disclosure, or use.

(16) "Required for the Performance of a Government Contract or Subcontract", as used in this clause, means in connection with the development of an item, component, or process, that the development was specified in a Government contract or subcontract or that the development was accomplished during and was necessary for performance of a Government contract or subcontract.

(17) "Restricted rights", as used in this clause, means rights that apply only to computer software, and include, as a minimum, the right to--

(i) Use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(ii) Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(iii) Copy computer programs for safekeeping (archives) or backup purposes; and

(iv) Modify computer software, or combine it with other software subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights. In addition, restricted rights include any other specific rights not inconsistent with the minimum rights in (a)(17)(i)- (iv) above that are listed or described in the contract or described in a license agreement made a part of the contract.

(18) "Technical data", as used in this clause, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

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(19) "Unlimited rights", as used in this clause, means rights to use, duplicate, release, or disclose, technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(20) "Unpublished", as used in this clause, means that technical data or computer software has not been released to the public or furnished to others without restriction on further use or disclosure. Delivery of other than unlimited rights technical data or computer software to or for the Government under the contract does not, in itself, constitute release to the public.

(b) Rights in Technical Data.

(1) Unlimited Rights. Unless otherwise agreed in writing, the Government is entitled to and will receive unlimited rights in:

(i) Technical data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;

(ii) Technical data resulting directly from performance of experimental, developmental, or research work which was specified as an element of performance under this or any other Government contract or subcontract;

(iii) Form, fit, and function data pertaining to items, components, or processes prepared or required to be delivered under this or any other Government contract or subcontract;

(iv) Manuals or instructional materials (other than detailed manufacturing or process data and commercial computer software documentation) prepared or required to be delivered under this or any other contract or any subcontract hereunder necessary for installation, operation, maintenance, or training purposes;

(v) Technical data prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government furnished data or computer software;

(vi) Technical data which is otherwise publicly available, or has been released or disclosed by the Contractor or subcontractor, without restriction on further release or disclosure;

(vii) Technical data in which the Government has obtained unlimited rights as a result of negotiations; and

(viii) Technical data previously delivered subject to either GPLR or limited rights and the restrictive condition has expired.

(2) Government Purpose License Rights. The Government shall have Government purpose license rights (GPLR) in technical data which the parties have agreed will be furnished with GPLR. The Government may disclose or provide GPLR data to a person or corporation that has

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executed the Standard NonDisclosure Agreement. This agreement establishes the third party beneficiary status of the Contractor identified in the GPLR legend. If the recipient of GPLR data has executed the Standard Non- Disclosure Agreement, the Contractor shall have no claim or right of action against the Government for damages related to misuse or unauthorized disclosure of the data. GPLR shall be effective, during the time period specified in the contract, only when the portion or portions of each piece of data subject to such rights are identified (for example, by circling, underscoring, or a note), and are marked with the legend below containing:

(i) The number of the prime contract under which the technical data is to be delivered;

(ii) The name of the Contractor and/or any subcontractor asserting Government purpose license rights; and

(iii) The date when the data will be subject to unlimited rights.

GOVERNMENT PURPOSE LICENSE RIGHTS LEGEND

Contract No. _____

Contractor _____

Government purpose license rights shall be effective until (insert date certain): thereafter, the Government purpose license rights will expire and the Government shall have unlimited rights in the technical data.

The restrictions governing use of technical data marked with this legend are set forth in the definition of "Government Purpose License Rights" in paragraph (a)(14) of the clause at 252.227-7013 of the contract listed above. This legend, together with the indications of the portions of this data which are subject to Government purpose license rights, shall be included on any reproduction hereof which includes any part of the portions subject to such limitations.

(3) Limited Rights. Unless otherwise agreed, the Government shall have limited rights in:

(i) Technical data pertaining to items, components, processes or computer software developed exclusively at private expense, except for data in the categories in (a)(1) above;

(ii) Technical data that the parties have agreed will be subject to limited rights for a specified period of time; and

(iii) Technical data listed or described in a license agreement made a part of the contract and subject to conditions other

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than those described in the definitions of limited rights. Notwithstanding any contrary provision in the license agreement, the Government shall have the rights included in the definition of "limited rights" in paragraph (a)(15) above.

Limited rights will remain in effect so long as the technical data remains unpublished and provided that only the portions of each piece of data subject to limited rights are identified (for example, by circling, underscoring, or a note), and the piece of data is marked with the legend below containing:

(A) The number of the prime contract under which the technical data is to be delivered; and

(B) The name of the Contractor and/or any subcontractor asserting limited rights.

