AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

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PART I

FEDERAL REGISTER

VOLUME 23 NUMBER 43

Washington, Saturday, March 1, 1958

TITLE 3—THE PRESIDENT

EXECUTIVE ORDER 10757

CREATING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN EASTERN AIR LINES, INC., TRANS WORLD AIRLINES, INC., UNITED AIR LINES, INC., NORTHWEST AIRLINES, INC., NORTHEAST AIRLINES, INC., CAPITAL AIRLINES, INC., AND NATIONAL AIRLINES, INC., AND CERTAIN OF THEIR EMPLOYEES

WHEREAS a dispute exists between Eastern Air Lines, Inc., Trans World Airlines, Inc., United Air Lines, Inc., Northwest Airlines, Inc., Northeast Airlines, Inc., Capital Airlines, Inc., and National Airlines, Inc., carriers, and certain of their employees represented by the International Association of Machinists, a labor organization; and

WHEREAS this dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended; and

WHEREAS this dispute, in the judgment of the National Mediation Board, threatens substantially to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation service:

NOW, THEREFORE, by virtue of the authority vested in me by section 10 of the Railway Labor Act, as amended (45 U. S. C. 160), I hereby create a board of three members, to be appointed by me, to investigate the said dispute. No member of the said Board shall be pecuniarily or otherwise interested in any organization of employees or any carrier.

The Board shall report its findings to the President with respect to the said dispute within thirty days from the date of this order.

As provided by section 10 of the Railway Labor Act, as amended, from this date and for thirty days after the Board has made its report to the President, no change, except by agreement, shall be made by any of the said carriers or their employees in the conditions out of which the said dispute arose.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
February 27, 1958.

[F. R. Doc. 58-1600; Filed, Feb. 28, 1958; 10:16 a. m.]

This issue includes two parts bound together. Part II contains a revision of the Air Force Procurement Instructions, 32 CFR Parts 1001–1080.

TITLE 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice

PART 235a—PREEXAMINATION OF ALIENS WITHIN THE UNITED STATES

PREEXAMINATION ELIGIBILITY

The following amendment to Chapter I of Title 8 of the Code of Federal Regulations is hereby prescribed:

The first sentence of § 235a.1 *Application* is amended to read as follows: "Any alien, except a citizen of Canada, Mexico, or islands adjacent to the United States, shall apply for preexamination on Form I-63 if he intends to apply to a consular officer of the United States in Canada for an immigrant visa and he believes that he will be admissible to the United States under all the provisions of the immigration laws if in possession of an immigrant visa, or that he is prima facie eligible for a waiver of excludability under section 5 or 7 of the act of September 11, 1957; that he will be able to obtain the prompt issuance of an immigrant visa, and that he is a person of good moral character."

(Sec. 103, 66 Stat. 173; 8 U. S. C. 1103)

This order shall become effective on the date of its publication in the FEDERAL REGISTER. Compliance with the provisions of section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U. S. C. 1003) as to notice of proposed rule making and delayed effective date is unnecessary in this instance because the rule prescribed by the order relieves a restriction and is clearly advantageous to persons affected thereby.

Dated: February 26, 1958.

J. M. SWING,
Comissioner of Immigration and Naturalization.

[F. R. Doc. 58-1560; Filed, Feb. 28, 1958; 8:49 a. m.]

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FEDERAL REGISTER

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CFR SUPPLEMENTS

(As of January 1, 1958)

The following Supplements are now available:

Title 3, 1957 Supp. ($0.40)

Titles 30–31 ($1.50)

Previously announced:
Titles 10–13 ($1.00); Title 18 ($0.50); Title 20 ($1.00)

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[Amdt. 59]

PART 609—STANDARD INSTRUMENT APPROACH PROCEDURES

PROCEDURE ALTERATIONS

The standard instrument approach procedures appearing hereinafter are adopted to become effective when indicated in order to promote safety. Compliance with the notice, procedures, and effective date provisions of section 4 of the Administrative Procedure Act would be impracticable and contrary to the public interest, and therefore is not required.

Part 609 is amended as follows:

NOTE: Where the general classification (L/MFR, ADF, VOR, TerVOR, VOR/DME, ILS, or RADAR), location, and procedure number (if any) of any procedure in the amendments which follow, are identical with an existing procedure, that procedure is to be substituted for the existing one, as of the effective date given, to the extent that it differs from the existing procedure; where a procedure is cancelled, the existing procedure is revoked; new procedures are to be placed in appropriate alphabetical sequence within the section amended.

1. The low or medium frequency range procedures prescribed in § 609.100 (a) are amended to read in part:

LFR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of Civil Aeronautics. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Los Fresnos FM (Final)	BRO-LFR	Direct	600	T-dn	300-1	300-1	300-1½
Brownsville VOR	BRO-LFR	Direct	1200	C-dn	400-1	500-1	500-1½
				S-dn-17R	400-1	400-1	400-1
				A-dn	800-2	800-2	800-2

Procedure turn W side N crs, 334 Outbnd, 154 Inbnd, 1200' within 10 miles. Beyond 10 miles NA.
Minimum altitude over facility on final approach crs, 600.
Crs and distance, facility to airport, 155—2.0.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 2.0 mi, climb to 1200' on S crs within 10 miles.
CAUTION: 156' water tank 0.5 mi. W of airport.

City, Brownsville; State, Tex.; Airport Name, Rio Grande Valley International; Elev., 22'; Fac. Class, SBRAZ; Ident., BRO; Procedure No. 1, Amdt. 8; Eff. Date, 4 Feb. 58; Sup. Amdt. No. 7; Dated, 8 Jan. 55

2. The automatic direction finding procedures prescribed in § 609.100 (b) are amended to read in part:

ADF STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of Civil Aeronautics. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine more than 65 knots
					65 knots or less	More than 65 knots	
Detroit LFR	FRD RBn	Direct	2000	T-dn	300-1	300-1	300-1½
Salem VOR	FRD RBn	Direct	2000	C-dn	400-1	500-1	500-1½
Milan VHF Int	FRD RBn	Direct	2000	S-dn-22R and 22L	400-1	400-1	400-1
Park VHF Int	FRD RBn	Direct	2000				
Saline Int*	FRD RBn	Direct	2000	A-dn	800-2	800-2	800-2

*Int SVM R-210 and OG R-264.
NOTE: Radar transitions to final approach crs authorized. Aircraft will be released for final approach without procedure turn on inbnd final approach crs at least 3 N miles from FRD RBn. Refer to Radar Approach Procedure (Willow Run) if detailed information on sector altitudes is desired.
Procedure turn, N side of crs, 050 Outbnd, 230 Inbnd, 2000' within 9 miles. NA beyond 9.0 miles.
Minimum altitude over facility on final approach crs, 1600'.
Crs and distance, facility to airport, 230-3.9.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 3.9 miles, climb to 2000' on W crs Detroit LFR within 20 miles or when directed by ATC: (1) Climb to 2300' proceed to YIP LOM. (2) Climb to 2300' proceed to RML LOM. (3) Make left turn, climbing to 2000' proceed to CRL VOR.
CAUTION: TV antenna 1738' and 1749' 15.0 mi. NE Ford Rbn.

City, Detroit; State, Mich.; Airport Name, Willow Run; Elev., 710'; Fac. Class, MHW; Ident., FRD; Procedure No. 2, Amdt. 6; Eff. Date, 29 Mar. 58; Sup. Amdt. No. 5; Dated, 31 May 56

3. The terminal very high frequency omnirange (TerVOR) procedures prescribed in § 609.200 are amended to read in part:

TERMINAL VOR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of Civil Aeronautics. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine more than 65 knots
					65 knots or less	More than 65 knots	
LSE-LFR	LSE-VOR	Direct	2400	T-d	*400-1	*400-1	#400-1
LSE-LFR	LSE-VOR (Final)	Direct	1100	T-n	*400-1½	*400-1½	#400-1½
Nodine-BVOR	LSE-VOR	Direct	2400	C-d	600-1	600-1	600-1½
				C-n	600-2	600-2	600-2
				S-dn-13	400-1	400-1	400-1
				A-dn	800-2	800-2	800-2

*300-1 takeoff authorized on Rwys 31, 35, and 17.
#200-½ takeoff authorized on Rwys 31, 35, and 17.
Procedure turn West side of crs, 318° Outbnd, 138° Inbnd, 2400' within 10 miles.
Minimum altitude over facility on final approach crs, ##1900'; 1100' after passing LSE-LFR or int Nodine-BVOR R-071.
##1900' m. s. l. (1200' ceiling) required if unable to determine passing LSE-LFR or Nodine-VOR R-071.
Facility on airport.
Crs and distance, breakoff point to Rwy 13, 130°—0.7 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished, over LSE-VOR make immediate right climbing turn, climb to 2400' on LSE R-318 within 10 mi.
CAUTION: 950' m. s. l. tower 2 mi SE of airport. 1227' m. s. l. bluffs and 1440' tower 3 and 4 mi SE, respectively, of airport. 1273' m. s. l. tower 4 mi WSW of airport and 1440' tower 3.5 mi W of airport. 1240' bluffs 2 mi NE of airport.

City, LaCrosse; State, Wis.; Airport Name, Municipal; Elev., 653'; Fac. Class, VOR: Ident., LSE; Procedure No. TerVOR-13, Orig.; Eff. Date, 1 Mar. 58

LSE-LFR	LSE-VOR	Direct	2400	T-d	*400-1	*400-1	#400-1
Nodine-BVOR	LSE-VOR	Direct	2400	T-n	*400-1½	*400-1½	#400-1½
				C-d	600-1	600-1	600-1
				C-n	600-2	600-2	600-2
				S-dn-17	400-1	400-1	400-1
				A-dn	800-2	800-2	800-2

*300-1 takeoff authorized on Rwys 31, 35, and 17.
#200-½ takeoff authorized on Rwys 31, 35, and 17.
Procedure turn West side of crs, 350° Outbnd, 170° Inbnd, 2400' within 10 miles.
Minimum altitude over facility on final approach crs, ##2000'; 1100' after passing 270° brg. to LSE-LFR or Nodine BVOR R-076 (3.5 mi from Rwy 17).
##2000' m. s. l. (1300' ceiling) required if unable to determine passing 270° brg. to LSE-LFR or Nodine R-076.
Facility on airport.
Crs and distance, breakoff point to Rwy 17, 175°—0.5 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished over LSE-VOR make right climbing turn, climb to 2400' on LSE R-318 within 10 miles.
CAUTION: 950' m. s. l. tower 2 mi SE of airport. 1227' m. s. l. bluffs and 1440' tower 3 and 4 mi SE, respectively, of airport. 1273' m. s. l. tower 4 mi WSW of airport and 1440' tower 3.5 mi West of airport. 1240' bluffs 2 mi NE of airport.

City, LaCrosse; State, Wis.; Airport Name, Municipal; Elev., 653'; Fac. Class, VOR; Ident., LSE; Procedure No. TerVOR-17, Orig.; Eff. Date, 1 Mar. 58

LSE-LFR	LSE-VOR	Direct	2400	T-d	*400-1	*400-1	#400-1
Nodine-BVOR	LSE-VOR	Direct	2400	T-n	*400-1½	*400-1½	#400-1½
				C-d	600-1	600-1	600-1
				C-n	600-2	600-2	600-2
				S-dn-35	400-1	400-1	400-1
				A-dn	800-2	800-2	800-2

*300-1 takeoff authorized on Rwys 31, 35, and 17.
#200-½ takeoff authorized on Rwys 31, 35, and 17.
Procedure turn East side of crs, 181° Outbnd, 001° Inbnd, 2700' within 10 mi.
Minimum altitude over facility on final approach crs, ##2300'; 1100' after passing LSE-BVOR R-223 or Nodine BVOR R-128 (5.2 mi from Rwy 35).
##2300' m. s. l. (1600' ceiling) required if unable to determine passing LSE R-223 or Nodine R-128.
Facility on airport.
Crs and distance, breakoff point to Rwy 35, 355°—0.4 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished over LSE-VOR make left climbing turn, climb to 2400' on LSE R-318 within 10 miles.
CAUTION: 950' m. s. l. tower 2 mi SE of airport. 1227' m. s. l. bluffs and 1440' tower 3 and 4 mi SE, respectively, of airport. 1273' m. s. l. tower 4 mi WSW of airport and 1440' tower 3.5 mi west of airport. 1240' bluffs 2 mi NE of airport.

City, LaCrosse; State, Wis.; Airport Name, Municipal; Elev., 653'; Fac. Class, VOR; Ident., LSE; Procedure No. TerVOR-35, Orig.; Eff. Date, 1 Mar. 58

				T-dn	400-1	400-1	400-1
				C-dn	500-1	500-1	500-1½
				S-dn-9	500-1	500-1	500-1½
				A-dn	800-2	800-2	800-2

Procedure turn S side of crs, 280° Outbnd, 100° Inbnd, 1000' within 10 miles.
Minimum altitude over facility on final approach crs, 500'.
Crs and distance, breakoff point to app end rny 9, 093—0.5#.
#Approximately over AXX MHW.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0 mile, climb to 1500' on R-100 within 20 miles.

City, Wake Island; Airport Name, Wake Airport; Elev., 10'; Fac. Class, VOR; Ident., AWK; Procedure No. TerVOR-9, Amdt. 1; Eff. Date, 17 Jun. 56; Sup. Amdt. No. Orig.; Dated, 16 Jun. 56

4. The very high frequency omnirange-distance measuring equipment (VOR/DME) procedures prescribed in § 609.300 are amended to read in part:

VOR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of Civil Aeronautics. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
15 mi fix R-329	10 mi fix R-329	Direct	1700	T-dn	300-1	300-1	200-½
10 mi fix R-329	4 mi fix R-329	Direct	1100	C-dn	500-1	500-1	500-1½
4 mi fix R-329	0 mi fix R-329 (Final Arpt)	Direct	900	A-dn	800-2	800-2	800-2

Procedure turn not required.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished at 0 miles fix climb to 1600 on R-139 within 20 miles.

City, Macon; State, Ga.; Airport Name, Macon (Cochran); Elev., 354'; Fac. Class and Ident., BVOR-DME-MCN; Procedure No. VOR-DME-Arpt (R-329), Amdt. 1; Eff. Date, 29 Mar. 58; Sup. Amdt. No. Orig.; Dated, 28 Apr. 56

10 mi fix R-119	3 mi fix R-119	Direct	900	T-dn	300-1	300-1	200-½
3 mi fix R-119	0 mi fix R-119 (Final-31)	Direct	800	C-dn	500-1	500-1	500-1½
				S-dn-31	400-1	400-1	400-1
				A-dn	800-2	800-2	800-2

Procedure turn N side R-119, 1800' within 10 miles (not required with DME). Procedure authorized without DME, but procedure turn required.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0 miles, climb to 1900' on R-239 within 20 miles.

City, Macon; State, Ga.; Airport Name, Macon (Cochran); Elev., 354'; Fac. Class and Ident., BVOR-DME-MCN; Procedure No. VOR-DME-31, Amdt. 1; Eff. Date, 29 Mar-58; Sup. Amdt. No. Orig.; Dated, 28 Apr. 56

5. The instrument landing system procedures prescribed in § 609.400 are amended to read in part:

ILS STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of Civil Aeronautics. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine more than 65 knots
					65 knots or less	More than 65 knots	
Detroit LFR	LOM	Direct	2300	T-dn	300-1	300-1	200-½
New Boston Int*	LOM	Direct	2300	C-dn	400-1	500-1	500-1½
Salem VOR	LOM	Direct	2300	S-dn:			
Bridgewater LF Int	LOM	Direct	2300	4R ILS	200-½	200-½	200-½
Milan Int	LOM (Final)	Direct	2300	4R-L ADF	400-1	400-1	400-1
Bridgewater VHF Int	LOM	Direct	2300	A-dn:			
				ILS	600-2	600-2	600-2
				ADF	800-2	800-2	800-2

*Int Windsor VOR R-254 and Carleton VOR R-023.
Radar transition to final approach crs authorized. Procedure turn not necessary on vectoring to final approach crs. Refer to Willow Run Radar Procedure if detailed information on sector altitudes is desired.
Procedure turn W side SW crs, 230 outbnd, 050 inbnd, 2300 within 10 miles.
Minimum altitude at G. S. int inbnd, 2300' ILS inbnd final 1500' ADF.
Altitude of G. S. and distance to approach end of rnwy at OM 2251—4.9, at MM 932—0.5.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.9 mi of LOM (ADF) make left turn climb to 2500' on R-170 SVM or when directed by ATC: (1) climb to 2700' on NE crs ILS proceed to Midcraft Int. (2) make right turn climb to 2300' proceed to RML LFR.

City, Detroit; State, Mich.; Airport Name, Willow Run; Elev., 716'; Fac. Class, ILS-IYIP; Ident., LOM-YI; Procedure No. 4R-L, Comb. ILS-ADF, Amdt. 9; Eff. Date, 29 Mar. 58; Sup. Amdt. No. 8; Dated, 31 May 56

Bergholz RBn or Int	Empire Int	Direct	3,000	T-dn	300-1	300-1	200-½
River RBn	Clinton RBn	Direct	2,500	C-dn	500-1	500-1	500-1½
Pittsburgh LFR	Clinton RBn	Direct	2,500	S-dn-10:			
Columbiana INT	Clinton RBn	Direct	2,500	ILS	400-1	400-1	400-1
Wheeling VOR	Clinton RBn	Direct	2,700	ADF	500-1	500-1	500-1
Butler RBn	Clinton RBn	Direct	2,500	A-dn	800-2	800-2	800-2
Cecil RBn	Clinton RBn	Direct	2,500				
Empire Int	Clinton RBn (Final)	Direct	2,500				
Radar Terminal Area Transition Altitudes.	Radar Site	All sectors within:					
		10 mi	2,500				
		10-40 mi	3,000 or MEA when lower				

Procedure turn S side W crs, 277 Outbnd, 097 Inbnd, 2500' within 10 miles of Clinton RBn.
No glide slope, no outer marker, no middle marker, minimum altitude over Clinton RBn inbnd 2000', Distance and bearing to Runway 10, 4.0, 097°.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.0 miles, after passing Clinton RBn, climb to 3000' on E crs of ILS or 097° crs to River RBn.

City, Pittsburgh; State, Pa.; Airport Name, Greater Pittsburgh; Elev., 1168'; Fac. Class, ILS-GPB; Ident., MHW-GHW; Procedure No. ILS-10, Comb. ILS-ADF, Amdt. 1; Eff. Date, 29 Mar. 58; Sup. Amdt. No. Orig.; Dated, 11 Jun. 55

ILS STANDARD INSTRUMENT APPROACH PROCEDURE—Continued

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
New Alexandria RBn or Int	Hudson Int	Direct	3000	T-dn	300-1	300-1	200-½
Butler RBn	River RBn	Direct	3000	C-dn	500-1	500-1	500-1½
McKeesport RBn	ILS crs (Final)	320–11	3000	S-dn 28*:			
Pittsburgh LFR	River RBn	Direct	3000	ILS	200-½	200-½	200-½
Pittsburgh VOR	River RBn	Direct	3000	ADF	400-1	400-1	400-1
Cecil RBn	River RBn	Direct	3000	A-dn:			
Clinton RBn	River RBn	Direct	3000	ILS	600-2	600-2	600-2
Hudson Int	River RBn (Final)	Direct	3000	ADF	800-2	800-2	800-2
Radar Terminal Area Transition Altitudes.	Radar Site	All sectors within					
		10 mi	2500				
		10–40 mi	3000 or MEA when lower				

*400-¾ required with glide slope inoperative.
Procedure turn N side E crs, 097 Outbnd, 277 Inbnd, 3000' within 10 miles of River RBn. Not authorized beyond 10 miles.
Minimum altitude at G. S. int inbnd 3000' ILS, minimum altitude over River RBn inbnd final 2500 ADF.
Altitude of G. S. and distance to appr end of rny at OM River RBn 3000'—5.6, at MM Parkway RBn 1390'—.6.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 5.6 miles after passing River RBn (ADF), climb to 3000' on W crs ILS or 277° crs to Clinton RBn.
NOTE: Center line modified type B approach lighting.

City, Pittsburgh; State, Pa.; Airport Name, Greater Pittsburgh; Elev., 1168'; Fac. Class, ILS-GPB; Ident., MHW-RER; Procedure No. ILS-28, Comb. ILS-ADF, Amdt. 1; Eff. Date, 29 Mar. 58; Sup. Amdt. No. Orig.; Dated, 11 Jun. 55

6. The radar procedures prescribed in § 609.500 are amended to read in part:

RADAR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet, MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.
If a radar instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of Civil Aeronautics. Initial approaches shall be made over specified routes. Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below. Positive identification must be established with the radar controller. From initial contact with radar to final authorized landing minimums, the instructions of the radar controller are mandatory except when (A) visual contact is established on final approach at or before descent to the authorized landing minimums, or (B) at pilot's discretion if it appears desirable to discontinue the approach, except when the radar controller may direct otherwise prior to final approach, a missed approach shall be executed as provided below when (A) communication on final approach is lost for more than 5 seconds during a precision approach, or for more than 30 seconds during a surveillance approach; (B) directed by radar controller; (C) visual contact is not established upon descent to authorized landing minimums; or (D) if landing is not accomplished.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
				T-dn	300-1	300-1	200-½
				C-dn	400-1	500-1	500-1¼
				S-dn-35, 17, 8, and 3.	400-1	400-1	400-1
				A-dn	800-2	800-2	800-2

Radar terminal area maneuvering sectors and altitudes. All bearings are from radar site with sector azimuths progressing clockwise:
Within 5 miles: All sectors 7500'.
Within 10 miles: 360—060 Unusable; 060—135 9000'; 135—360 7800'.
Within 15 miles: 360—060 Unusable; 060—105 10,000'; 105—140 9000'; 140—360 7500'.
Within 20 miles: 360—060 Unusable; 060—105 10,000'; 105—150 12,000'; 150—285 8000'; 285—360 14,000'.
Within 25 miles: 360—105 Unusable; 105—150 12,000'; 150—300 11,000'; 300—360 14,000'.
Within 30, 35, and 40 miles: 360—150 Unusable; 150—300 11,000'; 300—360 14,000'.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished—runways 35, 8 and 3: Turn left to 325° heading and climb to 8000' on N crs Albuquerque LFR or R-012 Albuquerque VOR within 20 miles or, when directed by ATC, turn left and climb to 8000' on R-256 Albuquerque VOR within 20 miles. Runway 17: climb to 7000' on S crs Albuquerque LFR within 20 miles or, when directed by ATC, turn right, climb to 10,000' on W crs Albuquerque LFR within 25 miles.

City, Alburquerque; State, N. Mex.; Airport Name, Kirtland AFB/Mun.; Elev., 5352'; Fac. Class, Kirtland; Ident., Radar; Procedure No. 1, Orig.; Eff. Date, 29 Mar. 58

These procedures shall become effective on the dates indicated on the procedures.

(Sec. 205, 52 Stat. 984, as amended; 49 U. S. C. 425. Interpret or apply sec. 601, 52 Stat. 1007, as amended; 49 U. S. C. 551)

[SEAL]

JAMES T. PYLE,
Administrator of Civil Aeronautics.

FEBRUARY 25, 1958.

[F. R. Doc. 58-1527; Filed, Feb. 28, 1958; 8:54 a. m.]

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

DEPARTMENT OF THE INTERIOR

Effective upon publication in the FEDERAL REGISTER, paragraph (b) (5) of § 6.310 is amended as set out below.

§ 6.310 *Department of the Interior.* * * *

(b) *Office of the Solicitor.* * * *

(5) One Assistant to the Secretary and Legislative Counsel.

(R. S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U. S. C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] WM. C. HULL,
Executive Assistant.

[F. R. Doc. 58-1556; Filed, Feb. 28, 1958; 8:48 a. m.]

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

COMMISSION ON CIVIL RIGHTS

Effective upon publication in the FEDERAL REGISTER, § 6.360 (a) is added as set out below.

§ 6.360 *Commission on Civil Rights.* (a) One Staff Assistant and Secretary to the Commission.

(R. S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U. S. C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] WM. C. HULL,
Executive Assistant.

[F. R. Doc. 58-1555; Filed, Feb. 28, 1958; 8:48 a. m.]

TITLE 7—AGRICULTURE

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Navel Orange Reg. 137]

PART 914—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

LIMITATION OF HANDLING

§ 914.437 *Navel Orange Regulation 137*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 14, as amended (7 CFR Part 914), regulating the handling of navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges as hereinafter provided will tend to effectuate the declared policy of the act by tending to establish and maintain such orderly marketing conditions for such oranges as will provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices, and is not for the purpose of maintaining prices to farmers above the level which it is declared to be the policy of Congress to establish under the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The Committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on February 27, 1958.

(b) *Order.* (1) The respective quantities of navel oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a. m., P. s. t., March 2, 1958, and ending at 12:01 a. m., P. s. t., March 9, 1958, are hereby fixed as follows:

(i) District 1: 323,400 cartons;

(ii) District 2: 323,400 cartons;

(iii) District 3: Unlimited movement;

(iv) District 4: Unlimited movement.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," "District 4," and "carton" have the same meaning as when used in said amended marketing agreement and order.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: February 28, 1958.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F. R. Doc. 58-1614; Filed, Feb. 28, 1958; 11:41 a. m.]

[Valencia Orange Reg. 125]

PART 922—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

LIMITATION OF HANDLING

§ 922.425 *Valencia Orange Regulation 125*—(a) *Findings.* (1) Pursuant to the marketing agreement and Order No. 22, as amended (7 CFR Part 922), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendations and information submitted by the Valencia Orange Administrative Committee, established under the said marketing agreement and order, as amended, and upon other available information, it is hereby found that the limitation of handling of such Valencia oranges as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week after giving due notice thereof, to consider supply and market conditions for Valencia oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Valencia oranges; it is necessary, in order to effectuate the declared policy of the act,

to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on February 27, 1958.

(b) *Order.* (1) The respective quantities of Valencia oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a. m., P. s. t., March 2, 1958, and ending at 12.01 a. m., P. s. t., March 9, 1958, are hereby fixed as follows:

(i) District 1: Unlimited movement;

(ii) District 2: Unlimited movement;

(iii) District 3: 92,400 cartons.

(2) All Valencia oranges handled during the period specified in this section are subject also to all applicable size restrictions which are in effect pursuant to this part during such period.

(3) As used in this section, "handled," "handler," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in said marketing agreement and order, as amended.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: February 28, 1958.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F. R. Doc. 58-1615; Filed, Feb. 28, 1958; 11:42 a. m.]

[Lemon Reg. 728]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

LIMITATION OF HANDLING

§ 953.835 *Lemon Regulation 728*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based becomes available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The Committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on February 26, 1958.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period beginning at 12:01 a. m., P. s. t., March 2, 1958, and ending at 12:01 a. m., P. s. t., March 9, 1958, are hereby fixed as follows:

(i) District 1: 13,950 cartons;

(ii) District 2: 195,300 cartons;

(iii) District 3: Unlimited movement.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: February 27, 1958.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F. R. Doc. 58-1595; Filed, Feb. 28, 1958; 9:19 a. m.]

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 6834]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

MC ALPIN CO.

Subpart—*Advertising falsely or misleadingly:* § 13.155 *Prices:* Comparative; exaggerated as regular and customary. Subpart—*Invoicing products falsely:* § 13.1108 *Invoicing products falsely:* Fur Products Labeling Act. Subpart—*Misbranding or mislabeling:* § 13.1212 *Formal regulatory and statutory requirements:* Fur Products Labeling Act. Subpart—*Neglecting, unfairly or deceptively, to make material disclosure:* § 13.1845 *Composition:* Fur Products Labeling Act; § 13.1852 *Formal regulatory and statutory requirements:* Fur Products Labeling Act; § 13.1865 *Manufacture or preparation:* Fur Products Labeling Act; § 13.1900 *Source or origin:* Fur Products Labeling Act: *Place.*

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 8, 65 Stat. 179; 15 U. S. C. 45, 69f) [Cease and desist order, The McAlpin Co., Cincinnati, Ohio., Docket 6834, January 22, 1958]

In the Matter of The McAlpin Co. (Erroneously Referred to in the Complaint as The McAlpin Company, Inc.), a Corporation

This proceeding was heard by a hearing examiner on the complaint of the Commission charging a furrier in Cincinnati, Ohio, with violating the Fur Products Labeling Act by making deceptive comparative price and percentage saving claims in its advertising and failing to keep the required records on which the pricing claims were based; and with failing in other respects to comply with the advertising, labeling, and invoicing requirements of the act.

Following acceptance of an agreement between the parties containing a consent order, the hearing examiner made his initial decision and order to cease and desist which became on January 22, 1958, the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondent, The McAlpin Co., a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce, of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur", and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations.

(b) That the fur product contains or is composed of used fur, when such is the fact.

(c) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is the fact.

(d) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact.

(e) The name, or other identification issued and registered by the Commission, of one or more persons who manufactured such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce.

(f) The name of the country of origin of any imported furs used in the fur product.

2. Setting forth on labels attached to fur products:

(a) Information required under section 4 (2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder, in abbreviated form or in handwriting.

(b) Information required under section 4 (2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder, mingled with nonrequired information.

3. Failure to show on labels attached to fur products all of the information required under section 4 (2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder, on one side of such labels.

B. Falsely or deceptively invoicing fur products by:

1. Failure to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations.

(b) That the fur product contains or is composed of used fur, when such is the fact.

(c) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is the fact.

(d) That the fur product is composed, in whole or in substantial part, of paws, tails, bellies, or waste fur, when such is the fact.

(e) The name and address of the person issuing such invoice.

(f) The name of the country of origin of any imported fur contained in a fur product.

(g) The item number or mark assigned to a fur product.

2. Setting forth information required under section 5 (b) (1) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in abbreviated form.

C. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement, or notice, which is intended to aid, promote or assist, directly or indirectly, in the sale or offering for sale of fur products, and which:

1. Fails to disclose:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide, and as prescribed under the rules and regulations.

(b) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact.

(c) The name of the country of origin of any imported furs contained in a fur product.

2. Fails to set forth information required under section 5 (a) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in type of equal size and conspicuousness.

3. Represents, directly or by implication, that the regular or usual price of any fur product is any amount which is in excess of the price at which the respondent has usually and customarily sold such products in the recent, regular course of its business.

4. Makes use of comparative prices or percentage savings claims unless such compared prices or percentage savings are based upon current market values or unless a bona fide price at a designated time is stated.

5. Makes pricing claims and representations of the types referred to in subparagraphs 3 and 4 above, unless there are maintained by respondent full and adequate records disclosing the facts upon which such claims or representations are based, as required by Rule 44 (e) of the rules and regulations (§ 301.44 (e)).

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

Issued: January 22, 1958.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F. R. Doc. 58-1532; Filed, Feb. 28, 1958; 8:46 a. m.]

TITLE 20—EMPLOYEES' BENEFITS

Chapter V—Bureau of Employment Security, Department of Labor

PART 601—ADMINISTRATIVE PROCEDURE

REFERENCES TO INTERNAL REVENUE CODE OF 1954

The purpose of this amendment is to conform section references to the Internal Revenue Code in this part to those in the recently codified Internal Revenue Code of 1954. This amendment is made necessary because the section numbers referred to in the text of this part were those contained in the Internal Revenue Code of 1939, and the sections have since been renumbered in the Internal Revenue Code of 1954. Since this is not a substantive change there is no necessity for a delayed effective date.

Pursuant to Chapter 23 of the Internal Revenue Code of 1954 (26 U. S. C. 3301–3308) and section 3 of the Administrative Procedure Act (5 U. S. C. 1002), Title 20 of the Code of Federal Regulations is amended as follows:

1. Wherever the words "section 1600 of the Internal Revenue Code" appear in the text of § 601.1, the words "section 3301 of the Internal Revenue Code of 1954" are substituted therefor.

2. Wherever the words "section 1601 (a) (1) of the Internal Revenue Code" appear in the text of § 601.2, the words "section 3302 (a) (1) of the Internal Revenue Code of 1954" are substituted therefor.

3. Wherever the words "section 1602 (a) of the Internal Revenue Code" appear in the text of §§ 601.1, 601.3, and 601.4, the words "section 3303 (a) of the Internal Revenue Code of 1954" are substituted therefor.

4. Wherever the words "section 1602 (a) (1) of the Internal Revenue Code" appear in the text of § 601.3, the words "section 3303 (a) (1) of the Internal Revenue Code of 1954" are substituted therefor.

5. Wherever the words "section 1602 (b) of the Internal Revenue Code" appear in the text of § 601.1 the words, "section 3303 (b) of the Internal Revenue Code of 1954" are substituted therefor.

6. Wherever the words "section 1602 (b) (3) of the Internal Revenue Code" appear in the text of § 601.4, the words "section 3303 (b) (3) of the Internal Revenue Code of 1954" are substituted therefor.

7. Wherever the words "sections 1602 (b) (3) and 1603 (c) of the Internal Revenue Code" appear in the text of subparagraphs (1) and (2) of § 601.5 (a), the words "sections 3303 (b) (3) and 3304 (c) of the Internal Revenue Code of 1954" are substituted therefor.

8. Wherever the words "section 1603 of the Internal Revenue Code" appear in the text of §§ 601.1 and 601.4, the words "section 3304 of the Internal Revenue Code of 1954" are substituted therefor.

9. Wherever the words "section 1603 (a) of the Internal Revenue Code" appear in the text of §§ 601.1, 601.2 and 601.3, the words "section 3304 (a) of the Internal Revenue Code of 1954" are substituted therefor.

10. Wherever the words "sections 1602 (b) (3) and (c) of the Internal Revenue Code" appear in the text of § 601.5 (d), the words "sections 3303 (b) (3) and 3304 (c) of the Internal Revenue Code of 1954" are substituted therefor.

11. Wherever the words "section 1603 (d) of the Internal Revenue Code" appear in the text of § 601.5, the words "section 3304 (d) of the Internal Revenue Code of 1954" are substituted therefor.

(Sec. 12, 48 Stat. 117, as amended, sec. 1102, 49 Stat. 647, as amended; 29 U. S. C. 49k, 42 U. S. C. 1302)

Signed at Washington, D. C., this 25th day of February 1958.

JAMES P. MITCHELL,
Secretary of Labor.

[F. R. Doc. 58-1573; Filed, Feb. 28, 1958; 9:18 a. m.]

TITLE 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

PART 1—GENERAL RULES OF PRACTICE

SPECIAL RULES OF PRACTICE GOVERNING PROCEDURE OF TEMPORARY AUTHORITIES BOARD AND THE TRANSFER BOARD

At a general session of the Interstate Commerce Commision, held at its office

in Washington, D. C., on the 23d day of December A. D. 1957.

The Commission on October 21, 1956, having abolished the Motor Carrier Board and assigned its duties to the Temporary Authorities Board and the Transfer Board, and the matter of special rules of procedure of the latter boards being under consideration:

It is ordered, That, to implement the action creating the Temporary Authorities Board and the Transfer Board in lieu of the Motor Carrier Board, § 1.225 is revised to read as follows:

§ 1.225 *Special rules of practice governing the procedure of the Temporary Authorities Board and the Transfer Board.* (a) The proceedings of the Temporary Authorities Board and the Transfer Board shall be informal. No transcription of such proceedings will be made. Subpoenas will not be issued and, except when applications or petitions are required to be attested, oaths will not be administered.

(b) A petition for reconsideration of an order of the Temporary Authorities Board or the Transfer Board may be filed by any interested person. Such petition and the reply thereto will be governed by the Commission's general rules of practice, except as otherwise provided in paragraphs (c) and (d) of this section.

(c) The original and four copies of every pleading, document, or paper permitted or required to be filed under this section, shall be furnished for the use of the Commission.

(d) A petition seeking reconsideration of an order of the Temporary Authorities Board entered under section 210a (a) of the Interstate Commerce Act must be filed within 20 days after the date of the service of the order. Within 20 days after the filing of such petition with the Commission, any interested person may file and serve a reply thereto.

Notice of this order shall be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission, Washington, D. C., and by filing a copy with the Director, Division of the Federal Register.

(Secs. 12, 17, 24 Stat. 383, as amended, 385, as amended, secs. 204, 205, 49 Stat. 546, as amended, 548 as amended; 49 U. S. C. 12, 17, 304, 305)

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F. R. Doc. 58-1544; Filed, Feb. 28, 1958; 8:48 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF THE TREASURY

United States Coast Guard

[46 CFR Part 144]

[CGFR 58-3]

LOADING AND STOWAGE OF GRAIN CARGOES

PUBLIC HEARING ON PROPOSED CHANGES

1. The Merchant Marine Council will hold a public hearing on Tuesday, March 18, 1958, commencing at 9:30 a. m. in Room 4120, Coast Guard Headquarters, 13th and E Streets, NW., Washington, D. C., for the purpose of receiving comments, views, and data on certain proposed changes in the navigation and vessel inspection regulations as generally described in another announcement as Items I to XVI, inclusive. In addition, Items XVII and XVIII described in this document will be considered as a part of the agenda for this public hearing.

2. Comments on the proposed regulations described in this document are invited. Written comments containing constructive criticisms, suggestions, or views are welcomed. However, acknowledgment of the comments received or reasons why the suggested changes were or were not adopted are not normally furnished because personnel are not available to handle the necessary correspondence involved. Each oral or written comment is considered and evaluated. If it is believed the comment, suggestion, or view clarifies or improves the proposed regulation or amendment, it is changed accordingly and after adoption by the Commandant the regulation is published in the FEDERAL REGISTER. Each person who desires to submit written comments, data, or views in connection with the proposed regulations set forth in this document should submit them to the Commandant (CMC), United States Coast Guard Headquarters, Washington 25, D. C., so that they will be received prior to March 14, 1958. Comments, data, or views may be presented orally or in writing at the hearing before the Merchant Marine Council on March 18, 1958.

ITEM XVII—EQUIVALENTS ALLOWED FOR VESSELS LOADING GRAIN

3. Due to local conditions, the established practices in the loading of grain in bulk in vessels in Argentine and Uruguayan ports have differed from the practices followed in the United States and upon which the current provisions in 46 CFR Part 144 (Loading and Stowage of Bulk Grain Cargoes) are based. The loading conditions followed in Argentine and Uruguayan ports have demonstrated the limits of safe practice which should be observed. Similar regulations to those proposed in this document have been already adopted by the Governments of Argentina, Great Britain, Sweden, Netherlands, Norway, France, West Germany, and Denmark. It is proposed to establish for certain United States vessels engaged in foreign trade certain equivalents to the present requirements governing the loading of grain in bulk.

4. It is proposed to amend § 144.10-10 to read as follows:

§ 144.10-10 *Application to vessels.* (a) The regulations in this part apply to every passenger vessel and every cargo vessel of 500 gross tons or over loading loose grain in bulk within the limits defined in § 144.01-1 (a) for an international voyage (excepting on the Great Lakes).

(b) The regulations in this part apply to every United States passenger vessel and every United States cargo vessel of 500 gross tons or over carrying loose grain in bulk as cargo on an international voyage (excepting on the Great Lakes).

5. It is proposed to amend § 144.10-90 by adding a new paragraph (b), reading as follows:

§ 144.10-90 *Equivalents.* • • •

(b) In any case where it is shown to the satisfaction of the Commandant that the use of specified loading and stowage requirements in this part are unreasonable or impracticable, the Commandant may permit the use of equivalent loading and stowage requirements in lieu of those described in this part to such extent and upon such conditions as will insure to his satisfaction a degree of safety consistent with the minimum standards set forth in Subparts 144.10 to 144.30, inclusive.

6. It is proposed to add a new § 144.10-95, reading as follows:

§ 144.10-95 *Responsibility of owner or master.* (a) Nothing in the regulations in this part shall be deemed to relieve the owner or master of a ship from taking all necessary and reasonable precautions to prevent grain from shifting.

7. It is proposed to add a new Subpart 144.40, reading as follows:

Subpart 144.40—Equivalents Allowed for Construction of Feeders and Bin Bulkheads, and Stowage of Loose or Heavy Grain in Bulk

Sec.

144.40-1 Application.
144.40-5 Conditions of acceptance.
144.40-10 Construction of feeders and bin bulkheads.
144.40-20 Holds, compartments or bins partly filled with grain in bulk.
144.40-30 Holds or compartments entirely filled with grain in bulk.
144.40-40 Location of stowage for heavy grain in bulk.
144.40-50 Countries utilizing these equivalents.

§ 144.40-1 *Application.* (a) It has been shown to the satisfaction of the Commandant that a degree of safety consistent with the minimum standards set forth in this part will be obtained when United States vessels, and when foreign vessels loading in United States ports, comply with the equivalents in this subpart for §§ 144.10-70 (c) and (d), 144.20-10 (a) and (c), 144.20-20 (a) and (c), and 144.20-40.

§ 144.40–5 *Conditions of acceptance.* (a) It is a condition of the Commandant's acceptance of these equivalents that the owners shall furnish the Commandant with plans and stability data, including the following related information:

(1) A capacity plan, including grain capacities and centers.

(2) Fuel and water consumption per day and maximum anticipated voyage duration in days.

(3) Stability data for the least favorable condition with a full cargo of grain in bulk, including:

(i) Details of the type of grain, weight and distribution of cargo, including arrangement of bins and/or feeders and the quantity of bagged grain in each hold or space;

(ii) Details of other weights (e. g. ballast, bunkers, fresh water, stores, etc.); and

(iii) Draft and metacentric height, with allowance for slack tanks.

(b) If, upon examination of these data, the Commandant is satisfied as to the adequacy of the vessel's stability for the proposed service, he will issue a letter certifying what equivalent provisions have been accepted for that particular vessel.

(c) Applicability of these alternative arrangements is also subject to the provisions that:

(1) All bulk grain is well trimmed up between the beams and in the wings, and the spaces between them are completely filled.

(2) Grain bags and other materials used in the construction of bins, feeders, etc., are of suitable quality, and good workmanship is employed in the construction.

(d) The requirements in §§ 144.40–10, 144.40–20, 144.40–30 shall apply to "heavy" and "light" grain except that §§ 144.40–20 and 144.40–30 shall not apply to linseed in bulk.

§ 144.40–10 *Construction of feeders and bin bulkheads.*[1] (a) Feeders of bin bulkheads may be constructed of bagged grain: *Provided*, That:

(1) The bags are tightly stowed and interlocked.

(2) Whenever practicable the bags are so stowed as to engage firmly with the ship's sides, bulkheads, and other convenient structures. Where this is not possible the bagged bulkheads are to be not less than 11 feet (mean) in thickness and stepped.

(3) Transverse bagged bulkheads not in way of hatchways of forming feeders but supporting grain on one side only are to be not less than 11 feet (mean) thickness and stepped.

(b) Under this arrangement bins shall be constructed by filling the wings of a 'tween deck with bagged grain or other suitable cargo to a breadth of not less than 25 percent of the beam of the ship on each side and regulating the size of the bin by the construction of transverse bagged bulkheads. In any bin so constructed longitudinal bulkheads or shifting boards in line with the keel shall not be required.

(c) In place of bagged grain, as required under these equivalent arrangements, cased, baled or other suitable cargo may be used provided it is equally strongly supported and made grain tight with strong separation cloths.

§ 144.40–20 *Holds, compartments or bins partly filled with grain in bulk.*[2] (a) In any hold or compartment which is partly filled with loose grain in bulk, the hold or compartment shall be divided by a properly constructed longitudinal bulkhead or shifting boards, clear of the hatchway in line with the keel, and extending for the full depth of the compartment. The grain in bulk shall be leveled and topped off with bagged grain or other suitable cargo extending to a height of not less than 4 feet above the top of the grain in bulk and supported on suitable platforms laid over the whole surface of the grain in bulk except that in the space beneath the hatchway and extending to the sides of the compartment, 5 feet of bagged grain shall be required.

(b) The fitting of a longitudinal bulkhead or shifting boards in a lower hold shall not be required if the grain in bulk does not exceed one-third of the capacity of the hold, or in the case of a hold containing a shaft or other similar tunnel, one-half the capacity of the hold.

(c) Not more than two holds or compartments shall be partly filled with grain in bulk, but other holds or compartments may be partly filled with grain in bulk provided they are filled up to the deckhead with bagged grain or other suitable cargo.

§ 144.40–30 *Holds or compartments entirely filled with grain in bulk.*[3] (a) Every hold or compartment which is entirely filled with loose grain in bulk shall be divided by a longitudinal bulkhead, or shifting boards clear of the hatchway, in line with the keel, which shall be properly constructed, secured and fitted grain tight with proper fittings between the beams. In holds such shifting boards shall extend downwards from the underside of the deck to a distance of at least one-third of the depth of the hold or 8 feet, whichever is the greater. In compartments in tween decks and superstructures they shall extend from deck to deck. In addition, either:

(1) The bulk grain beneath the hatchway shall be trimmed in the form of a saucer or pit hard up to the deckhead beyond the hatchway. It shall also be topped off with bagged grain or other suitable cargo extending to a height in the center of the saucer or pit of not less than 6 feet above the top of the grain in bulk (measured below the deck line) and supported on tarpaulins or strong separation cloths. The bagged grain or other suitable cargo shall be stowed tightly against the deck, the longitudinal bulkheads, the hatch beams and side and end coamings; or

(2) The hold or compartment shall be fed by a feeder constructed in accordance with § 144.40–10 or in accordance with § 144.10–70, and having a capacity of not less than 5 percent or more than 10 percent of the quantity of grain carried in the compartment which it feeds. Consideration of stability information may make it necessary to level off the surface of the bulk grain in large feeders and to overstow it with two tiers of bagged grain.

(b) When grain in bulk is loaded in a deep tank, the arrangements described in the last sentence of § 144.20–20 (c) shall apply.

§ 144.40–40 *Location of stowage for heavy grain in bulk.*[4] (a) Heavy grain in bulk shall not be carried above deck except in the manner specified in § 144.20–40 except that feeders and bins may be constructed of bagged grain and the capacity of any bin may exceed 8,000 cubic feet.

§ 144.40–50 *Countries utilizing these equivalents.* The equivalents authorized by this subpart are being invoked in the ports of the following countries:

Argentina.
Uruguay.

8. The authority for prescribed regulations is set forth in R. S. 4405, as amended, and 4462, as amended, 46 U. S. C. 375, 416. These regulations regarding bulk grain cargoes interpret or apply R. S. 4417, as amended, sec. 1, 49 Stat. 1544, as amended, and sec. 3, 68 Stat. 675; 46 U. S. C. 391, 367, 50 U. S. C. 198; E. O. 10402, 17 F. R. 9917, 3 CFR, 1952 Supp.

ITEM XVIII—A PROPOSED CODE OF GOOD PRACTICE FOR THE STOWAGE OF BULK CARGOES SUCH AS ORE, ORE CONCENTRATES, AND SIMILAR CARGOES WHEN CARRIED IN GENERAL CARGO VESSELS

9. The Commandant, pursuant to a recommendation of the Merchant Marine Council made at a public hearing held May 7, 1957, when considering proposed reuglations regarding the carriage of bulk ore, ore concentrates, etc., in general cargo vessels, established an industry advisory panel to analyze the various phases of the carriage of ore and ore concentrates and to develop a specific "Code of Good Practice" for the carriage of each type of cargo. This advisory panel has submitted a proposed "Code of Good Practice" for the stowage of bulk cargoes such as ore, ore concentrates, and similar cargoes when carried in general cargo vessels, dated January 7, 1958. This proposed Code has been printed so that it may be studied and commented upon by interested persons in the industry, as well as by the Coast Guard.

10. Oral comments, views, and data may be submitted to the Merchant Marine Council at the public hearing on March 18, 1958. Each person who desires to submit written comments, data, or views in connection with the proposed Code should submit them as soon as possible to the Commandant (CMC), United States Coast Guard, Washington 25, D. C.

[1] Equivalent to § 144.10–70 (c) and (d).

[2] Equivalent to § 144.20–10 (a) and (c).

[3] Equivalent to § 144.20–20 (a) and (c).

[4] Equivalent to § 144.20–40.

All comments received before July 1, 1958, will be considered and evaluated.

Dated: February 25, 1958.

[SEAL] A. C. RICHMOND,
Vice Admiral, U. S. Coast Guard, Commandant.

[F. R. Doc. 58-1546; Filed, Feb. 28, 1958; 8:48 a. m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 70]

GRADING AND INSPECTION OF POULTRY AND EDIBLE PRODUCTS THEREOF AND UNITED STATES CLASSES, STANDARDS AND GRADES WITH RESPECT THERETO

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given that the United States Department of Agriculture is considering an amendment to the Regulations Governing the Grading and Inspection of Poultry and Edible Products Thereof and United States Classes, Standards, and Grades With Respect Thereto under authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087; 7 U. S. C. 1621 et seq.).

The proposed amendment would require kidneys to be removed during processing; change the form of the grade mark; eliminate the combination inspection and grade mark; and provide for a new inspection mark to be used under the voluntary inspection program. In addition, the classes of turkeys are being modified slightly by providing new classes to be known as "yearling hen turkeys" and "yearling tom turkeys." The sanitary requirements will also be modified slightly to make these requirements consistent with the requirements issued under the regulations governing mandatory poultry inspection (7 CFR Part 81). It is contemplated to make the amendment effective May 1, 1958.

All persons who desire to submit written data, views or arguments in connection with this proposed amendment should file the same in triplicate, with the Chief of the Standardization and Marketing Practices Branch, Poultry Division, Agricultural Marketing Service, U. S. Department of Agriculture, Room 2095, South Building, Washington 25, D. C., not later than 10 days following publication in the FEDERAL REGISTER.

The proposed amendment is as follows:

1. Change the definition in § 70.1 of "Ready-to-cook poultry" to read as follows:

"Ready-to-cook poultry" means any dressed poultry from which the protruding pinfeathers, vestigial feathers (hair or down as the case may be), head, shanks, crop, oil gland, trachea, esophagus, entrails, kidneys, reproductive organs and lungs have been removed, and with or without the giblets, is ready to cook without need of further processing. Ready-to-cook poultry also means any cut-up or disjointed portion of poultry or any edible part thereof, as described in this paragraph.

2. Change paragraph (b) of § 70.91 to read as follows:

(b) Except as otherwise authorized, each grade mark which is to be used shall be of a shield design and shall include the letters "USDA", and the U. S. Grade of the product it identifies as specified in § 70.381. In addition, one of the following terms such as "Federal-State Graded" or "Government Graded" may be used adjacent to, but not within, the shield design grade mark. The class of the poultry shall be shown on the label which bears the grade mark: *Provided*, That for mature or old poultry, the kind of poultry with the prefix "mature" or "old" or the designation "mature poultry" or "old poultry" without the kind may be shown in lieu of the class. For young poultry the kind of poultry with the prefix "young", or the designation "young poultry" without the kind may be used in lieu of the class. When the grade mark is applied to an individual carcass which is not individually packaged and labeled, the information with respect to the class of the poultry and the plant number shall be included on the label which bears the grade mark.

3. Change paragraph (a) of § 70.93 to read as follows:

(a) *Wording and form of the inspection mark.* Except as otherwise authorized, the inspection mark permitted to be used with respect to inspected and certified edible products shall include wording as follows: "USDA Inspected and passed, voluntary poultry inspection service." This wording shall be contained within a hexagon in the form specified in § 70.382. The Administrator may approve the use of abbreviations of such inspection mark; and such approved abbreviations shall have the same force and effect as the inspection mark. The inspection mark or approved abbreviation thereof, as the case may be, may be applied to the inspected and certified edible product or to the packaging material of such product. The inspection mark, or the approved abbreviation thereof, shall, when used on packaging material, be printed on such material or on a label to be affixed to the packaging material, and the name of the packer or distributor of such product must be legibly printed on the packaging material or label as the case may be, excepting that on shipping containers and containers for institutional packs the inspection marks may be stenciled on the container and when the inspection mark is so stenciled the name and address of the packer or distributor may be applied by the use of a stencil or rubber stamp. Notwithstanding the foregoing, the name and address of the packer or distributor, if appropriately shown elsewhere on the labeling material, may be omitted from insert labels and giblet wrappers which bear an official identification: *Provided*, The applicable plant number is shown. Any present supply of labels bearing an inspection mark approved pursuant to this part prior to the effective date of this amendment may continue to be used until December 31, 1958, but not thereafter.

4. Delete paragraph (c) of § 70.170.

5. Delete § 70.173.

6. Change § 70.252 *Floors, walls, ceilings, etc.* to read as follows:

§ 70.252 *Floors, walls, ceilings, etc.*—(a) *Floors.* All floors in rooms where exposed products are prepared or handled shall be constructed of, or finished with materials impervious to moisture, so they can be readily and thoroughly cleaned. The floors in killing, ice cooling, ice packing, eviscerating, cooking, boning and cannery rooms shall be graded for complete runoff with no standing water.

(b) *Walls, posts, partitions, doors.* All walls, posts, partitions, and doors in rooms where exposed products are prepared or handled shall be smooth and constructed of materials impervious to moisture to a height of six feet above the floor to enable thorough cleaning. All surfaces above this height must be smooth and finished with moisture-resistant material.

(c) *Ceilings.* Ceilings must be moisture-resistant in rooms where exposed products are prepared or handled, finished and sealed to prevent collection of dirt or dust that might sift through floor above or fall from collecting surfaces on equipment or exposed product.

7. Change paragraph (b) (3) of § 70.253 to read as follows:

(3) Toilet soil lines shall be separate from house drainage lines to a point outside the buildings unless they are positively trapped to prevent backing up. Drainage from toilet bowls and urinals shall not be discharged into a grease catch basin.

8. Change § 70.284 to read as follows:

§ 70.284 *Temperatures and cooking and freezing procedures.* Temperatures and procedures which are necessary for cooling and freezing dressed and ready-to-cook poultry, including all edible portions thereof, shall be in accordance with operating practices which insure the prompt removal of the animal heat and will preserve the condition and wholesomeness of the poultry.

(a) *General cooling requirements.* All poultry that is prepared or processed in the official establishment shall be cooled immediately after processing so that the internal temperature is reduced to 40° F. or less, unless such poultry is to be further processed immediately at the official plant. Poultry to be shipped from the plant in packaged forms shall be maintained at 40° F. or less, except that during further processing and packaging operations, the internal temperature may rise to a maximum of 55° F.: *Provided*, That immediately after packaging, the poultry is placed under refrigeration at a temperature that will promptly lower the product to 40° F. or less, or placed in a freezer promptly. Poultry which is to be held at the plant in packaged form in excess of 24 hours shall be held in a room at a temperature of 36° F. or less.

(b) *Ice and water chilling.* (1) Only ice manufactured or produced from potable water may be used for ice-water chilling. The ice shall be handled and stored in a sanitary manner. If of block type, the ice shall be washed by spraying all surfaces with clean water before crushing.

(2) Poultry carcasses shall be chilled to 40° F. or lower within the times specified below:

Weight of carcass:	Time (hours)
Under 4 pounds	4
4 to 8 pounds	6
Over 8 pounds	8

Such chilled poultry shall be maintained constantly at 40° F. or below until removed from the vats or tanks for immediate packaging. Poultry may be removed from the vats or tanks prior to being cooled to 40° F. or lower for freezing or for further processing in the official plant. Poultry shall not be packed until after it has been chilled to 40° F. or below except when the packaging will be followed immediately by freezing at the official plant.

(3) In order to facilitate continuous processing operations, poultry may be held overnight in chilling tanks containing water-saturated ice, refrigerated water, or other approved cooling media that will maintain all poultry in the tanks at a temperature of 40° F. or lower. Practices (such as re-icing, recirculation of the chilling medium, or holding product in refrigerated rooms, or use of increased amounts of ice) shall be employed that will result in all of the poultry in the chilling tanks being maintained at a temperature of 40° F. or lower throughout the holding period.

(i) Should it be necessary to hold dressed poultry in excess of 24 hours in chilling tanks, the poultry shall be removed from the tanks, repacked in clean ice in clean tanks which are continually drained.

(ii) If it is necessary to hold ready-to-cook poultry in chilling tanks for longer periods than 24 hours, the tanks shall be drained and the chilling medium renewed to uniformly maintain the temperature of the ready-to-cook poultry at, or below, 40° F. The additional holding period shall not exceed 24 hours unless the poultry is maintained in continuously drained tanks which are adequately iced.

(4) Notwithstanding the foregoing cooling requirements, the Administrator is authorized to specify, under special circumstances, such additional cooling and handling methods as may be necessary to assure wholesome poultry and poultry products.

(c) *Air chilling.* In air chilling, dressed poultry shall be placed in a refrigerated room with moderate air movement at a temperature which will reduce the internal temperature of the carcasses to 40° F. or less within 24 hours. In air chilling ready-to-cook poultry, the internal temperature of the carcasses shall be reduced to 40° F. or less, within 16 hours.

(d) *Cooling giblets.* Giblets shall be chilled to 40° F. or lower within two hours from the time they are removed from the inedible viscera; except when they are cooled with the carcass the requirements of paragraphs (b) (2) and (f) (5) of this section shall apply. Any of the acceptable methods of chilling the poultry carcass may be followed in cooling giblets, except that unwrapped livers shall not be cooled in agitated ice and water chilling media, but may be cooled in perforated containers which are immersed in noncirculated ice and water chilling media: *Provided,* That the livers are removed from the chilling containers when their temperature has been lowered to 40° F. When ready-to-cook birds are to be consumer packaged, the giblets shall be handled in a manner that will prevent free water from being included in the giblet package. Giblet wrappers shall be made of reasonably nonabsorbent materials and shall be no larger than necessary to properly wrap the giblets.

(e) *Other chilling procedures.* Any other chilling procedure which will effect chilling in a manner equal to that obtained by the procedures herein set forth may be permitted when approved by the Administrator.

(f) *Freezing.* (1) Dressed and ready-to-cook poultry which has been chilled to 40° F. or below prior to packaging and which is to be frozen and so labeled shall be placed into a freezer within 48 hours from time of packaging. If such poultry cannot be immediately placed into the freezer after packaging, it shall be held at 36° F. or lower.

(2) The freezing operation for dressed poultry shall be accomplished in such a manner as to bring the internal temperature of the birds in the center of the package to 0° F. or below within 96 hours from the time of entering the freezer; whereas, ready-to-cook poultry shall be frozen in a manner so as to bring the internal temperature of the birds at the center of the package to 0° F. or below within 72 hours from the time of entering the freezer.

(3) Upon written request, and under such conditions as may be prescribed by the Administrator, dressed and ready-to-cook poultry which is to be frozen immediately may be moved from the official plant prior to freezing: *Provided,* That the plant and freezer are so located and the necessary arrangements are made so that the Inspection Service will have access to the freezing room and adequate opportunity to determine compliance with the time and temperature requirements specified in subparagraph (2) of this paragraph.

(4) Warm packaged ready-to-cook poultry which is to be chilled by immediate entry into a freezer within the official plant shall within 2 hours from time of slaughter be placed in a plate freezer or a freezer with a functioning circulating air system where a temperature of −10° F. or lower is maintained.

(5) Frozen poultry shall be held under conditions which will maintain the product in a solidly frozen state with temperature maintained as constant as possible.

(6) Immersion or spray freezing equipment shall be constructed of noncorrosive metal or other acceptable material. Compounds used in immersion or spray freezing procedures shall be approved by the Administrator prior to use.

(g) *Ice-pack containers.* When poultry is ice packed in barrels or other containers, the barrels and containers shall be covered and shall have an adequate number of drain holes to permit the water to drain out.

9. Change the title of paragraph (a) of § 70.302 *Turkeys,* to read as follows: *"Fryer or roaster turkey."*

10. Delete paragraphs (d), (e) and (f) of § 70.302 *Turkeys,* and insert in lieu thereof the following:

(d) *Yearling hen turkey.* A yearling hen turkey is a fully matured female turkey (usually under 15 months of age) that is reasonably tender-meated and with reasonably smooth-textured skin.

(e) *Yearling tom turkey.* A yearling tom turkey is a fully matured male turkey (usually under 15 months of age) that is reasonably tender-meated and with reasonably smooth-textured skin.

(f) *Mature turkey or old turkey (hen or tom).* A mature or old turkey is an old turkey of either sex (usually in excess of 15 months of age) with coarse skin and toughened flesh.

(g) For labeling purposes, the designation of sex within the class name is optional and the three classes of young turkeys may be grouped and designated as "young turkeys."

11. Delete the caption "Hen turkeys or tom turkeys" in Table II of § 70.370 and insert in lieu thereof the following: "Yearling turkeys and mature turkeys."

12. Change § 70.381 *Form of grade mark,* to read as follows:

§ 70.381 *Form of grade mark.* The grade mark approved for use pursuant to § 70.91 on a graded product shall be contained within a shield of the form and design indicated in the example in Figure 1. The information (including the form and arrangement of its wording) which is required in such mark shall be: (a) The letters "USDA", (b) the appropriate U. S. Grade of the product. The information within the shield shall be printed in a light color on a dark field. In addition, one of the following terms such as "Federal-State Graded" or "Government Graded" may be used adjacent to but not within the shield design grade mark (in a form similar to that illustrated in Figure 2). The class of the poultry shall be shown on the label which bears the grade mark if it is not shown prominently elsewhere on the packaging material: *Provided,* That for mature or old poultry the kind of poultry with the prefix "mature" or "old" or the designation "mature poultry" or "old poultry" without the kind may be shown in lieu of the class. For young poultry the kind of poultry with the prefix "young" or the designation "young poultry" without the kind, may be used in lieu of the class. When the grade mark is applied to an individual carcass which is not individually packaged and labeled, the information with respect to the class of the poultry, and the plant number shall be included on the label which bears the grade mark.



FIGURE 1.



Federal State Graded

FIGURE 2.

13. Change § 70.382 to read as follows:

§ 70.382 *Form of inspection mark.* The inspection mark approved for use on inspected and certified edible products shall be contained within the outline of a hexagon and contain the following wording: "USDA Inspected and Passed—Plant No. — Voluntary Poultry Inspection Service." The form and arrangement of such wording shall be as indicated in the example in Figure 3.



FIGURE 3.

14. Delete § 70.383 *Combined form of inspection and grade mark.*

15. Change the first sentence of § 70.384 to read as follows: "With respect to dressed poultry which has been graded or inspected for condition pursuant to § 70.16, the form of identification approved for use shall contain the wording 'Dressed Poultry—Eligible for Further Processing Under USDA Voluntary Poultry Inspection Service'."

16. Change Figure 5 of § 70.384 by deleting "In U. S. Department of Agriculture Official Plants" and inserting in lieu thereof "Under USDA Voluntary Poultry Inspection Service." Redesignate "Figure 5" as "Figure 4."

Issued at Washington, D. C., the 25th day of February 1958.

[SEAL] FRANK E. BLOOD,
Acting Deputy Administrator,
Agricultural Marketing Service.

[F. R. Doc. 58-1521; Filed, Feb. 28, 1958; 8:45 a. m.]

[7 CFR Ch. IX]

[Docket No. AO-303]

HANDLING OF NECTARINES GROWN IN CALIFORNIA

NOTICE OF HEARING WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND ORDER

Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), and in accordance with the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900); notice is hereby given of a public hearing to be held in the Auditorium, Pacific Gas and Electric Building, 1401 Fulton Street, Fresno, California, beginning at 10:00 a. m., P. s. t.,, March 19, 1958, with respect to a proposed marketing agrement and order regulating the handling of nectarines grown in California. The proposed marketing agreement and order have not received the approval of the Secretary of Agriculture.

The public hearing is for the purpose of receiving evidence with respect to the economic and marketing conditions which relate to the provisions of the proposed marketing agreement and order hereinafter set forth, and to any appropriate modifications thereof.

The Nectarine Order Promulgation Committee submitted and requested a hearing on the proposed marketing agreement and order, the provisions of which are as follows (the sections identified with an asterisk apply only to the proposed marketing agreement and not to the proposed order):

DEFINITIONS

SECTION 1. *Secretary.* "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

SEC. 2. *Act.* "Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 68 Stat. 906, 1047).

SEC. 3. *Person.* "Person" means an individual, partnership, corporation, association, or any other business unit.

SEC. 4. *Production area.* "Production area" means the State of California.

SEC. 5. *Nectarines.* "Nectarines" means all varieties of Glabrous peaches grown in the production area, classified botanically as genetic variant of Prunus persica.

SEC. 6. *Varieties.* "Varieties" means and includes all classifications or subdivisions of nectarines.

SEC. 7. *Fiscal period.* "Fiscal period" is synonymous with fiscal year and means the 12-month period beginning on March 1 of each year and ending on the last day of February of the following year.

SEC. 8. *Committee.* "Committee" means the California Nectarine Administrative Committee established pursuant to section 20.

SEC. 9. *Grower.* "Grower" is synonymous with producer and means any person who produces nectarines for the fresh market and who has a proprietary interest therein.

SEC. 10. *Handler.* "Handler" is synonymous with shipper and means any person (except a common or contract carrier transporting nectarines owned by another person) who handles nectarines.

SEC. 11. *Handle.* "Handle" and ship are synonymous and mean to sell, consign, deliver, or transport nectarines, or to cause nectarines to be sold, consigned, delivered, or transported, between the production area and any point outside thereof, or within the production area: *Provided,* That the term handle shall not include the transportation within the production area of nectarines from the orchard where grown to a packing facility located within such area for preparation for market, or the delivery of such nectarines to such packing facility for such preparation.

SEC. 12. *District.* "District" means the applicable one of the following described subdivisions of the production area or such other subdivisions as may be prescribed pursuant to section 31:

(a) "District 1" shall include the counties of Fresno and Madera.

(b) "District 2" shall include the counties of Tulare, Kings, and Kern.

(c) "District 3" shall include the counties of Merced and Stanislaus.

(d) "District 4" shall include the balance of the production area.

SEC. 13. *Pack.* "Pack" means the specific arrangement, size, weight, count, or grade of a quantity of nectarines in a particular type and size of container, or any combination thereof.

SEC. 14. *Container.* "Container" means a box, bag, crate, lug, basket, car-

ton, package, or any other type of receptacle, including all markings thereon, used in the packaging or handling of nectarines.

ADMINISTRATIVE BODY

SEC. 20. *Establishment and membership.* There is hereby established a California Nectarine Administrative Committee consisting of seven members each of whom shall have an alternate who shall have the same qualifications as the member for whom he is an alternate. The members and their alternates shall be growers or employees of growers. Three of the members and their respective alternates shall be producers of nectarines in District 1. Two of the members and their respective alternates shall be producers of nectarines in District 2. One of the members and his alternate shall be producers of nectarines in District 3; and one member and his alternate shall be producers of nectarines in District 4.

SEC. 21. *Term of office.* The term of office of each member and alternate member of the committee shall be for one year beginning March 1 and ending on the last day of February. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified.

SEC. 22. *Nomination*—(a) *Initial members.* Nominations for each of the initial members together with nominations for the initial alternate members for each position, may be submitted to the Secretary by the committee responsible for promulgation of this part. Such nominations may be made by means of group meetings of the growers concerned in each district. Such nominations, if made, shall be filed with the Secretary no later than the effective date of this part. In the event nominations for initial members and alternate members of the committee are not filed pursuant to, and within the time specified, in this section, the Secretary may select such initial members and alternate members without regard to nominations, but selections shall be on the basis of the representation provided for in section 20.

(b) *Successor members.* (1) The committee shall hold or cause to be held, not later than February 15 of each year, a meeting or meetings of growers in each district for the purpose of designating nominees for successor members and alternate members of the committee. These meetings shall be supervised by the committee which shall prescribe such procedure as shall be reasonable and fair to all persons concerned.

(2) Only growers, including duly authorized employees of growers, who are present at such nomination meetings may participate in the nomination and election of nominees for members and their alternates. Each grower shall be entitled to cast one vote for each nominee to be elected in the districts in which he produces nectarines.

(3) A grower or a duly authorized employee of a grower may participate in nominations and elections in each district in which such grower produces nectarines: *Provided,* That no such single entity shall be eligible for committee membership in more than one district.

SEC. 23. *Selection.* From the nominations made pursuant to section 22 or from other qualified persons, the Secretary shall select the seven grower members of the committee and an alternate for each such member.

SEC. 24. *Failure to nominate.* If nominations are not made within the time and in the manner prescribed in section 22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in section 20.

SEC. 25. *Acceptance.* Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

SEC. 26. *Vacancies.* To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the Committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in sections 22 and 23. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in section 20.

SEC. 27. *Alternate members.* An alternate member of the committee, during the absence or at the request of the member for whom he is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified. In the event both a member of the committee and his alternate are unable to attend a committee meeting, the member or the committee may designate any other alternate member from the same district to serve in such member's place and stead.

SEC. 30. *Powers.* The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

SEC. 31. *Duties.* The committee shall have, among others, the following duties:

(a) To select a chairman and such other officers as may be necessary, and to define the duties of such officers;

(b) To appoint such employees, agents, and representatives as it may deem necessary, and to determine compensation and to define the duties of each;

(c) To submit to the Secretary as soon as practicable after the beginning of each fiscal period a budget for such fiscal period, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(d) To keep minutes, books and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To cause its books to be audited by a competent public accountant at least once each fiscal year and at such times as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to nectarines;

(i) To submit to the Secretary such available information as he may request;

(j) To give the Secretary the same notice of meetings of the committee as is given to its members;

(k) To investigate compliance with the provisions of this part;

(l) With the approval of the Secretary, to redefine the districts into which the production area is divided and to reapportion the representation of any district on the committee: *Provided,* That any such changes shall reflect, insofar as practicable, shifts in nectarine production within the districts and the production area.

SEC. 32. *Procedure.* (a) Five members of the committee, or alternates acting for members, shall constitute a quorum and any action of the committee shall require the concurring vote of the majority of those present: *Provided,* That any action of the committee to recommend regulations pursuant to sections 50 through 55 shall require at least five concurring votes.

(b) The commitee may vote by telephone, telegraph, or other means of communication, and any votes so cast shall be confirmed promptly in writing: *Provided,* That if an assembled meeting is held, all votes shall be cast in person.

SEC. 33. *Expenses and compensation.* The members of the committee, and alternates when acting as members, shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part and may also receive compensation, as determined by the committee, which shall not exceed $5.00 per day or portion thereof spent in performing such duties: *Provided,* That at its discretion the committee may request the attendance of one or more al-

ternates at any or all meetings, notwithstanding the expected or actual presence of the respective members, and may pay expenses and compensation, as aforesaid.

SEC. 34. *Annual report.* The committee shall, as soon as is practicable after the close of each marketing season, prepare and mail an annual report to the Secretary and make a copy available to each grower and handler who requests a copy of the report.

EXPENSES AND ASSESSMENTS

SEC. 40. *Expenses.* The committee is authorized to incur such expenses, including the reserve fund provided for in section 42 (a) (2), as the Secretary finds are reasonable and likely to be incurred by the committee to enable it to exercise its powers and perform its duties in accordance with the provisions of this part during each fiscal period. The funds to cover such expenses shall be acquired by the levying of assessments as prescribed in section 41.

SEC. 41. *Assessments.* (a) Each person who first handles nectarines shall, with respect to the nectarines so handled by him, pay to the committee upon demand such person's pro rata share of the expenses which the Secretary finds will be incurred by the committee during each fiscal period. Each such person's share of such expenses shall be equal to the ratio between the total quantity of nectarines handled by him as the first handler thereof during the applicable fiscal period and the total quantity of nectarines so handled by all persons during the same fiscal period. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each such person. At any time during or after the fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all nectarines handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the committee may accept the payment of assessments in advance, and may also borrow money for such purposes.

SEC. 42. *Accounting.* (a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for as follows:

(1) Except as provided in subparagraph (2) of this paragraph, each person entitled to proportionate refund of any excess assessment shall be paid such refund: *Provided,* That any sum paid by a person in excess of his pro rata share of the expenses during any fiscal period may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such person.

(2) The Secretary, upon recommendation of the committee, may determine that it is appropriate for the maintenance and functioning of the committee that the funds remaining at the end of a fiscal period which are in excess of the expenses necessary for committee operations during such period be carried over into following periods as a reserve. Such reserve may be established at an amount not to exceed approximately one fiscal period's operational expenses; and such reserve may be used to cover the necessary expenses of liquidation, in the event of termination of this part, and to cover the expenses incurred for the maintenance and functioning of the committee during any fiscal period when there is a crop failure, or during any period of suspension of any or all of the provisions of this part. Such reserve may also be used by the committee to finance its operations, during any fiscal period, prior to the time that assessment income is sufficient to cover such expenses; but any of the reserve funds so used shall be returned to the reserve as soon as assessment income is available for this purpose. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to his successor in office, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor full title to all of the property, funds, and claims vested in such member pursuant to this part.

RESEARCH

SEC. 45. *Marketing research and development.* The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve or promote the marketing, distribution, and consumption of nectarines. The expense of such projects shall be paid from funds collected pursuant to section 41.

REGULATIONS

SEC. 50. *Marketing policy.* Each season prior to making any recommendations pursuant to section 51, the committee shall submit to the Secretary a report setting forth its marketing policy for the ensuing season. Such marketing policy report shall contain information relative to:

(1) The estimated total production of nectarines within the production area;

(2) The expected general quality and size of nectarines in the production area and in other areas;

(3) The expected demand conditions for nectarines in different market outlets;

(4) The expected shipments of nectarines produced in the production area and in areas outside the production area;

(5) Supplies of competing commodities;

(6) Trend and level of consumer income;

(7) Other factors having a bearing on the marketing of nectarines; and

(8) The type of regulations expected to be recommended during the season.

SEC. 51. *Recommendations for regulation.* (a) Whenever the committee deems it advisable to regulate the handling of any variety or varieties of nectarines in the manner provided in section 52, it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply and demand for nectarines during the period or periods when it is proposed that such regulation should be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

SEC. 52. *Issuance of regulations.* (a) The Secretary shall regulate, in the manner specified in this section, the handling of nectarines whenever he finds, from the recommendations and information submitted by the committee, or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may:

(1) Limit, during any period or periods, the shipment of any particular grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of nectarines grown in the production area;

(2) Limit the shipment of nectarines by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level;

(3) Fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in the packaging or handling of nectarines.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary, and the committee shall promptly give notice thereof to handlers.

SEC. 53. *Modification, suspension, or termination of regulations.* (a) In the event the committee at any time finds

that, by reason of changed conditions, any regulations issued pursuant to section 52 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of nectarines in order to effectuate the declared policy of the act, he shall modify, suspend, or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such suspension.

SEC. 54. *Special purpose shipments.* (a) Except as otherwise provided in this section, any person may, without regard to the provisions of sections 41, 52, 53, and 55, and the regulations issued thereunder, handle nectarines (1) for consumption by charitable institutions; (2) for distribution by relief agencies; or (3) for commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements, under or established pursuant to sections 41, 52, 53, or 55, the handling of nectarines in such minimum quantities, or types of shipments, to designated market areas within the State of California, or for such specified purposes (including shipments to facilitate the conduct of marketing research and development projects established pursuant to section 45), as the committee, with approval of the Secretary, may prescribe.

(c) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent nectarines handled under the provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle nectarines pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the nectarines will not be used for any purpose not authorized by this section.

SEC. 55. *Inspection and certification.* (a) Whenever the handling of any variety of nectarines is regulated pursuant to section 52 or section 53, each handler who handles nectarines shall, prior thereto, cause such nectarines to be inspected by the Federal or Federal-State Inspection Service and certified by it as meeting the applicable requirements of such regulation: *Provided*, That inspection and certification shall not be required for nectarines which previously have been so inspected and certified. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the committee a copy of the certificate of inspection issued with respect to such nectarines. The committee may, with the approval of the Secretary, prescribe rules and regulations waiving the inspection requirements of this section where it is determined that inspection is not available: *Provided*, That all shipments made under such waiver shall comply with all regulations in effect.

(b) The committee may, with the approval of the Secretary, establish a period prior to shipment during which the inspection required by this section must be performed.

REPORTS

SEC. 60. *Reports.* (a) Each handler shall furnish to the committee, at such times and for such periods as the committee may designate, certified reports concerning each shipment of nectarines as follows:

(1) The name of the shipper and the shipping point;

(2) The car or truck license number and identification of the carrier;

(3) The date and time of departure;

(4) The number and type of containers in the shipment;

(5) The variety, grade, and size of the fruit;

(6) The destination;

(7) Identification of the inspection certificate pursuant to which the fruit was handled.

(b) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such times as it may prescribe, such other information as may be necessary to enable the committee to perform its duties under this part.

(c) Each handler shall maintain for at least two succeeding fiscal years, such records of the nectarines received and disposed of by him as may be necessary to verify the reports he submits to the committee pursuant to this section.

(d) All reports and records submitted by handlers pursuant to the provisions of this section shall be received by, and at all times be in custody of, one or more designated employees of the committee. No such employee shall disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received: *Provided*, That such data and information may be combined, and made available to any person, in the form of general reports in which the identities of the individual handler furnishing the information is not disclosed and may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

MISCELLANEOUS PROVISIONS

SEC. 61. *Compliance.* Except as provided in this part, no person shall handle nectarines, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part; and no person shall handle nectarines except in conformity with the provisions of this part and the regulations issued under this part.

SEC. 62. *Right of the Secretary.* The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

SEC. 63. *Effective time.* The provisions of this part, and of any amendment thereto, shall become effective at such time as the Secretary may declare above his signature to this part, and shall continue in force until terminated in one of the ways specified in section 64.

SEC. 64. *Termination.* (a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which he may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part whenever he finds by referendum or otherwise that such termination is favored by a majority of the growers: *Provided*, That such majority have, during the current marketing season, produced more than 50 percent of the volume of the nectarines which were produced within the production area for shipment in fresh form. Such termination shall become effective on the first day of March subsequent to the announcement thereof by the Secretary.

(d) The Secretary shall conduct a referendum within the period beginning December 1, 1960, and ending February 1, 1961, to ascertain whether continuance of this part is favored by the growers. The Secretary shall conduct such a referendum within the same 2 months' period of every second marketing season thereafter.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

SEC. 65. *Proceedings after termination.* (a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees; to such persons as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

SEC. 66. *Effect of termination or amendment.* Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued under this part, or (b) release or extinguish any violation of this part or of any regulation issued under this part, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

SEC. 67. *Duration of immunities.* The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

SEC. 68. *Agents.* The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

SEC. 69. *Derogation.* Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

SEC. 70. *Personal liability.* No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

SEC. 71. *Separability.* If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

SEC. 72. *Counterparts.** This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

SEC. 73. *Additional parties.** After the effective date hereof, any handler may become a party to this agreement if a counterpart is executed by him and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

SEC. 74. *Order with marketing agreement.** Each signatory handler hereby requests the Secretary to issue, pursuant to the act, an order providing for the regulating of the handling of nectarines in the same manner as is provided for in this agreement.

Copies of this notice of hearing may be obtained from the Office of the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building, Washington 25, D. C., or the Field Representative, Fruit and Vegetable Division, Agricultural Marketing Service, 701 K Street, Room 302, Sacramento 14, California.

Dated: February 26, 1958.

[SEAL] F. R. BURKE,
Acting Deputy Administrator,
Marketing Service.

[F. R. Doc. 58-1569; Filed, Feb. 28, 1958; 8:51 a. m.]

[7 CFR Part 927]

[Docket No. AO-71-A33]

HANDLING OF MILK IN NEW YORK-NEW JERSEY MILK MARKETING AREA

DECISION WITH RESPECT TO PROPOSED AMENDMENTS TO TENTATIVE MARKETING AGREEMENT AND TO ORDER

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Utica, New York, on December 5th and 6th, 1957, pursuant to notice thereof which was issued November 22, 1957 (22 F. R. 9481).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on February 4, 1958 (23 F. R. 830) filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto. No exceptions to the recommended decision were filed.

The only material issue on the record of the hearing relates to the question of whether the order should be amended by reducing the level of Class I-A prices.

Findings and conclusions. The following findings and conclusions on the material issue are based on evidence presented at the hearing and the record thereof.

The hearing was called in compliance with a provision of the order (§ 927.40 (b) (3) requiring that, whenever for each of three consecutive months the minimum price established for Class I-A milk is more than $2.50 (or less than $1.00) higher than the average of prices reported to have been paid by specified Midwest condenseries, (1) a public hearing be called promptly to consider those and other economic conditions, or (2) announcement be made of a determination that such a hearing should not be held, together with reasons for such determination. The calling of the hearing constituted an exercise of the first of these authorized choices in recognition of the fact that the Class I-A price was more than $2.50 higher than the average of prices reported to have been paid by the specified Midwest condenseries for each of the months of August, September, and October 1957.

A decision on the issue here presented requires consideration of the purposes or objectives properly sought to be accomplished in the fixing of Class I-A prices under the order. The Agricultural Marketing Agreement Act of 1937, as amended, pursuant to which minimum prices are established under the order, authorizes the Secretary of Agriculture to fix such prices as he finds will reflect the price of feeds, the available supply of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, insure a sufficient quantity of pure and wholesome milk and be in the public interest. Prices established under the order must conform to these standards.

Monthly Class I-A prices for the year 1957 averaged $5.64, an increase of 35 cents over the average in 1956 and higher than for any prior year since 1951 when the annual average also was $5.64. The level of Class I-A prices declined from 1951 to an average of $5.13 in 1954. This decline reflected increased supplies of pool milk relative to fluid sales. Increases in 1955 and 1956 of 7 and 9 cents, respectively, from the 1954 level reflect increases in the wholesale price index and also improved utilization during the last half of 1956. The increase of 35 cents from 1956 to 1957 in the level of the Class I-A price reflects both further increases in the wholesale price index and the utilization for fluid use of a higher percentage of the total volume of pooled milk.

Receipts of pool milk in the 12-month period ending with July 1957 were 7 percent less than during the 12-month period ending with August 1956. Concurrently, Class I sales increased 3 percent. (Expansion of the marketing area effec-

tive August 1, 1957, precludes a direct comparison of receipts and sales volumes since that date with those occurring previously.) In July 1957, the number of producers delivering to pool plants (43,724) was 3,353 less than in July 1956 and 5,982 less than in July 1954. Deliveries of milk per day per producer were less than a year earlier in eight of the twelve months ending with July 1957 contrary to a consistent trend during the preceding several years.

Reflecting this reduction in supply and increase in fluid sales, the percentage (hereinafter called "utilization percentage") of pool milk utilized in Class I together with milk used for fluid cream in the marketing area (also required by health authorities to be from approved sources), has been higher in each month since August 1953 than in the same month a year earlier. The average of monthly utilization percentages during the 12-month period ending with July 1957 increased to 60.3 from an average of 54.3 during the 12-month period ending with August 1953. This is a larger increase than has occurred at any time since 1946 and reversed a trend of generally declining utilization percentages during the entire period from 1946 to August 1956.

Expansion of the marketing area effective August 1, 1957, contributed to a further increase in utilization percentages in recent months with the result that during the period August–November 1957, utilization percentages (including fluid cream in all of the expanded area) averaged 78.2 compared with 68.5 and 62.9 during the same periods of 1956 and 1955, respectively. Calculated on this basis, the utilization percentage in August 1957 (73.7) was higher than in August of any prior year and in November (82.4) was the highest since 1948. Using only Class I sales in the calculation of utilization percentages, such percentages averaged 65.9 during the August–November 1957 period compared with 60.5 and 55.3, respectively, in comparable periods of 1956 and 1955. Class I–A prices exceeding the Midwest condensery prices by more than $2.50 in recent months have occurred during a period when utilization percentages were accelerating and when the supply for the market was not greatly in excess of fluid requirements plus an adequate reserve.

Consideration of the relationship between the Class I–A price and Class I prices in other markets is appropriate since the supply of milk available for the market may be affected to some extent by such relationship. Relative to Class I prices in most northeastern markets the level of the Order No. 27 Class I–A price declined generally after 1950 through 1954 and since that time has tended to increase so that by 1957 its relationship approached that prevailing in 1950. In most instances, the 1957 relationship was not significantly out of line with the average relationship for the eight-year period 1950–1957.

Class I–A prices have exceeded Midwest condensery prices in recent months by the following amounts: August $2.52, September $2.73, October $2.93, November $3.07, and December $2.94. Assuming the same Midwest condensery price for January 1958 as for December 1957 ($3.15), the Class I–A price of $5.82 for January 1958 (official notice being taken of the announcement thereof on December 26, 1957) also will exceed the Midwest condensery price by $2.67. Although there will be a seasonal decline of two percent in the Class I–A price for February, it probably will be slightly more than $2.50 above the Midwest condensery price. Thus, February will be the seventh consecutive month of Class I–A prices exceeding Midwest condensery prices by more than $2.50. For the year 1957 the average of Class I–A prices exceeded the average of condensery prices by $2.51.

In the application of prescribed pricing standards, any milk, wherever produced, meeting the quality requirements of marketing area health authorities must be considered as comprising a part of the potential supply of milk for the marketing area. It is axiomatic that, from a strictly economic standpoint, there is some level of Class I–A prices at which additional sources of milk located outside the present supply area and now used for manufacturing purposes economically could be converted from potential to actual sources of supply for fluid use in the marketing area. The fixing of Class I–A prices at a level high enough to produce that result could be justified under the prescribed pricing standards of the act only if additional sources of supply were necessary in order to insure an adequate supply of milk for the marketing area. The present and prospective supply of milk originating in territory currently supplying the marketing area is adequate. Accordingly, a level of Class I–A prices high enough to attract new sources of supply cannot be justified.

It is apparent, of course, in this connection, that the level of Class I–A prices in relation to the Midwest condensery price (taken as a measure of the value of milk for manufacturing purposes) is a matter of real importance. The precise maximum justifiable margin of Class I–A prices over condensery prices, however, is difficult to determine on this record. There is no adequate basis in the record for determining the cost of transporting from locations outside the present production area potential fluid milk supplies which currently are being used for manufacturing or for determining the amount required for conversion of such manufacturing supplies to supplies qualified for fluid use.

The record does reveal, however, that the average margin of Class I–A prices over condensery prices of $2.51 for the year 1957, and an average margin of about $2.87 for the period September 1957–January 1958, are higher than in any comparable periods theretofore. Such margin averaged $2.40 in 1949, the highest of any prior year, $2.13, $2.24, and $2.17, respectively, for the years 1954, 1955, and 1956 and averaged $2.13 for the nine-year period 1949–1957. The fact that new supplies of fluid milk from manufacturing areas have not entered the marketing area could mean that the 1957 margin is not high enough to produce that result. This conclusion does not appear inescapable, however, since there is no assurance that a Class I–A margin as high as in recent months would not produce a different result if maintained over an extended period.

Present indications are that Class I–A prices beginning with March 1958 and at least for several months thereafter will not exceed condensery prices by as much as $2.50 and that such Class I–A prices will be lower than for the same months in 1957. As earlier indicated, the receipts and utilization figures for months beginning in August 1957 are not comparable with earlier periods because of the expansion of the marketing area. However, it appears that the supply of pool milk relative to fluid sales (excluding the influence of marketing area expansion for which the Class I–A pricing formula was adjusted effective August 1, 1957) has tended to increase during the last quarter of 1957, and that this relationship will continue through at least the first half of 1958. Cow numbers are not expected to decline this year as in 1957. In general, roughage supplies currently available are more plentiful and of higher quality than a year ago. The supply of homegrown feed grains is larger than a year earlier and the price of purchased feed grain is lower. Production per day per producer since July 1957 has been higher than a year earlier, whereas it was lower than a year earlier during the period September 1956–April 1957. Thus, it is anticipated that higher production relative to fluid sales will operate (again taking into account the August 1, 1957, formula revision offsetting the effect on utilization of expansion of the marketing area), by means of the utilization adjustment percentage in the Class I–A pricing formula, to produce a level of Class I–A prices during the first half of 1958 somewhat lower than in 1957. The other mover in the Class I–A formula, the wholesale commodity price index, also reasonably may be expected to average no higher during the first half of 1958 than in 1957.

The question of amending the provision of the order requiring a review of Class I–A prices whenever they exceed condensery prices by more than $2.50 was not an issue at the hearing. Evidence was presented, however, designed to show that changed conditions since adoption of that provision in 1950 render the $2.50 figure inapplicable or inappropriate as a compelling reason for reducing the level of the Class I–A price. It was stated in this connection that the seasonality both of Class I–A prices and of condensery prices has changed since 1950; that levels of price support affecting the condensery price have changed; that a change in the value of money makes $2.82 in 1957 equivalent to $2.50 in 1948 and that milk transportation costs have increased.