(C) The date the data will be subject to unlimited rights (if applicable).

LIMITED RIGHTS LEGEND

Contract No. _____

Contractor _____

Limited rights shall be effective until (insert date certain), thereafter the limited rights will expire and the Government shall have unlimited rights in the technical data.

The restrictions governing the use and disclosure of technical data marked with this legend are set forth in the definition of "limited rights" in paragraph (a)(15) of the clause at 252.227-7013 of the contract listed above.

For technical data which the parties have agreed will be subject to limited rights for a specified time period, insert the agreed upon date. If the limited rights are not subject to an expiration date, so indicate.

For technical data which the parties have agreed will be subject to rights other than those described in the definitions of limited rights or GPLR in paragraph (a)(15) and (a)(14) above, insert the following statement:

"In addition to the minimum rights described in the definition of limited rights in DFARS clause at 252.227-7013, the Government shall have the rights described in the license or agreement made a part of Contract No. _____."

This legend, together with the indications of the portions of this data which are subject to limited rights, shall be included on any

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reproduction hereof which includes any part of the portions subject to such limitations. This technical data will remain subject to limited rights only so long as it remains "unpublished" as defined in paragraph (a) above.

(c) Rights in Computer Software.

(1) Restricted Rights.

(i) The Government shall have restricted rights in computer software, listed or described in a license agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights. Notwithstanding any contrary provision in any such license agreement, the Government shall have the rights included in the definition of "restricted rights" in paragraph (a)(17) above. Unless the computer software is marked by the Contractor with the following legend:

RESTRICTED RIGHTS LEGEND

Use, duplication or disclosure is subject to restrictions stated in Contract No. _____ with _____ (Name of Contractor), and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software, the Government shall have unlimited rights in the software. The Contractor may not place any legend on computer software restricting the Government's rights in such software unless the restrictions are set forth in a license agreement made a part of this contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to the computer software shall relieve the Government of liability with respect to the unmarked software.

(ii) Notwithstanding subparagraph (c)(1)(i) above, commercial computer software and related documentation developed at private expense and not in the public domain may be marked with the following Legend:

RESTRICTED RIGHTS LEGEND

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013.

(Name of Contractor and Address)

When acquired by the Government, commercial computer software and related documentation so legended shall be subject to the following:

(A) Title to and ownership of the software and documentation shall remain with the Contractor.

(B) User of the software and documentation shall be limited to the facility for which it is acquired.

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(C) The Government shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime contractors, subcontractors and agents of the Government who have the Government's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the Government to use software, documentation, or information therein, which the Government has or may obtain without restrictions.

(D) The Government shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; and to modify the software and documentation or combine it with other software, provided, that the unmodified portions shall remain subject to these restrictions.

(2) Unlimited Rights. The Government shall have unlimited rights in:

(i) Computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any other Government contract or subcontract;

(ii) Computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(iii) Computer data bases, prepared under a Government contract, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain;

(iv) Computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government furnished computer software; and

(v) Computer software which is otherwise publicly available, or has been, or is normally released, or disclosed by the Contractor or subcontractor without restriction on further release or disclosure.

(d) Technical Data and Computer Software Previously Provided Without Restriction. Contractor shall assert no restrictions on the Government's rights to use or disclose any data or computer software which the Contractor has previously delivered to the Government without restriction. The limited or restricted rights provided for by this clause shall not impair the right of the Government to use similar or identical data or computer software acquired from other sources.

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(e) Copyright.

(1) In addition to the rights granted under the provisions of paragraphs (b) and (c) above, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world, of the scope set forth below, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies or phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes. With respect to technical data and computer software in which the Government has unlimited rights, the license shall be of the same scope as the rights set forth in the definition of "unlimited rights" in (a)(19) above. With respect to technical data in which the Government has limited rights, the scope of the license is limited to the rights set forth in the definition of "limited rights". With respect to computer software which the parties have agreed will be furnished with restricted rights, the scope of the license is limited to such rights.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include (in technical data or computer software prepared for or acquired by the Government under this contract) any works of authorship in which copyright is not owned by the Contractor or without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified herein.

(3) The Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under 17 U.S.C. 201(b).

(4) Technical data delivered under this contract bearing a copyright notice shall also include the following statement:

"This material may be reproduced by or for the U.S. Government pursuant to the copyright license under the clause at DFARS 252.227-7013 (date)."

(f) Removal of Unjustified and Nonconforming Markings.