The points were made also that the surplus or reserve supply over fluid requirements needs to be larger than here-

tofore because of the multiplicity of health authorities in the expanded marketing area, and that forecasts of supply-fluid sales relationships are more uncertain in view of the recent expansion of the marketing area, and accordingly, that present Class I–A pricing provisions should not be changed pending experience for a longer period under the order for the expanded area.

It is concluded that existing provisions of the order for the pricing of Class I–A milk are operating to produce Class I–A prices consistent with the prescribed pricing standards of the act, and accordingly, that no amendment of such provisions should be made at this time. However, the level of Class I–A prices relative to the value of milk for manufacturing should be reconsidered upon recurrence of a disparity exceeding presently prescribed limits.

Issued at Washington, D. C., this 25th day of February 1958.

[SEAL] TRUE D. MORSE,
Acting Secretary.

[F. R. Doc. 58–1541; Filed, Feb. 28, 1958; 8:47 a. m.

NOTICES

VETERANS ADMINISTRATION

HOME LOANS GUARANTEED OR INSURED BY THE VETERANS ADMINISTRATION

MAXIMUM PERMISSIBLE DISCOUNTS

1. Pursuant to section 605 of the Housing Act of 1957 (Pub. Law 85–104, approved July 12, 1957) as implemented by § 36.4312 of Veterans Administration Loan Guaranty and Insurance Regulations, the following have been determined to be the maximum discounts payable by builders or sellers of housing constructed or purchased by veterans with financing guaranteed or insured under the Servicemen's Readjustment Act of 1944, as amended:

State, Territory, or possession where housing located	Maximum discount	
	Down payment less than 10%	Down payment 10% or more
Connecticut, Massachusetts, New York, Rhode Island	4.0	3.5
Delaware, District of Columbia, Maine, Maryland, New Hampshire, New Jersey, Pennsylvania, Vermont	4.5	4.0
Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, North Carolina, South Carolina, North Dakota, South Dakota, Ohio, Nebraska, Tennessee, Virginia, Wisconsin	5.5	5.0
Arkansas, Louisiana, Oklahoma, West Virginia, Texas	6.0	5.5
Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Puerto Rico, Utah, Washington, Wyoming, Virgin Islands	6.5	6.0

2. Until further notice such discount maximums will be applicable to guaranteed or insured home loans for the purchase or construction of housing on which the Veterans Administration issued a master or individual certificate of reasonable value dated August 5, 1957, or subsequent thereto, unless such certificate includes a statement to the effect that the unit or units to which such certificate relates are exempt from the provisions of paragraphs (e) and (f) of § 36.4312.

3. This schedule of maximum permissible discounts supersedes the schedule which was published in the FEDERAL REGISTER (22 F. R. 6305) on August 7, 1957.

[SEAL] ROBERT J. LAMPHERE,
Acting Deputy Administrator.

[F. R. Doc. 58–1593; Filed, Feb. 28, 1958; 8:51 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Wyoming–022508]

WYOMING

ORDER PROVIDING FOR OPENING OF PUBLIC LANDS

FEBRUARY 24, 1958.

1. In an exchange of lands made under the provisions of section 8 of the act of June 28, 1934 (48 Stat. 1269), as amended June 26, 1936 (49 Stat. 1976) the following described lands have been reconveyed to the United States:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 33 N., R. 81 W.,
Sec. 18, Lots 3, 4, SE¼SW¼.

The areas described total 122.85 acres of public lands.

2. The above lands are located in Natrona County, 12 miles southwest of Casper, Wyoming, and are accessible from Poison Spider Highway, which traverses the lands. The lands are sloping to rolling and support a light grass cover, associated with salt bush and an abundance of phlox. The soil is a silty to heavy clay and the average annual precipitation in the area is 14.99 inches.

3. No application for these lands will be allowed under the homestead, desert-land, small-tract or any other non-mineral public land law, unless the lands have already been classified as valuable, or suitable for such type of application, or shall be so classified upon consideration of an application. Any application which is filed will be considered on its merits. The lands will not be subject to occupancy or disposition until they have been classified.

4. Subject to any existing valid rights and the requirements of applicable law, the lands described above are hereby opened to filing of applications, selections and locations in accordance with the following:

a. Applications and selections under the non-mineral public land laws may be presented to the Manager mentioned below, beginning on the date of this order. Such applications and selections will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(2) All valid applications under the Homestead, Desert Land, and Small Tract Laws by qualified veterans of World War II or of the Korean Conflict, and by others entitled to preference rights under the act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279–284, as amended), presented prior to 10:00 a. m. on April 6, 1958, will be considered as simultaneously filed at that hour. Rights under such preference right applications filed after that hour and before 10:00 a. m. on July 6, 1958, will be governed by the time of filing.

(3) All valid applications and selections under the non-mineral public land laws, other than those coming under paragraphs (1) and (2) above presented prior to 10:00 a. m. on July 6, 1958 will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

b. The lands will be opened to location under the United States mining laws beginning 10:00 a. m. on July 6, 1958.

5. Persons claiming veteran's preference rights under paragraph a. (2) above must enclose with their applications proper evidence of military or naval service, preferably a complete photostatic copy of the certificate of honor-

able discharge. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their applications, setting forth all facts relevant to their claims. Detailed rules and regulations governing applications which may be filed pursuant to this notice can be found in Title 43 of the Code of Federal Regulations.

6. Inquiries concerning these lands shall be addressed to the Manager, Land Office, Bureau of Land Management, Post Office Box 929, Cheyenne, Wyoming.

EUGENE L. SCHMIDT,
Lands and Minerals Officer.

[F. R. Doc. 58-1528; Filed, Feb. 28, 1958; 8:45 a. m.]

DEPARTMENT OF COMMERCE

Federal Maritime Board

MEMBER LINES OF WESTERN HEMISPHERE PASSENGER CONFERENCE

NOTICE OF AGREEMENT FILED FOR APPROVAL

Notice is hereby given that the following described agreement has been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 46 U. S. C. 814):

Agreement No. 8030-5, between the member lines of the Western Hemisphere Passenger Conference, modifies the basic agreement of that conference (No. 8030, as amended), to provide for the interchange of tickets among the member lines in accordance with rules to be set forth in the conference tariff.

Interested parties may inspect this agreement and obtain copies thereof at the Regulation Office, Federal Maritime Board, Washington, D. C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: February 26, 1958.

By order of the Federal Maritime Board.

GEO. A. VIEHMANN,
Assistant Secretary.

[F. R. Doc. 58-1547; Filed, Feb. 28, 1958; 8:48 a. m.]

MEMBER LINES OF CALCUTTA/U. S. A. CONFERENCE

NOTICE OF AGREEMENT FILED FOR APPROVAL

Notice is hereby given that the following described agreement has been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 46 U. S. C. 814):

Agreement No. 6500-10, between the member lines of the Calcutta/U. S. A. Conference, modifies the basic agreement of that conference (No. 6500, as amended), to change the voting procedure under the agreement.

Interested parties may inspect this agreement and obtain copies thereof at the Regulation Office, Federal Maritime Board, Washington, D. C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: February 26, 1958.

By order of the Federal Maritime Board.

GEO. A. VIEHMANN,
Assistant Secretary.

[F. R. Doc. 58-1548; Filed, Feb. 28, 1958; 8:48 a. m.]

MEMBER LINES OF UNITED STATES ATLANTIC & GULF-PUERTO RICO CONFERENCE

NOTICE OF AGREEMENT FILED FOR APPROVAL

Notice is hereby given that the following described agreement has been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 46 U. S. C. 814):

Agreement No. 6120-8, between the member lines of the United States Atlantic & Gulf-Puerto Rico Conference, modifies the basic agreement of that conference (No. 6120, as amended), by removing therefrom the provision that no through rates will be quoted from or to inland points of the United States or Puerto Rico.

Interested parties may inspect this agreement and obtain copies thereof at the Regulation Office, Federal Maritime Board, Washington, D. C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: February 26, 1958.

By order of the Federal Maritime Board.

GEO. A. VIEHMANN,
Assistant Secretary.

[F. R. Doc. 58-1549; Filed, Feb. 28, 1958; 8:48 a. m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-91]

AEROJET-GENERAL NUCLEONICS

NOTICE OF ISSUANCE OF CONSTRUCTION PERMIT

Please take notice that no request for a formal hearing having been filed following the filing of notice of the proposed action with the Federal Register Division on January 31, 1958, the Atomic Energy Commission has issued Construction Permit CPRR-23 authorizing Aerojet-General Nucleonics to construct at the location in San Ramon, California described in the application in Docket No. 50-91, five research reactors each designed to operate at a maximum power of five watts (thermal). Notice of the proposed action was published in the FEDERAL REGISTER on February 1, 1958, 23 F. R. 689.

Dated at Germantown, Md., this 20th day of February 1958.

For the Atomic Energy Commission.

H. L. PRICE,
Director,
Division of Licensing and Regulation.

[F. R. Doc. 58-1558; Filed, Feb. 28, 1958; 8:48 a. m.]

[Docket No. 50-90]

AEROJET-GENERAL NUCLEONICS

NOTICE OF ISSUANCE OF CONSTRUCTION PERMIT

Please take notice that no request for a formal hearing having been filed following the filing of notice of the proposed action with the Federal Register Division on February 3, 1958, the Atomic Energy Commission has issued Construction Permit CPRR-24 authorizing Aerojet-General Nucleonics to construct at the location in San Ramon, California, described in the application in Docket No. 59-90, fifteen research reactors each designed to operate at a maximum power of 100 milliwatts (thermal). Notice of the proposed action was published in the FEDERAL REGISTER on February 4, 1958, 23 F. R. 725.

Dated at Germantown, Md., this 20th day of February 1958.

For the Atomic Energy Commission.

H. L. PRICE,
Director,
Division of Licensing and Regulation.

[F. R. Doc. 58-1559; Filed, Feb. 28, 1958; 8:48 a. m.]

ATOMIC ENERGY PATENT PROGRAM

NOTICE OF PUBLIC MEETING

Pursuant to the Notice of Review of the Atomic Energy Patent Program published in the FEDERAL REGISTER of November 19, 1957, that consideration was being given to the holding of a public meeting, notice is hereby given that the Atomic Energy Commission will hold a public meeting with respect to its patent program at 10:00 a.m., on the 15th day of April 1958, in Room 1057, at the AEC Offices at 1717 H Street NW., Washington, D. C.

Any person wishing to attend such meeting and present an oral statement of his views with respect to the above matters should so indicate not later than March 14, 1958, in a written communication to the Atomic Energy Commission, Office of the General Counsel, 1717 H Street NW., Washington 25, D. C., Attention, Patent Branch. In order to assist the Commission in preparation of the agenda such communications should include the name of the person to present the statement, the subjects to which the remarks will be addressed, and the anticipated time which will be required to present the statement. It may be necessary to limit the time of each presentation in order to accommodate interested

parties, and therefore anyone desiring to do so may submit any additional written statements that may be made public by the Commission.

An agenda for the public meeting will be available to the public in the Public Document Room of the Atomic Energy Commission, 1717 H Street NW., Washington 25, D. C., not later than March 31, 1958.

Dated at Germantown, Md., this 14th day of February 1958.

R. W. Cook,
Acting General Manager.

[F. R. Doc. 58-1550; Filed, Feb. 28, 1958; 8:48 a. m.]

FEDERAL POWER COMMISSION

[Docket Nos. G-14116, G-14117]

Amerada Petroleum Corp. and United Gas Pipe Line Co.

NOTICE OF APPLICATIONS AND DATE OF HEARING

February 25, 1958.

Take notice that (1) on December 26, 1957, United Gas Pipe Line Company (United), a Delaware corporation, having its principal place of business in Shreveport, Louisiana, filed in Docket No. G-14117, an application for a certificate of public convenience and necessity, pursuant to section 7 (c) of the Natural Gas Act, authorizing the construction and operation of approximately 1.8 miles of 6-inch lateral supply pipeline, to extend from a point of connection near Milepost 15 on United's existing 6-inch pipeline in Acadia Parish, Louisiana, to a point in the South Lewisburg Field area in Acadia Parish, together with a purchase meter station, separator installation and appurtenances, in order to purchase, receive and transport in interstate commerce, subject to the jurisdiction of the Commission, natural gas produced in that area by Amerada Petroleum Corporation, and (2) on December 26, 1957 Amerada Petroleum Corporation (Amerada), filed in Docket No. G-14116 an application for a certificate of public convenience and necessity, pursuant to section 7 (c) of the Natural Gas Act, authorizing the above described sale of natural gas to United in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, all as more fully described in the application which is on file with the Commission and open to public inspection.

The proposed sale of gas by Amerada to United will be made pursuant to a gas sales contract dated December 16, 1957, as supplemented, by and between the aforesaid parties.

The estimated cost of the facilities proposed to be constructed by United is $71,597.

Temporary authorizations have been granted on January 29, 1958 (1) to United to construct and operate the proposed facilities as described in its application filed in Docket No. G-14117, and (2) to Amerada to sell natural gas in interstate commerce to United, as proposed in Docket No. G-14116.

These related matters should be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on March 25, 1958 at 9:30 a. m., e. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C. concerning the matters involved in and the issues presented by such applications: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C. in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before March 17, 1958. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] Michael J. Farrell,
Acting Secretary.

[F. R. Doc. 58-1529; Filed, Feb. 28, 1958; 8:45 a. m.]

[Docket No. G-14281]

Texas Eastern Transmission Corp.

NOTICE OF APPLICATION AND DATE OF HEARING

February 25, 1958.

Take notice that on January 17, 1956, Texas Eastern Transmission Corporation (Applicant) filed in Docket No. G-14281 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a 2-inch tap, with metering and regulating facilities on Applicant's existing 24-inch main line at milepost 550.58 in White County, Illinois, near Crossville, eight miles downstream from an existing metering station at Carmi, Illinois, subject to the jurisdiction of the Commission, and more fully described in the application on file with the Commission and open for public inspection.

The application recites the purpose of the proposed facilities is to enable Applicant to deliver gas to Consumers Gas Company for resale to Warren Petroleum Corporation for use in the operation of a gasoline plant near Crossville, Illinois.

The estimated capital cost of the facilities is $17,335, for which Applicant will be reimbursed by Consumers Gas Company.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on March 25, 1958 at 9:30 a. m., e. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before March 21, 1958. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] Michael J. Farrell,
Acting Secretary.

[F. R. Doc. 58-1530; Filed, Feb. 28, 1958; 8:46 a. m.]

[Docket No. G-14557]

San Patricio Oil Corp. et al.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATE

February 25, 1958.

San Patricio Oil Corporation (Operator) et al. (San Patricio), on January 27, 1958, tendered for filing a proposed change in its presently effective rate schedule for the sale of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of change, undated.
Purchaser: Texas Eastern Transmission Corporation.
Rate schedule designation: Supplement No. 12 to its FPC Gas Rate Schedule No. 2.
Effective date: February 27, 1958 (effective date is the first day after the expiration of the required thirty days' notice).

San Patricio has based its proposed rate increase upon a price redetermination provision in its contract with Texas Eastern which was executed prior to June 7, 1954. The redetermination provision states that at the commencement of the five year period beginning on February 5, 1958, the price shall be adjusted upward to equal the arithmetical average of the three highest prices paid or payable by interstate transporters in the lower part of Texas Railroad Commission District Nos. 1 and 4.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that the above designated supplement be suspended and the use thereof deferred as herinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure and the regulations under the Natural Gas Act (18 CFR Ch. 1), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred until July 27, 1958, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby shall be changed until this proceeding has been disposed of, or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested state commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 58-1531; Filed, Feb. 28, 1958; 8:46 a. m.]

CIVIL AERONAUTICS BOARD

[Docket No. 9229]

INI & CIA, S. A., AEROLINEAS

NOTICE OF POSTPONEMENT OF HEARING

In the matter of the application of INI & CIA, S. A., Aerolineas for a foreign air carrier permit to operate under section 402 of the Civil Aeronautics Act of 1938, as amended, between Buenos Aires, Argentina and Miami, Florida via intermediate points.

Notice is hereby given that the hearing in the above-entitled application now assigned to be held on March 4, 1958, is postponed to March 18, 1958, at 10:00 a. m., e. s. t., in Room E-210, Temporary Building No. 5, 17th Street and Constitution Avenue NW., Washington, D. C., before Examiner Ferdinand D. Moran.

Dated at Washington, D. C., February 25, 1958.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 58-1543; Filed, Feb. 28, 1958; 8:47 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 12326; FCC 58M-172]

HARDIN COUNTY BROADCASTING CO.

ORDER SCHEDULING HEARING

In re application of Harvard C. Bailes and Val D. Hickman d/b as The Hardin County Broadcasting Company, Silsbee, Texas, Docket No. 12326, File No. BP-11166; for construction permit.

It is ordered, This 21st day of February 1958, that Jay A. Kyle will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on April 30, 1958, in Washington, D. C.

Released: February 25, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-1567; Filed, Feb. 28, 1958; 8:51 a. m.]

[Docket No. 12118 etc.; FCC 58M-165]

TELEVISION BROADCASTERS, INC., ET AL.

ORDER SCHEDULING PREHEARING CONFERENCE

In re applications of Television Broadcasters, Inc., Beaumont, Texas, Docket No. 12118, File No. BMPCT-4681; for modification of construction permit; KPBX Broadcasting Company, Beaumont, Texas, Docket No. 12120, File No. BPCT-2313; Brown Telecasters, Inc., Beaumont, Texas, Docket No. 12121, File No. BPCT-2327; for construction permits for new television broadcast stations.

It is ordered, This 26th day of February 1958, that, pursuant to a preliminary understanding reached on the record of the above-entitled matter on February 24, 1958, a further prehearing conference herein will be held at 2:00 p. m., March 3, 1958, in the Commission's offices at Washington, D. C.

Released: February 26, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-1562; Filed, Feb. 28, 1958; 8:50 a. m.]

[Docket Nos. 12245, 12246; FCC 58M-176]

GOLDEN VALLEY BROADCASTING CO. (KRAK) AND RADIO SANTA ROSA

ORDER CONTINUING HEARING

In re applications of Golden Valley Broadcasting Company (KRAK), Stockton, California, Docket No. 12245, File No. BP-10676; Joseph E. Gamble and Lew L. Gamble, d/b as Radio Santa Rosa, Santa Rosa, California, Docket No. 12246, File No. BP-11084; for construction permits.

The Hearing Examiner having under consideration an oral request by counsel for the Commission's Broadcast Bureau to continue the hearing in the above-entitled matter, now scheduled to commence February 26, 1958, to March 11, 1958; and

It appearing that the continuance is necessary because of the illness of the Commission's engineer assigned to this case; and

It further appearing that the other two parties have consented to the continuance,

It is ordered, This 24th day of February 1958, that the aforementioned hearing be, and it hereby is rescheduled to commence at 10:00 a. m., March 11, 1958, in the Commission's offices in Washington, D. C.

Released: February 25, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-1564; Filed, Feb. 28, 1958; 8:50 a. m.]

[Change List 1]

DOMINICAN REPUBLIC BROADCASTING STATIONS

NOTIFICATION OF NEW STATIONS, AND CHANGES IN OR DELETIONS OF EXISTING STATIONS

FEBRUARY 2, 1958.

Notification of new Dominican Republic broadcasting stations, and of changes in or deletions of existing stations, made in conformity with part III, section II of the North American regional Broadcasting Agreement, Washington, D. C.

Call letters	Location	Power kw	Antenna	Schedule	Class	Expected date of change or commencement of operation
		1340 kilocycles				
HI8U	Puerto Plata 70° 42' W. 19° 04' N. (change in call letters from HI9T).	0.25	ND	U	IV	Jan. 3, 1958.
		1310 kilocycles				
HIF	Puerto Plata 70° 42' W. 19° 04' N. (New)	1	ND	U	III	Do.
		1440 kilocycles				
HI9T	Monsenor Nouel 70° 24' W. 18° 50' N. (New).	0.5	ND	U	III	Do.
		1450 kilocycles				
HI2K	Santiago 70° 42' W. 18° 28' N. (change in frequency from 1310 kilocycles).	0.25	ND	U	IV	In use.

[SEAL] FEDERAL COMMUNICATIONS COMMISSION,
MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-1568; Filed, Feb. 28, 1958; 8:51 a. m.]

[Docket No. 12110; FCC 58M-182]

GRAND HAVEN BROADCASTING CO. (WGHN)

ORDER CONTINUING HEARING

In re application of Grand Haven Broadcasting Company (WGHN), Grand Haven, Michigan, Docket No. 12110, File No. BP-11160; for construction permit.

The Hearing Examiner having under consideration the desirability of continuing the date of hearing;

It appearing that there are on file with the Commission two other applications which would involve a conflict with the application in this proceeding but that such pending applications have not yet been designated for hearing; and

It further appearing that no purpose would be served by proceeding with the hearing now scheduled for February 26, 1958;

It is ordered, This 24th day of February 1958, that the hearing scheduled to commence February 26 is continued indefinitely.

Released: February 25, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-1561; Filed, Feb. 28, 1958; 8:49 a. m.]

[Docket Nos. 12176—12178; FCC 58M-186]

KTAG ASSOCIATES (KTAG-TV) ET AL.

ORDER CONTINUING HEARING CONFERENCE

In re applications of Charles W. Lamar, Jr., J. Warren Berwick, Harold Knox, R. B. McCall, Jr., d/b as KTAG Associates (KTAG-TV), Lake Charles, Louisiana, Docket No. 12176, File No. BMPCT-4682; for modification of construction permit; Evangeline Broadcasting Company, Inc., Lafayette, Louisiana, Docket No. 12177, File No. BPCT-2335; Acadian Television Corporation, Lafayette, Louisiana, Docket No. 12178, File No. BPCT-2351; for construction permits for new television broadcast stations.

By agreement of the parties and good cause having been shown therefor: *It is ordered*, This 25th day of February 1958, that the further prehearing conference presently scheduled for February 26, 1958, is hereby continued to a date to be set by subsequent order at the request of counsel for any of the parties.

Released: February 26, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-1563; Filed, Feb. 28, 1958; 8:50 a. m.]

[Docket Nos. 12287, 12288; FCC 58M-181]

SHERRILL C. CORWIN AND K-UHF (TV)

ORDER FOR PRE-HEARING CONFERENCE

In re applications of Sherrill C. Corwin, Los Angeles, California, Docket No. 12287, File No. BPCT-2368; Frederick J. Basset and William E. Sullivan (Partners) as K-UHF (TV), Los Angeles, California, Docket No. 12288, File No. BPCT-2385; for construction permits for a new television broadcast station (Channel 34).

A pre-hearing conference in the above-entitled proceeding will be held on Monday, March 3, 1958, beginning at 10:00 a. m., in the offices of the Commission, Washington, D. C. This conference is called pursuant to the provisions of § 1.111 of the Commission's rules and the matters to be considered are those specified in that section of the rules.

It is so ordered, This the 24th day of February 1958.

Released: February 25, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-1565; Filed, Feb. 28, 1958; 8:50 a. m.]

[Docket Nos. 12318, 12319; FCC 58M-183]

TELEMUSIC CO. AND SOUTHWEST BROADCASTING CO., INC.

ORDER SCHEDULING PREHEARING CONFERENCE

In re applications of Richard C. Simonton, d/b as Telemusic Co., San Bernardino, California, Docket No. 12318, File No. BPH-2188; Southwest Broadcasting Company, Inc., Redlands, California, Docket No. 12319, File No. BPH-2215; for construction permits.

The Hearing Examiner having under consideration the above-entitled proceeding;

It is ordered, This 25th day of February 1958, that all parties, or their attorneys, are directed to appear for a pre-hearing conference, pursuant to the provisions of § 1.111 of the Commission's rules, at the Commission's offices in Washington, D. C., at 10:00 a. m., March 12, 1958.

Released: February 26, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-1566; Filed, Feb. 28, 1958; 8:51 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70-3668]

SOUTHWESTERN GAS AND ELECTRIC CO.

NOTICE OF FILING OF APPLICATION REGARDING ACQUISITION OF PREFERRED STOCK OF NON-UTILITY DEVELOPMENT FINANCE CORPORATION AND NOTICE OF AND ORDER FOR HEARING THEREON

FEBRUARY 20, 1958.

Notice is hereby given that Southwestern Gas and Electric Company ("Southwestern"), a public utility company and a wholly-owned subsidiary of Central and South West Corporation ("Central"), a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("act") and has designated sections 9 (a) (1) and 10 of the act and Rule U-40 promulgated thereunder as applicable to the proposed transaction which is summarized as follows:

Southwestern proposes to subscribe for and purchase 1,440 shares of the preferred stock, par value $25 per share, of First Arkansas Development Finance Corporation ("First Arkansas"), a nonprofit Arkansas corporation organized under the provisions of Act No. 567 of the Acts of Arkansas, 1957. Said shares are to be purchased at the par value thereof, and the aggregate purchase price of the 1,440 shares is $36,000. The preferred stock proposed to be purchased will not be entitled to receive dividends or to vote. Such subscription is to be conditioned upon the receipt by First Arkansas of subscriptions for a total of not less than $900,000 par value of its preferred stock. Unless subscriptions in such amount are received, First Arkansas cannot complete its organization under said Act. No. 567, and any payments on subscriptions for preferred stock will be returned.

The purposes of First Arkansas, as set forth in its Articles of Incorporation, and as authorized by said Act No. 567, are to promote and provide financing for the industrial, commercial, agricultural and economic development of the State of Arkansas.

The application states that no State commission or any Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

No fees or commisions will be incurred or paid by Southwestern in connection with the proposed transaction. Southwestern's expenses in connection therewith will be nominal and are estimated not to exceed $200.

It appearing to the Commission that it is appropriate in the public interest and in the interest of investors and consumers that a hearing be held with respect to the application and that such application shall not be granted except pursuant to the further order of the Commission:

It is ordered, That a hearing on said application, pursuant to the applicable provisions of the act and the rules of the Commission, promulgated thereunder, be held on March 20, 1958 at 10 a. m., at the offices of the Commission, 425 Second Street NW., Washington, D. C. On such date the hearing room clerk in room 193 will advise as to where such hearing will be held.

Any person desiring to be heard or otherwise wishing to participate in this proceeding shall, prior to the commencement of the hearing, file with the hearing officer, hereinafter designated, a request relative thereto as provided by Rule XVII of the Commission's rules of practice and shall state the reasons for wishing to participate, the nature and extent of his interest in the proceeding, and the issues of fact or law raised by the application which he desires to controvert.

The Division of Corporate Regulation has advised the Commission, upon the

basis of its examination of the application, that the following matters and questions are presented for consideration, without prejudice, however, to the presentation of additional matters and questions upon further examination:

(1) Whether the consideration to be paid by Southwestern for the preferred stock of First Arkansas is reasonable.

(2) Whether the proposed acquisition by Southwestern of the preferred stock of First Arkansas will unduly complicate the capital structure of the holding company system of which Southwestern is a part or will be detrimental to the public interest or the interest of investors or consumers or the proper functioning of such holding company system.

(3) Whether the acquisition by Southwestern of the preferred stock of First Arkansas would be detrimental to the carrying out of the provisions of section 11.

(4) Whether all State laws applicable to the proposed acquisition by Southwestern of the preferred stock of First Arkansas have been complied with.

(5) Generally, whether the proposed transactions are in all respects compatible with the provisions and standards of the applicable sections of the act and of the rules and regulations promulgated thereunder; and what terms and conditions, if any, should be contained in the order of the Commission.

It is further ordered, That particular attention be directed at said hearing to the foregoing matters and questions.

It is further ordered, That Robert N. Hislop or any other hearing officer or hearing officers of the Commission designated by it for that purpose shall preside at the hearing in such matter. The hearing officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of the act and to a hearing officer under the Commission's rules of practice.

It is further ordered, That the Secretary of the Commission serve copies of this order by registered mail on the applicant herein, the Arkansas Public Service Commission, First Arkansas and the Arkansas State Banking Board; and that notice of said hearing shall be given to all other persons by general release of this Commission, which shall be distributed to the press and mailed to the mailing list for releases issued under the act, and by publication of this notice and order in the FEDERAL REGISTER.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 58-1533; Filed, Feb. 28, 1958; 8:46 a. m.]

[File No. 59-102]

NEW ENGLAND ELECTRIC SYSTEM AND SUBSIDIARY COMPANIES

ORDER DISMISSING PROCEEDING IN RESPECT OF CERTAIN ISSUES

FEBRUARY 20, 1958.

The Commission having, on August 5, 1957, issued its Notice of and Order for Hearing pursuant to section 11 (b) (1) of the Public Utility Holding Company Act of 1935 ("act") in respect of New England Electric System and its Subsidiary Companies, Respondents (Holding Company Act Release No. 13525), to determine what action, if any, shall be required to be taken to limit the operations of the system to a single integrated public utility system and to such additional systems and other businesses as are retainable under the provisions of section 11 (b) (1) of the act; and

A public hearing having been held after appropriate notice, at which evidence was adduced solely with respect to the issue of whether the electric utility assets of New England Electric System and its subsidiaries constitute a single integrated public utility system; and

New England Electric System having filed a motion and supporting memorandum requesting dismissal of the proceeding insofar as it relates to said issue; and

The Commission having considered the record on said issues; and having this day issued its findings and opinion herein, on the basis of such findings and opinion:

It is ordered, That the proceeding heretofore instituted by the Commission's notice of and order for hearing of August 5, 1957, issued pursuant to section 11 (b) (1) of the act, in respect of New England Electric System and its Subsidiary Companies, Respondents, be, and hereby is, dismissed insofar as such proceeding relates to the issue of whether the electric utility assets embraced in the holding company system of New England Electric System constitute a single integrated public utility system.

It is further ordered, That, in all other respects, said proceeding is continued in full force and effect. A further hearing will be held herein upon the remaining issues at such time and place as may be ordered by the Commission or fixed by the hearing examiner heretofore designated.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 58-1534; Filed, Feb. 28, 1958; 8:46 a. m.]

[File No. 811-786]

AMERICAN MUTUAL INVESTMENT CO., INC.

NOTICE OF FILING OF APPLICATION FOR ORDER DECLARING COMPANY HAS CEASED TO BE AN INVESTMENT COMPANY

FEBRUARY 21, 1958.

Notice is hereby given that American Mutual Investment Company, Inc. ("Applicant"), a corporation organized under the laws of the District of Columbia and which is registered under the Investment Company Act of 1940 ("act") as an open-end diversified investment company, has filed an application pursuant to section 8 (f) of the act for an order of the Commission declaring that it has ceased to be an investment company.

Applicant filed its Notification of Registration as an investment company on Form N-8A on November 13, 1957. Since its organization Applicant has been primarily engaged in the business of purchasing or otherwise acquiring mortgages and other liens on and interests in real estate. On December 4, 1957, it was decided by resolution of its Board of Directors that Applicant shall remain primarily engaged in the business of purchasing or otherwise acquiring mortgages and other liens on and interests in real estate rather than engaging in business as an investment company as defined in the act. Mortgages and other liens on and interests in real estate comprise over 90 percent of Applicant's assets, and Applicant submits that it is not an investment company within the meaning of the act, by reason of the exception stated in section 3 (c) (6) (C) of the act. That section excludes from the operation of the act any person, other than one issuing face-amount certificates of the periodic or installment type, who is primarily engaged in purchasing or otherwise acquiring mortgages and other liens on and interests in real estate.

Applicant's outstanding securities as of December 30, 1957 consisted of 10,000 shares of common stock which were sold for cash at a price of $10.20 per share. It presently plans to make a public offering of 490,000 additional shares of common stock at the same price.

Section 8 (f) of the act provides, in part, that whenever the Commission upon application finds that a registered investment company has ceased to be an investment company, it shall so declare by order and that upon the taking effect of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than March 6, 1958, at 5:30 p. m., submit to the Commission in writing any facts bearing upon the desirability of a hearing on the matter and may request that a hearing be held, such request stating the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission Washington 25, D. C. At any time after said date, the application may be granted as provided in Rule N-5 of the rules and regulations promulgated under the act.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 58-1535; Filed, Feb. 28, 1958; 8:46 a. m.]

[File Nos. 54-164, 59-14]

INTERNATIONAL HYDRO-ELECTRIC SYSTEM (NOW ABACUS FUND)

NOTICE WITH RESPECT TO FILING OF FINAL APPLICATIONS FOR APPROVAL OF FEES AND EXPENSES AND ORDER FOR HEARING THEREON

FEBRUARY 21, 1958.

The Commission and the United States District Court for the District of Massa-

chusetts ("the Court") having heretofore approved, pursuant to section 11 (d) of the Public Utility Holding Company Act of 1935 ("act"), the Interim Board Plan for the reorganization of International Hydro-Electric System ("IHES") as an investment company under the new name Abacus Fund; and

Said plan of reorganization having now been consummated except for the approval of final allowances for fees and expenses in connection with the administration of the estate and the plan proceedings, as to which jurisdiction was reserved; and

The Commission having notified the participants in the proceedings to file their applications for final allowances not later than October 1, 1957, and thirteen applications having been filed pursuant to such notice requesting maximum allowances from the estate aggregating $876,100 for fees and $28,805.50 for expenses; and

The directors of Abacus Fund having requested that the Commission authorize payment prior to the end of 1957 of such amounts on account of said claims as it might deem fair and equitable; and the Commission by order entered herein on December 20, 1957 (Holding Company Act Release No. 13637) having authorized payments on account to certain of the applicants in the aggregate amount of $241,200 for fees and $14,644.51 for expenses, subject to the condition that the final maximum allowances to such applicants should be determined only after full and final hearing, and subject to the further condition that nothing contained in said order should be deemed to prejudice the claims of those applicants to whom no payment on account was then authorized; and

The Commission deeming it appropriate, pursuant to sections 11 (d) and 11 (f) of the act and Rule U-63 thereunder, that a hearing be held with respect to said applications and any other applications which may be filed in response to this notice and order, to the end that, upon the final determination of such applications, all further claims on account of services rendered in these reorganization proceedings shall be barred and the jurisdiction of the Commission with respect thereto released:

It is ordered, That any person, not having already filed his application herein, who deems that he is entitled to compensation or reimbursement of expenses from the estate of IHES on account of services rendered in these reorganization proceedings shall file his application therefor in triplicate with the Secretary of this Commission (Washington 25, D. C.) on or before March 20, 1958, and shall at the same time mail a copy thereof to Abacus Fund (654 Madison Avenue, New York 21, New York).

It is further ordered, That a hearing in these proceedings be reconvened on April 2, 1958 at 10 o'clock a. m. at the offices of the Commission, 425 Second Street NW., Washington, D. C., for the purpose of inquiring into and taking evidence with respect to the applications heretofore filed and such further applications, if any, as may be filed in response to the foregoing order; the applications heretofore filed and the amounts heretofore allowed on account thereof being as follows:

Applications Heretofore Filed

Name and capacity of applicant	Amount of claim		Amounts heretofore allowed on account thereof	
	Fee	Expenses	Fee	Expenses
B. A. Brickley and Oliver R. Waite, for legal services as counsel to B. A. Brickley, trustee of IHES	$432,500		$100,000	
Interim Board, for directors' fees and expenses	2,100	$1,885.13	2,100	$1,885.13
Purcell and Nelson, counsel to Interim Board	160,000	5,629.03	75,000	5,629.03
Stanley S. Surrey, tax counsel to Trustee	17,500	48.09	7,500	48.09
Ropes, Gray, Best, Coolidge & Rugg, for legal services to Interim Board	6,000	269.48	5,600	269.48
George E. Cleary, tax consultant on IHES tax problems	35,000	1,050.84	15,000	1,050.84
George E. Cleary, expert witness for Interim Board on tax consequences of proposed reorganization plans	10,000	139.64	6,000	139.64
Henry J. Friendly and Leonard J. Sheriff, counsel to certain large shareholders	55,000	5,622.30	30,000	5,622.30
Central-Illinois Securities Corp.		6,152.45		
Wolf, Block, Schorr & Solis-Cohen, counsel to Christian A. Johnson and Central-Illinois Securities Corp.	90,000	2,444.27		
Schenker & Schenker, counsel to The Equity Corp.	50,000	5,160.71		
Class A Stockholders Protective Committee	3,000			
Nemerov & Shapiro, counsel to said Committee	15,000	403.56		
Total	876,100	28,805.50	241,200	14,644.51

It is further ordered, That Sidney L. Feiler or any other officer or officers of the Commission designated by it for that purpose shall preside at such hearing. Such presiding officer is hereby empowered to exercise all powers granted to the Commission under section 18 (c) of the act and to a hearing officer under the Commission's rules of practice.

The Division of Corporate Regulation of the Commission having advised the Commission that it has made a preliminary examination of said applications, and that upon the basis thereof the following matters and questions are presented for consideration by the Commission, without prejudice to its specifying other matters and questions upon further examination:

1. Whether the several services and disbursements for which remuneration is sought are compensable from the estate of IHES, and whether it is lawful or appropriate to grant any allowance for fees or expenses to the persons making such claims.

2. Whether each of the several amounts requested is fair and reasonable as the final maximum amount that may be paid for the services rendered; and, if not, what amounts should be fixed by the Commission.

It is further ordered, That particular attention be directed at said hearing to the aforesaid matters and questions.

It is further ordered, That all persons other than the applicants named herein and those further applicants, if any, who shall have filed their applications on or before March 20, 1958, as hereinabove ordered, and those persons heretofore granted participation in these proceedings, who desire to be heard in connection with said fee applications or who propose to intervene herein, shall file with the Secretary of the Commission on or before March 28, 1958, their requests therefor as provided in Rule XVII of the Commission's rules of practice.

It is further ordered, That the Secretary of the Commission shall serve copies of this notice and order by registered mail upon William K. Jacobs, Jr., President of Abacus Fund, and the aforesaid applicants, and that notice of said hearing shall be given to all other persons by general release of this Commission which shall be distributed to the press and mailed to the mailing list for releases issued under the act, and by publication of this notice and order in the FEDERAL REGISTER.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 58-1536; Filed, Feb. 28, 1958; 8:46 a. m.]

[File No. 70-3674]

UTAH POWER & LIGHT CO.

NOTICE OF PROPOSAL BY REGISTERED HOLDING COMPANY TO ACQUIRE, FOR CASH AND ITS COMMON STOCK, VOTING STOCKS OF NON-AFFILIATED PUBLIC-UTILITY COMPANY, AND ORDER FOR HEARING THEREON

FEBRUARY 21, 1958.

Notice is hereby given that Utah Power & Light Company ("Utah"), a registered holding company and a public-utility company, has filed an application-declaration pursuant to the Public Utility Holding Company Act of 1935 ("act"), designating sections 7 and 10 thereof and Rule U-62 thereunder as aplicable to the proposed transactions, which are summarized as follows:

Utah proposes to acquire certain outstanding securities of Telluride Power Company ("Telluride"), consisting of 750,525 shares of 6 percent Cumulative Second Preferred (voting) Stock and 582,337 shares of Common (voting) Stock, upon the following terms: (1) Utah will pay cash for the Second Preferred Stock at its par value of $1.00 per share plus accrued dividends; (2) Utah will exchange its own Common Stock for the Common Stock of Telluride on the

basis of one share of Utah Common for eleven shares of Telluride Common. Stockholders owning over 80 percent of Telluride's voting stocks are already committed to sell their stocks to Utah on the terms aforesaid, and Utah proposes to offer to acquire the uncommitted voting stocks of Telluride upon the same terms, such offer to remain open for 30 days after issuance of the necessary regulatory approvals.

Telluride's 6 percent Cumulative First Preferred Stock (300 shares of the par value of $100 per share), which has no voting rights except on questions directly affecting its position, will remain in the hands of the public.

Utah proposes to issue such number of shares of its own Common Stock as may be required to effect the exchanges aforesaid, up to a maximum amount of 52,940 shares.

In the event control of Telluride is acquired, Utah expects to operate Telluride as a subsidiary in Utah's holding-company system.

It is requested that Utah's issuance of Common Stock be exempted from the requirements of Rule U-50, due to its incompatibility with the proposed transaction.

Utah, which operates as a public-utility company in the States of Utah, Wyoming and Idaho, has applied to the Public Service Commission of Utah for approval of the proposed acquisition and purchase of the voting securities of Telluride, and to the Public Service Commission, of Wyoming and to the Idaho Public Utilities Commission for approval of the issuance of 52,940 shares of its Common Stock.

It appearing to the Commission that it is appropriate in the public interest and in the interest of investors and consumers that a public hearing be held with respect to the proposed transactions, and that such application-declaration should not be granted or permitted to become effective except pursuant to the further order of the Commission:

It is ordered, That a hearing be held on said matter on March 18, 1958 at 10:00 a. m. at the office of the Commission, 425 Second Street NW., Washington 25, D. C. Any person desiring to be heard in connection with this proceeding shall file with the Secretary of the Commission on or before March 14, 1958 a request relative thereto, as provided in Rule XVII of the Commission's rules of practice.

It is further ordered, That Robert N. Hislop or any other officer or officers of the Commission designated by it for that purpose shall preside at said hearing. The officer so designated is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of the act and to a hearing officer under the Commission's rules of practice.

The Division of Corporate Regulation of the Commission having advised the Commission that it has made a preliminary examination of the application-declaration and that, upon the basis thereof, the following matters and questions are presented for consideration, without prejudice, however, to the presentation of additional matters and questions upon further examination:

(1) Whether the proposed issue by Utah of not exceeding 52,940 shares of its Common Stock satisfies the requirements of section 7 of the act.

(2) Whether the proposed acquisition by Utah of the Telluride stocks satisfies the requirements of section 10 of the act.

(3) Whether the proposed offers of common stock of Utah for the common stock of Telluride and of cash for Second Preferred Stock of Telluride are fair to the stockholders of Utah and of Telluride.

(4) Whether the proposed acquisition by Utah of the Telluride stocks will serve the public interest by tending toward the economical and efficient development of an integrated public-utility system.

(5) Whether compliance with the competitive bidding requirements of Rule U-50 with respect to the issue by Utah of its common stock is not appropriate to aid the Commission in determining whether the fees, commissions, or other remuneration to be paid directly or indirectly in connection with the issue of its Common Stock are reasonable.

(6) Whether the accounting proposed by Utah with respect to the proposed transactions is in accordance with accepted accounting principles.

(7) Whether the fees, commissions and other expenses to be incurred are for necessary services and are reasonable in amount.

(8) Generally, whether the proposed transactions are in all respects compatible with the provisions and standards of the applicable sections of the act and of the rules and regulations promulgated thereunder; and what terms and conditions, if any, should be contained in the order of the Commission.

It is further ordered, That particular attention be directed at the hearing to the foregoing matters and questions.

It is further ordered, That the Secretary of the Commission shall give notice of the aforesaid hearing by mailing copies of this Notice and Order by registered mail to Utah and Telluride, and to the Public Service Commission of Utah, the Public Service Commission of Wyoming, and the Idaho Public Utilities Commission; that notice to all other persons shall be given by publication of this notice and order in the FEDERAL REGISTER; and that a general release of this Commission in respect of this notice and order shall be distributed to the press and mailed to the persons appearing on the mailing list of the Commission for releases under the Public Utility Holding Company Act of 1935.

It is further ordered, That Utah shall mail a copy of this notice and order to each of the Second Preferred and Common stockholders of Telluride at such stockholder's last known address not less than fifteen days prior to the date of the hearing.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 58-1537; Filed, Feb. 28, 1958; 8:46 a. m.]

[File No. 70-3678]

GEORGIA POWER CO.

NOTICE OF PROPOSED ISSUANCE AND SALE AT COMPETITIVE BIDDING OF BONDS

FEBRUARY 24, 1958.

Notice is hereby given that Georgia Power Company ("Georgia"), a public-utility subsidiary of The Southern Company, a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("act"), designating section 6 (b) of the act and Rule U-50 promulgated thereunder as applicable to the proposed transaction which is summarized as follows:

Georgia proposes to issue and sell, pursuant to the competitive bidding requirements of Rule U-50, $24,000,000 principal amount of First Mortgage Bonds ("New Bonds"), __ percent Series, to be dated as of March 1, 1958, and to mature March 1, 1988. The interest rate on the New Bonds (which will be a multiple of ⅛ of 1 percent) and the price, exclusive of accrued interest, to be paid to Georgia (which will not be less than 99 percent nor more than 102¾ percent of the principal amount thereof) will be determined by the competitive bidding.

The New Bonds are proposed to be issued under the Indenture, dated as of March 1, 1941, between Georgia and The New York Trust Company, Trustee, as heretofore supplemented and amended and as proposed to be supplemented and amended by an indenture dated as of March 1, 1958.

Georgia contemplates making expenditures of approximately $60,200,000 during 1958 for the construction or acquisition of property. The proceeds of the proposed issue and sale will be used to finance this program. The company estimates that the only other financing necessary for this purpose will consist of short-term bank loans aggregating $4,000,000 to be made late in 1958.

The application states that the issuance and sale of the New Bonds will have been expressly authorized by the Georgia Public Service Commission and that no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

The fees and expenses incident to the proposed transaction are to be supplied by amendment.

Notice is further given that any interested person may, not later than March 12, 1958, at 5:30 p. m., request the Commission in writing that a hearing be held on such matters, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said filing which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C. At any time after said date, the application, as filed or as it may hereafter be amended, may be granted as provided in Rule U-23 of the general rules and regulations promulgated under the act, or the Commission may grant

exemption from its rules as provided in Rules U–20 (a) and U–100, or take such other action as it may deem appropriate.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 58–1538; Filed, Feb. 28, 1958; 8:46 a. m.]

[File No. 1–3090]

PENINSULAR TELEPHONE CO.

NOTICE OF APPLICATION TO STRIKE FROM LISTING AND REGISTRATION, AND OF OPPORTUNITY FOR HEARING

FEBRUARY 25, 1958.

In the matter of Peninsular Telephone Company common stock, $1 Cumulative Preferred Stock; File No. 1–3090.

New York Stock Exchange has made application, pursuant to section 12 (d) of the Securities Exchange Act of 1934 and Rule X–12D2–1 (b) promulgated thereunder, to strike the above named security from listing and registration thereon.

The reasons alleged in the application for striking this security from listing and registration include the following:

In the opinion of the Exchange, the Company does not meet its requirements for continued listing of the $1 preferred stock which has been reduced to less than $200,000 aggregate market value exclusive of concentrated holdings, and of the common stock which is held by less than 250 holders of record.

As of January 21, 1958, General Telephone Corporation was stated to own all but 7,151 shares of $1 preferred and all but 9,882 shares of common stock, acquired pursuant to an offer of exchange made by prospectus dated June 14, 1957. The 7,151 shares of $1 preferred stock were stated to have an aggregate market value of $171,624 at $24 per share, and 71 holders of record. The common stock was stated to have 202 holders of record.

Dealings in the two stocks were suspended by the Exchange before the opening of its trading session on February 17, 1958.

Upon receipt of a request, on or before March 14, 1958, from any interested person for a hearing in regard to terms to be imposed upon the delisting of this security, the Commission will determine whether to set the matter down for hearing. Such request should state briefly the nature of the interest of the person requesting the hearing and the position he proposes to take at the hearing with respect to imposition of terms. In addition, any interested person may submit his views or any additional facts bearing on this application by means of a letter addressed to the Secretary of the Securities and Exchange Commission, Washington 25, D. C. If no one requests a hearing on this matter, this application will be determined by order of the Commission on the basis of the facts stated in the application and other information contained in the official file of the Commission pertaining to the matter.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 58–1539; Filed, Feb. 28, 1958; 8:46 a. m.]

[File No. 1–699]

THE FAIR

NOTICE OF APPLICATION TO STRIKE FROM LISTING AND REGISTRATION, AND OF OPPORTUNITY FOR HEARING

FEBRUARY 25, 1957.

In the matter of The Fair common stock; File No. 1–699.

New York Stock Exchange has made application, pursuant to section 12 (d) of the Securities Exchange Act of 1934 and Rule X–12D2–1 (b) promulgated thereunder, to strike the above named security from listing and registration thereon.

The reasons alleged in the application for striking this security from listing and registration include the following:

In the opinion of the Exchange, the Company does not meet its requirements for continued listing since the outstanding amount exclusive of concentrated holdings has been reduced to less than 5,000 shares, consequent upon an offer by Montgomery Ward & Company, Inc. to purchase the shares. As of January 31, 1958, only 3,755 shares were owned by others than Montgomery Ward, the shareholders numbering 246. Dealings in The Fair stock were suspended by the Exchange before the opening of its trading session on February 17, 1958.

Upon receipt of a request, on or before March 14, 1958, from any interested person for a hearing in regard to terms to be imposed upon the delisting of this security, the Commission will determine whether to set the matter down for hearing. Such request should state briefly the nature of the interest of the person requesting the hearing and the position he proposes to take at the hearing with respect to imposition of terms. In addition, any interested person may submit his views or any additional facts bearing on this application by means of a letter addressed to the Secretary of the Securities and Exchange Commission, Washington 25, D. C. If no one requests a hearing on this matter, this application will be determined by order of the Commission on the basis of the facts stated in the application and other information contained in the official file of the Commission pertaining to the matter.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 58–1540; Filed, Feb. 28, 1958; 8:46 a. m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

FEBRUARY 26, 1958.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 34504: *Anhydrous ammonia from, to, and between points east of the Rocky Mountains.* Filed by F. C. Kratzmeir, Agent (SWFB No. B–7232), for interested rail carriers. Rates on anhydrous ammonia, tank-car loads from, to, and between points in southwestern, western trunk line, Illinois, trunk-line, southern and Texas-Louisiana territories.

Grounds for relief: Short-line distance formulas, grouping, and relief line arbitraries.

Tariffs: Supplement 252 to Agent Kratzmeir's tariff I. C. C. 4112 and five other schedules.

FSA No. 34505: *Grain and soybean oil cake or meal—North Chattanooga, Tenn., to Augusta Ga.* Filed by Southern Railway Company (No. 130–A), for interested rail carriers. Rates on grain and soybean oil cake or oil cake meal, carloads from North Chattanooga, Tenn., to Augusta, Ga.

Grounds for relief: Truck competition.

Tariffs: Supplement 23 to Agent Spaninger's tariff I. C. C. 1625. Supplement 52 to Agent Spaninger's tariff I. C. C. 1551.

FSA No. 34506: *Iron and steel articles—Sault Ste. Marie, Mich., to Chicago, Ill.* Filed by The Duluth, South Shore and Atlantic Railroad Company, for itself (No. A–3) and interested rail carriers. Rates on iron and steel articles, carloads from Sault Ste. Marie, Mich., to Chicago, Ill.

Grounds for relief: Market competition.

Tariff: Supplement 30 to Duluth, South Shore and Atlantic Railroad Company tariff I. C. C. 3931.

By the Commission.

[SEAL] HAROLD D. MCCOY, *Secretary.*

[F. R. Doc. 58–1542; Filed, Feb. 28, 1958; 8:47 a. m.]

[Ex Parte 212]

INCREASED FREIGHT RATES, 1958

At a session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D. C., on the 25th day of February A. D. 1958.

It appearing, that by order dated February 11, 1958, the Commission instituted an investigation into and concerning the lawfulness of all the rates, charges, and regulations contained in the schedules referred to therein, including the schedules therein authorized to be filed:

It is ordered, That, for the convenience of the parties and the Commission, this investigation be divided into subjects as follows:

A. General Revenue Needs of the railroads (including showing by regions, districts, and total).
B. Line-haul rates:
I. Products of Agriculture.
II. Animals and Products.
III. Products of Mines.
IV. Products of Forests.
V. Manufactures and Miscellaneous.
VI. Class Rates (See report of February 11, 1958).
C. Special and accessorial charges:
I. New charge on waterborne traffic. (Items 220 and 220-A [1]).
II. Loading and unloading charge at New York and Philadelphia.
III. Switching (Items 170 (a) and 170 (b) [1]).
IV. Diversion, reconsignment, and other (including accessorial services not covered by I, II, and III).
D. Free time at the ports.
E. Economic effect of considered schedules on communities, markets, and carriers.

It is further ordered, That the special rules of practice and procedure hereinafter set forth shall apply:

(a) All evidence, except oral cross-examination and rebuttal by any party to matters brought out on cross-examination, shall be submitted in the form of verified statements (affidavits) with or without exhibits attached, signed in ink and accompanied by a certificate of service, and post office address of witness or counsel.

(b) *Subject to be designated.* Each verified statement shall be confined, so far as practicable, to one of the subjects set forth above, to be designated on the cover or first page of such statement by letter, roman number, and description, and where applicable, by particular commodity or service.

(c) *Joint presentation.* Parties or groups having a common interest are urged to join in the presentation of evidence and in the cross-examination of witnesses.

(d) *Verified Statements in support of petitioners and respondents.* An original and 29 copies of such statements shall be furnished to the Commission and a copy served upon each party heretofore filing an appearance in this proceeding. One additional copy shall be sent by first class mail to each of the Regional Offices of the Commission where it will be open to public inspection. A list of the addresses of the Regional Offices and Regional Managers is set forth below in the Appendix hereto. Such statements must be filed on or before March 25, 1958.

(e) *Verified Statements in opposition to, or not in support of, petitioners or respondents, or of said schedules.* An original and 29 copies of such statements shall be furnished to the Commission and 25 copies shall be furnished to Mr. Edward A. Kaier, 1036 Transportation Building, Washington, D. C., for respondents. One additional copy shall be sent by first class mail to each of the Regional Offices of the Commission where it will be open to public inspection. These statements must be filed on or before April 22, 1958. Copies shall be furnished to any interested party upon request addressed to the witness or his counsel.

(f) *Verified statements in rebuttal of statements submitted under the preceding paragraph.* An original and 29 copies of such statements shall be furnished to the Commission, and a copy shall be sent by first class mail to each party whose statement is being rebutted. An additional copy shall be sent by first class mail to each of the Regional Offices of the Commission where it will be open to public inspection. These statements must be filed on or before May 6, 1958. A copy shall be furnished to any interested party upon request.

(g) Hearings for the purpose of cross-examination of witnesses who have filed verified statements, and for oral testimony in rebuttal of matters brought out on cross-examination, will be held, except as hereinafter provided, at times and places to be announced later.

(h) On or before May 15, 1958, in order that appropriate arrangements may be made for the hearings, the parties shall advise the Commission and opposing counsel which witness or witnesses they desire to cross-examine, and an estimate of the time required for such cross-examination.

(i) Rule 21(c) of the Commission's general rules of practice allowing 5 days' additional time for parties located at or west of the El Paso, Texas-Helena, Montana, line will not apply in this proceeding.

(j) *Information desired.* Statements submitted on Subject A, General Revenue Needs, should contain a breakdown of operating results, actual and estimated, as between passenger and freight operations, and of estimates of increased revenue by the major commodity groups and services, and to the extent possible, by individual commodities.

Statements submitted on Subject B, Line-haul rates, should show, among other things, with respect to each commodity covered, for the years 1939, 1946, and 1957, where available to the witness, the value, loading, distance and other transportation characteristics, competition, production, volume of movement by rail and other forms of transportation, the rates by rail, the outstanding orders, if any, with respect thereto, with the authorized and effective increases therein, the rates or costs by other forms of transportation, together with similar information for the 6 months ending February 28, 1958, as compared with the 6 months ending August 31, 1957, and in the case of coal, the B. t. u. values of coal and other forms of energy and the relative growth of the latter.

Statements submitted on Subjects B, C, and D should include the best information available to the witness with respect to the cost of hauling the particular commodity (line-haul or terminal) or performing the particular service.

Evidence, of course, may be adduced as to any other facts pertinent to the particular subject, commodity, or service.

Subject E may be treated generally, or as a subsubject in the respective categories.

Documents heretofore submitted in this proceeding will not be considered in this investigation, unless resubmitted in accordance with the special rules of procedure herein prescribed.

It is further ordered, That this proceeding be, and it is hereby, assigned for hearing before Division 2, for the purpose of cross-examination of witnesses submitting verified statements on Subjects A and E, General Revenue Needs and General Economic Effects, and for the submission of oral testimony on said subjects by protestants and others in rebuttal of matters brought out on cross-examination, at the offices of the Commission in Washington, D. C., beginning at 9:00 a. m., U. S. standard time, or 10:00 a. m., daylight saving time, May 19, 1958.

It is further ordered, That, for the further convenience of the parties and the Commission, official notice be, and it is hereby, taken, subject to objection, of the following documents:

Annual, quarterly, and monthly reports of individual railroads, water carriers, and freight forwarders filed with the Commission; Frieght Commodity Statistics, Class I steam railways; Annual Report on the Statistics of Railways in the United States; similar compilations of statistics of Class I motor carriers, electric railways, freight forwarders, carriers by water, and private car owners; Anual Report on Transport Statistics in the United States, and annual returns of railroads to Valuation Order No. 3.

Quarterly Reports: Series No. Q-500, 600, 650, 750, 800, 900, and 950.

Monthly Reports: Series No. M-100, 125, 150, 200, 211, 213, 215, 220, 230, 240, 250, and 300.

Weekly Reports: Association of American Railroads' Car Service Division (Form CS-54A) Revenue Freight Loaded and Received from Connections.

Special Studies: Analyses of the 1 percent sample of waybills, by the Commission's Bureau of Transport Economics and Statistics. Statement of Distribution of the Rail Revenue Contribution by Commodity Groups, prepared by the Commission's Bureau of Accounts, Cost Finding, and Valuation.

It is further ordered, That persons referring in their verified statements or otherwise to the above or other public documents shall specify the portions relied upon with particularity.

And it is further ordered, That a copy of this order be filed with the Director, Division of the Federal Register, and served on each party heretofore filing an appearance in this proceeding.

By the Commission, Division 2.

[SEAL] HAROLD D. McCOY, *Secretary.*

APPENDIX

INTERSTATE COMMERCE COMMISSION

Regional Offices

Region 1: Territory—Maine, New Hampshire, Vermont, Rhode Island, Massachusetts; headquarters—Boston 9, Mass., 14-17

[1] Item numbers refer to those in Tariff X-212, or supplement thereto.

Court Square, 11th Floor; in charge—George R. Nuzum, regional manager.

Region 2: Territory—New York, New Jersey, Connecticut; headquarters—New York 13, N. Y., Room 1111, 346 Broadway; in charge—Thomas L. McClelland, regional manager.

Region 3: Territory—Eastern Pennsylvania, Maryland, Delaware, District of Columbia, Virginia; headquarters—Philadelphia 6, Pa., 800 United States Custom House Building, Second and Chestnut Streets; in charge—T. G. Reynolds, regional manager.

Region 4: Territory—Western Pennsylvania, Ohio, West Virginia; headquarters—Columbus 15, Ohio, 236 New Post Office Building, 85 Marconi Boulevard; in charge—Roy M. Snetzer, regional manager.

Region 5: Not active.

Region 6: Territory—Georgia, Florida, Alabama, North Carolina, South Carolina; headquarters—Atlanta 8, Ga., 680 West Peachtree Street NW.; in charge—William Addams, regional manager.

Region 7: Territory—Kentucky, Tennessee, Mississippi; headquarters—Nashville 3, Tenn., Room 701, United States Court House, 801 Broadway; in charge—E. S. Craig, regional manager.

Region 8: Territory—Indiana, Illinois, Michigan; headquarters—Chicago 7, Ill., 852 United States Custom House Building, 610 South Canal Street; in charge—Harry P. Raymond, regional manager.

Region 9: Territory—Wisconsin, Minnesota, North Dakota, South Dakota; headquarters—Minneapolis, Minn., 618 Metropolitan Building, Second Avenue South and Third Street; in charge—W. E. Hustleby, regional manager.

Region 10: Territory—Iowa, Missouri, Nebraska, Kansas; headquarters—Kansas City 6, Mo., 1100 Federal Office Building, 911 Walnut Street; in charge—H. Joseph Simmons, regional manager.

Region 11: Not active.

Region 12: Territory—Texas, Oklahoma, Arkansas, Louisiana; headquarters—Fort Worth 2, Tex., 816 T & P Building; in charge—Bernard H. English, regional manager.

Region 13: Territory—Wyoming, Colorado, New Mexico, Utah, Montana; headquarters—502 Denham Building, Denver 2, Colo.; in charge—Bert L. Penn, regional manager.

Region 14: Not active.

Region 15: Territory—Oregon, Washington, Idaho; headquarters—Portland 5, Oreg., 538 Pittock Block, 921 Southwest Washington Street; in charge—Frank E. Landsburg, regional manager.

Region 16: Territory—Arizona, California, Nevada; headquarters—San Francisco 5, Calif., 602 Sheldon Building, 461 Market Street; in charge—Dean F. Noble, regional manager.

[F. R. Doc. 58-1545; Filed, Feb. 28, 1958; 8:48 a. m.]

PART II

FEDERAL REGISTER

VOLUME 23 VOLUME 43

Washington, Saturday, March 1, 1958

TITLE 32—NATIONAL DEFENSE

Chapter VII—Department of the Air Force

Subchapter J—Air Force Procurement Instructions

ISSUANCE OF REGULATIONS

Subchapter J of Chapter VII, Title 32, is added to read as set forth below.

Part
1001 General provisions.
1002 Procurement by formal advertising.
1003 Procurement by negotiation.
1004 Coordinated procurement.
1005 Interdepartmental procurement.
1006 Foreign purchases.
1007 Contract clauses.
1008 Termination of contracts.
1009 Patents, copyrights, and technical data.
1010 Bonds and insurance.
1011 Federal, State, and local taxes.
1012 Labor.
1013 Government property.
1014 Inspection and acceptance.
1015 Contract cost principles.
1016 Procurement forms.
1050 Labor supply considerations to be made in the placement of contracts.
1051 Small business.
1052 Facility capability reports.
1053 Contracts; general.
1054 Contract administration.
1055 Spare parts.
1056 Contracts entered into under authority of Title II, First War Powers Act, 1941, as amended.
1057 Reports.
1058 Contract financing.
1059 Aircraft and GFAE procurement.
1080 Production surveillance and control.

PART 1001—GENERAL PROVISIONS

Subpart A—Introduction

Sec.
1001.101 Purpose of subchapter.
1001.102 Applicability of subchapter.
1001.104 Content of instruction.
1001.105 Amendments.
1001.107 Effective date.
1001.108 Air Force Procurement Circulars.
1001.109 Deviations from ASPR or a Department of Defense directive.
1001.109–2 Deviations affecting one contract or transaction.
1001.109–3 Deviations affecting more than one contract or contractor.
1001.109–50 Deviations from AFPI or AFPC.
1001.109–51 Deviations, contract clauses.
1001.109–52 Basic legal questions involved in deviations.

Subpart B—Definition of Terms

1001.201 Definitions.
1001.201–9 Sources of supplies.

This Part II contains a revision of the Air Force Procurement Instructions, 32 CFR Parts 1001–1080.

Sec.
1001.201–50 United States and Government.
1001.201–51 Contractor.
1001.201–52 Chief officer responsible for procurement.
1001.201–53 Appropriated funds.
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1001.201–56 Local purchase activity.
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1001.201–58 AMC field procurement activities.
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1001.201–60 AF plant representative office.
1001.201–61 AF plant representative.
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1001.201–65 Form of contract.
1001.201–66 Type of contract.
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1001.305 Specifications.
1001.306–50 Ocean rates and port handling charges for use in evaluating bids on proposals.
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1001.460 Priorities authority—ballistic missiles program.
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1001.651 Supplemental lists.
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Subpart T—Ethical Standards of Procurement Personnel

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1001.2004–3 Format of affidavit.
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Subpart U—Industry Advisory Committees

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1001.2102 Statement of position.
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AUTHORITY: §§ 1001.101 to 1001.2105 issued under sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314.

SUBPART A—INTRODUCTION

§ 1001.101 *Purpose of subchapter.* The Air Force Procurement Instruction is issued by the Commander, Air Materiel Command, by authority of the Secretary of the Air Force, delegated through the Deputy Chief of Staff, Materiel, Hq USAF. It implements the Armed Services Procurement Regulation Subchapter A, Chapter I, of this title and establishes for the Department of the Air Force uniform policies, procedures, and instructions relating to the procurement of supplies and services under the authority of the Armed Services Procurement Act of 1947, as amended (41 U. S. Code 151–161) (hereinafter referred to as "the Act"), or under other statutory authorization.

§ 1001.102 *Applicability of subchapter.* The Air Force Procurement Instruction will apply to all purchases and contracts, within or outside of the continental United States, for the procurement of supplies or services which obligate appropriate funds (including available contract authorizations). If a particular part, subpart, or section has a limited application, the part, subpart, or section will contain the specific application thereof. The Air Force Procurement Instruction will be effective on and after December 1, 1954.

§ 1001.104 *Content of instruction.* The Air Force Procurement Instruction will contain all policies, procedures, and instructions relating to procurement of supplies and services within the Air Force, except those contained in Armed Services Procurement Regulation (Chapter I, Subchapter A of this title), and those contained in specifically exempted regulations.

§ 1001.105 *Amendments.* The Air Force Procurement Instruction will be amended from time to time by publication of revised or additional pages, subparts, or parts. Each revised or additional page will bear, at the top, the date of the change. The Air Force Procurement Instruction will also be amended from time to time by Air Force Procurement Circulars pending issuance of revised pages.

§ 1001.107 *Effective date.* Compliance with an amendment to Air Force Procurement Instruction will be permissible with the date of issuance thereof and will be mandatory effective 30 days thereafter, except:

(a) As otherwise prescribed in such amendment.

(b) New or revised Air Force Procurement Instruction contract clauses will be effective 90 days after issuance. Contractual documents submitted to contractors for signature before receipt of amendments need not be rewritten to include new or revised Air Force Procurement Instruction clauses.

§ 1001.108 *Air Force Procurement Circulars.* Air Force Procurement Circulars will be issued from time to time for the purpose of announcing changes, additions, and deletions to the Armed Services Procurement Regulation and Air Force Procurement Instruction pending publication of revised pages. Air Force Procurement Circulars will be numbered consecutively for the calendar year, beginning with No. 1.

§ 1001.109 *Deviations from Armed Services Procurement Regulation or a Department of Defense Directive.*

§ 1001.109–2 *Deviations affecting one contract or transaction.* Deviations from Armed Services Procurement Regulation or a Department of Defense directive which affect one contract only or a single transaction in connection with one contract, will be made only by and with the prior approval of: Director of Procurement and Production, Deputy Chief of Staff/Materiel, Hq USAF, Deputy Director of Procurement and Production, Deputy Chief of Staff/Materiel, Hq USAF, or Chief, Procurement Policy Division, Directorate of Procurement and Production, Deputy Chief of Staff/Materiel, Hq USAF, after coordination as to form and legality by the Office of the General Counsel, USAF. Requests for authority to make such deviations will be sent through channels, including the Commander, Air Materiel Command, attn: Office of Procurement Committee, Directorate of Procurement and Production. Written notice to the Assistant Secretary of Defense (Supply and Logistics) and the other military departments will be made by the Directorate of Procurement and Production, Hq USAF.

§ 1001.109–3 *Deviations affecting more than one contract or contractor.* Deviations from Armed Services Procurement Regulation or a Department of Defense directive which affect more than one contract or contractor will be made by the Director of Procurement and Production, DCS/M, Hq USAF. Requests for authority to make such deviations will be sent through channels, including the Commander, AMC, attn: MCPC.

§ 1001.109–50 *Deviations from AFPI or AFPC.* (a) Except for deviations from § 1003.604, deviations from the requirements of the Air Force Procurement Instruction and an Air Force Procurement Circular will be made only by and with the prior approval of the Office of the Procurement Committee (MCPC), Hq AMC. Deviations from the provisions of § 1003.604, of Part 1003, Imprest Funds, will be made only by and with the prior approval of the Director of Procurement and Production, DCS/M, Hq USAF.

§ 1001.109–51 *Deviations, contract clauses*—(a) *Policy.* Contracts will consist solely of prescribed clauses to the greatest extent practicable. It is recognized, however, that special situations may arise which will make deviations necessary. Deviations from prescribed clauses will be held to a minimum and will not be included in contracts except with approval as set forth in §§ 1003.109–2, 1001.109–3 or 1001.109–50 (a).

(b) *Definitions.* For the purpose of this section:

(1) The term "deviation" includes:

(i) The use of any prescribed clause not in conformance to the rules of application for such clause.

(ii) The omission of any prescribed clause.

(iii) Any addition to, deletion from, or modification of language in a prescribed clause.

(iv) Any collateral provision which, although not included in a prescribed clause, has the effect of altering the prescribed clause or changing the application.

(v) Any contractual provision not included in the foregoing which has not been specifically authorized for use in contracts, except as provided in subparagraph (2) of this paragraph.

(2) The term "deviation" does not include:

(i) Provisions which describe the supplies or services being procured, or the supplies or material being furnished to a contractor.

(ii) Provisions establishing the time, place, or method of furnishing supplies and services, or paying for the same, unless such provision brings it within the purview of subparagraph (1) (iv) of this paragraph.

(iii) In the case of cost type contracts, special allowable items of cost enumerated pursuant to Subpart E, Part 15, Chapter I, of this title, so long as such special items are consistent with the ASPR and its implementation in this Instruction.

(3) The term "prescribed clause" means any contract clause prescribed by ASPR or AFPI, as well as any contract clause prescribed by Hq USAF or Hq AMC.

SUBPART B—DEFINITION OF TERMS AND ABBREVIATIONS

§ 1001.201 *Definitions.* As used throughout ASPR and AFPI, the following terms will have the meanings set forth in this subpart.

§1001.201–9 *Sources of supplies.* (a) The following definition applies to contracts for supplies which will be manufactured and furnished outside the geographical limits of the United States, Alaska, Hawaii, Puerto Rico, the Virgin

Islands, or the District of Columbia. The terms "sources of supplies" will include:

(1) Manufacturers,

(2) Construction contractors,

(3) Regular dealers in the supplies to be procured, as defined in § 1.201–9 of this title.

(4) Intermediaries, provided such sources are not prohibited by local foreign law. An intermediary will be deemed to be any one of the following:

(i) A person (or firm) who owns, operates, or maintains a place of business, regularly engaged in performing certain services which directly or indirectly increase the value of the materials, supplies, articles, or equipment being procured (services to consist of such functions as the recovery from consignees and redistribution to manufacturers and producers of containers and packing materials; the receiving, storing, repacking, and reshipping of items being procured; the collection, consolidation, assembling, packing, and shipping of items being procured, etc.; and NOT the functions of mere soliciting of business, taking of orders, rendering assistance to manufacturers or producers by the preparation of receiving payment documents, arranging for transportation facilities, etc.).

(ii) A person (or firm) who owns, operates, or maintains a place of business, regularly engaged in the importing and exporting business, provided that the items being procured are not to be imported from within the geographical limits of the continental United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

(iii) Agencies or instrumentalities of a foreign government.

§ 1001.201–50 *United States and Government.* These are synonymous terms which include the Department.

§ 1001.201–51 *Contractor.* The term "contractor" means any person, partnership, company, or corporation (or any combination of these) which is a party to a contract with the United States.

§ 1001.201–52 *Chief officer responsible for procurement.* The term "chief officer responsible for procurement" means the Commander, Air Materiel Command as sole head of a procuring activity within the Air Force.

§ 1001.201–53 *Appropriated funds.* The term "appropriated funds" comprises all such funds, including funds allocated to, as distinguished from appropriated to, the Department (including available contract authorizations); but does not include organization, unit, or similar funds.

§ 1001.201–54 *Local purchase.* The term "local purchase" means the authorized purchase, with appropriated funds, of materials, supplies, and nonpersonnel services by an AF installation for its own use or the use of a logistically supported activity.

§ 1001.201–55 *Central procurement.* The term "central procurement" means the procurement of consolidated Air Force requirements of materials, supplies or services effected by designated agencies, namely the Air Materiel Command, the Department of the Army, Department of the Navy, Armed Services Medical Procurement Agency, and Armed Services Petroleum Purchasing Agency.

§ 1001.201–56 *Local purchase activity.* The term "local purchase activity" means any AF installation that is engaged in local purchase and is located within the continental limits of the United States, its Territories and possessions.

§ 1001.201–57 *Foreign procurement activity.* The term "foreign procurement activity" means any AF installation engaged in procurement and located outside the continental limits of the United States, its Territories and possessions. The term includes air attaches and AF foreign missions. For the purpose of this section "Territories and possessions" include Alaska, Hawaii, Puerto Rico, Panama Canal Zone, Virgin Islands, and Guam.

§ 1001.201–58 *AMC field procurement activities.* The term "AMC field procurement activities" means the purchasing and contract administration activities of the air materiel areas and Air Force depots listed in this section:

Middletown AMA.
Mobile AMA.
Oklahoma City AMA.
Ogden AMA.
Sacramento AMA.
San Antonio AMA.
San Bernardino AMA.
Warner Robins AMA.
Dayton AF Depot.
Gadsden AF Depot.
Memphis AF Depot.
Rome AF Depot.
Shelby AF Depot.
Topeka AF Depot.

§ 1001.201–59 *Air procurement district.* An "air procurement district" is a component of the air materiel area to which assigned, and is responsible for administering contracts and related functions in a specific geographical area excluding facilities administered by an AF plant representative.

§ 1001.201–60 *AF plant representative office.* An "Air Force plant representative office" is a component of the air materiel area to which assigned, and is responsible for administering contracts and related functions in a designated industrial plant where establishment of the office is justified by the size of the contractor or the importance of the work being performed.

§ 1001.201–61 *AF plant representative.* An "AF plant representative" is the individual in charge of an AF plant representative office.

§ 1001.201–62 *Air procurement office.* An "air procurement office" is a component of the parent air procurement district and is responsible for APD activities (quality control, production, industrial property, etc.) in a designated geographical area or in a number of plants as assigned.

§ 1001.201–63 *Plant office.* A "plant office" is a component of the parent air procurement district and is responsible for APD activities (quality control, production, industrial property, etc.) in a designated plant. The individual in charge of a plant office will be entitled "Officer-in-Charge"; except in a plant office where only quality control inspectors are assigned, in which case the individual in charge will be entitled "AF Quality Control Representative."

§ 1001.201–64 *Purchasing offices.*—(a) *Purchasing office.* A purchasing office is any AF installation or activity, or a division office, branch, section, or unit of an AF installation or activity, charged with a purchasing or procurement function, including base purchasing and contracting offices.

(b) *Principal purchasing office.* The following are designated as principal purchasing offices of the Air Force:

(1) Buying divisions of the Directorate of Procurement and Production, Hq AMC, Wright-Patterson AFB, Ohio.

(2) All AMC field procurement activities listed in § 1001.201–58.

§ 1001.201–65 *Form of contract.* The term "form of contract" has reference to a physical object which is one or more sheets of paper, preprinted, with blanks designed to be filled in by typewriting or other method; examples: DD Form 351, DD Form 702, and DD Form 738.

§ 1001.201–66 *Type of contract.* The term "type of contract" has reference to the method provided in the contract for recompensing the contractor for supplies or services to be furnished by him; examples: fixed-price type, cost-plus-fixed-fee type.

§ 1001.201–67 *Kind of contract.* The term "kind of contract" has reference to the nature of the commodity or service being procured; examples: construction contract and supplies contracts.

§ 1001.201–68 *Supplemental agreement.* "Supplemental agreement" means a written modification in the terms of a contract which is found to be desirable or necessary during the life of the contract, and which the contracting officer is not authorized to make under the terms of the contract without the concurrence of the contractor.

§ 1001.201–69 *Change order.* "Change order" means a written order, signed by the contracting officer, making changes in the contract which the contracting officer is authorized to make under the provisions of the contract without the concurrence of the contractor.

§ 1001.201–70 *Contract change notification.* A contract change notification (CCN) is a written order signed by the contracting officer directing the making of changes of the kind authorized by the provisions of the contract in the supplies or services called for thereunder, but containing no adjustment of price or estimated cost. Following such a written order, the necessary revisions in other provisions of the contract which are brought about by such order will be made by a supplemental agreement.

§ 1001.202 *Abbreviations.*

ACD—Administrative commitment document.

ACO—Administrative contracting officer.

ACOP—Aircraft out of commission for parts.

AEC—Atomic Energy Commission.
AEM—Advance engineering memorandum.
AF—Air Force.
AFISR—Armed Forces Industrial Security Regulation.
AFL—Air Force Letter.
AFM—Air Force Manual.
AFMIR—Director of Industrial Resources.
AFMPE—Director of Procurement and Production Engineering.
AFPC—Air Force Procurement Circular.
AFPI—Air Force Procurement Instruction.
AFR—Air Force Regulation.
AGO—Adjutant General Office.
AMA—Air Materiel Command.
AMCM—Air Materiel Command Manual.
AMCR—Air Materiel Command Regulation.
AMPR—Aeronautical Manufacturers Planning Report.
APD—Air Procurement District.
ARDC—Air Research and Development Command.
ASPC—Analysis of spare parts change.
ASPPA—Armed Services Petroleum Purchasing Agency.
ASPPO—Armed Services Procurement Planning Officer.
ASPR—Armed Services Procurement Regulation.
ATC—Air Transport Command.
ATO—Aircraft transfer order.
ATRC—Air Training Command.
BAR—Bureau of Aeronautics Representative.
Bu Aer—Bureau of Aeronautics.
CAA—Civil Aeronautics Administration.
CADC—Crown Assets Disposal Corporation.
CAR—Civil Air Regulation.
CC—Coll contracts.
CCN—Contract change notification.
CFP—Contractor furnished materiel.
CID—Change in design.
Com. Gen.—Comptroller General.
CPD—Contractual provisioning document.
CPFF—Cost plus-a-fixed fee.
CPIC—Cost price items canceled.
CPIF—Cost plus incentive fee.
CPIT—Cost price of items terminated.
CR—Change release; cost reimbursement.
CS—Cost sharing.
DF—Disposition Form.
DIRS—Departmental Industrial Reserve System.
DOD—Department of Defense.
DAP—Defense Production Administration.
EAPD—End article prime depot.
ECP—Engineering change proposals.
EO—Expenditure order.
FCR—Facility capability report.
FEAF—Far East Air Force.
FIFO—First-in-first-out.
FPE—Fixed price escalation.
FPI—Fixed price incentive.
FPIF—Fixed price incentive fee.
FPR—Fixed price redetermination.
GAO—General Accounting Office.
GFAE—Government furnished aircraft equipment.
GFE—Government furnished equipment.
GFM—Government furnished materiel.
GFP—Government furnished property.
GSA—General Services Administration.
Hq—Headquarters.
IFB—Invitation for bid.
LP—Local purchase.
MATS—Military Air Transport Service.
MCC—Comptrollers Department Headquarters Air Materiel Command.
MCCBOP—Budget Analysis and Program Section, Budget Division.
MCCFP—Finance Services Branch, Finance Division, Comptrollers Department.
MCCMC—Equipment Branch, Manpower and Organization Division, Comptrollers Department.
MCCP—Management Analysis Office, Comptrollers Department.
MCCQ—Central Procurement Financial Division, Comptrollers Department.
MCCR—Purchase Request—Military Interdepartmental Purchase Office, Comptrollers Department.
MCCS—Statistical Services Division Comptrollers Department.
MCGGP—Publications and Forms Management Branch, Adjutant Executive Commander.
MCGGPF—Forms Control Section, Publications and Forms Management Branch, Adjutant.
MCJ—Staff Judge Advocates Office, Commander Air Materiel Command.
MCJV—Procurement Law Division Staff, Judge Advocates Office.
MCM—Directorate of Maintenance Engineering, Headquarters Air Materiel Command.
MCMT—Maintenance Engineering Services Division.
MCMTT—Technical Publications Branch, Maintenance Engineering Services Division.
MCP—Directorate of Procurement and Production, Headquarters Air Materiel Command.
MCPA—Management Services Office, Directorate of Procurement and Production.
MCPAB—Manpower and Budget Branch, Management Services Office.
MCPAC—Contractors Relations and Industrial Liaison Branch, Management Services Office.
MCPAP—Policy and Coordination Branch, Management Services Office.
MCPAR—Reports and Analysis Branch, Management Services Office.
MCPAT—Personnel and Administrative Branch, Management Services Office.
MCPATF—Printing and Forms Section, Personnel and Administrative Branch.
MCPB—Industrial Resources Division, Directorate of Procurement and Production.
MCPBC—Resources Control Office, Industrial Resources Division.
MCPBE—Equipment Branch, Industrial Resources Division.
MCPBI—Preparedness Branch, Industrial Resources Division.
MCPBIC—Construction and Real Estate Section, Preparedness Branch.
MCPBIF—Facilities Contract Section, Preparedness Branch.
MCPBIP—Commodity Coordination Section, Preparedness Branch.
MCPBRI—Industrial Manpower Section, Resources Branch.
MCPBRR—Requirements and Allocations Section, Resources Branch.
MCPC—Office of Procurement Committee, Directorate of Procurement and Production.
MCPG—Deputy Director/Mobilization Planning, Directorate of Procurement and Production.
MCPH—Aircraft Division, Directorate of Procurement and Production.
MCPI—Office of Inspection, Directorate of Procurement and Production.
MCPJ—Readjustment Division, Directorate of Procurement and Production.
MCPJP—Plant Clearance Branch, Readjustment Division.
MCPJPC—Classification and Screening Section, Plant Clearance Branch.
MCPJPF—Field Operations Section, Plant Clearance Branch.
MCPJS—Settlement Branch, Readjustment Division.
MCPJT—Terminations Branch, Readjustment Division.
MCPMA—Airlines Branch Airlines, Maintenance and Service Contracts Division.
MCPPA—Procurement Analysis Branch, Deputy Director/Procurement.
MCPPB—Pricing Branch, Deputy Director/Procurement.
MCPPBB—Bonds and Insurance Section, Pricing Branch.
MCPPC—Contract Management Branch, Deputy Director/Procurement.
MCPPCC—Contract Management Section, Contract Management Branch.
MCPPCI—Industrial Property Section, Contract Management Branch.
MCPPP—Purchase Policy Branch, Deputy Director/Procurement.
MCPPPC—Coordinated Procurement and Assignment Section, Purchase Policy Branch.
MCPPPL—Base Procurement Section, Purchase Policy Branch.
MCPPPS—Purchase Surveillance Section, Purchase Policy Branch.
MCPRM—Production Management Branch, Deputy Director/Production.
MCPS—Support Division, Directorate of Procurement and Production.
MCPSC—Contract Reporting and Bailment Branch, Support Division.
MSPSCB—Bailment Section, Contract Reporting and Bailment Branch.
MSPSCP—Procurement Reports Section, Contract Reporting and Bailment Branch.
MCPSD—Contract Distribution and Files Branch Support Division.
MCPSDF—Contract Files Section Contract Distribution and Files Branch.
MCPSE—Equipment Distribution Branch, Support Division.
MCPSES—Shipping Instructions Section, Equipment Distribution Branch.
MCPZ—Programs and Analysis Office, Directorate of Procurement and Production.
MCPZB—Budget Branch, Programs and Analysis Office, Directorate of Procurement and Production.
MCPZBB—Budget Preparation Section, Budget Branch, Programs and Analysis Office.
MCPZBF—Funds Control Section, Budget Branch, Programs and Analysis Office.
MCPZBG—Government Furnished Aircraft Equipment Budget Data Section, Budget Branch Programs and Analysis Office.
MCPZF—Financial Branch, Programs and Analysis Office.
MCPZO—Analysis Branch, Programs and Analysis Office.
MCPZR—Programs Branch, Programs and Analysis Office.
MCQ—Quality Control, Headquarters Air Materiel Command.
MCR—Master change record.
MCS—Directorate of Supply and Services, Headquarters Air Materiel Command.
MCSDD—Aircraft Distribution Branch, Materiel Control Division.
MCSIFD—Engineering Data Section, Interchangeability and Standardization Branch.
MCSQF—Food Services Branch, Services Division, Director of Supply and Services.
MCSQG—Memorial Affairs Branch, Services Division, Directorate of Supply and Services.
MCSR—Programs and Requirements Division, Directorate of Supply and Services.
MCSRC—Provisioning Coordinating Office, Program and Requirements Division.
MCSRE—Equipment and Automotive Branch, Program and Requirements Division.
MCST—Transportation and Packaging Division, Directorate of Supply and Services.
MCSTE—Packaging and Materials Handling Branch, Transportation and Packaging Division.
MIPR—Military Interdepartmental Procurement Request.
MDAP—Mutual Defense Assistance Program.
MTU—Mobile Training Units.
OC—Open contract.
ODM—Office Defense Mobilization.
OPU—Priorities of programmed units.
OSP—Offshore procurement.
PO—Purchase order.
PR—Purchase request.
RAAF—Royal Australian Air Force.
RC—Requirements contract.
RCAF—Royal Canadian Air Force.
RCS—Reports control symbol.
R&D—Research and Development.
RDO—Research and Development Order.
REF—Removal of Excess Funds.
RFP—Request for Proposal.
SBA—Small Business Administration.
SFP—Straight fixed price.
SPCR—A proposed priced spare parts change request.

TCO—Terminating Contract Officer.
TM—Time and materials.
UCC—Unadjusted contract change.
USAF—United States Air Force.
USAFE—United States Air Force in Europe.
WADC—Wright Air Development Center.
WCLE—Equipment Laboratory, Directorate of Laboratories.
WCX—Directorate of Engineering Standards, Wright Air Development Center.
WCXES—Status and Nomenclature Section, Equipment Central Branch.
WD—War Department.
ZI—Zone of Interior.

SUBPART C—BASIC POLICIES

§ 1001.305 *Specifications.* (a) To permit full and free competition required by law, the requirements of the Air Force must be set forth in the invitation for bids or requests for proposals in such a manner that competition is not restricted. Every item on an invitation for bids or request for proposals will be described by reference to the applicable specifications, or in lieu thereof, will contain a composite description containing all the essential requirements to be met by the item.

(b) The following types of specifications or composite description are authorized for procurement in the order of preference listed:

(1) Federal specifications.
(2) Coordinated military (MIL or JAN) specifications.
(3) Air Force-Navy Aeronautical specifications.
(4) Uncoordinated military (Mil) specifications.
(5) United States Air Force, Army, or Navy specifications.
(6) Tentative specifications.
(7) Other Government departmental specifications.
(8) A composite description.

(c) Under the provisions of section 206 (b) of the Federal Property and Administration Act of 1949, as amended (63 Stat. 390; 40 U. S. C. 487) as implemented by 44 C. F. R. 53.11–53.13, all executive agencies are required to use applicable Federal specifications promulgated by the Director, Bureau of Federal Supply. These Federal specifications are listed in a Federal Specifications Index which is available at the Government Printing Office, Washington, D. C. Contracting officers will enforce the requirement that appropriate Federal specifications be used by returning purchase requests to the initiators when the item to be procured is the subject of a Federal specification and that specification is not set forth in the purchase request. If the initiator of the purchase request omits the Federal specification because it is considered inappropriate to meet the needs of the Air Force, the reasons upon which that conclusion is based must be furnished to the contracting officer prior to procurement action.

(d) Purchases will be made by referencing the applicable type of specification or composite description prescribed by paragraph (b) of this section, except for those purchases required for:

(1) Research and development projects, including experimental, engineering, service, and field tests, provided the technical and quantity requirements of the items are approved for these purposes by appropriate technical committee action.

(2) The current military program, provided the specifications used are actually in process of conversion to a Federal or coordinated military specification.

(3) Spare parts, components, or materials required for existing stocks of material or for maintenance and operation of established installations, provided the item description used includes the contractor's part number or drawing number and refers to the model designation and manufacturer's name and address of the equipment with which the item is to be used. The above items will be considered for formal advertising under the conditions described herein only when the items to be procured are predominantly commercial type items.

(e) Repeated use of a composite description for large dollar volume purchases of any item other than one of minor significance indicates a need for a specification. In these instances, necessary action will be taken to provide for issuance of adequate military or Federal specification as appropriate.

(f) Where a proper determination has been made that one, and only one, supplier can furnish the required items or item, procurement should be accomplished by negotiation according to the applicable portion of Part 3, Chapter I, of this title and Part 1003 of this chapter.

(g) Many adopted specifications cover several grades or types, and provide for several options in methods of inspection, etc. When such specifications are used, the invitation for bids or requests for proposals will state specifically the grade, type, or method of inspection, etc., on which bids are to be based.

(h) Contracting officers accomplishing offshore procurement are authorized to use, where necessary, such specifications, standards, and purchase descriptions of foreign governments and foreign trade associations, which will be readily understood by foreign vendors, provided adequate measures are taken to insure satisfactory and acceptable products, including standard and interchangeable items, where required.