(1) Unjustified Technical Data Markings. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may, at the Contractor's expense, correct, cancel, or ignore any marking not justified by the terms of this contract on any technical data furnished hereunder in accordance with the clause of this contract entitled "Validation of Restrictive Markings on Technical Data", DFARS 252.227- 7037.

(2) Nonconforming Technical Data Markings. Correction of nonconforming markings is not subject to this clause. The Government may, at the Contractor's expense, correct any nonconforming markings if the Contracting Officer notifies the Contractor and the Contractor fails to correct the nonconforming markings within sixty (60) days.

(3) Unjustified and Nonconforming Computer Software Markings. Notwithstanding any provision of this contract concerning inspection and

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acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any computer software furnished hereunder if:

(i) The Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the markings; or

(ii) The Contractor's response fails to substantiate, within sixty (60) days after written notice, the propriety of restricted rights markings. In either case, the Government shall give written notice to the Contractor of the action taken.

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

(h) Limitation on Charges for Data and Computer Software. The Contractor recognizes that the Government is not obligated to pay, or to allow to be paid, any charges for data or computer software which the Government has a right to use and disclose to others without restriction and Contractor agrees to refund any such payments. This provision applies to contracts that involve payments by subcontractors and those entered into through the Military Assistance Program, in addition to U.S. Government prime contracts. It does not apply to reasonable reproduction, handling, mailing, and similar administrative costs.

(i) Acquisition of Technical Data and Computer Software from Subcontractors.

(1) The Contractor must satisfy its contractual obligation to the Government while ensuring that the rights afforded its subcontractors under 10 U.S.C. 2320 and 2321 are recognized and protected. In satisfying its obligation, the Contractor must accomplish the balancing of interest described at DFARS 227.472-1 in dealing with its subcontractors.

(2) Whenever any technical data or computer software is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or the Contractor's rights in the subcontractor data or computer software.

(3) Technical data required to be delivered by a subcontractor shall normally be delivered to the next higher-tier contractor. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor, then said subcontractor may fulfill its requirement by submitting such data directly to the Government, rather than through the prime Contractor.

(4) The Contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to obtain rights in technical data or computer software from their subcontractors.

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(5) The Contractor shall ensure that subcontractor rights are recognized and protected in the notification and listing process at paragraphs (j) and (k) below.

(6) In no event shall the Contractor use its obligation to recognize and protect subcontractor rights in technical data as an excuse for failing to satisfy its contractual obligation to the Government.

(j) Notice of Limitations on Government Rights.

(1) The Offeror/Contractor shall notify the Contracting Officer of its or its potential subcontractor's use in the performance of the contract or subcontract of items, components, processes and computer software that--

(i) Have been developed exclusively at private expense;

(ii) Have been developed in part at private expense; or

(iii) Embody technology that has been developed exclusively with Government funds which the Offeror or Contractor or subcontractor desires exclusive rights to commercialize, with Government approval.

(2) Such notification is not required with respect to items, components, processes or computer software if no technical data is required to be delivered or if the required technical data is delivered with unlimited rights.

(3) Such notification shall be accompanied by the following representation:

REPRESENTATION OF PRIVATE DEVELOPMENT

The Offeror/Contractor/Subcontractor represents that, to the best of its knowledge and belief, the information contained in this notification is current, accurate, and complete.

Date: _____

Name and Title: _____

Official: _____

This representation shall be dated and the signing official (identified by name and title) shall be duly authorized to bind the Contractor.

(4) Upon request by the Contracting Officer, the Offeror or Contractor shall provide sufficient information to enable the Contracting Officer to identify and evaluate the Contractor's or subcontractor's assertions made in (j)(1) above.

(k) Identification of restrictions on Government rights. Technical data and computer software shall not be tendered to the Government with other than unlimited rights, unless the technical data or computer software are identified in a list made part of this contract. This list

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is intended to facilitate review and acceptance of the technical data and computer software by the Government and does not change, waive, or otherwise modify the rights or obligations of the parties under the clause at DFARS 252.227-7037. As a minimum, this list must--

(1) Identify the items, components, processes, or computer software to which the restrictions on the Government apply;

(2) Identify or describe the technical data or computer software subject to other than unlimited rights; and

(3) Identify or describe, as appropriate, the category or categories of Government rights, the agreed-to time limitations, or any special restrictions on the use of disclosure of the technical data or computer software.

(1) Post-Award Negotiation - Disputes. If, after exhausting all reasonable efforts, the parties fail to agree on the apportionment of the rights in technical data furnished under this contract by the date established in the contract for agreement, or within any extension established by the Contracting Officer, then the Contracting Officer may establish the respective data rights of the parties, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract.