§ 1001.306–50 *Ocean rates and port handling charges for use in evaluating bids or proposals.* Contracting officers will request the appropriate transportation officer to furnish any ocean transportation rates and port handling charges required for use in evaluating bids or proposals. These rates and charges will be considered in making the awards.

§ 1001.307 *Responsible prospective contractor.* See §§ 1002.403 (a) (2) (iii).

§ 1001.307–50 *Policy regarding the consideration of loyalty of scientific researchers on unclassified research contracts.* (a) The problems of security and possible unauthorized release of classified information do not arise under unclassified scientific research contracts. The major consideration regarding the individuals involved should be their scientific integrity and ability. The only consideration relating to the loyalty of individual scientists engaged in work under Government contracts is the principle that it would appear to be against the national interest to give aid and comfort to a person disloyal to the United States. In conformance with this principle, the following policy has been adopted:

(1) In considering proposals for contracts in support of unclassified research not involving security considerations, the policy is to assure that, in appraising the merit of a proposal submitted by or on behalf of a scientist, his experience, competence and integrity are always taken carefully into account. Purchasing activities will not knowingly award or continue a contract in support of research for one who is:

(i) An acknowledged Communist or anyone established as being a Communist by a judicial proceeding, or anyone who advocates change in the United States Government by other than constitutional means.

(ii) An individual who has been convicted of sabotage, espionage, sedition, subversive activity under the Smith Act, or a similar crime involving the Nation's security.

(b) Whenever any purchasing activity has reason to believe that the policies described in paragraph (a) (1) of this section applies to a scientific researcher whose services will be utilized in a proposed contract, or whose services are being used in an existing contract, all pertinent information will be forwarded through the Commander, AMC, attn: MCPI, to the Deputy Chief of Staff, Materiel, Hq USAF, attn: AFMPP, for resolution.

(c) Where a purchasing activity receives information indicating that a potential or an actual scientific researcher may have violated a Federal statute, an immediate report will be made in the manner prescribed for reporting the commission of suspected crimes.

§ 1001.350 *Forward purchasing policy.* The primary objective of the forward purchasing policy is to attain and maintain on a continuing basis an Air Force in a maximum state of readiness to perform its combat mission within approved force structures, with a minimum cost impact on the United States economy. The control of expenditures through employment of efficient inventory control procedures and purchasing methods, are indispensable prerequisites to the achievement of this objective. The Air Force must demonstrate continually increased efficiency in its current operations in addition to developing sound programs directed towards greater efficiencies in the future. Consistent with this objective, the following requirements are established:

(a) Procurements will not be placed earlier than necessary to meet requirements and/or maintain continuity of production.

(b) All procurement will be according to the latest production reserve policy. This applies to both prime contractor and subcontractor complexes of aircraft and to all manufacturers of related equipment.

(c) No new contract is to be placed until the price, delivery, and quality elements of the purchase have been carefully reviewed and analyzed.

(d) Where contractors have delayed without justifiable cause or failed to negotiate in good faith prompt contract formalization, price redetermination, and target reset or final price revision under incentive contracts, and it is determined, after suitable review, that such delinquencies exist, no new contracts are to be placed with the contractors involved until the delinquencies have been corrected.

(e) Careful consideration is to be given to tightening the terms and conditions of new contracts and to insure that obligations undertaken by contractors are clearly stated and enforced. Increasing emphasis is to be placed on fixed-price contracts, and wider use of incentive type contracts where it can be anticipated that lower over-all cost will result.

(f) Reasonable administrative controls or other assurances will be used to insure that AF contractors maintain minimum inventories required for production consistent with sound business practices.

§ 1001.351 *Policy on establishment of secondary sources of aircraft production.* As an integral part of the policy of broadening the industrial base during a period of national emergency, it is necessary for the Air Force to create supplementary sources for the production of aircraft and related equipment normally obtained from the original designer-manufacturer and to provide the supplementary sources with engineering help and technical assistance from such original sources. The Air Force recognizes the contributions made by the primary suppliers of aircraft and related equipment to the advanced state of the art and the importance of maintaining the industry in strong financial condition. To that end, it is essential that the aircraft industry be adequately compensated for its creative efforts and its over-all contributions to the national defense. The policies set forth in this section are designed to recognize the respective contributions and responsibilities of industry and Government toward the maintenance of an aviation industry in this country of sufficient strength to provide the air power needed for national security.

(a) *Determination of need for supplementary sources.* It will be the prerogative of the Air Force to determine whether one or more supplementary sources are needed, and to make the final selection of secondary suppliers. Nevertheless, it will be AF policy to consult with the primary source prior to the selection and establishment of each supplementary source to obtain the benefit of the experienced advice and judgment of the primary source and also with a view toward obtaining a competent supplementary supplier, who will operate in harmony with the primary source. It is expected that, after the establishment of each supplementary source, the primary source will cooperate in furnishing technical assistance to the supplementary source and in entering into licensor-licensee agreements. When establishing a supplementary source, consideration will be given to the cost of the production facilities that the Government may have to provide such supplementary source.

(b) *Proration of procurement between primary and supplementary sources.* In determining the extent to which procurement will be prorated between the primary source and the supplementary source or sources, it will be AF policy to give prior consideration to the primary source, subject always to the Government being assured of deliveries of the needed equipment within the time required and at a reasonable price. In determining the amount of procurement to be placed with the supplementary source or sources, consideration will be given to amortizing the cost of any facilities the Government may have provided or will provide the supplementary source, as well as maintaining an expansible base in event of mobilization, but there also will be taken into account the investment in production facilities made by the primary source. Due recognition will be given to the available capacity of the primary source, and in scheduling production programs it will be AF policy to maintain such production with the primary source as is consistent with the foregoing. It will be the prerogative of the Air Force to determine the proration of business between the primary and supplementary sources.

(c) *Reimbursement of primay source for technical assistance.* For technical assistance the primary contractor will be reimbursed by the Government on a basis which will fairly reflect the contractors' "out-of-pocket" cost plus a fair profit.

(d) *Compensation of primary source for helping establish supplementary sources.* The establishment of a supplementary source generally involves some proprietary rights of the original designer-manufacturer other than patent rights which are not considered as being within the purview of this policy statement. These proprietary rights will be given appropriate recognition on a case by case basis. The supplying of engineering know-how and technical and other assistance by the primary source is materially beneficial to the supplementary source and to the Government, in reduced costs and effort in furnishing supplies. The amount and nature of the engineering assistance and know-how supplied by the primary contractor will be an important consideration in the negotiation of profit allowances for supplies procured by the Government from the primary contractors as well as in the negotiation of profit allowances for the supplies procured by the Government from the supplementary sources with the engineering and technical assistance furnished by the primary contractor.

SUBPART D—PROCUREMENT RESPONSIBILITY AND AUTHORITY

§ 1001.401 *Responsibility of each procuring activity.* (a) The Commander, Air Materiel Command, as sole "head of a procuring activity," is responsible for the procurement of supplies and services assigned to the procurement cognizance of the Department of the Air Force, except for the supplies and services assigned to the procurement cognizance of a jointly-staffed and financed procuring activity established under the provisions of Part 4, Chapter I, of this title. This responsibility includes the authority to issue appropriate delegations of authority, to impose limitations upon the authority delegated, and to require such business clearance and approval as he may prescribe in procuring activity instructions (Air Force Procurement Instruction). This responsibility and authority extends over all activities of the Air Force, including oversea commands, air attachés, and AF foreign missions.

(b) Except as specifically limited or prohibited herein, by Subchapter A, Chapter I, of this title, or by law, the authorities vested in the heads of procuring activities by Subchapter A, Chapter I, of this title, or in the Commander, AMC, by this subchapter may be delegated and redelegated.

§ 1001.402 *General authority of contracting officers.* (a) According to the provisions of Subchapter A, Chapter I of this title and this subchapter, any contracting officer is hereby authorized to enter into contracts on approved forms for supplies and services on behalf of the Government and in the name of the United States of America, whether by formal advertising or by negotiation. Unless otherwise specifically provided, the words "the contracting officer" when used in Subchapter A, Chapter I of this title and this subchapter, or in any contract, supplemental agreement, or change order, are construed to include any contracting officer, acting within the scope of the written orders designating him a contracting officer, his duly designated successor, or authorized representative. Purchases will be made only by individuals duly designated as contracting officers, except petty cash purchases, which will be made according to § 1003.604 of this chapter, and emergency purchases of fuel, oil, repairs, etc., which will be made according to current pertinent regulations.

(b) The contracting officer has only such powers as are given him by delegations of authority and the instrument by which he was designated. Acts exceeding those powers do not bind the Government.

(c) There have been cases where personnel other than contracting officers have issued oral orders to contractors which resulted in the contractors performing work not in accord with their contractual obligations and often at added expense to the contractors. Commanders will emphasize to personnel under their jurisdiction that only contracting officers are authorized to commit the Air Force in dealing with contractors.

(d) Contracting officers must comply with all requirements of applicable laws and regulations in exercising their contractual authority.

(e) Headquarters, depot, or base contracting officers will accomplish procurements by formal advertising or negotia-

tion procedures, strictly according to Public Law 413 (80th Congress) (62 Stat. 21; 41 U. S. C. 151–161), Chapter I, of this title, this chapter, and other directives issued by proper authority.

§ 1001.450 *Secretary.* The Secretary establishes policies for, and directs and supervises, the Department's activities with respect to procurement and related matters. The General Counsel, as his legal advisor, is the final authority on all legal questions relating thereto. By delegation of authority from the Secretary, policies established by him are implemented and other appropriate instructions are issued to lower echelons by the Chief of Staff, USAF, through the Deputy Chief of Staff, Materiel.

§ 1001.451 *Representatives of contracting officers.* (a) The designating authority may designate any officer (including warrant officer) or civilian official, or any airman, to act as representative of the contracting officer or his duly designated successor.

(b) A designation so authorized will be made by written instructions referring to particular contractual instruments or classes of instruments, and may, to the extent not specifically prohibited by the terms of the contractual instrument involved, empower the representative to take any or all action thereunder which could lawfully be taken by the contracting officer. A representative by virtue only of his designation as such will not be empowered to execute any contract or supplemental agreement on behalf of the United States.

(c) This section will not be interpreted as prohibiting the designation in a contract of a Government agency or position (by title but not an individual by name) to perform specified functions under the contract. Persons acting pursuant to such contractual provisions are not considered representatives of the contracting officer within the meaning thereof.

§ 1001.452 *Designation of contracting officers and representatives of contracting officers.* To maintain a high degree of efficiency and effect the most economical management and organization of local purchase activities, AF policy is to centralize the functions of purchasing and contracting in a consolidated activity at all AF installations authorized to make local purchases from appropriated funds.

§ 1001.453 *Delegations of authority.* (a) The exercise of the delegated authorities will be subject to the applicable provisions of Chapter I, of this title, this chapter, and other directives issued by proper authority, except that emergency procurements in combat areas will be accomplished in the manner prescribed by the commander of the combat theatre. The provisions of Chapter I, of this title and this chapter apply to procurement in oversea areas for Government and Relief in Occupied Areas (GARIOA) chargeable to annual appropriations for such purposes.

(b) All redelegations of authority as well as withdrawals or rescissions thereof will be made in writing over the personal signature and title of the person vested with the authority. Delegations and redelegations will be made to official positions and not to individuals by name, except in the case of designations of contracting officers and representatives of contracting officers.

(c) Delegations of authority do not affect the authority of the delegator to exercise any of the authority delegated or to issue instructions concerning the exercise of such authority.

(d) Authorities delegated by the Director of Procurement and Production, Hq AMC, may not be redelegated except as expressly provided in individual authorizations.

(e) Delegations of authority to air attachés may be exercised only by air attachés on duty in foreign countries. Delegations of authority to chiefs of AF foreign missions or chiefs of AF sections of joint military missions may be exercised only when the missions are not operating under the jurisdiction of an oversea command.

(f) Procurement authorities vested in commanders, major air commands are likewise vested in the Commander, Military Air Transport Service. Procurement authorities vested in commanders, oversea commands are likewise vested in the Commander, Military Air Transport Service, with respect to areas outside the continental United States and not within the jurisdiction of a major air command.

(g) The term "oversea commands" includes major air commands located in Territories and possessions of the United States as well as those in foreign countries.

(h) In the absence of a person occupying a position to which authority has been delegated, the authority may be exercised by the person who is occupying the position in an "acting" capacity. "Absence" refers to absence from the installation on leave or temporary duty travel. In cases of extreme emergency, "absence" may be construed to mean absence from the office regardless of whereabouts, except approval of contracts or redelegations of authority which must be accomplished by the person occupying the position to which authority has been delegated.

(i) Approval of awards and manual approval of contracts authorized by delegations of authority will be made in person by the individual occupying the position to which the authority has been delegated. Execution of such approval by one individual for, or over the signature of, another is unauthorized. Persons serving in an acting capacity will execute authority, as delegated, over their own name as acting chief, deputy chief, etc. Awards and contractual instruments in excess of the contracting officer's authority which require approval by higher authority will be reviewed by competent persons prior to manual approval.

(j) In the exercise of delegated authority, a person may ratify the act of another which, when done and when ratified, the person might have himself done and which, when done, the other might have been authorized to do.

NOTE: The authority delegated to contracting officers generally does not include authority to redelegate. Therefore there is, as a general rule, no authority in contracting officers to ratify unauthorized acts of others.

(k) Authority to make awards and execute or approve contracts applies only when such documents include all prescribed clauses approved for use by Director of Procurement and Production, Hq AMC, or higher authority.

(l) When contracting authority is limited as to dollar amount, the limitation includes:

(1) Any contractual instrument initially involving a sum in excess of the dollar limitation considering the aggregate of obligated and committed funds.

(2) Contracts firmly negotiated for the total cost of the program, as stated therein, but which are funded for less than the total cost of the program as firmly negotiated.

(3) Call and requirement contracts, even though no funds are committed or obligated thereby, provided the estimated aggregate amount for which calls or delivery orders may be issued thereunder exceeds the dollar limitation. Such contracts are required to include on their face as an administrative recital a bona fide estimate of such aggregate amount.

(4) Any contractual instrument in excess of the dollar limitation that increases the allotment of funds for reimbursement under a cost-reimbursement or time-and-materials type of contract.

(5) Any contractual instrument, regardless of total contract consideration, which accomplishes a change that would increase the cost to the Government by more than the dollar limitation were there not offsetting credits provided in the same contractual instrument. Requirements aggregating more than the dollar amount of the contracting authority delegated will not be broken down into more than one purchase transaction for the purpose of avoiding authority limitations.

(m) When contracting authority is limited as to dollar amount, the limitation does not include:

(1) Contractual instruments providing for increases in fund commitments for engineering changes or provisioning document actions.

(2) Contractual instruments increasing fund obligations under partially funded contracts (see paragraph (l) (2) of this section) when not exceeding the firmly negotiated total cost of the program as stated in the prime contract.

(3) Contractual instruments obligating funds covering calls issued under terms of call or requirements contracts.

(n) Authorities vested in chiefs of AF foreign missions are likewise vested in AF sections of joint military missions.

§ 1001.454 *Authority to designate contracting officers and representatives thereof.* (a) Contracting officers, as defined in § 1.201–5 of this title, will be those designated by the persons listed in this section, or by persons who are authorized in writing by the persons listed in this section to designate contracting officers within the meaning of that term

as used throughout Chapter I of this title and this chapter.

(1) Secretary of the Air Force.

(2) Chief of Staff, USAF.

(3) Vice Chief of Staff.

(4) Deputy Chief of Staff, Materiel.

(5) Director of Procurement and Production, Office of the Deputy Chief of Staff, Materiel.

(6) Sole head of a procuring activity (Commander, AMC).

(b) The authority of the Commander, AMC, with respect to designating contracting officers and representatives of contracting officers, as set forth in § 1.401 of this title and paragraph (a) of this section, has been delegated to the Director of Procurement and Production, Hq AMC, with power of redelegation. Authority to designate includes authority to terminate designations.

(c) The authority referred to in paragraph (b) of this section has been redelegated by the Director of Procurement and Production, Hq AMC, to the officials listed in this paragraph. Except as specified, exercise of the authority is limited to the designation of persons under the jurisdiction of the designating authority.

(1) Commanders of major air commands with power of redelegation not below the level of a staff officer responsible for procurement within the headquarters of the first echelon of command immediately subordinate to the major air command.

(2) Air attachés and chiefs of AF foreign missions.

(3) Commander, ARDC, with respect to research and development procurement, with power of redelegation.

(4) Commanders and deputy commanders of air materiel areas who may also designate persons not under the jurisdiction of the designating authority, including persons under the jurisdiction of other AF commands, as representatives of contracting officers.

(5) Commanders and deputy commanders of AF depots.

(6) Commanders of separate AMC activities under the direct jurisdiction of the Commander, AMC.

(7) Deputy Director/Procurement and Assistant Deputy Director/Procurement, Hq AMC, who may also designate as contracting officers, persons assigned to any Hq AMC activity, and as representatives of contracting officers, persons not under the jurisdiction of the designated authority, including persons under the jurisdiction of other AF commands.

(8) [Reserved.]

(9) Deputy Director/Ballistic Missiles, Hq AMC, who may also designate persons not under his jurisdiction as representatives of contracting officers. Further redelegation may be made to the Assistant Deputy Director/Ballistic Missiles.

(10) Director, Air Force Academy Construction Agency, who may also designate persons not under his jurisdiction as representatives of contracting officers.

(11) Chief, Electronics Defense Systems Division, who may also designate persons not under his jurisdiction as representatives of contracting officers. Further redelegation may be made to the Deputy Chief, Electronics Defense Systems Division.

(12) Commander and Deputy Commander, Air Materiel Force, Pacific Area (AMFPA), who may also designate persons under the jurisdiction of other AF commands as representatives of contracting officers. Further redelegation may be made to commanders of first echelons of command immediately subordinate to AMFPA.

(13) Commander and Deputy Commander, Air Materiel Force, European Area (AMFEA), who may also designate persons under the jurisdiction of other AF commands as representatives of contracting officers. Further redelegation may be made to commanders of first echelons of command immediately subordinate to AMFEA.

§ 1001.455 *General procurement authority.* The delegation described in this section is a general one, and all other existing or future delegations, regulations, or directives issued by competent authority, to the extent to which they would, expressly or by reasonable implication, limit the scope of or impose conditions or restrictions upon the exercise of the general authorities set forth in this section, will be controlling over it.

(a) The Commander, AMC, has delegated, with power of redelegation, to the: Director and Deputy Director of Procurement and Production, Hq AMC, and Deputy Director/Procurement and Assistant Deputy Director/Procurement, Hq AMC, the authority to act for the Secretary of the Air Force or the Assistant Secretary of the Air Force (Materiel) in the following particulars:

(1) To enter into, approve, and take other action in respect to contracts, change orders, supplemental agreements, awards, letter contracts, leases, amendments of contracts, and other contractual instruments.

(2) To make, authorize, and approve sales or contracts for the sale of equipment, supplies, and materiel.

(3) Approve deviations from regulations, in respect to procurement, and deviations from approved forms of contracts; provided all deviations from Chapter I, of this title, this chapter, and Air Force Procurement Circulars will be effected in the manner provided in Subpart A of this part, as it may from time to time be amended or supplemented.

(b) There is specifically excepted from the delegation described above all authority to take action under Title II of the First War Powers Act of 1941, as amended (50 U. S. C. App. 611), and to take any nondelegable action required by statute to be taken by the Secretary of the Air Force, such as the making of findings and exceptions under the Buy American Act (41 U. S. C. 10a–d), the granting of waivers under the Miller Act (40 U. S. C. 270a–e), the approval of contracts made pursuant to Section 15 of Public Law 600, 79th Congress (5 U. S. C. 55a) and Section 601 of the Department of Defense Appropriation Act, 1956 (70 Stat. 466) (and similar provisions in subsequent Appropriation Acts), the making of the determinations required by Section 630 of the Department of Defense Appropriation Act, 1956 (70 Stat. 472) (and similar provisions in subsequent acts), the authorization of leases pursuant to Section 1 of Public Law 364, 80th Congress, as amended (5 U. S. C. 626s–3), and the making of those findings and determinations under the Armed Services Procurement Act of 1947, as amended (41 U. S. C. 151–161) therein stated to be nondelegable, and the taking of the nondelegable action, required to be taken by the Secretary of the Air Force, according to Subpart C, Part 3, Chapter I, of title and Subpart C, Part 1003, of this chapter, as they may from time to time be amended or supplemented, or Air Force Procurement Circulars modifying the same. The leasing authority conferred on the Secretary of the Air Force by Public Law 130, 83rd Congress, as amended (50 U. S. C. App. 1173), is not delegated.

§ 1001.456 *Authorities of the sole "head of a procuring activity."* (a) The Director of Procurement and Production, Hq AMC, has been authorized by the Commander, AMC, to issue delegations of the redelegable authorities that are vested in the Commander, AMC, as sole "head of a procuring activity." Any such delegations issued to oversea commands, air attachés, and foreign missions will be issued "by direction of the Commander, AMC."

(b) The Director of Procurement and Production, Hq AMC, has delegated to the persons listed in this section all redelegable powers vested in the head of a procuring activity by Chapter I of this title except as noted.

(1) Commanders of major air commands with power of redelegation not below the level of a staff officer responsible for procurement within the headquarters of the first echelon of command immediately subordinate to the major air command. However, the powers set forth in §§ 3.303, 4.205–3 and 7.103–12 of this title were withheld from the commanders of major air commands located within the United States, its Territories, and possessions, and the powers set forth in §§ 3.303 and 4.205–3 of this title were withheld from commanders of oversea commands located outside the Territories and possessions of the United States.

(2) Air attachés and chiefs of AF foreign missions. However, the powers set forth in §§ 3.303 and 4.205–3 of this title were withheld.

§ 1001.457 *Authority to enter into, execute and approve contracts.* (a) The authority to enter into, manually execute or approve contracts has been delegated by the Director of Procurement and Production, Hq AMC, to the persons listed in this section. Awards made and contracts executed in excess of dollar limitations shown herein require approval of higher authority. If the use of a letter contract has been properly authorized pursuant to § 1003.405–3, the letter contract may be executed without regard to any dollar limitations set forth in this section.

(1) Contracting officers of major air commands within the continental United States (except Air Materiel Command). Authority is limited to making awards and executing contracts involving $100,000 or less. Commanders of major air commands may further limit the author-

ity, provided such limitations are made uniform throughout the command. Commanders of major air commands have been authorized to make awards and manually approve contracts involving $100,000 or less. Commanders may delegate authority to manually approve certain contracts not below the level of a staff officer responsible for procurement within the headquarters of the first echelon of command immediately subordinate to the major air command.

(2) Commanders of oversea commands. May authorize contracting officers, designated by them, to make awards and execute contracts involving $100,000 or less. Authority to manually approve contracts may be redelegated not below the level of a staff officer responsible for procurement within the headquarters of the first echelon of command immediately subordinate to the major air command.

(3) Air attachés and chiefs of AF foreign missions. May authorize contracting officers, designated by them, to make awards and execute contracts involving $100,000 or less.

(4) AMC field procurement activities:

(i) Contracting officers of AMC field procurement activities. Authority is limited to making awards and executing contracts involving $30,000 or less, except that production lists or calls under open contracts may be issued (through administrative contracting officer) to contractors irrespective of estimated dollar amount. AMA and AF depot commanders or directors of procurement and production may further limit the authority. AMA and AF depot commanders have been authorized to make awards and manually approve contracts involving $350,000 or less, with power of redelegation to directors of procurement and production. AMA commanders may also redelegate procurement authority to a director of a USAF Logistical Control Terminal for amounts of $100,000 or less.

(ii) Administrative contracting officers. Authority is limited to: (*a*) Executing documents establishing prices of calls against open contracts after review and approval, (*b*) accomplishing initial pricing and price redeterminations, (*c*) obligating funds previously committed (but not obligated) in the basic contract, or in other contractual documents supplementary thereto approved by the designated approving authority, for support items or for other items subject to provisioning action based on the submission of approved provisioning orders, irrespective of total amount, or for contingent items or services based on approved written document(s), work order(s) or invoice(s) irrespective of total amount, (*d*) obligating funds previously committed whenever additional funds must be obligated as a result of price redetermination negotiations conducted by ACO's and reviewed as set forth in this subdivision. AMA commanders or their directors of procurement may further limit this authority.

(6) Local purchase contracting officers of separate AMC installations (excludes AMC field procurement activities, AMFPA and AMFEA) under the direct jurisdiction of the Commander, AMC. Authority is limited to making awards and executing contracts involving $30,000 or less. Commanders of the installations have been authorized to make awards and manually approve contracts involving $100,000 or less.

(7) Commander, ARDC, with respect to research and development contracting matters (excludes local purchase) including authority to: (i) waive bid, payment, performance, or other bonds (other than for construction), and (ii) administer patent matters incident to R&D contracts. The authority may be redelegated. A copy of all redelegations by the Commander, ARDC, of any of his research and development procurement authorities will be furnished to the Commander, AMC, attn: MCPPA. Limitations of the authority are shown in this subparagraph.

(*a*) This authority does not apply to procurement initiated by Wright Air Development Center (WADC), except for procurements of research and of armament development using 650 series funds. Procurements initiated by WADC for other than research or armament development in the 650 series (primarily development of experimental aircraft and aeronautical items) will be accomplished by WADC's preparing and forwarding a purchase request to Deputy Director/Procurement, Hq AMC, for necessary procurement action. Reassignments from WADC to any other component of ARDC of other-than-research responsibilities that involve procurement actions will be subject to prior coordination with the Director of Procurement and Production, Hq AMC.

(*b*) Contracts, involving more than $250,000, for research are subject to review by the Office of the Procurement Committee (MCPC), Directorate of Procurement and Production, Hq AMC, before manual approval by an official duly authorized by the Commander, ARDC.

(*c*) Contracts, involving more than $250,000 for other than research are subject to review by MCPC, Hq AMC, and manual approval by an official duly authorized by the Director of Procurement and Production, Hq AMC.

(8) Deputy Director/Procurement and Assistant Deputy Director/Procurement, Hq AMC. Normally the authority will be exercised with respect to manually approving contracts, involving less than $1,000,000, that are subject to manual approval of a duly authorized official of the Directorate of Procurement and Production, Hq AMC, because of limitations on delegated authority. Such contracts involving more than $1,000,000 are normally approved by the Director of Procurement and Production, Hq AMC, but may be approved by the Deputy Director/Procurement in the absence of the Director and Deputy Director of Procurement and Production. For the purposes of the dollar limitations in this subparagraph, acquisition cost of any industrial facilities to be furnished under a facilities contract will be added to the amount of funds being obligated on that contract.

(9) Procuring contracting officers of the Directorate of Procurement and Production, Hq AMC. Authority is limited to making awards and executing contracts involving $350,000 or less.

(10) Chiefs and deputy chiefs of buying divisions within the Directorate of Procurement and Production, Hq AMC. Authority is limited to the manual approval of supplemental agreements for engineering changes. This authority may be used in conjunction with other contractual actions which in themselves in the aggregate do not exceed the delegated dollar limitation without further approval.

(11) Deputy Director/Ballistic Missiles, Hq AMC. Authority is limited to making awards and approving contracts involving $350,000 or less. Redelegation may be made to contracting officers designated by him. Contracts in excess of $350,000 will be subject to manual approval by duly authorized approving officials of the Directorate of Procurement and Production, Hq AMC. Further redelegation may be made to the Assistant Deputy Director/Ballistic Missiles.

(12) Director, Air Force Academy Construction Agency. Make awards and manually approve contracts and modifications thereto for supplies and services involving $350,000 or less. Contracts in excess of $350,000 will be subject to manual approval by duly authorized approving officials of the Directorate of Procurement and Production, Hq AMC. Contracting officers of the Air Force Academy Construction Agency are authorized to make awards and manually execute contracts and modifications thereto involving $30,000 or less, without approval of higher authority, subject to such limitations as may be imposed by the Director, Air Force Academy Construction Agency.

(13) Chief, Electronics Defense Systems Division. Make awards and manually approve contracts and modifications thereto for supplies and services involving $350,000 or less. Contracts in excess of $350,000 will be subject to manual approval by duly authorized approving officials of the Directorate of Procurement and Production, Hq AMC. Contracting officers of the Electronics Defense Systems Division are authorized to make awards and manually execute contracts and modifications thereto involving $30,000 or less, without approval of higher authority, subject to such limitations as may be imposed by the Chief, Electronics Defense Systems Division. Further redelegation may be made to the Deputy Chief, Electronics Defense Systems Division.

(14) Commander and Deputy Commander, Air Materiel Force, Pacific Area (AMFPA), with power of redelegation to not below the level of a staff officer responsible for procurement within the headquarters of the first echelon of command immediately subordinate to AMFPA. Contracting officers under the jurisdiction of AMFPA may be authorized to make awards and execute contracts involving $100,000 or less.

(15) Commander and Deputy Commander, Air Materiel Force, European Area (AMFEA), for amounts of $350,000 or less, with power of redelegation to not below the level of a staff officer respon-

sible for procurement within the headquarters of the first echelon of command immediately subordinate to AMFEA. Contracting officers, under the jurisdiction of AMFEA, may be authorized to make awards and execute contracts involving $100,000 or less.

§ 1001.458 *Manual approval of contracts for services of experts and consultants.* (a) Prior approval in the form of findings and determinations personally signed by the Secretary are required for contracts for the services of experts and consultants entered into by authority of section 15 (60 Stat. 810; 5 U. S. C. 55a), and the current implementing appropriation acts. If the Secretary has made the necessary findings required by law, he may direct others to manually approve contracts for such services. In his findings and determinations made in support of the contracts, the Secretary generally includes a statement that, by his direction, the contracts will be approved by the Commander, AMC, or his designee.

(b) Except for the particular classes covered in §§ 1001.459 and 1001.467, contracts described in this section may be approved by the following persons pursuant to designations by the Commander, AMC:

(1) Director and Deputy Director of Procurement and Production, Hq AMC.

(2) Deputy Director/Procurement and Assistant Deputy Director/Procurement, Hq AMC.

(3) Commander, ARDC, or his designee for contracts entered into by ARDC. Designees of the Commander, ARDC, may not be other than a staff officer responsible for procurement within Hq ARDC, or within the headquarters of the first echelon of command immediately subordinate thereto.

§ 1001.459 *Manual approval of architect-engineer contracts.* (a) The Commander, AMC, has been authorized to review and approve contracts involving $1,000,000 or less for architectural or engineering services when findings and determinations authorizing such contracts have been made by the Secretary.

(b) The authority described in paragraph (a) of this section has been delegated by the Commander, AMC, to the Director of Procurement and Production, Hq AMC, who has further delegated the authority, subject to limitations shown, to the following:

(1) Commanders of AF commands outside the continental United States for contracts involving $1,000,000 or less, with power of redelegation to the vice commander and a command staff officer responsible for procurement. Commanders, vice commanders, and command staff officers responsible for procurement may further redelegate this authority to the commander of any AF base under their jurisdiction for contracts involving $5,000 or less.

(2) Commanders of AF commands within the continental United States, with power of redelegation to the vice commander and a command staff officer responsible for procurement for: (i) contracts involving $500,000 or less that are authorized by an individual findings and determination, and (ii) contracts involving $100,000 or less that are authorized by a blanket findings and determination. Commanders, vice commanders, and command staff officers responsible for procurement may further redelegate this authority to the commander of any AF base under their jurisdiction for contracts involving $5,000 or less.

(3) Commander, Air Materiel Force, Pacific Area, for contracts involving $5,000 or less.

(4) Commander, Air Materiel Force, European Area, for contracts involving $5,000 or less.

(5) Commanders of air materiel areas (includes commanders of oversea AMA's under the jurisdiction of AMFPA and AMFEA) and AF depots for contracts involving $5,000 or less.

(6) Commander, Wright-Patterson Air Force Base, for contracts involving $5,000 or less.

§ 1001.460 *Priorities authority—ballistic missiles program.* (a) The Commander, AMC, has been delegated authority with respect to the Ballistic Missiles Program (ICBM/IRBM) as described in this section. The authority is to be exercised within the limits of such allocation determinations or other quantitative restrictions as may be established from time to time by proper authority (see § 1.308 of this title). Each person who redelegates the authority will maintain a record of such redelegations and limits placed thereon.

(1) Authority to authorize production and construction schedules and to make allotments of controlled materials with respect to contracts to meet authorized Ballistic Missiles programs (ICBM/IRBM) for which the Department of Defense is claimant agency.

(2) Authority to apply, or assign to others the right to apply, DX ratings and allotment numbers and symbols, as the case may be, with respect to contracts to meet authorized programs.

(3) Authority to assign the right to apply DX ratings and allotment numbers to certain prime or subcontractors on orders for delivery of production equipment specifically required to support authorized programs.

(4) Authority to assign the right to apply DX ratings and allotment numbers to certain contractors on orders for delivery of construction equipment for use on construction outside the Continental United States.

(b) The authority has been redelegated by the Commander, AMC, to the Director of Procurement and Production, Hq AMC. Further redelegation has been made by the Director of Procurement and Production, Hq AMC, as follows:

(1) The authority set forth in paragraph (a) (1) of this section to the Chief, Industrial Resources Division, Hq AMC, with power of redelegation.

(2) The authorities set forth in paragraphs (a) (2) and (3) of this section to and through successive echelons of command to all contracting officers (includes procuring and administrative) of the Air Force.

(3) The authority set forth in paragraph (a) (4) of this section to and through the Deputy Director/Ballistic Missiles, Hq AMC, and division chiefs of the Directorate of Procurement and Production, Hq AMC, to contracting officers under their jurisdiction.

(c) The use of DX, as a program rating device, has been authorized for making the necessary adjustments so that suppliers can meet required delivery dates. It is mandatory when assigning a DX rating that the following is complied with:

(1) Required delivery dates are specific, and are no earlier than necessary to the performance of the master program schedule. This policy will be reflected in programming activities as well as in contracts.

(2) The higher priority of the DX rating is not compromised by specifying delivery dates that are unrealistic or provide unnecessarily short lead times. The value of the DX rating is to be guarded for its real effect, making it possible to telescope those parts of the program where progress towards an earlier success can thereby be advanced.

(3) The DX rating is not a substitute for the best possible advance scheduling or for prompt procurement actions.

(4) It is not to be used as a bottleneck breaking device after trouble occurs, but at once, to prevent delays in the delivery of material and equipment.

§ 1001.461 *Contracts for public utility services extending beyond current fiscal year.* (a) The Commander, AMC, has been authorized to enter into contracts for public utility services (power, gas, water but not communication services) for periods extending beyond the current fiscal year but not exceeding 10 years, under one or more of the following circumstances:

(1) Where there are obtained lower rates, larger discounts, or more favorable conditions of service than those available under contracts the firm term of which would not extend beyond a current fiscal year.

(2) Where connection or special facility charges payable under contracts the firm term of which would not extend beyond a current fiscal year are eliminated or reduced.

(3) The utility refuses to render the desired service except under a contract the firm term of which extends beyond a current fiscal year. The authority will be exercised according to the applicable provisions of the "Statement of Areas of Understanding Between the Department of Defense and General Services Administration-Procurement of Utility Services".

(b) The authority described in paragraph (a) of this section has been delegated by the Commander, AMC, to the Director and Deputy Director of Procurement and Production, Hq AMC, and to the Deputy Director/Procurement and the Assistant Deputy Director/Procurement, Hq AMC.

§ 1001.463 *Assignment of DO ratings and allotment of controlled materials.* (a) The Commander, AMC, has been delegated the authority described in this section, except to the extent that such authority has been otherwise delegated with respect to housing construction

programs authorized under Public Law 211 (81st Congress), as amended (63 Stat. 570; 12 U. S. C. 1748), and construction programs of the National Guard Bureau, Air Force Division. The authority is to be exercised within the limits of such allocation determinations or other quantitative restrictions as may be established from time to time by proper authority. Each person who redelegates the authority will maintain a record of such redelegations and the limits placed thereon.

(1) Authority to authorize production and construction schedules and to make allotments of controlled materials with respect to contracts to meet authorized programs for which the Department of Defense is claimant agency and to meet such other programs as may be designated.

(2) Authority to apply, or assign to others the right to apply, DO ratings and allotment numbers and symbols as the case may be, with respect to contracts to meet authorized programs.

(3) Authority to assign the right to apply DO ratings and allotment numbers to certain prime or subcontractors on orders for delivery of production equipment specifically required to support authorized programs.

(4) Authority to assign the right to apply DO ratings and allotment numbers to certain contractors on orders for delivery of construction equipment for use on construction outside the continental United States.

(b) The authority has been delegated by the Commander, AMC, to the Director of Procurement and Production, Hq AMC. Further delegation has been made by the Director of Procurement and Production, Hq AMC, as follows:

(1) The authority set forth in paragraph (a) (1) of this section to the Chief, Industrial Resources Division, Hq AMC, with power of redelegation.

(2) The authorities set forth in paragraph (a) (2) and (3) of this section and to and through successive echelons of command to all contracting officers (includes procuring and administrative) of the Air Force.

(3) The authority set forth in paragraph (a) (4) of this section to and through division chiefs to contracting officers of the Directorate of Procurement and Production, Hq AMC.

§ 1001.464 *Delegation to commander, air training command.* In addition to the authorities delegated to him as a commander of a major air command, the Commander, ATC, has been authorized by the Director of Procurement and Production, Hq AMC, to exercise the authorities described in this section. The authorities may be exercised only with respect to negotiated contracts for procurement of services. The responsibility for administration of contracts entered into by virtue of these authorities will be assigned to the appropriate AMA of the Air Materiel Command.

(a) Authority to execute findings and determinations in support of cost or cost-plus-a-fixed-fee-type contracts, provided facts have been obtained which establish that:

(1) Such method of contracting is likely to be less costly than other methods, or

(2) It is impracticable to secure services of the kind or quality required without the use of such type of contract.

The authority may be redelegated only to the staff officer responsible for procurement within Hq ATC, provided further that the authority may not be exercised by any person who is or will be the contracting officer for the procurements involved.

(b) Authority to authorize ATC contracting officers to enter into contracts containing any of the price redetermination clauses, provided facts have been obtained which establish that:

(1) It is impractical to secure services of the kind or quality required without the use of such a price redetermination clause.

(2) The conditions for use of the price redetermination clauses have been satisfied. The authority may be redelegated only to the staff officer responsible for procurement within Hq ATC.

(c) Authority to authorize ATC contracting officers to enter into master bailment agreements, bailment agreement, and amendments thereto for the loaning of Government property to AF contractors for some specific purpose in connection with AF contracts when it has been determined that:

(1) The bailment is necessary in the interest of the national defense.

(2) It will not adversely affect the competitive aspect of procurement.

(3) The property is not available to the contractor in the open market within the time requirements of the Air Force.

The authority may be redelegated not below the level of a staff officer responsible for procurement in the first echelon of command immediately subordinate to Hq ATC.

§ 1001.465 *Release of program data and procurement information.* (a) Information concerning proposed procurement and purchases of supplies, including construction and maintenance projects, will not be released prior to the issuance of invitation for bids or requests for quotations. In the preparation of work projects estimates, local contractors often render invaluable aid to AF base personnel in supplying information concerning local wage rates, material costs, etc. The Air Force does not intend that such contacts be curtailed; however, preliminary or approved project estimates will not be discussed with prospective contractors or made a matter of public knowledge (except as provided in § 1002.407 (f) of this chapter) until after an award has been made, whether the contract is advertised or negotiated.

(b) The Deputy Chief of Staff, Materiel, Hq USAF and the Commander, AMC, are authorized to release approved programming data when essential to prospective bidders, subbidders, contractors, or subcontractors in planning long-range production requirements or for insuring timely availability of their field engineers and technical representatives. The authority granted herein may be redelegated. Bidders, subbidders, contractors, or subcontractors requiring classified programming data must be properly cleared.

(c) All AF military and civilian personnel will refrain from releasing to individual business concerns or their representatives any preknowledge that such personnel may possess concerning proposed procurements or purchases of supplies (including construction or maintenance projects) by any AF procuring activity. Such information will be released to all potential contractors at the same time, as nearly as possible, and only through duly designated agencies so that one potential contractor may not be given an unfair advantage over another. All dissemination of such information will be according to existing authorized procedures and only in connection with the necessary and proper discharge of official duties.

§ 1001.466 *Participation by airlines representatives in flights of commercially adaptable USAF aircraft.* (a) The Commander, AMC, has been delegated authority to act on requests of contractors to permit participation by representatives of domestic or foreign commercial airlines, for demonstration purposes, in flights of commercially adaptable USAF aircraft, provided:

(1) No classified military information is revealed or discussed.

(2) Adequate measures are taken to indemnify the Government against any liability to personnel to whom the aircraft is being demonstrated.

(3) The proposed demonstration be limited to normal production test flights conducted by the contractor's test pilots in connection with contract performance prior to acceptance of the aircraft by the Government.

(4) No additional cost will accrue to the Government because of the demonstration.

(b) The authority described in paragraph (a) of this section has been delegated by the Commander, AMC, to the Director and Deputy Director of Procurement and Production, Hq AMC, without power of redelegation. The authority will be exercised on an individual basis only on requests of contractors that are submitted in writing through the AF representative responsible for local administration of the production contract.

§ 1001.467 *Manual approval of contracts for personal services for air photographic and charting service.* (a) Blanket findings and determination by the Assistant Secretary of the Air Force, July 11, 1956, reads as follows:

I hereby find that:

a. The responsibility of the Air Photographic and Charting Service, for the production of Air Force motion pictures, requires that that organization be able to employ actors, narrators, writers, and other professional technical personnel for short intermittent periods of time in order to accomplish economic and efficient operations.

b. The type of personel involved and the short intermittent periods of time involved make it impracticable and uneconomical for this type of personnel to be placed on permanent Civil Service status.

c. The authority to utilize the referenced personnel, at the time required without delay in production schedules, is essential. Pursuant to Section 15 of the act approved

August 2, 1946 (Public Law 600, 79th Congress) and Section 601 of Public Law 639, 84th Congress, I find and determine that the existing facilities of the Air Force are inadequate and that it will be advantageous to the national defense to employ actors, narrators, writers, and other professional technical personnel in the production of motion pictures for the Air Force.

I hereby authorize the Commander, Air Materiel Command, and such other officers and individuals as he may designate, to employ by contract, actors, narrators, writers, translators, and other professional and technical personnel as may be necessary in the production of motion pictures without reference to Civil Service or Classification Laws, at the following rates of compensation:

ACTING TALENT (NONSPEAKING PARTS—$25 PER DAY) (SPEAKING PARTS—$50 PER DAY)

Male leads.
Female leads.
Character part.
Aged.
Juvenile.
Child.
Infants.
Atmosphere people.
Stunt men ($35 per day, flat rate).

MUSICAL

Composers ($50 per day).
Arrangers ($50 per day).
Conductors ($50 per day).
Musicians ($40 per day).

TRANSLATORS

Foreign languages ($25 per day).

PRODUCTION SPECIALISTS

Directors (Special) ($50 per day).
Writers (Special) ($50 per day).
Riggers for prop effects ($35 per day).

NARRATORS ($50 PER DAY)

English of various types of dialects.
Foreign languages of various types of dialects.

The Commander, Air Materiel Command, or his designee, will approve such contracts by my direction.

This authorization granted will expire on June 30, 1957, and contracts executed pursuant to this authority will not extend beyond June 30, 1957.

(b) The Commander, AMC, has designated the persons listed in this paragraph to manually approve contracts, by direction of the Assistant Secretary of the Air Force, to employ actors, narrators, writers, translators, and other professional and technical personnel for in-service motion-picture production to be produced by the Air Photographic and Charting Service, MATS. The authority is subject to the conditions and limitations set forth in paragraph (a) of this section.

(1) Director and Deputy Director of Procurement and Production, Hq AMC.

(2) Deputy Director/Procurement and Assistant Deputy Director/Procurement, Hq AMC.

(3) Chief and Deputy Chief, Airlines, Maintenance and Service Contracts Division, Hq AMC.

(4) Commander and Deputy Commander, Middletown AMA.

(5) Commander and Deputy Commander, Oklahoma City AMA.

(6) Commander and Deputy Commander, San Bernardino AMA.

(7) Chief, New York Air Procurement District.

(8) Chief, Chicago Air Procurement District.

(9) Chief, Los Angeles Air Procurement District.