(End of Clause)

I.4.5 DFARS 252.227-7018 - DFARS Text Reference 227.403- -72(a)

RESTRICTIVE MARKINGS ON TECHNICAL DATA
(OCT 1988)

(a) The Contractor or any subcontractor that delivers technical data with other than unlimited rights shall have, maintain, and follow throughout the performance of this contract, written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of the "Rights in Technical Data and Computer Software" clause of this contract. The Contractor or subcontractor shall also maintain a quality assurance system to assure compliance with this clause.

(b) As part of the procedures, the Contractor shall as minimum:

(1) Maintain records to show how the procedures of paragraph (a) above were applied in determining that the markings are authorized;

(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data delivered under this contract;

(3) Provide for review of subcontractor procedures for controlling the restrictive markings on technical data. Where appropriate, the Contractor may request Government assistance in evaluating subcontractor procedures; and

(4) Establish and maintain operating procedures and physical security designed to protect any technical data subject to other than

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unlimited rights from inadvertent or unauthorized marking, disclosure or release to third parties.

(c) The Contractor shall, within sixty (60) days after award of this contract, identify in writing to the Contracting Officer by name or title the person(s) having the final responsibility within Contractor's organization for determining whether restrictive markings are to be placed on technical data to be delivered under this contract. The Government is authorized to contact such person(s) to resolve questions involving restrictive markings.

(d) The Contracting Officer may evaluate, verify and obtain a copy of the Contractor's procedures. The failure of the Contracting Officer to evaluate or verify such procedures shall not relieve the Contractor of the responsibility for complying with paragraphs (a) and (b) above.

(e) If the Contracting Officer gives written notification of any failure to maintain or follow the established procedures, or of any deficiency in the procedures, corrective action shall be accomplished within the time specified by the Contracting Officer.

(f) This clause shall be included in each subcontract under which technical data is required to be delivered. When so inserted, "Contractor" shall be changed to "Subcontractor".

(End of Clause)

I.4.6 DFARS 252.227-7029 - DFARS Text Reference 227.403-72(a)

IDENTIFICATION OF TECHNICAL DATA
(APR 1988)

Technical data delivered under this contract shall be marked with the number of this contract, name of Contractor, and name of any subcontractor who generated the data.

(End of Clause)

I.4.7 DFARS 252.227-7030 - DFARS Text Reference 227.403-74(b)

TECHNICAL DATA--WITHHOLDING OF PAYMENT
(OCT 1988)

(a) If technical data specified to be delivered under this contract is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not identified in the list described in the clause at 252.227- - 7013(k) of the contract), the Contracting Officer may until such data is accepted by the Government, withhold payment to the Contractor of ten percent (10%) of the total contract price or amount unless a lesser withholding is specified in the contract. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contractor's failure to make timely delivery or to deliver such data without deficiencies arises out of causes beyond the control and without the fault or negligence of the contractor.

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(b) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

I.4.8 DFARS 252.227-7031 - DFARS Text Reference 227.405-70(a)

DATA REQUIREMENTS
(OCT 1988)

The Contractor is required to deliver the data items listed on the DD Form 1423 (Contract Data Requirements List) and data items identified in and deliverable under any contract clause of FAR Subpart 52.2 and DOD FAR Supplement Subpart 52.2 made a part of the contract.

I.4.9 DFARS 252.227-7036 - DFARS Text Reference 227.403-74(c)

CERTIFICATION OF TECHNICAL DATA CONFORMITY
(MAY 1987)

(a) All technical data delivered under this contract shall be accompanied by the following written certification:

The Contractor, _____, hereby certifies that, to the best of its knowledge and belief, the technical data delivered herewith under Contract No. _____ is complete, accurate, and complies with all requirements of the contract.

Date _____
Name and Title of Certifying Official _____

This written certification shall be dated and the certifying official (identified by name and title) shall be duly authorized to bind the Contractor by the certification.

(b) The Contractor shall identify, by name and title, each individual (official) authorized by the Contractor to certify in writing that the technical data is complete, accurate, and complies with all requirements of the contract. The Contractor hereby authorizes direct contact with the authorized individual responsible for certification of technical data. The authorized individual responsible for certification of technical data. The authorized individual shall be familiar with the Contractor's technical data conformity procedures and their application to the technical data to be certified and delivered.

(c) Technical data delivered under this contract may be subject to reviews by the Government during preparation and prior to acceptance. Technical data is also subject to reviews by the Government subsequent to acceptance. Such reviews may be conducted as a function ancillary to other reviews, such as in-process reviews or configuration audit reviews.