§ 1001.468 *Execution of contracts for sale of spare parts to civil air carriers.* (a) Aircraft spare parts may be furnished to civil air carriers on an emergency need basis if specific authorization is granted by the Secretary of the Air Force. Authorization by the Secretary is in the form of findings and determinations citing Title II of the First War Powers Act, as amended (55 Stat. 839; 50 U. S. C. App. 611). The findings and determinations usually contain a statement that the commander, AMC, or his designee, is authorized to execute the necessary contract of sale.

(b) The Commander, AMC, has designated contracting officers of the air materiel areas to execute sales contracts, at his direction, when the Secretary has made the findings and determinations required by law to justify the sale of aircraft spare parts to civil air carriers and the findings and determinations contained the statement described in paragraph (a) of this section.

SUBPART E—CONTINGENT OR OTHER FEES

§ 1001.506 *Representation and agreement required from prospective contractors.* Every request for proposals (RFP), except as provided in § 1.507–2 of this title, and every invitation for bids (IFB) will contain the representation and agreement form prescribed by § 1.506 of this title.

§ 1001.507 *Use of Standard Form 119.* Contractors will be required to submit Standard Form 119 (December 1952 Ed.) in duplicate, when the representation and agreement has been answered in the affirmative.

§ 1001.507–1 *Statement in lieu of form.* Every request for proposal, except as provided in § 1.507–2 of this title, and every invitation for bids will contain the following:

If the bidder, by checking the appropriate box provided therefor in his bid, has represented that he has employed or retained a company or person (other than a full-time bona fide employee working solely for the bidder-contractor) to solicit or secure this contract, or that he has paid or agreed to pay any fee, commission, percentage, or brokerage fee to any company or person contingent upon or resulting from the award of this contract, he may be requested by the contracting officer to furnish a completed Standard Form 119, "Contractor's Statement of Contingent or Other Fees" (December 1952 Ed.). If a bidder has previously furnished a completed Standard Form 119 (December 1952 Ed.) to the office issuing this invitation for bids (request for quotations), he may accompany his bid with a signed statement, (a) indicating when such completed form was previously furnished, (b) identifying by number the previous invitation for bids or contract, if any, in connection with which such form was submitted, and (c) representing that the statement in such form is applicable to this bid.

§ 1001.508 *Enforcement.*

§ 1001.508–1 *Failure or refusal to furnish Standard Form 119.* If the potentially successful bidder or contractor, upon request, and prior to award, refuses to furnish a completed Standard Form 119 or a statement in lieu thereof as provided in § 1.507–1 of this title and § 1000.1–507.1, determination of whether the bid or offer will be rejected will be made as follows:

(a) At Hq AMC, by chiefs of the buying divisions of the Directorate of Procurement and Production.

(b) At air materiel areas and AF depots, by directors or deputy directors of procurement and production.

(c) At local purchase activities, by the chief, local purchase contracting office.

(d) At ARDC, by those persons designated by Director of Procurement, Hq ARDC.

§ 1001.550 *Responsibility for protecting information contained in completed Standard Forms 119.* Information contained in the completed Standard Forms 119 will be considered private and personal. Personnel having access to this information will not discuss or transmit the information gained by them to any other person not entitled or authorized to have access to the files in which it is maintained.

SUBPART F—DEBARRED, INELIGIBLE, AND SUSPENDED BIDDERS

§ 1001.601 *Establishment and maintenance of a list of firms or individuals debarred or ineligible.*

§ 1001.601–1 *General.* (a) An official publication entitled "List of Debarred, Ineligible, and Suspended Contractors" will be published, maintained, and distributed for the information and guidance of AF contracting officers and other concerned procurement personnel. No firm or individual will be listed on the "List of Debarred, Ineligible, and Suspended Contractors" for causes or under conditions other than those set forth in § 1.602 of this title.

(b) The Deputy Chief of Staff, Materiel (DCS/M), Hq USAF, is the authorized representative of the Secretary of the Air Force for making final determinations respecting Air Force debarments and suspensions, including modifications and removals. The debarment or suspension of a firm or individual is an administrative determination within the discretion of the DCS/M, Hq USAF, and each case will be decided upon its individual merits. The seriousness of the offense, the civil satisfaction received by or available to the Government, and all mitigating factors will be considered in making such determinations. The placement of a firm or individual on the list will be for the purpose of protecting the interest of the Government and not for punishment.

§ 1001.601–4 *Removal of firms and individuals on list.* The DCS/M, Hq USAF, will remove or modify current debarments and suspensions when such action is deemed appropriate, upon consideration of all available evidence. The Office of Inspection (MCPI), Directorate of Procurement and Production, Hq AMC, will maintain a continuing review of the cases of all firms and individuals

appearing on the list and will recommend to the DCS/M, Hq USAF, the removal or modification of pending debarments and suspensions when such action is deemed appropriate. Other major commands, upon belief that a debarment or suspension should be removed or modified, will forward recommendations for same, with substantiating reasons, through the Commander, AMC, attn: MCPI, to the DCS/M, Hq USAF, for consideration.

§ 1001.602 *Basis for addition of firms and individuals on list.* In addition to the names of firms or individuals included in the list as provided by § 1.602 (a), (b), (d) and (e) of this title, the DCS/M, Hq USAF, will, upon the recommendation of the Director of Procurement and Production, Hq AMC, determine whether a firm or individual will be administratively debarred or suspended and included in the list according to § 1.602 (c) or (f) of this title as the case may be.

§ 1001.603 *Treatment to be accorded firms or individuals in debarred or ineligible status.*

§ 1001.603–1 *Total restrictions.* (a) The DCS/M, Hq USAF, may, when appropriate, authorize exceptions to the restrictions outlined in § 1.603–1 (a) of this title in instances where firms or individuals have been debarred by the Air Force. MCPI will recommend to DCS/M, Hq USAF, action to be taken on connection with exceptions to restrictions when such action is deemed appropriate.

(b) DCS/M, Hq USAF, will determine, based on recommendations of MCPI, whether it is in the best interest of the Government to terminate current contracts and/or withhold all or part of funds due firms and individuals appearing on the list.

(c) DCS/M, Hq USAF, will request the Air Force Finance Center, Denver, Colo., to notify all AF finance officers to withhold payments when such action is considered appropriate.

§ 1001.651 *Supplemental lists.*

§ 1001.651–1 *General.* Under department authority of § 1.307–2 of this title, all major commands are authorized to establish and maintain records and experience data relative to firms or individuals, and to maintain a list of such firms or individuals for the guidance of contracting officers in placing new procurements.

§ 1001.651–2 *AMC experience list.* This section sets forth the policies and procedures for the establishment and operation of the AMC Experience List.

(a) *General.* (1) The AMC Experience List is established to aid procurement personnel in determining the responsibility of firms or individuals concerning the placement, administration, and termination of contracts, and the approval of subcontracts, as to source. In regard to the placement of contracts, the AMC Experience List is considered to be in consonance with §§ 2.406–3 and 3.101 (b) of this title.

(2) Hq AMC will place the names of firms or individuals on the subject list for the following reasons:

(i) Improper or undesirable practices. The name of a firm or an individual will not be placed on the list unless the Government has suffered injury from that firm or individual in a contractual relationship. Reasons for listing may include but are not limited to the following: (*a*) inadequate quality control, (*b*) a history of delinquent deliveries provided such delinquencies are substantial and within a reasonable period of time preceding the determination to list, and, provided further, such delinquencies are not caused by acts beyond the control of the contractor, (*c*) questionable business ethics or sharp business practices resulting in greater costs to the Government, (*d*) inadequate bookkeeping or accounting systems, (*e*) current OSI or FBI investigation reasonably tending to establish a violation of a federal statute, (*f*) reasonable presumption of a violation of the Gratuities clause, (*g*) breach of a subordination agreement where the Government is beneficiary, and (*h*) any other conduct under a Government contract leading to a substantially increased administrative burden on the Government.

(ii) For default which indicates that the contractor was grossly negligent and by exercising diligence could have avoided the default cancellation.

(b) *Use of the list.* The AMC Experience List is intended solely to alert procurement personnel to proceed with caution in dealing with those firms or individuals carried on the list. The appearance of a firm or individual on the list will not require mandatory refusal of an award, nor will it authorize procurement personnel to omit solicitations of bids or proposals from such firms or individuals or to discontinue termination proceedings, solely by reason of the inclusion of the name on the list.

(c) *Approval of subcontracts as to source.* The administrative contracting officer, who is concerned with source approval action for subcontracts (other than firm fixed-price) according to § 1054.203, of this chapter, is responsible for screening the proposed subcontractors with the AMC Experience List.

§ 1001.651–3 *Letter contract, price redetermination and contract change notification delinquency list.* (See § 1001.350 (d).) This section provides for the establishment and use of a list of contractors who, within the criteria listed in this section, are delaying without justifiable cause the definitization of letter contracts and contract change notifications, or the completion of repricing actions.

(a) *Criteria.* (1) A letter contract will be considered delinquent when the contractor unduly delays submission of adequate data required for definitizing the contract, or fails to negotiate in good faith. A letter contract cannot be considered delinquent until the Air Force is in possession of all the information required for definitization with the exception of necessary contractor-furnished information.

(2) Price redetermination, and target reset or final price revision under incentive contracts, will be considered delinquent when the contractor without justifiable cause fails to submit adequate information according to the time schedule and other terms of the contract, or fails to negotiate in good faith.

(3) A contract change notification (CCN) will be considered delinquent when the contractor, without justifiable cause (as determined by the administrative contracting officer), fails to submit a quotation covering the work directed by a CCN within 60 days after the issuance of a CCN. CCN's being held pending definitization of letter contracts, completion of price redetermination, or contract termination will be excluded from this report.

(b) *Review of reports.* The reporting activity will request from each such contractor a statement of justification or corrective action, if any. Any contractor who does not show just cause within 10 days will be placed on the delinquency list by the committee. Statements received from contractors will be forwarded by the reporting activity to MCPPPS. The names of contractors placed on the list will be consolidated by MCPPPS and forwarded to the Reports and Forms Control Branch (MCPAR) for publication and distribution to all AMC procurement activities.

(c) *Use of the list.* No new procurements will be placed with any contractor who has been placed on the consolidated listing until that contractor has been removed from the list or a waiver has been obtained.

SUBPART T—ETHICAL STANDARDS OF PROCUREMENT PERSONNEL

§ 1001.2003 *Restrictions on present personnel.*

§ 1001.2003–1 *Unauthorized receipt of compensation*—(a) *Bribes.* Military and civilian personnel of the Air Force are prohibited from, and may subject themselves to criminal penalty by asking, accepting, or agreeing to receive as a bribe or graft, directly or indirectly, any money, contract, or other thing of value, with the intent to have any of their official decisions or actions influenced thereby, or for giving to, or procuring or aiding to procure for any person, a Government contract (62 Stat. 691, 694; 18 U. S. C. 202, 216).

(b) *Compensation for services in relation to proceedings in which the United States is interested.* Military and civilian personnel of the Air Force are prohibited from, and may subject themselves to criminal penalty by, receiving or agreeing to receive directly or indirectly, compensation for service rendered by themselves or another in relation to any proceeding or claim before any department or agency, where the United States is directly or indirectly interested in the proceeding or claim (62 Stat. 697; 18 U. S. C. 281).

(c) *Compensation from other sources in connection with Government services.* Military and civilian personnel are prohibited from, and may subject themselves to criminal penalty by, receiving

from any sources other than the Government any compensation in connection with Government services (62 Stat. 793; 18 U. S. C. 1914). Inductees or reservists called into the Armed Services, however, may continue to receive income from their former employer (50 U. S. C., App. 454 (f)).

(d) *Payments in connection with mutual defense procurement.* Military and civilian personnel are prohibited from, and may subject themselves to criminal penalty by, soliciting, accepting, or offering to accept any commission, payment, or gift in connection with the procurement of equipment, materials, or services under the Mutual Defense Assistance Act of 1949, as amended (63 Stat. 720; 22 U. C. S. 1584).

(e) *Gifts, entertainment, and favors.* Military and civilian personnel must not accept from contractors or potential contractors gifts, entertainment, or favors, no matter how inconsequential, of a character that may create a sense of a personal obligation.

§ 1001.2003–2 *Dealings on behalf of the Government with individuals or firms as to which private interests exist*—(a) *Pecuniary interest.* Military and civilian personnel of the Air Force are prohibited from, and may subject themselves to criminal penalty by, transacting business as officers or agents of the United States with any corporation, firm, or partnership in the profit of which they are directly or indirectly interested (62 Stat. 703; 18 U. S. C. 434).

(b) *Dealings with future employers or associates.* Where military or civilian personnel of the Air Force have arranged or are negotiating for their subsequent employment by, or association with, a firm or individual, they are disqualified from representing the Air Force in dealings with such firm or individual.

(c) *Dealings with former employers or associates.* (1) Military and civilian personnel of the Air Force will not be in direct charge of negotiation, or exercise authority for the final approval, of any contract with any firm or individual if at any time within the previous 2 years such personnel were employed by, or were engaged in substantial nongovernmental business dealings with, the firm or individual involved.

(2) The Secretary of the Air Force may make exceptions to the policy of this paragraph (c) where he considers the application of the policy impractical or as not serving the best interests of the Government. The personnel concerned will determine whether a need exists to apply for an exemption in their individual cases.

§ 1001.2003–3 *Private activities in conflict with Government interest*—(a) *Prosecution of claims.* Military and civilian personnel of the Air Force may subject themselves to criminal penalty by acting as an agent or attorney in prosecuting any claim against the Government or assisting in the prosecution of any such claim other than in the proper discharge of official duties (62 Stat. 697; 18 U. S. C. 283).

(b) *Other conflicts of interest.* Military and civilian personnel of the Air Force must refrain from any other private business or professional activity which would place them in a position where there is a conflict between their private interest and the public interest of the United States. In particular, it is a general rule of public policy that the Government should not contract with its own personnel unless the needs of the Government cannot reasonably be met otherwise. In any case where AF personnel have any financial interests in any business entity, they are disqualified from representing the Air Force in dealings of any kind with such entity. Personnel charged with the administration of §§ 804.201 to 804.205 of this chapter, who own stock in, or are officers of, an insurance company, must scrupulously avoid negotiating with such company in respect to granting authorization to solicit sales. The same restriction will apply in the case of personnel having a financial interest in any other business enterprise which deals with AF personnel on an individual basis.

(c) *Capitalization of information.* Military and civilian personnel of the Air Force must not engage in any private activity which makes possible the improper capitalization of information gained through their AF position.

(d) *Civil employment of military personnel.* Officers of the Air Force may not be employed in civil works or internal improvements, nor be permitted to engage in the services of any corporation if such extra employment requires that he will be separated from his organization or interferes with the performance of military duty (70A Stat. 527; 10 U. S. C. 8544). No enlisted man in the active service of the United States in the Air Force may be detailed, ordered, or permitted to leave his post to engage in private pursuits for hire when the same will interfere with the customary employment and regular engagement of local civilians in the respective arts, trades, and professions.

§ 1001.2003–4 *Conduct of procurement activities*—(a) *Off-installation contractual negotiations.* No matter of contractual negotiations will be conducted at hotels or at any points away from offices of the initiating or negotiating authority without permission of the chief of the branch or unit in the division or office concerned; and a memorandum will be made of the persons present and subjects discussed at such places.

(b) *Dealings with present or former personnel who are representing private interests.* AF procurement personnel will not knowingly deal with present personnel who are, or appear to be, violating the instructions of § 1001.2003–3, or with former personnel who are or appear to be violating the instructions in § 1001.2004. Further, if AF personnel have doubt about the propriety of dealing with former personnel whose conduct does not appear to be in violation of § 1001.2004, they may refer the matter to higher authority for decision.

(c) *Interpretation of "claim" and activities related to claims.* The term "claim," as used in §§ 1001.2003 and 1001.2004, refers to both monetary and nonmonetary claims, and includes the assertion of defenses against Government action as well as attempts to secure affirmative action from the Government. In deciding whether to deal with present or former personnel who are representing private interest(s) (see paragraph (b) of this section) AF personnel will not consider the restrictions in §§ 1001.2003 and 1001.2004 as extending to activities only remotely connected with the claims in question.

§ 1001.2004 *Restrictions on former personnel.* All former personnel who wish to represent a private interest to the Air Force, are required to submit affidavits according to § 1001.2004–3 of this subpart.

§ 1001.2004–1 *Former civilian personnel: Reserve and National Guard officers not on active duty.* Former civilian personel of the Air Force, and reserve and National Guard officers not on active duty are prohibited, for a period of 2 years after their separation, from prosecuting or acting as counsel, attorney, or agent for prosecuting any claim against the United States which involves any such matter directly connected with which they were employed or performed duty. Former civilian personnel are also prohibited for a period of 2 years after their separation from soliciting, accepting, or offering to accept any commission, payment or gift in connection with the procurement of equipment, materials, or services under the Mutual Defense Assistance Act of 1949, as amended. (68 Stat. 862; 22 U. S. C. 1751.)

§ 1001.2004–2 *Air Force and other retired regular officers.* (a) Retired regular officers are prohibited from taking part in the prosecution of a claim against the Government involving matters with which they were directly connected while on active duty.

(b) A retired regular officer of the Army, Navy, Marine Corps, Air Force, or Coast Guard, or a retired officer of the Coast and Geodetic Survey or the Public Health Service, is subject to forfeiture of pay for the 2-year period following his retirement if, for himself or for others, he is engaged in selling, or in contracting or negotiating for the sale of supplies or war materials to any agency of the Department of Defense, the Coast and Geodetic Survey, or the Public Health Service. The statute in question (section 1309 of the Supplemental Appropriation Act, 1954, 57 Stat. 437; 5 U. S. C. 59c) is not a criminal statute, but it plainly shows that Congress intended to bar retired officers in the specified categories, during the first 2 years of their retirement, from selling supplies to any of the uniformed services. Such retired officers will, therefore, be regarded as prohibited from engaging in the activities described in this part for the first 2 years of their retirement.

(c) In addition to the foregoing, Air Force retired regular officers are prohibited from: (1) taking part in the prosecution of a claim against the Government involving the Air Force for a period of 2 years following retirement; and (2) contracting or negotiating for the sale of

anything to the Air Force. With respect to paragraphs (b) and (c) (2) of this section, the prohibition extends beyond the mere bargaining which may precede the execution or the modification of a contract. It includes any direct participation in obtaining a contract with the Government on behalf of a prospective contractor. However, it is not the intent of this subchapter to preclude a retired officer from accepting employment with private industry solely because his employer is a contractor with the Government. Therefore, this subchapter should not be construed as applicable to activities which are only remotely connected with contractual matters.

§ 1001.2004–3 *Format of affidavit.* All affidavits will be prepared on AFPI Form 34, "Affidavit for Clearance to Represent Private Interests.

§ 1001.2004–4 *Filing affidavit.* All affidavits and all inquiries pertaining thereto, will be sent directly to the Commander, AMC, for processing.

§ 1001.2004–5 *Scope of applicability.* Letters of clearance will be honored at all AF installations worldwide. The letter of clearance will contain any restrictions imposed upon former personnel and will be granted for the sole purpose of permitting an individual to represent a private interest to the Air Force. It does not imply a right to enter any AF installation or to receive information on any matters not directly connected with the purpose for which the clearance was granted. The right of any individual who has received a letter of clearance to enter any AF installation is subject to all regulations promulgated to control visitors at the AF installation concerned.

SUBPART U—INDUSTRY ADVISORY COMMITTEES

§ 1001.2100 *Scope of subpart.* This subpart states for all procurement activities of the Air Force the position of the Department of Justice on whether or not participation by members of industry in activities of industry advisory committees constitutes a violation of the antitrust laws of the United States.

§ 1001.2102 *Statement of position.* As a general rule, decisions of the necessity for the formation of industry committees to advise a Government department and responsibility for formation of these committees rest with the department concerned. To minimize the possibility of antitrust law violations, the following requirements and criteria will be fulfilled in organization and operation of such committees:

(a) There must be statutory authority for the employment of such committees or there must be administrative findings that it is necessary to use such committees to perform certain statutory duties.

(b) Agenda for such committees and their meetings will be initiated and formulated only by the Government.

(c) Meetings to be held will be at the call of and under the chairmanship of full-time Government officials.

(d) Complete, comprehensive minutes of each meeting will be kept.

(e) All functions of such committees will be purely advisory and any resultant action to be taken will be determined solely by Government officials or their representatives.

§ 1001.2103 *Limitations.* Activities maintained in strict compliance with all requirements of § 1001.2102 will not be viewed by the Department of Justice as constituting independent violations of antitrust laws. However, all participants in such activities will be notified that the Department of Justice retains the right:

(a) To institute proceedings, either civil or criminal, or both, in the event any particular plan or course of action resulting from organization or activities of any such advisory committee is used in accomplishment of unlawful private ends.

(b) To institute civil actions to enjoin continuance of any acts or practices in consequence of organization or activities of any such advisory committee, which are found not to be in the public interest and which persist or continue after notice to desist is issued by the Department of Justice.

§ 1001.2105 *Responsibility.* The commander of every AF procurement and contracting activity will:

(a) Investigate the organization and activities of industry advisory committees currently sponsored or participated in by his activity, to determine their compliance with all requirements stated in this subpart.

(b) Notify all participating members of such industry advisory committees of rights reserved by the Department of Justice, as stated in § 1001.2103.

(c) Issue instructions which he deems necessary to insure compliance with all requirements of this subpart by personnel of his activity insofar as contemplated future industry advisory committees are concerned.

PART 1002—PROCUREMENT BY FORMAL ADVERTISING

Sec.
1002.000 Scope of part.

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1002.2003 Special contract provisions.
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AUTHORITY: §§ 1002.000 to 1002.2003–6 issued under sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314.

§ 1002.000 *Scope of Part.* In recognition of the fact that formal advertising is the basic method of procurement by the Government, this part gives detailed guidance to Air Force procurement personnel for adapting formal advertising procedures to use in fulfilling as many

procurement requirements as possible. In particular, subpart T of this part sets forth many examples of special provisions which may be incorporated in Invitations for Bids to assure that the Government's requirements will be fully met and at the same time preserve the benefits of full and free competition which are inherent in formal advertising.

SUBPART A—USE OF FORMAL ADVERTISING

§ 1002.102 *Use of formal advertising*—(a) *Statutory requirement.* 10 U. S. C. 2304 (a) provides that all contracts for supplies or services, with certain stated exceptions, shall be made by formal advertising. (See Subpart B, Part 3, Chapter I of this title and Subpart B, Part 1003 of this chapter for discussion of the exceptions.)

(b) *House of Representatives Report.* The House Committee on Armed Services, section 2 (e) of House Report No. 1688 (84th Congress, 2nd Session, January 1956) accompanying H. R. 8710, has stated as follows:

> The amendment adds a new subsection. In it, we have stated positively the intention of Congress that all procurement shall be by advertised bidding. We have said, in clear language, that none of the exceptions 2 (c) (1) through (17) shall be used by the agency head unless the facts and circumstances in justification thereof are clear and convincing.
>
> We mean by this that "borderline" cases or "Grey areas," as they are sometimes referred to, and any case in doubt or uncertainty shall be resovled in favor of advertised competitive bidding and not by resorting to these 17 exceptions.
>
> The Comptroller General, in his vigilant examination of the operation of this Act and of procurement practices generally, will, as the agent of Congress, be fully advised and fortified by this firm expression of congressional intent. And moreover, no agency head can now be in any doubt whatsoever as to what Congress expects of him. We cannot be more explicit.
>
> We propose that the trend shall be toward advertised competitive procurement and that advertised competitive procurement will be the rule, that in every case in which the agency head or his subordinates look toward the exceptions of the Act, they are met with the expression of congressional intent in this act, as amended, that what they do must be supported by a justification which is both clear and convincing. And the Congress will examine the findings that are required under the act, from time to time, to determine whether this mandate is being followed. We are determined that the trend which prompted this inquiry, shall be reversed.

(c) *Air Force policy.* (1) The Air Force policy is to use formal advertising procedures whenever possible notwithstanding the existence of a negotiation authority under 10 U. S. C. 2304 (a) and Subpart B, Part 3, Chapter I of this title and Subpart B, Part 1003 of this Chapter. Thus negotiation authority will be used only when the facts and circumstances of the procurement clearly indicate the need to use the authority.

(2) Before the negotiation authority of §§ 3.202 or 3.210 of this title is used, officials approving determinations and findings will satisfy themselves that formal advertising procedures cannot be used without detriment to the Government, and that the facts and circumstances in justification of negotiation are clear and convincing.

(d) *Classified procurements.* Formal advertising will be used for classified procurements when the Government's interest will be better served for reasons of enlarged competition and opportunities for small business, after giving due consideration to security requirements with reference to the data supplied to bidders. Otherwise, classified procurements will be negotiated pursuant to 10 U. S. C. 2304 (a) (12). Invitations for Bids for classified procurements will be made available only to properly cleared representatives of concerns invited to bid on classified work.

SUBPART B—SOLICITATION OF BIDS

§ 1002.201 *Preparation of forms*—(a) *Formal specifications.* Every item on an IFB which is covered by drawings, plans, or specifications will contain a reference to all applicable drawings, plans, and specifications. (See §1001.305 of this chapter for a listing of the various types of specifications in order of preference.) At least one copy of each referenced drawing, plan, or specification will be on file at the AF installation which issues the IFB prior to such issuance. When bids are invited on an item to be supplied according to drawings, plans, or specifications, and when distribution to prospective bidders of the applicable drawings, plans, and specifications with the IFB (pursuant to § 2.201 (d) (i) of this title) or upon request (pursuant to § 2.201 (d) (ii) of this title), is impracticable, the IFB will state the exact mailing address of all locations where the IFB, containing a complete set of drawings, plans, and specifications, will be available for public display and examination.

(b) *Item description when no specification is available.* If the item to be procured is not covered by an authorized drawing, plan, or specification, and preparation of such data is not feasible, a description will be prepared and used containing all of the essential requirements to be met by the item.

(c) *"Or equal descriptions".* The use of a named product "or equal" may be a necessary technique in procurement on some occasions. When the "or. equal" procedure is used, bidders must be given the opportunity to offer substitute items, and such substitute items need not be exact duplicates of those products named. Rather, such items will be considered acceptable if they will perform the functions needed by the Government in essentially the same manner as the specified products. When the "or equal" provision is used, three commercial products will be listed as part of the descriptions unless this is impossible.

(d) *Description of authorized alternate bids.* The IFB may request that alternate bids be submitted on the basis of several different items or qualities of material; for example, where the Government wants to use a specific grade of material but the bids for that grade may be so high as to require the use of less expensive material, or where the Government wishes to have a certain quantity of work done, or items delivered, but the cost of such work or items may be so high that the Government's interest will require procurement of a lesser quantity. Similarly, the Invitation for Bids may request alternate bids in situations where two different items will be equally acceptable to the Government depending upon relative price. (See § 1002.2003–6.) However, alternate bids which are authorized in the IFB must be stated with a reasonable degree of preciseness to assure that the same degree of competition is obtainable on the alternate bids as is obtainable on the basic item described.

(e) *General provisions or conditions.* (1) The IFB will include general provisions according to the appropriate subpart of Part 1007 of this chapter, and any special conditions necessary to describe the Government's requirements fully, such as, but not limited to, the following:

(i) Kind of packing required.

(ii) Special marking of packages, boxes, invoices, etc.

(iii) Conditions of inspection.

(iv) Special factors to be used in evaluation of bids covering such areas as quality, qualifications and experience of bidders, financial and technical ability, cost of inspection, etc.

See Subparts A and T of this part.

(2) IFB's for the disposal of edible garbage will also contain the following provision:

> Prior to award the bidder agrees to furnish a certification from an Animal Disease Eradication Branch representative of the U. S. Department of Agriculture that he possesses adequate and approved garbage sterilization equipment. In the event of an acceptance of his bid by the Government, the bidder warrants that all garbage received under the contract will be sterilized not less than 30 minutes at 212° F. before being fed to swine.

§ 1002.201–51 *Option clauses.* Contracts resulting from formal advertisement may contain provisions reserving to the Government for a specified time an option to accomplish additional procurement under the contract (see, for example, § 1007.4026 of this chapter). These options are of two general types: an option to procure additional supplies or services during the fixed life of the contract; and an option to extend the life of the contract. The exercise of either type of option is considered to be a new procurement. This is because under the basic contract the contractor is not obligated to furnish the supplies or services covered by the option, but only to keep the option open for the time specified. The contractor becomes obligated to furnish the supplies or services covered by the option only when and if the Government exercises the option.

§ 1002.202 *Methods of soliciting bids.* Copies of unclassified IFB's for construction projects may be furnished to trade journals for the construction field. Copies of such IFB's may consist of Standard Form 20, "Invitation for Bids (Construction Contract)," and Standard Form 21, "Bid Form (Construction Contract)." Where IFB's call for unit prices or multiple lump sum bids, a copy of the applicable schedule sheet (Schedule "C") may also be furnished. Drawings, specifications, general and special provisions

will not be furnished to such trade journals.

§ 1002.202–4 *Publishing in newspapers.* (a) Paid advertisements in newspapers will be used in connection with the disposition of disposable property by sale. If time will permit, the publication of essential details of IFB's in newspapers (paid advertisements) may be authorized as shown in this section, when necessary to obtain effective competition, or in view of the quantity, character, or value of the supplies or services to be procured.

(b) *Insertions and limitations thereon.* Ordinarily, advertisements will be given six insertions in daily or four in weekly papers. When more than 10 days are to intervene between the date of the first publication and the date of opening bids, those in the daily newspapers inviting bids will at once be given four consecutive insertions, and immediately before the date of opening two consecutive insertions. In construction projects, such insertions will be placed in sufficient time prior to the date of opening to allow interested bidders to obtain plans and specifications and prepare bids. In case of emergency advertisements may be given one or more insertions, as time and circumstances permit.

§ 1002.202–50 *Distribution of invitation for bids*—(a) *Unclassified invitations.* (1) One copy of each invitation for bids (IFB) and one copy of each amendment to an IFB will be sent on the date issued directly to:

Procurement Information Center,
Office of the Deputy Chief of Staff for Logistics,
Department of the Army,
Room 732, Old Post Office Building,
Washington 25, D. C.

The Procurement Information Center is maintained for the public display of IFB's issued by the Army and the Air Force.

(2) Copies of each IFB will be distributed to persons or firms on the appropriate bidders' mailing list, selected according to § 1002.204. Copies of IFB's will be supplied to additional sources upon submission of AFPI Form 2B, "Request for Bid Set."

(3) Bid sets will be furnished to Government-owned manufacturing establishments as applicable.

(4) Copies of unclassified IFB's for construction projects may be furnished to trade journals for the construction field. (See § 1002.202–1 (e).)

(5) Copies of IFB's for both housing and off-site utility construction projects will be sent on date issued to:

Headquarters USAF,
Family Housing Division, AFCIE,
Washington 25, D. C.

(b) *Classified invitations.* For instructions on the distribution of classified documents, instead of sending a copy of the invitation to the Procurement Information Center as set forth in paragraph (a) (1) of this section for unclassified invitations, a letter will be sent to that office, in substance as follows:

This Office has issued Invitation for Bids No. ---------- dated ----------, bids to be opened on ----------, under classified project No. ----------

§ 1002.204 *Bidders' mailing lists.*

§ 1002.204–1 *General.* The bidders' mailing list is a list, index, file, or any other form of record of the names of suppliers who are believed to be potential bidders on the requirements of the Air Force.

(a) *Basic policies*—(1) *Advertised procurement.* It is mandatory that the complete list be obtained by the contracting officer. The selection of sources from the list will be at the discretion of the contracting officer, but will be in consonance with § 1.302–4 (b) (iii) of this title.

(2) *Negotiated procurement.* It is mandatory that the complete "list" be obtained by the contracting officer for procurement of supplies and services estimated to cost $10,000 or more unless the procurement is to be placed on an authorized selected-source basis. The selection of sources from the list will be at the discretion of the contracting officer, but will be in consonance with § 1.302–4 (b) (iii) of this title.

(b) *Augmenting lists*—(1) *Policy.* Contracting officers may add names and mailing addresses to the bidders "list." AF small business specialists may add names and addresses to those selected by the contracting officer for solicitation, and such additions will include any that may be furnished by Small Business Administration (SBA) representatives.

(2) *Sources.* The bidders' mailing list may be augmented in special instances on new items of procurement. The supplier so listed in advance will be requested to confirm the listing by filing Standard Form 129, "Bidder's Mailing List Application." If the supplier fails to furnish the application requested, his name may be removed from the list.

(c) *Local purchase use of AMA or AF depot lists.* Where an AF depot activity, having centralized procurement responsibility, administratively determines that an item or items normally procured by an AMA or AF depot will be purchased by a local purchase activity and specific authority for such action subsequently is delegated, the local purchase activity receiving such authority has the responsibility of soliciting bids necessary to assure full and free competition as prescribed by § 2.102 of this title.

(d) *Identification of surplus dealers.* Whenever the name of a surplus dealer is placed on a bidders' mailing list, the words "Surplus Dealer" will be placed directly beneath the name of the firm. See Subpart O, Part 1053 of this chapter for additional material concerning surplus dealers.

(e) *Synopses.* In addition to the operation of bidders' mailing lists, the facilities of the Department of Commerce for the dissemination of synopses of proposed procurements will be used according to AF procedures to make more widely available to all business enterprises (and particularly small business concerns and concerns in labor-surplus areas) public notice of procurement information sufficiently in advance of bid closing date to insure the broadest participation of qualified suppliers.

(f) *Limits on use.* In connection with the use of the bidders' mailing list, it is manifestly in the Government's best interest to consider carefully the administrative costs of each purchase in relation to the dollar value of the articles or services being procured to achieve maximum economy in procurement. On all items having local supply characteristics (such as sand and gravel), bids might accordingly be solicited only in the geographic area where performance can be expected. Thus, use of the bidders' mailing list should be on a basis that will promote the development of the maximum competition commensurate with the dollar value of the purchase to be made; and the degree of use of the entire mailing list in any case will be as broad as is compatible with efficiency and economy in securing adequate competition, as required by law. (See § 2.204–5 of this title.)

§ 1002.204–5 *Excessively long bidders' mailing lists.* The administrative cost of mailing and later evaluating hundreds of IFB's is often prohibitive. Following are two procedures which may be used in relation to a specific procurement to provide a reduced bidders' mailing list.

(a) Bidders' mailing lists may be rotated, but to do so will require considerable judgment on the part of the contracting officer as to size of transaction where rotation is justifiable. The following factors must be considered in rotating the bidders' mailing list: The interests of small business concerns, the existence of surplus labor areas, the adequacy of the curtailed list, and the best interest of the Government. In those instances where the entire bidders' mailing list is not used, the reduced list will contain the names of sufficient small business concerns to maintain the pro rata percentage between large and small business as established by the entire list. This procedure does not preclude consideration of bids received from bidders who were originally not invited to bid.

(b) In lieu of forwarding complete bid sets in the first instance, the method known as "pre-invitation notices" may be used. Following is the procedure: (1) Accomplish AFPI Form 2 "IFB Information" (post card), (2) attach the schedule sheet of the IFB which will contain the complete item description and condensation of other essential information from IFB to provide the potential suppliers with an intelligent basis for judging whether he has an interest in the procurement and (3) mail to all potential suppliers on the bidders' mailing list. Drawings, plans, and specifications will not normally be furnished with the pre-invitation notice but will be furnished at the time the IFB is mailed. Upon receipt of the replies to such notification within the specified time established in the AFPI Form 2, bid sets will be sent to those suppliers who have indicated an interest in the procurement. It is of utmost importance that the return date of AFPI Form 2 be sufficiently in advance of the mailing date of the IFB to permit an accurate estimate of the number of bid sets required. This procedure is particularly adaptable to major purchasing activities where lengthy IFB's and long bidders' mailing lists are common and is also recom-

mended for RFP's where the same circumstances exist.

§ 1002.204–53 *Requests from foreign entities for information as to acquisition of production and sales rights to United States military end items.* (a) It is AF policy to assist potential foreign producers of AF military end items to identify the United States qualified production sources. Whenever a foreign production source (either a friendly foreign government or a private entity of a friendly foreign government) requests information on the appropriate procedures to be followed in acquiring production or patent rights to an AF military end item, it is deemed essential that AF personnel provide a complete list of United States military department sources, together with addresses, as expeditiously as possible.

(b) AF personnel initially contacted by the foreign entity will assist the inquirer in identifying each AF item by stock number and nomenclature designation. In addition, the offshore unit will determine the AF activity which has procurement responsibility of each item and advise the inquirer to write directly to the director of procurement and production of that activity.

(c) Upon receiving such requests, the appropriate AF activity within the continental United States will:

(1) Secure a complete list of United States military sources together with addresses presently on record at that activity for the item involved.

(2) Send this list directly to the foreign entity and advise the foreign potential producer to contact the United States source(s) direct. This letter will be substantially as follows:

Forwarded herewith as per your request is a list of United States military sources presently on record at this activity as United States manufacturers of (item).

Inasmuch as the ultimate decision insofar as patient rights and technical assistance arrangements are concerned, rests with the owner of the patents which may be involved and the United States producers of the item, no commitment is made on behalf of the United States Government.

If further information is desired, it is requested that the attached list be utilized for contacting the United States manufacturers direct.

(3) No other information will be released to a foreign entity without the approval and coordination of the local office of the staff judge advocate.

(d) At the same time the list is forwarded, each United States producer whose name has been included on the list will be advised of the inquiry. Since the ultimate decision, insofar as patent rights and technical assistance are concerned, rests with the owner of the patents which may be involved and the United States producer(s) of the item, no position will be taken in this respect and no commitments made on behalf of the United States Government. This letter will be substantially as follows:

It is the policy of the Department of the Air Force to assist potential foreign producers of Air Force military end items to identify the United States qualified production sources.

Pursuant to this policy your company's name has been forwarded to (foreign entity's name and address) as per their request as a producer of (item description).

Inasmuch as the ultimate decision, insofar as patent rights and technical assistance arrangements are concerned, rests with the owner of the patents which may be involved and the United States producers of the item, no commitments can be or were made on behalf of the United States Government.

No further action on this matter will be taken by this activity. However, it is hoped that the Air Force has been of some assistance to you in establishing contact between your concern and a potential foreign source of (item).

(e) If a request is received from a foreign entity which contemplates production in other than a friendly country or if the AF item is classified, the request will be referred with recommendations to Hq USAF, attn: AFMPP.

(f) The AF policy is to lend every assistance in identifying the interested parties and to aid United States private entities in processing an application to the United States Department of State or Commerce for export license or approval of a contemplated production and sales program abroad. The procedures outlined in this section afford the Department of the Air Force ample opportunity at Hq USAF to make recommendations to the Department of Defense which, after review, forwards the Department of Defense recommendations to the Department of State. The Department of State is the established and solely authorized United States Government instrumentality for final determination in respect to release of United States military end items for production and sale outside of the continental United States by foreign entities.

§ 1002.250 *Price escalation for basic steel, aluminum, brass, bronze or copper mill products.* IFB's for furnishing basic steel, aluminum, brass, bronze, or copper mill products will NOT contain a price escalation clause, except in those instances where the market condition is such that the contracting officer is certain that all bids submitted would include an escalation provision. In the latter instance only, the clause specified in § 7.106–1 of this title is authorized. For instructions as to when an award may be made on IFB's which call for price escalation, see § 1002.406–3 (e).

§ 1002.251 *Amendments to invitations for bids.* Amendments, if issued, will refer to the number, date of issue, and opening date of original invitation; will clearly indicate the nature of the changes made therein and the extension of the opening date, if any; and will be serially numbered as issued. For example, the first amendment would be Amendment 1.

§ 1002.252 *Information to be furnished prospective bidders.* (a) Information regarding supplies or services for which bids have been invited will be furnished on application to all potential bidders desiring it, except that information concerning classified projects will be furnished only as authorized. (For information to bidders, see § 1002.407.)

(b) The estimated cost of the supplies included in an invitation will neither be furnished to prospective bidders nor will such information be shown on any copy of the invitation.

(c) Except on classified projects, prospective bidders will be permitted to examine the standard samples at the place where deposited, will be furnished with or allowed to examine plans and specifications of all work on which they desire to bid (a deposit may be required, if necessary) and will be furnished with any information they need to enable them to act understandingly.

§ 1002.253 *Assistance not to be rendered.* No person employed by or serving with the Department will render assistance to bidders in the preparation of bids.

SUBPART C—SUBMISSION OF BIDS

§ 1002.301 *Method of submission.* While it is recognized that bids should be filled out, executed, and submitted by each bidder according to the instructions accompanying the appropriate bid forms, letter bids submitted in response to IFB's are acceptable provided such bids specifically accept all the terms and conditions of the invitation for bids and are otherwise responsive thereto, so that acceptance by the Government will result in a mutually binding obligation. However, in such a case the bidder must complete required forms prior to award if he is the successful bidder.

§ 1002.302 *Time of submission*—(a) *Hand-carried late bids.* It is the responsibility of bidders to see that their bids reach the designated office before the time fixed for the opening of bids. The purpose of this requirement is to give all bidders an equal opportunity, to prevent fraud, and to preserve the integrity of the competitive bid system. Consequently, bids hand carried by the bidder or his representative to the public opening and submitted after the contracting officer has declared that the time of opening has arrived will not be accepted by the contracting officer. This rule will be followed without regard to the length of time involved; for example, if the bid opening is scheduled for 11 a. m. and at that time the contracting officer has declared that the time of opening has arrived, any bid personally submitted thereafter by a bidder or his representative will not be accepted even though it may be only one or two minutes late. Late arrival of a hand-carried bid, not due to any fault or negligence of the bidder, does not come within the terms of the Invitation for Bids excusing "late arrival due solely to delay in mails for which bidder was not responsible."

(b) *Late bids received by mail.* Late bids received by mail will be handled as follows:

(1) The exact date and hour of mailing such bids, as shown by the cancellation stamp or by the stamp of an approved metering device, will be recorded in a "Late Bid Book" maintained for that purpose.

(2) Such late bids will be considered provided they are received before the award has been made and provided the failure to arrive on time was due solely to a delay in the mail for which the bid-

der was not responsible. When there is a reasonable doubt as to whether the failure to arrive on time was due solely to a delay in the mail, the local postmaster will be requested to make a determination as to whether the bid would, except for delay in the mail, have been received prior to the time of opening. Information received from the postmaster will be written on the envelope and authenticated by the signature of the contracting officer.

(3) The acceptable late bids will be opened and entered on the abstract of bids and so identified.

(4) Unacceptable late bids will be held unopened until after the award is made or all bids rejected and will then be returned to the bidder with an explanatory letter of transmittal.

§ 1002.303 *Modification or withdrawal of bids*—(a) *Modification of bids.* (1) As a general rule, bidders may not vary their proposals after bids are opened since this would nullify the entire procedure of letting public contracts on an open competitive basis. For this reason the terms and conditions of the Invitation for Bids provide that no bid or modification of a bid received after the time set for opening will be considered; except that when a bid or modification arrives by mail after the time set for opening, but before award is made, and the Government determines that the late arrival was due solely to delay in the mails for which the bidder was not responsible, such bid or modification will be considered. Notwithstanding this rule and subparagraph (2) of this paragraph, a late modification of a low bid which results in a decrease in the contract price which the Government must pay for the supplies or services being procured may be considered since such a modification would be in no way prejudicial to the other bidders.

(2) Although telegraphic bids will not be considered unless specifically authorized in the Schedule, bids may be modified by the telegraphic notice if such notice is received prior to the time set for the opening of bids. In addition a late telegraphic notice of modification will be considered if received before award is made and if the bidder proves to the satisfaction of the Government that:

(i) The modification was deposited for transmission in time for receipt by normal transmission prior to the time set for the opening of bids;

(ii) The failure to arrive prior to the time set for the opening of bids was due to no fault or neglect on the part of the bidder; and

(iii) The delay was attributable to an abnormal transmission time beyond the time usually required by normal transmission procedures.

(3) Attempted modifications of bids by telephone will not be considered.

(b) *Withdrawal of bids.* The terms and conditions of the Invitation for Bids provide that bids may be withdrawn by written or telegraphic notice received prior to the time set for the opening of bids. In addition, written withdrawals received late due to delay in the mails, and telegraphic withdrawals received late due to delay in transmission, will be considered if they meet the criteria established by paragraph (a) of this section for the consideration of written and telegraphic modifications respectively. Attempted withdrawals by telephone will not be considered.