(End of Clause)

I.4.10 DFARS 252.227-7037 - DFARS Text Reference 227.403-73(a)

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VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA
(APR 1988)

(a) Definitions. The terms used in this clause are defined in the clause at DFARS 252.227-7013 of the Department of Defense Federal Acquisition Regulation Supplement (DFARS).

(b) 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, and shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a challenge under paragraph (d) below.

(c) 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 (c)(1) above, 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 (d) below.

(3) If the Contractor or subcontractor fails to respond to the Contracting Officer's request for information under paragraph (c)(1) above, 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 (d) below.

(d) 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

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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 (f) below, 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.

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

(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 by FAR 33.207, 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.

(e) 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, the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause at FAR 52.233-1, 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 (d)(1)(ii) or (d)(2) above. Following the issuance of the final decision, the Contracting Officer will comply with the procedures in (f)(2)(ii) through (iv) below.

(f) Final Decision When Contractor or Subcontractor Responds.

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(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 justified, the Contracting Officer shall issue a final decision to the Contractor or subcontractor in accordance with 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 for a period of ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (f)(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 suite to the Contracting Officer within ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (f)(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 (f)(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 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

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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.

(g) 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.

(h) 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 on the release, disclosure or use of technical data at any time if such

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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. 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."

(i) 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.

(j) Flowdown. The Contractor or subcontractor agrees to insert this clause in subcontracts at any tier requiring the delivery of technical data.

(End of Clause)

I.4.11 DFARS 252.249-7002 - DFARS Text Reference 249.7003(c)

NOTIFICATION OF PROPOSED PROGRAM TERMINATION OR REDUCTION
(AUG 1993)

a. Within two weeks after the Government notifies the Contractor that this contract may be adversely affected by a program termination or reduction, the Contractor shall provide notice of such proposed termination or reduction to --

(1) Each representative of the Contractor's employees whose work is directly related to the contract; or

(2) If there is no such representative at that time, each such employee;

(3) The State dislocated worker unit or office described in section 311(b)(2) of the Job Training Partnership Act (29 U.S.C. 1661(b)(2) and the chief elected official of the unit of general local government within which the adverse effect may occur; and

(4) Each affected subcontractor.

(b) If the proposed program termination or reduction is likely to result in plant closure or mass layoff, the notice provided an employee under paragraph (a) of this clause shall have the same effect as a notice of termination to the employee for the purposes of determining whether such employee is eligible for training, adjustment assistant, and employment services under Section 325 or 325A of the Job Training Partnership Act. If the Contractor has specified that the proposed program termination or reduction is not likely to result in plant closure or mass layoff, the employee shall only be eligible to receive services under Section 314(b) and paragraphs (1) through (14), (16), and (18) of Section 314(c) of the Job Training Partnership Act.

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(c) If the Government subsequently withdraws a notice issued in accordance with paragraph (a) of this clause, the Contractor, within two weeks after receipt of the withdrawal notice shall provide notice of the withdrawal to --

(1) The representative, employees, offices, officials and subcontractors specified in paragraph (a) of this clause; and

(2) Each grantee under Section 325(a) or 325A(a) of the Job Training Partnership Act, as the case may be, providing training, adjustment assistance, and employment services to each employee described in this paragraph.

(d) An employee who receives notice of withdrawal shall not be eligible for training, adjustment assistance, and employment services under Section 325 of the Job Training Partnership Act, or Section 325A of such Act, as the case may be, beginning on the date the employee receives such notice.

(e) The Contractor shall insert the substance of this clause in all subcontracts of \$500,000 or more.

(End of Clause)

I.4.12 FIRMR 201-39.5202-3 - FIRMR Text Reference 201-39.106-4

PROCUREMENT AUTHORITY
OCT 90 FIRMR

This acquisition is being conducted under "a specific acquisition" delegation of GSA's exclusive procurement authority for FIP resources. The specific GSA DPA case number is KMA-93-0087.

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I.4.13 FIRMR 201-39.5202-6 - FIRMR Text Reference 201-39.4601

WARRANTY EXCLUSION AND LIMITATION OF DAMAGES
OCT 90 FIRMR

Except as expressly set forth in writing in this agreement and except for the implied warranty of merchantability, there are no warranties expressed or implied.

In no event will the contractor be liable to the Government for consequential damages as defined in the Uniform Commercial Code, section 2-715, in effect in the District of Columbia as of January 1, 1973, i.e.---

Consequential damages resulting from the seller's breach include--

(a) Any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty.

(End of clause)