SUBPART D—OPENING OF BIDS AND AWARD OF CONTRACT

§ 1002.401 *Opening bids*—(a) *Bid opened for purpose of identification.* If an unidentified bid must be opened for purposes of identification, this will be accomplished only by a contracting officer. After resealing the envelope, the contracting officer will write on the envelope an adequate explanation of the action, the date and time opened, and his signature. If a bid is opened by mistake, the contracting officer will write on the envelope an explanation of the action, the date and time opened, and his signature.

(b) *Unclassified invitations.* The contracting officer whose duty it is to open the bids will decide when the specified time has arrived and so declare to those present. He will then personally and publicly open all bids received and, when practicable, read them aloud to those present. A record of each bid will then and there be made.

(c) *Classified invitations.* The bid opening of a classified invitation for bids will not be accessible to the general public and no public record will be made of the bid price. However, the bid opening may be witnessed and the results recorded by only those properly cleared representatives of properly cleared suppliers, if the supplier concerned was invited to bid on the invitation.

(d) *Numbering copies of bids.* The contracting officer whose duty it is to open bids also will personally number one copy of each bid received serially in the order in which the bids were read and will retain these numbered copies in his possession or under the immediate supervision of an official of the Government, as set forth in § 2.401 of this title, until the accuracy of the abstract of bids (see § 1002.402) has been verified.

(e) *Delegation and responsibility.* The procedure described in paragraphs (a) through (d) of this section may be delegated to an assistant, provided the contracting officer retains full responsibility for the action of his subordinate.

(f) *Pertinent questions.* Pertinent questions asked at the opening will be answered fully, and the examination of bids by properly interested (and cleared, in the case of classified invitation) persons will be permitted as set forth in § 2.401 of this title, provided such action does not unduly interfere with the conduct of Government business.

§ 1002.402 *Recording of bids.* (Abstract of bids.)

(a) *Procedure.* For every invitation for bids, and abstract of bids will be prepared as soon as practicable after bids have been opened or as soon as it is decided to cancel the invitation before opening bids. The abstract will set forth all qualifications, deviations, and/or riders included with the bids.

§ 1002.403 *Rejection of bids*—(a) *Rejection authorized to be made by the contracting officer.* (1) Where all bids are rejected by the contracting officer pursuant to his finding, in writing, that the bids are not reasonable, or were not independently arrived at in open competition, or are collusive, or were submitted in bad faith, he will so report to the Commander, AMC, attn: MCPI (see § 3.215 of this title). Reports of possible violations of the antitrust laws or any other Federal criminal statutes relating to procurement will be made.

(2) The lowest bid will be rejected by the contracting officer if:

(i) An item description contained in a bid, when compared with the item description in the Invitation for Bids, does not sufficiently describe the item being offered to assure that it complies with the IFB description or if the bid does not otherwise conform to the essential requirements of the IFB.

(ii) The bidder is, at the time, debarred or ineligible (see § 1.603 (a) of this title); (for bidders in suspended status, see § 1.605–3 (a) of this title).

(iii) The bidder is unable to furnish satisfactory evidence that it is responsible: *Provided*, That if a performance bond has been required, rejection under this subdivision will be limited to those instances where a Facility Capability Report has been obtained according to Part 1052 of this chapter and is negative. In addition, rejection will be subject to the approval of the Deputy Director/Production, Hq AMC, or in his absence the Assistant Deputy Director/Production, Hq AMC. A favorable FCR will be considered as evidence that the bidder is responsible. Determination of whether the bidder is responsible in the sense of being "financially and otherwise able to perform" (see ASPR § 2.406–3 of this title) will take into account the following factors:

(*a*) The bidder's experience (skill of supervisory and operating personnel in work of the kind or type being procured).

(*b*) The reputation of the bidder (actual performance as to quality and delivery on previous Government contracts or delinquent deliveries on current contracts).

(*c*) The adequacy of the bidder's facilities to perform the work (sufficient machine tools, dies, jigs, gauges, buildings, inspection procedures, etc.).

(*d*) The adequacy of the bidder's financial resources to do the work, taking into consideration the delivery schedule, inventories, and payment rate on the proposed procurement.

(*e*) The adequacy of the number of personnel employed (engineers, laboratory technicians, toolmakers, machinists, etc.).

(3) All bids will be rejected and the Invitation for Bids canceled after opening but prior to award upon written determination by the contracting officer that the requirements of § 2.201 (d) of this title have not been met. If a claim or protest is made after that the requirements of § 2.201 (d) of this title have not been met, see § 1002.407 (g).

(b) *Manufacturer or regular dealer.* When the lowest bid is from a firm which is not a manufacturer or regular dealer and it is considered desirable to reject

such bid, request will be made to the Commander, AMC, for authority to reject this bid and to authorize the award to the next lowest bidder. In forwarding such requests, contracting officers will be careful to verify all statements contained therein which are given as the basis for rejection, so there may be no just cause for complaint.

(c) *Nonresponsive bids.* Deviations in bids from the requirements of the advertised specifications which go to the substance of the bid so as to affect either the price, quantity, or quality of the articles offered, and, therefore, are prejudicial to the rights of other bidders, make such bids nonresponsive. Examples of nonresponsive bids are the following:

(1) *Modifications of the item description.* Bids which deviate from the advertised specification relative to the design or components of the end item ordinarily will be found to go to the substance of the bid and, therefore, normally must be rejected. Bidders will not be permitted to modify bids containing such deviations after the opening of bids since such modification would be equally prejudicial to the rights of the other bidders.

(2) *Modifications of delivery schedules.* Normally the Invitation for Bids for supplies will set forth a desired delivery schedule and a somewhat longer maximum delivery schedule. A low bid offering a delivery schedule exceeding the desired delivery schedule but not exceeding the maximum delivery time specified in the IFB will not be rejected even though some other bidder may have offered to meet the desired delivery schedule. However, a low bid offering a delivery schedule exceeding the maximum delivery time specified in the IFB (or exceeding the required delivery schedule if the special provision in § 2.2003–2 of this title and § 1053.102 of this chapter has been used in the IFB) will be rejected as nonresponsive to the Invitation since such a longer delivery schedule must be presumed to have produced a lower price and thus to be prejudicial to the rights of the other bidders. Similarly, a bid which offers a conditioned delivery schedule, such as "I will meet the Government's desired delivery schedule if I am able to get materials without delay," will be rejected as nonresponsive (see subparagraph (3) of this paragraph).

(3) *Conditional or qualified bids.* Where a bidder attempts to condition or qualify its bid by stipulations not contained in the advertised requirements which modify those requirements, the bid will be rejected as nonresponsive to the Invitation for Bids (but see § 2.204 of this title and § 1002.404). For example, a bid will be rejected if it includes special provisions materially qualifying the terms of the Invitation for Bids, such as:

(i) A provision that in the event unsatisfactory material is delivered to the Government under the contract, the only remedy of the Government will be rescission of the contract and return of the material; (this would deviate from the Default clause).

(ii) A provision requiring the Government to make payment within a specified time after delivery; (this would deviate from the Payments clause).

(iii) A provision requiring the Government to determine whether the product offered complies with specifications, such as "I will deliver my part number 1775 which shall be considered to comply with specifications;" (normally, the burden of determining whether an item offered complies with specifications rests with the bidder unless the Government requests samples (see §§ 1002.403–51 and 1002.2003–4); or unless the Government requests descriptive literature and the noncomplying feature is clearly specified in the literature submitted (see §§ 1002.403–52 and 1002.2003–5).

§ 1002.403–50 *Rejection of bids because of internal administrative Air Force difficulties.* This section establishes the procedure to be followed when, after IFB's have been distributed, internal administrative difficulties are encountered which may result in: (a) Cancellation of the requirement, (b) rejection of all bids, or (c) a prolonged delay in making award. The primary objective of the procedure is to eliminate necessity of readvertising a procurement covering an identical requirement shortly after all bids have been rejected because of internal administrative difficulties which, when resolved, do not in any way affect the bid prices submitted by bidders.

(1) *Difficulties encountered prior to bid opening.* Immediate action will be taken to amend the IFB to extend the bid opening date for a sufficient time to allow for the elimination of the difficulties prior to bid opening.

(2) *Difficulties encountered after bid opening.* (i) Bids will not be rejected until difficulties have been resolved or it is determined they cannot be resolved.

(ii) Bids received will be evaluated and the lowest responsible bidder(s) determined.

(iii) If it becomes apparent that the difficulties cannot be resolved in time to assure award of a contract(s) prior to the expiration of the bid acceptance period, action will be taken to obtain from the lowest responsible bidder(s) an extension of the bid acceptance period(s).

(iv) Failure to resolve the administrative difficulties and effect award of the contract(s) to the lowest responsible bidder prior to the expiration of the bid acceptance period (or any unqualified extensions thereto) will be cause for rejection of all bids and readvertisement. Award to other than the lowest responsible bidder is not authorized.

§ 1002.403–51 *Samples.* (a) Samples will not be requested except when they are absolutely necessary to evaluate bids. When samples are required as necessary for evaluation of bids, the Invitation for Bids will set forth this requirement and will state that failure of a bidder to furnish samples will result in rejection of that bid. When samples are required, the Invitation for Bids will also provide that, if a bidder has previously offered a product which has been previously procured or previously tested so that further testing of a sample would not add to the Government's knowledge of the acceptability of the product, the requirement for furnishing samples may be waived as to that bidder.

(b) Under an Invitation for Bids which requires the submission of samples (see § 1002.2003–4), a bid which complies with the specification as advertised, but is accompanied by a sample which fails to meet such specifications, will be rejected as nonresponsive since an award would only bind the bidder to perform in accordance with the sample.

§ 1002.403–52 *Descriptive literature.* The provisions of §1002.403–51 are equally applicable if the Invitation for Bids called for the furnishing of descriptive literature (see § 1002.2003–5) rather than samples.

§ 1002.404 *Minor informalities or irregularities in bids*—(a) *General.* The terms and conditions of the Standard Forms for Invitations for Bids reserve to the Government the right to waive any minor informality or irregularity in bids received. The informalities or irregularities which a contracting officer properly may waive are those of form and not of substance, or some immaterial and inconsequential defect in or variation of a bid from the exact requirements of the Invitation for Bids such as would not affect either the conformity of the equipment to the advertised specifications or the accountability or liability of the contractor to the Government in the event of delays or failure to perform. An express and positive condition imposed by a bidder which does, or may, materially affect the rights of the parties under the intended contract does not fall within this definition. For example, a contracting officer will not waive as an "informality," or permit the bidder to correct after bid opening, a condition imposed by the bidder for the purpose of limiting liability in the event of delay or failure to perform to such an extent as to restrict materially the rights of the Government. The primary question is whether the deviation proposed goes to the substance of the bid so as to affect price, quantity or quality of the end items offered, or is merely a matter of form or some other immaterial variation from the exact requirements of the Invitation for Bids such as would not affect price, quantity, or quality.

(b) *Bids; lack of signature.* The decisive question in cases where the bid is not signed is whether acceptance of the bid as submitted will effect a contract binding on the bidder. Thus, generally, the failure of a bidder to sign a bid, even though it bears a typewritten signature, is a substantive defect which may not be waived after the opening of bids. However, some firms have formally adopted or authorized the execution of documents by a typewritten, printed, or rubber-stamped signature and where such authorization is in effect no written signature is necessary. Also, an unsigned bid may be accompanied by other material which clearly indicates the bidder's intention to be bound by the unsigned bid document, in which case the failure to

sign the bid may be treated as a mere informality; for example, the submission of a bid bond, or letter forwarding a sample, signed by the bidder and referring to and clearly identifying the bid itself.

(c) *All-or-none qualifications.* A bid is not rendered nonresponsive by the fact that the bidder specifies that award will be accepted only on all, or a specified group, of the items included in the Invitation for Bids. However, such all-or-none qualifications go to the substance of the bid and bidders submitting bids containing all-or-none qualifications will not be permitted to withdraw or modify those qualifications after the opening of bids.

(d) *Acknowledgement of receipt of amendments.* A bid which fails to acknowledge receipt of all amendments to the Invitation for Bids, as required by the Invitation, usually places the bidder in a position to elect, after the opening of bids, to acknowledge the receipt or to avoid award by denying receipt; therefore, such a bid will be rejected as nonresponsive unless the bid as received clearly indicates that the bidder must have received all amendments (for example, when only one amendment was issued, which added an item to the Invitation, and the bid quotes a price for that item) in which case the failure to formally acknowledge receipt may be waived as an informality. Similarly, if a representative of the bidder who is authorized to bind the bidder states to a responsible Government employee, prior to the opening of bids, that all the amendments were received, identifying them to assure that there is no misunderstanding, that statement may be considered to be the required acknowledgment. Finally, failure to acknowledge an amendment which clearly could have no effect on price, quantity, or quality (an amendment changing only Government administrative data, for example) may be waived as a minor informality.

(e) *Failure to furnish a bid bond.* A bidder's failure to furnish a bid bond, if required by the Invitation for Bids, may be waived by the contracting officer, and the bidder permitted to furnish the bond late, only if investigation establishes clearly that failure to furnish the bid bond with the bid was due solely to oversight or some other excusable cause and not due to the bidder's inability to obtain a bid bond because of its financial status or some similar reason.

§ 1002.405 *Mistakes in bids.* After the opening of bids, contracting officers will examine all bids for mistakes. In cases of obvious error, and in cases where the contracting officer has reason to believe that a mistake has been made, he will request from the bidder a verification of the bid. If the bidder alleges a mistake, the matter will be processed as set forth in § 2.405 of this title. All of the foregoing action will be taken before the award is made.

§ 1002.405–1 *Obvious or apparent mistakes of a clerical nature.* Additional examples of obvious or apparent mistakes are: error in extension of unit prices, error in designation of unit, and transportation of prices for delivery f. o. b. origin and f. o. b. destination. If the contracting officer corrects an obvious or apparent mistake of a clerical nature pursuant to § 2.405–1 of this title, he will include in the contract file a written statement of the action taken.

§ 1002.405–2 *Mistakes disclosed after opening and prior to award other than obvious or apparent mistakes of a clerical nature.* (a) The authority in § 2.405–2 of this title to make administrative determination in connection with mistakes in bids is based upon the establishment of clear and convincing evidence. In order to authorize the correction of an allegedly erroneous bid after the bids have been opened, the records submitted should contain the best evidence available conclusively establishing not only the existence of error, but its nature, how it occurred, and what the bidder actually intended to bid. A mere statement that the administrative officials themselves are satisfied that an error was made ordinarily will not suffice. The question of whether a bidder may change a bid after the bids have been opened—because of error therein—always presents a matter of serious concern in a factual situation. The form of such evidence necessarily will vary with the circumstances of particular cases, but it should always be the best evidence available.

(b) (1) No implementation.

(2) No implementation.

(3) Headquarters USAF letter March 3, 1955, granted a deviation as follows: "Authority is hereby granted to deviate from 32 CFR 2.405–2 (b) (3). The authority for making the determinations set forth in 32 CFR 2.405–2 (a) may be vested in the Deputy Director of Procurement, Headquarters, AMC, and in his absence in the Assistant Deputy Director of Procurement."

(c) Each proposed determination will be reviewed by the Staff Judge Advocate, Hq AMC, prior to issuance.

(d) (1) In the case of any suspected mistake in bid, the contracting officer will immediately contact the bidder in question and request him to examine again the requirements of the Invitation for Bids, together with the bid which he has submitted, for purpose of verifying this bid. If the bid is verified, the contracting officer will consider the bid as originally submitted. There may be cases where the bid is conditioned upon acceptance within such a fixed time that the bid will probably expire by its terms before a decision can be received from Hq AMC. The proper course is for the contracting officer to request from the bidder an extension of time for acceptance of the bid so as to allow the decision to be made prior to expiration. If a mistake is alleged the contracting officer will request the bidder to make a written request indicating its desire to withdraw or modify the bid. The bidder's request will be supported by sworn statements (if possible) concerning the alleged mistake and be complete to the extent of including all evidence such as bidder's file copy of the bid, the original work sheets and other data used in preparing the bid, subcontractor's quotations published price lists, and any other evidence which conclusively establishes the existence of the error, how it occurred, and the bid actually intended.

(2) If, upon receipt of an allegation by a bidder of a mistake in bid, together with supporting evidence, the contracting officer is of the opinion, based on a review of the evidence submitted and other relevant data, that the bidder should not be authorized to modify or withdraw its bid, he will so inform the bidder and ask whether the bidder wishes to withdraw the allegation of mistake. Contracting officers will not attempt to dissuade bidders from their allegations of mistake by adopting an arbitrary attitude. All cases where the contracting officer is of the opinion that withdrawal or modification should be allowed and all cases where the bidder declines to withdraw the allegation of mistake will be submitted to Hq AMC for decision.

(3) When the bidder fails or refuses to furnish evidence in support of a suspected or alleged mistake and the contracting officer must consider the bid in the form submitted the contract file will be documented to show the attempts made to obtain information in support of the suspected or alleged mistake.

(e) The data required by § 2.405–2 (e) of this title will be submitted in the most expeditious manner to the Commander, AMC, attn: MCPPP, marked "Immediate Attention—Mistake in Bid." Purchase Policy Staff Division (MCPPP), Hq AMC, will evaluate the facts presented and prepare an administrative determination according to § 2.405–2 (a) of this title for signature of the administrative official designated in paragraph (b) (3) of this section.

(f) In addition to § 2.405–2 (g) of this title, copies of all administrative determinations will be included in the official contract file. If modification is authorized and award is made to the bidder alleging the mistake, a copy of the determination will be furnished to the finance officer to support payment.

§ 1002.405–3 *Disclosure of mistakes after award.* (a) When a mistake in a contractor's bid is not discovered until after the award, the situation is similar to that of a mistake in a negotiated contract which is not discovered until after the contract has been signed. In such cases the method of correction depends primarily on what effect correction of the mistake would have. If correcting the mistake would make the contract more favorable to the Government, the mistake may be corrected by a supplemental agreement.

(b) If correcting the mistake would make the contract less favorable to the Government, the contracting officer will refer the case, as specified in paragraph (c) of this section to Hq AMC, together with the following data:

(1) A copy of the contract containing the mistake.

(2) A copy of the invitation and of the bid (if separate from subparagraph (1) of this paragraph).

(3) An abstract or record of the bids received.

(4) A written statement by the contractor specifying the relief requested together with supporting evidence, in-

cluding work sheets and other original papers, of the existence of the mistake and the manner in which it occurred.

(5) A written statement by the contracting officer (i) describing the supplies or services involved (ii) specifying how and when the alleged mistake was discovered (iii) specifying how the alleged mistake occurred such as through clerical or mathematical error in the contracting office or through an error in the bid, (iv) summarizing the evidence submitted by the contractor, (v) submitting any additional evidence considered pertinent, and (vi) indicating whether any contract amendment is recommended. If an amendment is recommended the written statement will also recommend exact contract language to accomplish the amendment.

(c) The data required by paragraph (b) of this section will be submitted to the Commander, AMC, attn: MCPPJS–2, who will take appropriate action according to Part 1056 of this chapter concerning correction of mistakes in contracts pursuant to Title II of the First War Powers Act as amended (55 Stat. 839; 50 U. S. C. App. 611).

(d) Correction of mistakes under paragraph (b) of this section involving the sale of Government-owned surplus property will be processed to the Comptroller General according to § 1056.004 (a) of this chapter.

§ 1002.406 *Award.* (a) When a contracting officer has invited and received bids he will, subject to such further approval as may be required, make the award and execute the necessary papers unless all bids are rejected.

(b) When bids are received by a contracting officer not authorized to make the award, the bids and the abstract of bids will be forwarded to the officer authorized to make the award (approving officer), with recommendations as to the bidder to whom the award should be made.

§ 1002.406–1 *Responsible bidder.* Within AMC, determination of bidder responsibility is accomplished by obtaining a Facility Capability Report according to Part 1052 of this chapter. This section is optional for use by other AF commands but will be used whenever doubt exists as to the responsibility of bidders to whom award is otherwise contemplated. See § 1002.403 (a) (2) (iii).

§ 1002.406–2 *Discounts.* (a) When bids otherwise equal offer the same discount rate, the bid offering the longer discount period will be accepted.

(b) The omission in a bid of a specified period within which a cash discount may be taken does not invalidate the offer since award to the bidder gives the Government the right to deduct the discount from any payments made within a reasonable time. No attempt to cure the omission will be made in this situation.

§ 1002.406–3 *Other factors to be considered.*—(a) *General.* (1) The term "price and other factors considered" contemplates that in making an award the Government will consider not only the prices offered but also the ability of the bidder to perform (see § 2.406–1 of this title and § 1002.406–1) and any cost factors which will affect the overall cost to the Government. However, acceptance of other than the lowest bid is not authorized simply because the supplies or materials offered are of a better quality than those offered by the lowest bidder so long as those offered by the lowest bidder meet the quality requirements, if any, specified in the IFB.

(2) The selection of proper evaluation factors is considered to be the most important judgment area of the contracting officer in the preparation of IFB's. It is only through these factors that the best interests of the Government may be served. However caution must be observed to insure that invitations to prospective bidders do not impose conditions or restrictions which tend to limit competition unless such restrictions are required by statute or otherwise permitted in the public interest. Bids may not be evaluated on any basis not provided for in the Invitation for Bids, except that cost of delivery may be considered in determining award whether expressly stated in the IFB or not.

(3) The use of formal advertising should not be avoided merely because the item to be procured is particularly complex or because normally only experienced firms have been able to fabricate the article. Reliance on the Facility Capability Report is normally justified in these cases. There may, however, in unusual instances be specialized procurements where it is known that some prior experience is essential. In such cases the IFB may require bidders to supply information concerning prior experience, and other suitable language as to qualifications required may be included in the IFB. (See § 1002.2003–3.)

(b) *Transportation costs.* In connection with bids submitted on an f. o. b. origin basis, transportation costs between the source of supply and the designated destination point or points will be considered in determining the lowest estimated cost to the Government. To facilitate the evaluation of bids and proposals and to insure accurate analyses contracting officers will request the advisory services of local transportation officers to assist in determining the lowest possible transportation costs to a given point. (See § 1.306–1 of this title.)

(c) *Qualified products.* If the Government wishes to limit a particular procurement to qualified products, the IFB should state that a qualified product is required. (See § 2.505–2 of this title.)

(d) *Multiple awards.* Advantages or disadvantages to the Government that might result from making multiple awards will be considered if the "Notice to Bidders" was included in the IFB. This factor will not be considered in bid evaluation if the referenced notice was not included in the IFB. In evaluating bids where multiple award is appropriate the cost of issuing and administering an advertised contract will be considered to be $50. (The above procedures are inapplicable to disposal sales.) The following examples will serve as a guide:

(1) An award will be made to the lowest responsible bidder on each item except where a bidder is low by a total of $50 or less; in the excepted case, award will be made to the next low bidder receiving award on some other item.

Illustration No. 1—One award:

	A	B	C
Item 1	$500	$515	$510
Item 2	705	700	710
Item 3	300	290	280
	1,505	1,505	(1,500)

In this illustration no bidder was low on any item by more than $50. Accordingly award would be made on the total amount rather than by individual items.

Illustration No. 2—Two awards:

	A	B	C
Item 1	($450)	$615	$510
Item 2	700	(640)	710
Item 3	300	(290)	285
	1,450	1,545	1,505

In this illustration Bidder A was $60 low on item 1 and Bidder B was $60 low on item 2, so award will be as indicated on these items because the bids mentioned were lower for these items than the $50 contract cost differential to be considered. Since Bidder C was low on item 3 in an amount of only $5 no award can be contemplated to be made to that low bidder because no bid was low by an amount less than the $50 contract cost differential. Accordingly award on this item should be made to that successful bidder on items 1 or 2 at the lowest cost to the Government, in this case Bidder B. When award is made in this manner, the reason for rejection of the low bid on item 3 will be stated on the abstract of bids and Standard Form 1036 as follows: "Low bid on Item 3 rejected as multiple award is not considered to be in the interest of the Government as contemplated by 32 CFR 2.406–3(f)."

Illustration No. 3—Two Awards:

	A	B	C
Item 1	($450)	$650	$510
Item 2	700	(640)	710
Item 3	300	(290)	285
Item 4	-----	(120)	100
	1,450	1,660	1,605

In this illustration Bidder A was $60 low on item 1 and Bidder B was $60 low on item 2, so award will be indicated on these items because the bids mentioned were lower for these items than the $50 contract cost differential to be considered. Since Bidder C was low on item 3 by $5, low on item 4 by $20, and low on the total of item 3 and 4 by $25, no award can be contemplated to be made to that low bidder because his low bids were low by a total amount of less than $50 contract cost differential. Accordingly, award on these items should be made that successful bidder on items 1 or 2 at the lowest cost to the Government, in this case Bidder B on both items. When award is made in this manner, reason for rejection of the low bids on items 3 and 4 will be stated on the abstract of bids and Standard Form 1036 as follows: "Low bids on Items 3 and 4 rejected as multiple award is not considered to be in the interest of the Government as contemplated by 32 CFR 2.406–3 (f)."

(e) *Price escalation.* When bids are received that include price escalation

which, if added to the base price, will still result in a lesser bid price with maximum escalation than that offered by a bidder submitting a fixed-price bid, award will be made to the bidder whose net cost is the lowest to the Government, provided the bid is responsive and determined satisfactory to the Government with respect to all factors in the invitation. This applies to invitations for bids which do not provide for escalation. (See § 1002.250.)

§ 1002.407 *Information to bidders*—(a) *Responsibility of contracting officers.* Before giving the information to representatives of bidders, the contracting officer will satisfy himself that information furnished is for the exclusive use of the bidder and that it will not come into the hands of persons not authorized to receive it. (For information to be furnished prospective bidders, see § 1002.252.)

(b) *Information concerning awards made.* (1) After a source has been selected and the contractor has been notified of an award of an advertised contract, the contracting officer will notify unsuccessful bidders that their bid was not accepted, and extend the appreciation of the procuring activity for the interest the unsuccessful bidder has shown in submitting a bid.

(2) In the case of classified invitations, information regarding the name of the successful bidder and the contract price will be furnished only to unsuccessful bidders or suppliers invited to bid, and then only upon request. No information regarding a classified opening may be furnished by telephone.

(3) Cost breakdowns or other cost or profit information submitted by any supplier will NOT be revealed to any other supplier.

(4) If a request is received from an inquirer who is not a bidder or representative of a bidder concerning an unclassified invitation for bids, the contracting officer may furnish the names of the successful bidders and the prices at which awards were made. Where such requests require a large amount of work, the inquirer will be informed where a copy of the abstract of bids may be seen by a representative of his office.

(5) The procedures set forth in this section are not intended to apply to requests for general information concerning purchases made over extended periods of time, such as one for information on the number of parachutes purchased during a year and the prices paid therefor. Such requests will be returned and the inquirer informed that it is not AF policy to compile and disseminate such information.

(c) *Notice of protest against award.* (1) Notice will be given promptly to all bidders affected of any protest or objection against the awarding of a contract to any particular bidder so that, if the interested parties desire, they may take action in their own behalf before further steps are taken in the matter of awarding the contract.

(2) Contracting officers will accept all protests or objections to the award of a contract whether submitted by a bidder or nonbidder. If the protest is submitted orally, the contracting officer will advise the protestor that this subchapter requires the protestor to confirm his protest in writing within such time as the contracting officer may require and that award will be withheld at least until that time has expired. If the written protest is not received within the required time, the oral protest may be disregarded and award made in the normal manner unless the contracting officer, upon investigation, believes that remedial action is required, in which event such action will be taken. If the written protest is received within the required time, the contracting officer will investigate the matter and decide whether the protest is, in his opinion, valid. If his conclusion is affirmative, he will take necessary action to rectify the erroneous action. If his conclusion is negative, the contracting officer will make a written statement of his opinion in the matter, supported by copies of all pertinent papers. The contracting officer will submit the protest and statement directly to the Director of Procurement and Production, Hq USAF, for submission to the Comptroller General for decision. The contracting officer will be guided by the decisions of the Comptroller General. Previous Comptroller General decisions on this subject are as follows: 13 Comp. Gen. 315 and 16 Comp. Gen. 497. Submission of protests to the Comptroller General under this section may be dispensed with by the contracting officer if he is satisfied that the protest is without any reasonable degree of foundation or that it was made solely to obstruct and hinder the contracting officer or the otherwise successful bidder. In such case, the contracting officer on his own responsibility, or after asking such advice as he may desire, may disallow the protest, advising the protestor in writing.

(d) *When all bids are rejected.* When decision has been made to reject all bids, the contracting officer will, if otherwise expedient, inform each bidder of the fact that all bids have been rejected and the reason for such action. When it is necessary to reject all bids on a construction project IFB on the basis that they are too high, the Government's estimate of the construction project will also be furnished to each bidder.

(e) *Protest after award.* If a claim or protest is made after award that the requirements of § 2.201 (d) of this title have not been met, the matter will be forwarded promptly to Director of Procurement and Production, Hq USAF, through the Commander, AMC, attn: MCPPP, with a full statement of the facts and recommendations with respect to the consideration and disposition of such claim or protest.

§ 1002.408 *Synopses of contract awards.*

§ 1002.408–50 *Preparation and transmittal of synopses.* Purchasing offices will prepare and send one copy of synopses to the addressees below. The synopsis will be forwarded before the close of business at the end of each week. It will be sent by airmail or ordinary mail, whichever is considered most expeditious. Negative summaries are not required.

(a) U. S. Department of Commerce, 433 West Van Buren Street, Room 1300, Chicago 7, Ill.

(b) Procurement Information Center, Office of the Deputy Chief of Staff for Logistics, Department of the Army, Room 732, Old Post Office Building, Washington 25, D. C.

§ 1002.450 *Distribution of bids and abstracts*—(a) *Contracting officer.* The original of all rejected and unsuccessful bids, a copy of the accepted bid, and a copy of the abstract of bids will be retained by the contracting officer.

(b) *Procurement information center.* Within 3 working days after bids have been opened and final action taken, or after it is decided to cancel the invitation before opening bids, a copy of the abstract will be mailed directly to the Procurement Information Center (see § 1002.408–50 (b) for address).

SUBPART E—QUALIFIED PRODUCTS

§ 1002.503 *Qualification of products.*

§ 1002.503–1 *Opportunity to qualify.* (a) The Directorate of Engineering Standards, Wright Air Development Center, ARDC, issues a daily activity report which lists and identifies all specifications covering commodities requiring qualification testing which are used by the Air Force. Using this daily report as its notification, Contract Distribution and Files Branch (MCPSD), Hq AMC, and the responsible office at AMC field procurement activities will notify all known manufacturers by letter stating the AF policies on procurement of qualified products and encouraging interested manufacturers to contact the Directorate of Engineering Standards, Wright Air Development Center, ARDC, for engineering data, specifications, and instructions for authorization of tests. MCPSD also will forward each specification number, nomenclature, and name of qualified activity, listed in the daily activity report, to the U. S. Department of Commerce, Room 1300, 433 West Van Buren Street, Chicago 7, Ill., for publication in the daily "Synopsis of U. S. Government Proposed Procurement, Sales and Contract Awards."

(b) Unlisted manufacturers requesting to be added to the bidders' mailing list as manufacturers of products covered by a Qualified Products List will be informed by MCPSD and the responsible office within AMC field procurement activities of the AF policies on procurement of qualified products.

§ 1002.504 *Qualified products lists.*

§ 1002.504–50 *Extension of qualification.* Unless qualification is extended as stated in this section, qualification will apply only to the product manufactured at the plant which produced the sample tested. The AF activity responsible for this qualification may extend it to the identical product made by other plants of the same manufacturer or by plants of his subcontractor, after it has ascertained either of the following:

(a) By inspection or test of this identical product, it is equal in all respects to the qualified product.

(b) Quality control and processing standards at these other plants are high enough to guarantee a product equal in all respects to the qualified product. This finding usually will be based upon inspection of these plants.

§ 1002.505 *Procurement of qualified products.*

§ 1002.505–2 *Solicitation of bids.* The following specific provision will be inserted in IFB's when soliciting bids involving qualified products:

Qualified products: With respect to products requiring qualification, awards will be made only for such products as have, prior to the time set for opening of bids, been tested and approved for inclusion in the Qualified Products List (insert here the title of the applicable Federal or Military Qualified Products List or Lists), whether or not such products have actually been so listed by that date. Manufacturers are urged to communicate with the (insert here the name and address of the applicable office) and arrange to have the products that they propose to offer tested for qualification. Manufacturers having products not yet listed, but which have been qualified or approved, are requested to submit evidence of such qualification or approval with their bids, so that their bids may be given consideration.

Contracting officers will forward requests for qualification tests received from suppliers to the appropriate testing laboratory listed in the specification concerned. An interim reply will be made to the suppliers advising them of the disposition of their request.

SUBPART T—IFB PROVISIONS

§ 1002.2001 *Long form invitation.* Set forth below is a sample Invitation for Bids using Standard Forms 30, 31, and 36. The sample does not include the contract General Provisions. General Provisions, according to the appropriate part of Part 1007 of this title, will be included in each Invitation for Bids. (In the case of supply contracts Standard Form 32, with modifications and additions as appropriate, will be used.) Similarly omitted from the sample are MCP 71–163 and 71–163C, which are referred to in paragraph D, "Preservation, Packaging, Packing and Marking," in the sample Schedule. Where that provision is used in an Invitation for Bids, the forms should be attached.

SAMPLE

Standard Form 33 (Revised June 1955)
Prescribed by General Services Administration
Regulation 1–11–300.03

INVITATION AND BID
(SUPPLY CONTRACT)

ISSUED BY: Headquarters, Air Materiel Command
Aeronautical Equipment Division
Wright-Patterson Air Force Base, Ohio

DEPARTMENT: AIR FORCE

ADDRESS: Attn: MCPEC-P

INVITATION FOR BIDS

DATE ISSUED: 15 October 1956

INVITATION NO.: IFB 33-600-57-000

(1 original and 1 carbon)
Sealed bids in Duplicate, subject to (1) the Terms and Conditions of the Invitation for Bids, (2) the attached Schedule, (3) General Provisions (Standard Form 32, Nov. 1949 edition), which are incorporated herein by reference, and (4) such other contract provisions and specifications as are attached or incorporated by reference in the Schedule, will be received at the above office until 11 o'clock a.m., Eastern Standard time, at 15 November 1956 (date) and at that time publicly opened, for furnishing the supplies or services described in the attached Schedule.

Property Class: 05-C

General information and instructions to bidders are contained in the terms and conditions on the reverse hereof.

BID

DATE

NOTE: Bids specifying less than 60 days acceptance time may not be acceptable.

In compliance with the above, the undersigned offers and agrees, if this Bid be accepted within _____ calendar days (*60 calendar days unless a different period be inserted by the bidder*) from the date of the opening, to furnish any or all of the items upon which prices are quoted, at the price set opposite each item, delivered at the designated point(s) within the time specified in the attached Schedule.

BIDDER REPRESENTS. (*Check appropriate boxes*)

(1) That the aggregate number of employees of the bidder and its affiliates is ☐ 500 or more, ☐ less than 500.

(2) That he is a ☐ regular dealer in, ☐ manufacturer of, the supplies bid upon.

(3) (a) That he ☐ has, ☐ has not, employed or retained any company or person (other than a full-time bona fide employee working solely for the bidder) to solicit or secure this contract, and (b) that he ☐ has, ☐ has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract; and agrees to furnish information relating to (a) and (b) above as requested by the contracting officer. (*For interpretation of the representation, including the term "bona fide employee," see Code of Federal Regulations, Title 44, Part 150.*) See Sched. Prov. A. hereof.

TYPE OF BUSINESS (*Check appropriate box*)

☐ Individual ☐ Partnership ☐ Corporation

INCORPORATED IN THE STATE OF (*Complete, if corporation*)

FULL NAME OF BIDDER (*Type or print*)

BUSINESS ADDRESS OF BIDDER (*Street, city, zone, and State. Type or print*)

TELEPHONE NO.

SIGNATURE OF PERSON AUTHORIZED TO SIGN BID

TYPE OR PRINT SIGNER'S NAME AND TITLE

TERMS AND CONDITIONS OF THE INVITATION FOR BIDS

1. *Preparation of bids.* (a) Bidders are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at the bidder's risk.

(b) Each bidder shall furnish the information required by the bid form. The bidder shall print or type his name on the Schedule and each Continuation Sheet thereof on which he makes an entry. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent must be accompanied by evidence of his authority.

(c) Unit price for each unit bid on shall be shown and such price shall include packing unless otherwise specified. A total shall be entered in the Amount column of the Schedule for each item bid on. In case of error in extension of price, the unit price will govern.

(d) Alternate bids will not be considered unless authorized by the Invitation.

(e) When not otherwise specified, bidder must definitely state time of proposed delivery.

(f) Time, if stated as a number of days, will include Sundays and holidays.

2. *Submission of bids.* (a) Bids and modifications thereof shall be enclosed in sealed envelopes addressed to the issuing office, with the name and address of the bidder, the date and hour of opening, and the invitation number on the face of the envelope. Telegraphic bids will not be considered unless authorized by the Invitation; however, bids may be modified by telegraphic notice provided such notice is received prior to the time set for the opening of the bids.

(b) Samples of items, when required, must be submitted within the time specified, and unless otherwise specified by the Government, at no expense to the Government. If not destroyed by testing, samples will be returned at bidder's request and expense, unless otherwise specified by the Invitation.

(c) In the event no bid is to be submitted, do not return the Invitation unless otherwise specified. However, a letter or post card should be sent to the issuing office advising whether future Invitations for the type of supplies or services covered by this Invitation are desired.

3. *Withdrawal of bids.* Bids may be withdrawn by written or telegraphic notice (see 4 below).

4. *Late bids.* Bids and modifications or withdrawals thereof received after the time set for opening will not be considered, unless they are received before the award is made, and it is determined by the Government that failure to arrive on time was due solely to delay in the mails for which the bidder was not responsible.

5. *Government-furnished property.* No material, labor, or facilities will be furnished by the Government unless otherwise provided for in the Invitation.

6. *Labor information.* Attention is invited to the possibility that wage determinations may have been made under the Walsh-Healey Public Contracts Act providing minimum wages for employees engaged in the

manufacture for sale to the Government of the supplies covered by this Invitation for Bids. Information in this connection, as well as general information as to the requirements of the Act concerning overtime payment, child labor, safety and health provisions, etc., may be obtained from the Wage and Hour and Public Contracts Divisions, Department of Labor, Washington 25, D. C. Requests for information should state the Invitation number, the issuing agency and the supplies covered.

7. *Discounts*—(a) Prompt-payment discounts will be included in the evaluation of bids, provided the period of the offered discount is sufficient to permit payment within such period in the regular course of business under the delivery, inspection, and payment provisions of the Invitation and Bid.

(b) In connection with any discount offered, time will be computed from date of delivery of the supplies to carrier when delivery and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when delivery and acceptance are at either of those points, or from date correct invoice or voucher (properly certified by the Contractor) is received in the office specified by the Government if the latter date is later than the date of delivery. Payment is deemed to be made, for the purpose of earning the discount, on the date of mailing of the Government check.

8. *Award of contract*—(a) The contract will be awarded to that responsible bidder whose bid, conforming to the Invitation for Bids, will be most advantageous to the Government, price and other factors considered.

(b) The Government reserves the right to reject any or all bids and to waive informalities and minor irregularities in bids received.

(c) The Government may accept any item or group of items of any bid, unless the bidder qualifies his bid by specific limitations. UNLESS OTHERWISE PROVIDED IN THE SCHEDULE, BIDS MAY BE SUBMITTED FOR ANY QUANTITIES LESS THAN THOSE SPECIFIED; AND THE GOVERNMENT RESERVES THE RIGHT TO MAKE AN AWARD ON ANY ITEM FOR A QUANTITY LESS THAN THE QUANTITY BID UPON AT THE UNIT PRICES OFFERED UNLESS THE BIDDER SPECIFIES OTHERWISE IN HIS BID.

(d) A written award mailed (or otherwise furnished) to the successful bidder within the time for acceptance specified in the bid results in a binding contract without further action by either party.

9. *Seller's invoices.* Invoices shall be prepared and submitted in quadruplicate unless otherwise specified. Invoices shall contain the following information: Contract and order number (if any), item numbers, description of supplies or services, sizes, quantities, unit prices, and extended totals. Bill of lading number and weight of shipment will be shown for shipments made on Government bills of lading. The following certificate, signed by the Contractor or his authorized representative, will be shown on the original of the invoice:

"I certify that the above bill is correct and just and that payment therefor has not been received."

When the invoice is signed in the name of a company or corporation, the name of the person signing and the capacity in which he signs must appear. For example: "John Doe Company, by John Smith, Secretary," "Treasurer," or as the case may be.

NOTE 1: *Bids shall be submitted in sufficient time to reach the designated office prior to the time set for the opening of bids.* See Paragraphs 2, 3, and 4 of the terms and conditions on the preceding page.

NOTE 2: *Formal advertisement.* Bids submitted as a result of this Invitation will be evaluated in accordance with the regulations pertaining to formal advertising. Award of contract shall be in accordance with paragraph 8 of the terms and conditions on the preceding page.

NOTE 3: *Terms and conditions.* Bidders are cautioned to examine carefully all of the paragraphs of the terms and conditions on the preceding page.

NOTE 4: *Information.* The Buyer on this particular IFB, who may be contacted concerning this Invitation is [buyer's name, office symbol, and telephone number].

NOTE 5: *No bid.* Bidders receiving this Invitation as a result of being on the mechanized mailing list will not be considered for future procurements of the items listed herein if they fail to submit a bid unless they request that their name be retained on the mailing list for future procurements of these items.

NOTE 6: *Survey team.* If the Bid or Proposal outlined hereby is favorably considered, a survey team may contact your facility for the purpose of determining your financial and technical ability to perform. Current financial statements and other data pertinent to this purpose should be available at that time if not already on file with the Air Materiel Command.

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SCHEDULE
(SUPPLY CONTRACT)

PAGE NO. 1 | NUMBER OF PAGES OF SCHEDULE

REQUISITION NUMBER OR OTHER PURCHASE AUTHORITY: PR No. (Initiator and Symbol)
INVITATION NO.: IFB 33-600-57-000

ACCOUNTING AND APPROPRIATION DATA

Accounting and Appropriation Data will be included in the Award Schedule.

The supplies or services to be furnished, the specifications, the discounts, the time and place of delivery, and any other special terms and conditions applicable to the Invitation for Bids, are set forth below.

DISCOUNTS WILL BE ALLOWED BY BIDDER FOR PROMPT PAYMENT AS FOLLOWS:
_____ PERCENT, 10 CALENDAR DAYS; _____ PERCENT, 20 CALENDAR DAYS; _____ PERCENT, 30 CALENDAR DAYS.

ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number of Units)	UNIT	UNIT PRICE	AMOUNT
1.	Class: Light Assembly, Projection Printer, Type FN-7 in accordance with Specification MIL-L-26802 (USAF) dated 28 November 1955	42	ea.		

NAME OF BIDDER

Standard Form 32
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Standard Form 36
Prescribed by General Services Administration, Nov. 1949 Edition

CONTINUATION SHEET
(SUPPLY CONTRACT)

CONTRACT, ORDER, OR INVITATION NO. (As applicable)

PAGE NO. 2

ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number of units)	UNIT	UNIT PRICE	AMOUNT

A. CONTRACTOR'S STATEMENT OF CONTINGENT OR OTHER FEES FOR SOLICITING OR SECURING CONTRACTS.

If the bidder, by checking the appropriate box provided therefor in his bid, has represented that he has employed or retained a company or person (other than a full-time bona fide employee working solely for the bidder-contractor) to solicit or secure this contract, or that he has paid or agreed to pay any fee, commission, percentage, or brokerage fee to any company or person contingent upon or resulting from the award of this contract, he may be requested by the Contracting Officer to furnish a completed Standard Form 119, "Contractor's statement of Contingent or Other Fees" (December 1952 ED.). If the bidder has previously furnished a completed Standard Form 119 (December 1952 Ed.) to the office issuing this Invitation for Bids, he may accompany his bid with a signed statement (a) indicating when such completed form was previously furnished, (b) identifying by number the previous Invitation for Bids or contract, if any, in connection with which such form was submitted, and (c) representing that the statement in such form is applicable to this bid.

B. SUBCONTRACTING CONTEMPLATED:

Bidder represents that the estimated percentage of subcontracting contemplated on this procurement is _____ per cent.

C. F.O.B. POINT:

Articles called for herein shall be delivered F.O.B. Carrier's Equipment, wharf, or freight station (at Government's option) at or near contractor's plant, at a specified city or shipping point.

Specified City or Shipping Point _____

D. PRESERVATION, PACKAGING, PACKING AND MARKING:

Preservation, Packaging and Packing shall be in accordance with MCP 71-163 attached. Marking shall be in accordance with MCP 71-1630 attached.

E. INSPECTION AND ACCEPTANCE: Final inspection and acceptance shall be at Contractor's or Subcontractor's plant. Bidder shall indicate place of inspection in applicable space provided below.

Contractor's Plant _____
Name City State

Subcontractor's Plant _____
Name City State

NAME OF BIDDER OR CONTRACTOR

Standard Form 36
Nov. 1949 Edition

U.S. GOVERNMENT PRINTING OFFICE : 1953-O-716471

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CONTINUATION SHEET
(SUPPLY CONTRACT)

CONTRACT, ORDER, OR INVITATION NO. (As applicable)

PAGE NO. 3

ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number of units)	UNIT	UNIT PRICE	AMOUNT

F. DELIVERY:

The Government DESIRES delivery of the articles listed herein as follows: . . . . . days after receipt of written notice of award. If bidder is unable to meet the above delivery schedule, he may, without prejudice to evaluation of his bid, set forth below the delivery schedule he is prepared to meet provided, in no event shall the bidder's delivery schedule extend beyond . . . . . days after receipt of written notice of award, as bid proposing delivery after that period will be considered non-responsive to the invitation and will be rejected. If bidder does not state a different delivery schedule, the Government's desired delivery schedule stated above will apply.

Bidder's Proposed Delivery Schedule:

. . . . . days after receipt of written notice of award.

G. SHIPPING INSTRUCTIONS:

Except for Data, requests for shipping instructions for the supplies called for herein in accordance with Clause 28(a) shall be made as follows: TO: Commander, Air Materiel Command, Wright-Patterson Air Force Base, Ohio Attention: MCPSES.

H. GENERAL PROVISIONS:

The following General Provisions attached hereto shall be applicable to any contract resulting from this Invitation for Bids:

Standard Form 32 November 1949 Edition - Clauses 1 thru 20
MCP Form 71-32(5) dated 23 January 1956 - Clauses 21 thru 40

At this point any necessary alterations in printed clauses may be set forth, such as:

The following is hereby added to Clause 40 - Alterations:
"g" Clause 2 - Changes - is hereby designated as Clause 2(a) and the following paragraph (b) is added thereto:

(b) Disposition of Inventory Resulting from Changes. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment pursuant to the Changes Clause of this contract, the Contracting Officer shall have the right to prescribe the manner of disposition of such property.

NAME OF BIDDER OR CONTRACTOR

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§ 1002.2002 *Special schedule descriptions.*

§ 1002.2002–1 *General.* The sample Invitation for Bids set forth in § 1002.2001 can be adapted easily to cover many specialized forms of procurement. Several alternate sample provisions are set forth in §§ 1002.2002–2 through 1002.2002–4 as examples of types of procurement which can be accomplished by formal advertising. These samples are furnished as a guide only. In each Invitation for Bids the provision used in the Schedule must accurately describe the item being procured.

§ 1002.2002–2 *Sample schedule description limited to qualified products.*

ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number of Units)	UNIT	UNIT PRICE	AMOUNT
	QUALIFIED PRODUCTS: With respect to products requiring qualification, awards will be made only for such products as have, prior to the time set for opening of bids, been tested and approved for inclusion in the Qualified Products List (8408) whether or not such products have actually been so listed by that date. Manufacturers are urged to communicate with the (Commander, Wright Air Development Center, Wright-Patterson Air Force Base, Ohio, Attn: WCLCI-1 Equipment Laboratory) and arrange to have the products that they propose to offer tested for qualification. Manufacturers having products not yet listed, but which have been qualified or approved, are requested to submit evidence of such qualification or approval with their bids, so that their bids may be given consideration. The items listed below require qualification. (If only some items require qualification, the foregoing sentence should be revised to read "Items (Numbers) require qualification.")				
1.	Altimeter, Pressure, Range 0 to 80,000 ft, type MA-1 in accordance with specification MIL-A-8408 dated 20 Oct. 1954 and Amendment No. 1 dated 9 Sept. 1955, Aerpo No. 60-605. Contractor's Part Number _____ (USAF Installation P 141 FY 55)	285	ea.		

§ 1002.2002–3 *Sample schedule description of an "or equal" item.*

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CONTINUATION SHEET
(SUPPLY CONTRACT)

CONTRACT, ORDER, OR INVITATION NO. (If applicable) _____ PAGE _____

ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number of Units)	UNIT	UNIT PRICE	AMOUNT
1.	Nut Assembly, gang-channel steel nut aluminum alloy, channel type G12 10 32 x 1" spacing. Elastic Stop Nut part no. 22012-02-8 or equal, Nutt-Shell part no. 2700PW02 or equal, Kennedy part no. KY2-200, or equal.	300	ea.		
2.	Nut, speed steel, J type ½ x 31/64". Tinnerman Part No. A1783-1 or equal, Elastic Stop Nut Part No. 52FF070 or equal. Harrington part no. hC284-58 or equal. Stock No. 6500-514545.	200	ea.		

Offer of Equal Item:

When "or equal" is specified, and the item which the bidder proposes to furnish is offered as equal to the specified item, the bidder must submit the following information with his bid, otherwise the bid on that item will not be considered.

1. Complete descriptive data of the item offered as equal including type designation and trade name and giving all physical, mechanical, electrical and/or chemical details, as the case may be.

_____

_____

2. A statement setting forth all differences between the item offered and the item specified.

_____

_____

_____

If the space provided is inadequate concerning information to be furnished above, attach necessary information as a separate exhibit.

The procuring agency will make the award to the lowest responsible bidder submitting item that will accomplish the functions for which the item described above is intended. Bids are particularly invited from those concerns which commonly meet in competition for the articles described herein in regular commercial markets. There are no Government drawings or specifications available covering this item.

NAME OF BIDDER OR CONTRACTOR _____

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§ 1002.2002-4 *Sample schedule description where first article approval is required.*

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CONTINUATION SHEET
(SUPPLY CONTRACT)

CONTRACT, ORDER, OR INVITATION NO. (As applicable) | PAGE NO.

ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number of units)	UNIT	UNIT PRICE	AMOUNT
1.	S/N 2900-939600 Titler motion picture film, 110v AC, 19½" long by 6½" wide by 7½" high, 18.375 mm plus or minus .125 focal length lens. Internal light source and a rectangular ¼ inch x 6 inch space for inserting Title Cards. USAF Type LM-1 in accordance with USAF Drawing 52F17991.				
	Bid "A" (First Article, Approval Required)	48	ea.		
	Bid "B" (First Article, Approval Not Required)	48	ea.		

First Article Applicability:

Bidders who HAVE NOT previously furnished to the Government the articles referred to in item 1 above shall submit bid on Bid "A" which includes compliance with the following:

/Insert here a First Article Approval provision (see AFPI 7-4020)./

Bidders who HAVE previously furnished to the Government the articles referred to in item 1 above shall submit bid on Bid "B" which does not include compliance with the above First Article Approval provision.

Bids submitted under Bid "A" (First Article, Approval Required) or under Bid "B" (First Article, Approval Not Required) are equally acceptable to the Government, as applicable, and award will be made thereon with the best interest of the Government considered.

/Bid "A" and Bid "B" First Article Requirements also require special emphasis on the Delivery Schedule in order that same is clear. Following is an example of a method of handling delivery schedule when First Article Bid "A" and Bid "B" used. This provision would take the place of the Delivery provision (Schedule, paragraph F) of the sample IFB in AFPI 2-2001./

DELIVERY.

Delivery Schedule corresponding to Bid "A" (First Article Approval Required). The Government desires delivery of the supplies listed herein as follows:

Item 1 - One each First Article within 60 days after receipt of written notice of award. Balance to be completed within 180 days after receipt of written Government approval of First Article. If bidder is unable to meet the above delivery schedule, he may, without prejudice to evaluation of his bid, set forth below the delivery schedule he is prepared to meet provided, in no event shall the bidder's delivery schedule extend beyond the period set forth below, as bids proposing delivery after that period will be considered nonresponsive to the invitation and will be rejected.

NAME OF BIDDER OR CONTRACTOR

Standard Form 36 Nov. 1949 Edition

☆ U.S. GOVERNMENT PRINTING OFFICE: 1950-O-796271

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CONTINUATION SHEET
(SUPPLY CONTRACT)

CONTRACT, ORDER, OR INVITATION NO. (As applicable) | PAGE NO.

ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number of units)	UNIT	UNIT PRICE	AMOUNT

One each First Article within 90 days after receipt of written notice of award. Balance to be completed within 240 days after receipt of written Government approval of First Article.

If the Bidder does not state a different delivery schedule, the Government's desired delivery schedule stated above will apply.

Bidders Proposed Delivery Schedule:

Delivery Schedule corresponding to Bid "B" (First Article, Approval Not Required). The Government desires delivery of the supplies listed herein as follows:

Item 1 - Complete within 180 days after receipt of written notice of award. If the bidder is unable to meet the above delivery schedule, he may, without prejudice to evaluation of his bid, set forth below the delivery schedule he is prepared to meet provided, in no event shall the bidder's delivery schedule extend beyond 240 days after receipt of written notice of award, as bids proposing delivery after that period will be considered nonresponsive to the invitation and will be rejected.

If the Bidder does not state a different delivery schedule, the Government's desired delivery schedule stated above will apply.

Bidder's Proposed Delivery Schedule:

****

NAME OF BIDDER OR CONTRACTOR

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§ 1002.2002–5 *Schedule description where production sample is required.* Where production samples are required, the provision in the IFB Schedule may be the same as a "first article" provision (see § 1002.2002–4) except that the term "production sample" will be used instead of "first article" and a Production Sample Test clause (see § 1007.4021 of this chapter) will be used instead of a First Article Approval clause.

§ 1002.2002–6 *Sample schedule description where special maintenance tools and test equipment are being procured.*

ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number of Units)	UNIT	UNIT PRICE	AMOUNT
1A	Light Assembly, Projection Printer Type FN-7 in accordance with specification MIL-L-26802 (USAF) dated 28 November 1955.	42	ea.		
1B	The contractor agrees to furnish special maintenance tools and test equipment for item 1A above, to be selected in accordance with Form MCF 71-650 dated 25 April 1955, incorporated herein by reference, as supplemented by AMC Forms 263 and 321 attached hereto and made a part hereof.			LOT	1% of Item 1A.

§ 1002.2002–7 *Sample schedule description where Table 250 drawings and data list are required.*

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CONTINUATION SHEET
(SUPPLY CONTRACT)

CONTRACT, ORDER, OR INVITATION NO. (As applicable) | PAGE NO.

ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number of Units)	UNIT	UNIT PRICE	AMOUNT
1A	Light Assembly, Projection Printer Type FN-7 in accordance with Specification MIL-L-26802 (USAF) dated 28 November 1955.	42	ea.		
1B	The Contractor shall furnish ORIGINAL data for Item 1A above in accordance with Table 250 attached hereto, priced as follows:				
	Direct Reading Paper Van Dyke Negatives of Drawings and Data List, Including Parts Application List when required (Reproducible)	1	set		*
	Blueline Prints (Nonreproducible)	23	ea.		*
	Parts Application Data List (Non-reproducible)	12	ea.		*
1C	The contractor shall furnish REVISION data for Item 1A above, in accordance with Table 250 attached hereto, priced as follows:				
	Direct Reading Paper Van Dyke Negatives of Drawings and Data List, Including Parts Application List when Required (Reproducible)	1	set		*
	Blueline Prints (Nonreproducible)	23	ea.		*
	Parts Application Data List (Non-reproducible	12	ea.		*
	Original and Revision Data Applicability:				
	Bidders who HAVE NOT previously furnished to the Government data covering the material listed under Item 1A hereof, shall submit bid on the Original data called for herein.				
	Bidders who HAVE previously furnished to the Government data covering the material listed under Item 1A hereof, shall submit bid on the revision data called for herein.				

NAME OF BIDDER OR CONTRACTOR

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ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number of units)	UNIT	UNIT PRICE	AMOUNT
	Bids submitted on Original Table 250 data or Revision Table 250 data are equally acceptable to the Government, as applicable, and award will be made thereon with the best interest of the Government considered. *DATA PRICING - Bidders are requested to insert opposite the data items the price of such data. If the bidder does not insert price as requested above, or inserts the words "NO CHARGE FOR DATA" or similar language, the Government will consider that the data price is included in the cost of the end items and if the bid is the lowest received and otherwise acceptable, award will be made on that basis and so indicated in the resultant contract.				

NAME OF BIDDER OR CONTRACTOR

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§ 1002.2002–8 *Sample schedule description where technical data based on MCMTT Exhibit No. 1–5 is required.*

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ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number of units)	UNIT	UNIT PRICE	AMOUNT
1A	Light Assembly, Projection Printer Type FN-7 in accordance with Specification MIL-L-26802 (USAF) dated 28 November 1955.	42	ea.		
1B	The Contractor shall furnish New Basic Technical data for item 1A above, in accordance with MCMTT Exhibit No. 1-5 and modification to MCMTT Exhibit No. 1-5 attached hereto. (Bidder shall furnish information required on Modification to MCMTT Exhibit No. 1-5.)			LOT	*
1C	The Contractor shall furnish Revision or Reissue data for item 1A above, in accordance with MCMTT Exhibit No. 1-5 and modification to MCMTT Exhibit No. 1-5 attached hereto. (Bidder shall furnish information required on Modification to MCMTT Exhibit No. 1-5.)				
	Revisions			LOT	*
	Reissues			LOT	*

New Basic, Revision and Reissue Data Applicability:

Bidders who HAVE NOT previously furnished to the Government data covering Item 1A hereof, shall submit a bid on the new basic data called for herein.

Bidders who HAVE previously furnished to the Government data covering Item 1A hereof, shall submit a bid on both the Revision and Reissue data called for herein.

Bids under New Basic Data, Revision and Reissue Data are equally acceptable to the Government, as applicable, and award will be made thereon with the best interest of the Government considered.

* DATA PRICING - Bidders are requested to insert opposite the data items the price of such data. If the bidder does not insert price as requested above, or inserts the words "NO CHARGE FOR DATA" or similar language, the Government will consider that the data price is included in the cost of the end items and if the bid is the lowest received and otherwise acceptable, award will be made on that basis and so indicated in the resultant contract.

NOTE: In order for bids on MCMTT Exhibit 1-5 Technical Data to be evaluated on an Advertised Procurement it is necessary that the MODIFICATION to MCMTT Exhibit No. 1-5 be inserted in the Invitation for Bid as set forth on the next page.

NAME OF BIDDER OR CONTRACTOR

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Rev. 1949 Edition

§ 1002.2002-9 *Sample schedule description where item identification data is required with physical articles only.*

ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number of Units)	UNIT	UNIT PRICE	AMOUNT
1A	Light Assembly, Projection Printer Type FN-7 in accordance with Specification MIL-L-26802 (USAF) dated 28 November 1955.	42	ea.		
1B	The contractor shall furnish item identification data for item 1A above, to be furnished in accordance with provisions of specification MIL-D-26715 (USAF) dated 11 May 1955 and Amendment No. 1 dated 26 October 1955. Such data to be delivered to the Government at least 60 days prior to initial shipment of the items in order to allow for cataloging and assignment of Federal Stock numbers. No delivery shall be made on Item 1A until the cataloging has been accomplished and the contract amended to include Federal Stock numbers. Any delay after receipt of data over the 60 days allowed for cataloging will automatically extend the delivery schedule by the time of the delay.			LOT	

* DATA PRICING - Bidders are required to insert opposite the data items the price of such data. If the bidder does not insert price as requested above, or inserts the words "NO CHARGE FOR DATA" or similar language, the Government will consider that the data price is included in the cost of the end items and if the bid is the lowest received and otherwise acceptable, award will be made on that basis and so indicated in the resultant contract.

§ 1002.2002-10 *Sample schedule description where spare parts are required.*

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CONTINUATION SHEET
(SUPPLY CONTRACT)

CONTRACT, ORDER, OR INVITATION NO. (As applicable) | PAGE NO.

ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number of units)	UNIT	UNIT PRICE	AMOUNT
	EXAMPLE OF SPARE PARTS ITEM:				
1A	Light Assembly, Projection Printer Type FN-7 in accordance with Specification MIL-L-26802 (USAF) dated 28 November 1955.	42	ea.		
1B	The contractor agrees to furnish spare parts for Item 1A above, to be selected and furnished in accordance with the provisions of "Spare Parts Provisioning Document for USAF Aeronautical and Supporting Equipment," MCP 71-649 (Revised 1 April 1952) Amendments No. 1, 2 and 3 thereto dated 1 September 1954, 10 February 1956 and 1 July 1956 respectively, incorporated herein by reference and Exhibit "1" attached hereto and hereby made a part hereof. Note: When Item Identification Data is applicable to the Spare Parts, another item shall be added as follows:		(for purposes of bid evaluation only)	LOT	10% of Item 1A.
1C	The Contractor also agrees to furnish Item Identification Data for the above Spare Parts (Item 1B), to be furnished in accordance with the provisions of specification MIL-D-26715 (USAF) dated 11 May 1955 and Amendment No. 1 dated 26 Oct. 1955. Such Data shall be delivered to the Government at least 60 days prior to initial shipment of the items in order to allow for cataloging and assignment of Federal Stock Numbers. No deliveries shall be made on these items until the cataloging has been accomplished and the contract amended to include Federal Stock Numbers. Any delay after receipt of data over the sixty (60) days allowed for cataloging will automatically extend the delivery schedule by the time of the delay.			Included in the cost of Item 1B above.	

NAME OF BIDDER OR CONTRACTOR

Standard Form 36 Nov. 1949 Edition

§ 1002.2002–11 *Sample schedule description providing for alternate bids, f. o. b. destination or f. o. b. carrier's equipment.*

Standard Form 36
Prescribed by General Services Administration, Nov. 1949 Edition

CONTINUATION SHEET
(SUPPLY CONTRACT)

CONTRACT, ORDER, OR INVITATION NO. (As applicable)

PAGE NO.

ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number of units)	UNIT	UNIT PRICE	AMOUNT
	EXAMPLE OF BID "A" AND BID "B", F.O.B. DESTINATION OR F. O. B. CARRIER'S EQUIPMENT.				
1	Light assembly, Projection Printer Type FN-7 in accordance with Specification MIL-L-26802 (USAF) dated 28 November 1955.				
	Bid "A", F.O.B. CARRIER'S EQUIPMENT	42	ea.		
	Bid "B", F.O.B. DESTINATION	42	ea.		
	F.O.B. Point:				
	Bid "A": Bids are requested under Bid "A" of this invitation based on delivery, at the Government's option, F.O.B. carrier's equipment, wharf, or freight station at a specified city or shipping point at or near the contractor's plant.				
	F.O.B. Points (Bid "A"): _____				
	Bid "B": Bids are requested under Bid "B" of this invitation based on delivery of all transportation charges paid to destination by the contractor.				
	THE ABOVE EXAMPLE MAY BE MODIFIED AS INDICATED BELOW WHEN PRICES ARE DESIRED FOR ALTERNATE F.O.B. POINTS IN ADDITION TO DESTINATION PRICES FOR DEFINITE CONSIGNEES.				
1	Light Assembly, Projection Printer Type FN-7 in accordance with Specification MIL-L-26802 (USAF) dated 28 November 1955.				
	Bid "A" : F.O.B. CARRIER'S EQUIPMENT	42	ea.		
	Bid "B" : F.O.B. DESTINATION	42	ea.		
	OR				
	Bid "C" : F.O.B. DESTINATION AS SHOWN BELOW:				
	Mobile	21	ea.		
	Ogden	21	ea.		

NAME OF BIDDER OR CONTRACTOR

Standard Form 36
(Rev. 1948 Edition)

☆ U.S. GOVERNMENT PRINTING OFFICE : 1955—O-378271 46-55-60079-2.

§ 1002.2003 *Special contract provisions.*

§ 1002.2003–1 *General.* The use of formal advertising is not impractical merely because certain special conditions must be applied with respect to matters other than the description of the supplies or services being procured. Since maximum use of formal advertising is required, the insertion of special conditions in Invitations for Bids, thereby enabling these procurements to be formally advertised, may be necessary; provided these conditions are not otherwise unduly restrictive and are properly utilized. Sections 1002.2003–2 through 1002.2003–6 set forth additional sample provisions covering other special conditions which are used with varying frequency. In particular, the special conditions relating to qualifications of bidders (§ 1002.2003–3) should not be employed except where necessary to protect the interests of the Government (see also § 1002.406–3). However, the availability of such special conditions where properly applied is pointed out in this section for the purpose of illustrating that formal advertising may still be employed despite the need for the insertion of special conditions.

§ 1002.2003–2 *Required delivery schedule.* Paragraph F in the Schedule of the sample IFB in §1002.2001 advises bidders of the delivery schedule desired by the Government and then asks the bidder to offer its own delivery schedule within a stipulated maximum number of days. With that provision in the IFB, award will normally be made to the lowest responsible bidder regardless of the fact that the delivery schedule offered is somewhat longer than the desired delivery schedule but not exceeding the stipulated maximum number of days. Since permitting the bidders to establish its own delivery schedule normally results in lower cost to the Government, the "desired delivery" provision should be used in most formally advertised procurements. In a few procurements the urgency of the Government requirement may make delivery by a certain date essential. The Invitation for Bids in such cases should contain a "required delivery" provision similar to the sample set forth in this section rather than the "desired delivery" provision of § 1002.2001.

DELIVERY

Delivery of the articles listed herein is REQUIRED on or before expiration of the time specified immediately below:

---------- days after receipt of written notice of award.

Bidders are cautioned to consider carefully the Government's required delivery, as bids specifying delivery AFTER the time specified above will be rejected.

Bidder's proposed Delivery Schedule: --------- days after receipt of written notice of award.

If the bidder does not state a different delivery schedule, the Government's required delivery schedule, stated above, will apply.

§ 1002.2003–3 *Qualification of bidders*—(a) *General.* Awards can only be made to bidders which are determined to be responsible and which are financially and technically capable of performing the contract. (See § 1.307 of this title and Part 1052 of this chapter.) It should be the constant aim of contracting officers within this general policy framework to solicit bids from a sufficient number of potential bidders to assure full and free competition. New business firms found to be responsible, whether small or large, should be given the same opportunity to compete as other firms having a long record of satisfactorily performed contracts with the Government.

(b) *Special qualifications.* In unusual cases (see § 1002.406–3), special qualifications may have to be inserted in invitations due to the complexity of the equipment being purchased or for some other special reason. Sample clauses are set forth in this section covering these types of situations to again serve as a reminder that, in spite of the need for such special conditions, formal advertising may nevertheless be employed. Since such conditions tend to reduce competition and to eliminate potential bidders, these conditions should only be used where necessary to protect the Government's interests (see § 1002.2003–1). In any event, such special conditions as to qualifications of bidders should not be so limiting as to reduce the number of potential bidders to the point where full and free competition will not be obtained. The following subparagraphs set forth sample provisions for use in these unusual situations:

(1) *Construction contract sample.*

BIDDER'S QUALIFICATIONS

All bidders are hereby notified that any bid submitted in response to this advertisement must be accompanied by a statement of facts in detail of the business and technical organization of the bidder available for the contemplated work including financial resources and building experience. The Government expressly reserves the right to reject any bid in which the facts as to the business and technical organization, financial resources,

or building experience, compared with the project bid upon, justifies such rejection.

(2) *Supply contract sample.*

BIDDER'S QUALIFICATIONS

Bidders must be regularly engaged in the business covered by these specifications and possessed of satisfactory financial and technical ability and of equipment and an organization to insure a satisfactory completion of the contract, and must have established a satisfactory record in the past for completion of contracts of similar character and extent. The Contracting Officer shall be the judge of the facts submitted in support of bidders' claims as to competency. The fact that drawings and specifications have been furnished to bidders will not limit the Government's right to judge as to competency after bids have been received.

(3) *Supply and installation contract sample.*

BIDDER'S QUALIFICATIONS

Bids to furnish and install the equipment specified will be accepted only from bidders who are versed in the art of water sterilization by means of chlorine gas, and who have been engaged in the business either as manufacturers of such equipment or as suppliers and installers of such equipment for a period of not less than five (5) years and who have actually made similar installations of a satisfactory character. Bidders shall submit with their proposals a list of not less than three (3) such installations which are now operating satisfactorily and have been so operating for a period of not less than two (2) years. The Government reserves the right to reject any bid which does not comply with the above requirements.

§ 1002.2003–4 *Samples.* Procurements where the Government requires samples for evaluation purposes prior to award can be accomplished by formal advertising. Perhaps the most critical factor in using formal advertising where samples are required is to assure that samples are received prior to the opening of bids, since a bidder which withholds its sample until after the opening of bids is in a position to avoid award by refusing to furnish a sample (see § 1002.403–51). Set forth in this section is an example of a Schedule provision requiring submission of samples:

SUBMISSION OF SAMPLES

(a) All bidders are hereby notified that samples must be furnished, prior to the opening of bids, to the issuing office indicated above for test and evaluation. Samples will be subjected to test in accordance with paragraphs 2.1 and 3.13 of Specifications MIL–T–10308. Any sample failing in any portion of the tests will be deemed sufficient basis for rejection of the bid. Samples submitted shall conform in every respect with the requirements of the IFB. Since samples are required for evaluating bids, nonconforming samples shall result in rejection of the bids.

(b) Failure of a bidder to have furnished samples will result in rejection of that bid. However, the bid will not be rejected if the bidder has previously offered a product which has been previously procured or previously tested so that further testing of a sample would not add to the Government's knowledge of the acceptability of the product. The Contracting Officer will verify that the product previously procured or previously tested is adequate to meet the requirements of the Invitation for Bids. Upon verification, the requirement for furnishing samples may be waived as to that bidder.

§ 1002.2003–5 *Descriptive literature.* (a) The Government may wish to have bidders furnish descriptive literature with their bids to assist in determining whether the bidder's product meets the Government requirement.

(b) Set forth in this paragraph is a sample provision making the submission of descriptive literature mandatory:

DESCRIPTIVE LITERATURE

(a) All bidders under this Invitation for Bids will be required to submit to the Government the descriptive literature listed below. Such literature shall be submitted with the bids and shall conform in every respect with the requirements of the Invitation for Bids. Since descriptive literature is required for evaluating bids, nonconforming literature shall result in rejection of that bid. The descriptive literature relative to design approaches, etc. which will be required for evaluation purposes is as follows:

(1) Outline drawings of the overall equipment item and major components thereof showing size, arrangement of parts, weight, and any other physical features of a major nature.

(2) Schematic diagrams for the overall equipment items showing controls, protective devices, valves, gauges, and other components, including identification of known commercial major components by nameplate or catalog rating thereof.

(3) A listing of the Government requirements, by specification paragraph number and/or noun description, followed by a statement indicating compliance and, where applicable, details of the engineering design approach. In no case will an award based on the foregoing data constitute a waiver of the requirements of the specification as to acceptance, inspection, testing, or any other provisions of the specification.

(b) Failure of a bidder to have furnished descriptive literature will result in rejection of that bid. However, the bid will not be rejected if the bidder has previously offered a product which has been previously procured so that additional descriptive literature would not add to the Government's knowledge of the acceptability of the product. The Contracting Officer will verify that the product previously procured is adequate to meet the requirements of this Invitation for Bids. Upon verification, the requirement for furnishing descriptive literature may be waived as to that bidder.

§ 1002.2003–6 *Alternate bids.* As a general rule, bidders offering items which do not comply with the specifications of the Invitation for Bids cannot receive the award even though the proposed deviation is acceptable to the Government since other bidders might have offered even better prices had they known that the deviation would be acceptable. In some cases, however, the Government may know at the time of preparing the Invitation for Bids that certain deviations will be acceptable if they result in lower cost to the Government. In that event, the Invitation for Bids may inform all bidders that alternate bids based on the specified deviation will be considered for award. Sample provisions authorizing such alternate bids are set forth in this paragraph:

ALTERNATE BIDS

All bidders are hereby notified that they may, if they so desire, propose alternate bids complying with the specifications on Item 1 hereof, provided that the outside dimensions of the unit does not exceed 10% of that currently specified in the specification and the weight does not increase by more than 25 pounds. In submitting such alternates, bidders will submit adequate data and written statements to show that the unit proposed to be furnished complies with the above requirements.

Bids in accordance with the specification requirements and bids in compliance with the above alternate specification requirements are equally acceptable to the Government and award will be made to the lowest responsive bidder thereon. Thus award will only be made to the bidder offering an alternate bid if same is lower than the lowest bidder meeting the specification requirements of this Invitation for Bids.

or

ALTERNATE BIDS

All bidders are hereby notified that they may, if they so desire, propose alternate bids complying with the specifications on Item 1 hereof, except that metal containers may be utilized in lieu of wood, provided further however, that the gross weight does not exceed that specified in the packaging sheet attached to this Invitation.

In the evaluation of the alternate bids, award will only be made thereon (if otherwise acceptable) if same is lower than the lowest bidder meeting the specification requirements of this Invitation for Bids.

PART 1003—PROCUREMENT BY NEGOTIATION

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AUTHORITY: §§ 1003.101 to 1003.2008 issued under sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U. S. C. 2301-2314.

SUBPART A—USE OF NEGOTIATION

§ 1003.101 *Negotiation as distinguished from formal advertising.*

§ 1003.101-51 *Objectives of negotiation.* Consistent with § 1.301 of this title, the basic objective of negotiation is to secure the desired supplies or services, of the quality and at the time and place needed at a fair and reasonable price. Price and profit considerations should not be allowed to outweigh considerations of quality and timely delivery; however, premium quality and early delivery should not be allowed to command a premium price if lower quality or later delivery is acceptable. While a lower price may generally be considered a fairer price, contracting officers should not attempt to force contractors to accept a price which is less than reasonable under the circumstances.

§ 1003.101-52 *Use of negotiation.* Contracting officers of foreign procurement activities of the Air Force will consider negotiation the normal method of procurement. Contracting officers other than those of foreign procurement activities should even during the period of the present national emergency, consider negotiation as the unusual method of purchasing, and should consider the usual and normal method to be formal advertising as set forth in § 1002.102 of this chapter. The fact that circumstances exist which permit negotiation under the Armed Services Procurement Act does not settle the question of whether or not to negotiate. Even where such permissive circumstances exist, the decision whether to negotiate or to advertise should be based on practical considerations. Among such considerations are:

(a) *Number and location of potential supplier.* The greater the number of potential suppliers, and the more widely they are distributed, the greater is the difficulty of individual solicitation, and the more desirable is formal advertising.

(b) *Nature of items purchased.* If items being purchased are of a kind which can be used interchangeably with competitive items, formal advertising will generally produce better results. Conversely, if the items are peculiar to one manufacturer or are propriety in nature, and therefore formal advertising can be expected to result in only one acceptable bid negotiation is the preferable means of procurement.

(c) *Time requirement.* If the items are needed immediately, negotiation may be necessary. Formal advertising procedures generally require a minimum of 10 days after an invitation is issued for preparation and submission of bids, and an even longer period of time is desirable.

(d) *Amount of purchase.* Although there is no statutory requirement for advertising if the amount of the contract is $1,000 or less, advertising may still be desirable when there are a large number of potential suppliers, and where it is not certain that a quotation of $1,000 or less can be obtained. However, the cost of preparing and distributing a large number of invitations to bid, with accompanying drawings and specification, should be considered.

(e) *Type of contract contemplated.* Formal advertising can only result in a fixed-price contract without price revision or incentive features, except as otherwise authorized. If any other type of contract is anticipated as necessary to protect the interest of the Government, this fact should be considered in deciding whether to advertise or negotiate.

§ 1003.101-53 *Steps in negotiation.* The process of negotiation commences after the establishment of a requirement which is reflected in a purchase request, and is finally completed upon the execution and distribution of a definitive contract. The following important considerations, not necessarily in the same sequence, are involved in the process of varying degree depending upon the circumstances surrounding a particular negotiation.

(a) *Determination that description of work is adequate for negotiation.* This is a major step toward a successful negotiation. An inadequate description of the item to be procured may effectively limit competition, or delay negotiations by requiring amendments or deviations to the work statement. Accordingly the contracting officer will assure himself that the item description is adequate to minimize delay and to achieve the desired degree of competition.

(b) *Verification of the requirement.* During the course of negotiation the contracting officer at some stage will verify the requirement with the initiating office to the end that only desired quantities or services are procured. This is particularly important in those circumstances where negotiations have been prolonged, or the description of the item or delivery schedule is changed in negotiation.

(c) [Reserved.]

(d) *Selection of sources to be solicited.* (1) Successful accomplishment of procurement depends largely on the degree of care exercised at the outset in selecting prospective contractors. No matter how much skill the contracting officer may possess, the effectiveness of his actions is limited by the characteristics of the sources with whom he deals. His bargaining position is improved by his ability to deal with two or more sources through the introduction of competition into the negotiations. The controlling principle in this selective process should be that real competition is the most effective method yet devised to bring about reasonable terms and close prices. Prior to conducting negotiations, therefore, the contracting officer will decide what potential contractors should be asked to submit quotations. (See Subpart F, Part 1001 of this chapter, "Debarred, Ineligible, and Suspended Bidders.") Relief from the requirement of formal advertising and exercise of the privilege of negotiation does not waive the requirement that competition should be obtained to the maximum extent consistent with the product being procured and the size of the procurement. The contracting officer is required to exercise judgment in deciding how many and what sources to solicit.

(2) A major consideration to the AF negotiator is that contractors provide their own industrial facilities in lieu of Government provision of facilities. When Government facilities are required, analysis of quotations will adhere strictly to § 13.407 of this title. Hence, during the proposal stage, requirements for Government industrial facilities will be identified in appendix listings and justified by prospective contractors. The contractors' justifications should include statements with respect to schedules of the appendix (§ 1013.2404 of this chapter) and why additional facilities are required, with Government financing, over and above facilities which contractors will provide.

(e) *Request for proposals.* Request for Proposals (RFP's) will:

(1) Be made to all selected sources at the same time. No one of such sources will be given the advantage which follows from advance knowledge that proposals are to be requested. RFP's, when mailed, will be sent as first class mail.

(2) Contain all the necessary information required for the preparation of a quotation by the contractor.

(3) Establish reasonable and specified time for receipt of proposals. Provide that written proposals will be received until the close of business on a specified date, and any extension of time granted at the request of one bidder will be granted uniformly to all bidders.

(4) Be complete with respect to item description, required and/or desired delivery schedule, and contract clauses.

(5) Specifically require price breakdowns, when such are desired.

(6) Contain a special provision substantially as follows (see § 9.111 of this title):

When a bidder's proposal exceeds $25,000 in total amount and contains a cost or charge for royalties in excess of $250, the following information must be furnished on each separate item of royalty:

(i) Name and address of licensor.

(ii) Date of license agreement.

(iii) Applicable patent numbers or patent application serial numbers.

(iv) Brief description, including any part or model numbers of each item or component on which the royalty is payable.

(v) Percentage or dollar rate of royalties.

(vi) Total dollar amount of royalties.

(7) Contain the provisions set forth in § 1053.101–6 (b) (5) of this chapter where required by § 1053.101 of this chapter. (See also § 1053.101–6 (b) (7) of this chapter for the clause to be inserted in contracts resulting from RFP's containing the above-cited provisions.)

(g) *Further negotiations.* The contracting officer is at liberty to conduct further negotiations as contemplated by § 3.101 of this title with any or all of the concerns submitting proposals. Contrary to formal advertising procedures, when the purchase is being negotiated, there is no restriction on changes in prices or other terms of a proposal at any time prior to award. If one concern is given an opportunity to revise its quotation, others who are within a competitive price range and capable of meeting requirements must in fairness be given an equal opportunity. Further, where the request for proposals states, or an announcement is made by the contracting officer, that negotiations will be conducted after receipt of proposals, such negotiations are then mandatory.

(h) *Prenegotiation reviews.* (1) When, in the procurement cycle, it becomes advantageous and necessary to meet with the contractor to agree upon the terms and conditions of a proposed contract or upon adjusted prices on an existing contract, the meeting will be preceded by a conference of the Government representatives who will make up the negotiating team. This prenegotiation conference will permit the Government team to: Discuss the contractor's proposal in detail sufficient to achieve understanding, express opinions and air problems that relate to the proposal and to the contractor's operations but which should be resolved prior to the meeting with the contractor, and determine negotiation objectives and the course of action to be followed in realizing these objectives.

(2) The negotiating team generally will include the contracting officer (either administrative or procuring or both, as appropriate), the price or cost analyst and all others (including the assigned auditor in major procurements) who have specific and pertinent information to contribute. The team membership will always be restricted to those few absolutely necessary to advance the progress of the negotiations, although this limitation should not be construed to exclude observers assigned for training purposes.

(3) There will be occasions when those responsible for manually approving contracts within AF procuring activities will find it advantageous to be briefed by the negotiating team after negotiation objectives have been firmed but prior to the conference with the contractor. Procedures for this type of prenegotiation review should be determined locally. It will be discovered that review is particularly fruitful if procurements involve situations where:

(i) A new contract follows contract(s) where contractor's performance was unsatisfactory.

(ii) A need for a significant change in profit pattern is indicated.

(iii) A new procurement substantially increases a contractor's annual sales and production volume.

(iv) Costs have increased drastically beyond those originally estimated.

(v) Items procured have performed poorly and required modification and retrofit.

(vi) Superior performance indicates justification for additional profit consideration.

(vii) The procurement obligates a significant portion of the AF budget.

§ 1003.101–54 *Conduct of negotiations.* The following principles and practices will be adhered to by procurement personnel in the conduct of negotiations.

(a) Negotiations, including price redeterminations, will be conducted in a timely manner. After a contractor's proposal has been adequately evaluated by the contracting officer and other technical and supervisory personnel when necessary, negotiations will be resolved with expedition, and not unnecessarily delayed by prolonged negotiations if no substantial benefits will accrue further to the Government.

(b) The contracting officer must be fair in dealing with prospective contractors. The following examples are considered to be unfair:

(1) Revealing to one prospective contractor, in advance of soliciting proposals from other contractors, the fact that a certain procurement is about to be placed.

(2) Revealing to one prospective contractor figures pertaining to cost and profit submitted by another contractor. This is not intended to prevent the contracting officer from advising one prospective contractor, during the course of negotiation and prior to award, that lower quotations have been obtained

provided he does not reveal who the other quoting concerns are, nor the exact quotation; however, the contracting officer will furnish, upon request, or according to paragraph (g) (1) of this section, the name and address of the successful supplier and the actual or approximate contract price, but, will not reveal the names of other unsuccessful suppliers or the amounts and conditions of their quotation.

(3) Accepting a quotation with knowledge that the quoting contractor has failed to understand clearly what is expected of him.

(c) Negotiations will always be aimed at arriving at complete understanding on all major points initially. Basic issues requiring resolution should not be put off for later agreement in price redetermination or further supplemental action, but should be faced squarely during initial negotiations. Failure to accomplish initial agreements leads to future misunderstandings and poor relationships. In this connection, basic agreements are designed to minimize differences with respect to contract clauses.

(d) Negotiations should avoid unnecessary demands on prospective contractors. Only pertinent and useful information which may serve as an aid in negotiation will be requested with respect to such matters as cost estimates, historical costs, prices, or technical information. Unnecessary or inapplicable information takes time and money in the preparation and delays the progress of negotiation, as well as creating an unfavorable attitude by prospective contractors.

(e) Negotiations will be conducted in a manner to induce competition or, in the absence thereof, to introduce the incentive pricing approach into the negotiations and final terms.

(f) Contracting officers and other procurement personnel will conduct themselves according to the ethical standards prescribed in Subpart T of Part 1001 of this chapter.

(g) Release of price information and notification of unsuccessful supplier:

(1) After a source has been selected and the contractor has been notified of an award of a negotiated contract, the contracting officer will notify unsuccessful suppliers, who submitted quotations, of the fact that their proposals were not accepted, and extend the appreciation of the procuring activity for the interest the unsuccessful supplier has shown in submitting a proposal. Regarding small purchase notification, see § 3.603 of this title. The letter to the unsuccessful suppliers will be manually signed (reproduced signatures will not be used) by a contracting officer, or his authorized representative, and should be similar to the following:

Gentlemen:

This will acknowledge receipt of your quotation in response to our Request for Proposals No. ----------

Your interest in submitting a quotation is appreciated by this activity; however, we are unable to award you a contract in this instance.

Yours very truly,

———— ————,

Contracting Officer.

This letter may be modified, at the option of the contracting officer, to include the award information specified in subparagraph (2) of this paragraph.

(2) If additional information regarding the award is requested by suppliers invited to submit quotations, contracting officers will furnish the name and address of the successful supplier and the actual or approximate contract line item prices, but, as a general rule, will not reveal the names of unsuccessful suppliers, and, in no case, the amounts and conditions of their quotations.

(3) Information concerning a classified negotiated contract may not be furnished by telephone. In the case of classified negotiations, information regarding the name of the successful supplier and the contract price will be furnished only to unsuccessful suppliers invited to quote, and then only upon request.

(4) In no event will cost breakdowns or other profit or cost information submitted by any supplier be revealed to any other supplier.

(5) In some instances providing information according to the above requirements may entail special selective preparation of lengthy lists of bidders and/or items, or other clerical work of sufficient extent to interfere with normal operations of the office. The contracting officer may courteously decline to furnish the information in the manner requested. It is suggested that the inquirer be advised that the information is too extensive to be compiled and transmitted at Government expense, and that the necessary records will be made available for examination in the appropriate office of the procuring activity if he or his representative wishes to call.

(6) Disclosure of information relative to contracts resulting from negotiation will not include the reason for selecting a particular source except in the particular case where the inquiry is initially made by an unsuccessful bidder who is lower in price than the successful bidder, in which instance sufficient information will be furnished in the reply to fully explain the basis for award.

(7) The above procedures are not intended to apply to requests from suppliers for general information concerning purchases made over extended periods of time, such as one for information on the number of parachutes purchased during a year and the prices paid. Such requests will be returned and the inquirer informed that it is not AF policy to compile and disseminate such information.

§ 1003.107 *Late proposals and late unsolicited revisions to proposals.*

§ 1003.107–2 *Procedure.* Research and development procurements are exempt from the procedure set forth in paragraphs (a) and (b) of this section.

(a) In each case in which a late low proposal, or a late proposal otherwise worthy of consideration, is received from a qualified bidder, the contracting officer will immediately execute a finding and determination as to the course of action which he deems to be in the best interests of the Government, taking into account all pertinent factors, and will refer it to the appropriate officer for written concurrence:

(b) If it is determined by the aforesaid officer that it is in the best interest of the Government to consider the late proposal, the contracting officer will resolicit all the other bidders who are capable of meeting requirements.

§ 1003.108 *Negotiation of initial production contracts for technical or specialized military supplies.* (a) The policy set forth in § 3.108 (a) of this title and this section is applicable to the production of: (1) Important new technical or specialized military supplies such as tanks, radar, guided missiles, aircraft, rockets, and equipment of similar complexity which generally involve development, evaluation, and initial production phases, (2) major components of such equipment as the foregoing, (3) items of a technical or specialized nature necessary for the use, maintenance, or operation of such equipment as the above.

(b) Recognition of industry-financed research and development is vital to increased participation by industry in this field. Therefore, the policy set forth in § 3.108 of this title is applicable to a concern which is responsible for the development of the design of the technical or specialized supplies, even though the concern did so without a Government contract.

(c) The analysis required by § 3.108 (b) of this title will be accomplished by the contracting officer, and in addition to being made a part of the contract file, will be used as justification for the determination and findings required by paragraph (d) of this section. In making the analysis, the contracting officer will give due consideration to the factors set forth in § 3.108 (b) of this title to determine whether it is proper to negotiate only with the developer. Where such factors are not controlling, procurement will be effected either by formal advertising or by competitive negotiation where justified by one of the circumstances authorizing negotiation set forth in subpart B, Part 3, Chapter I of this title. In either instance, the developer will be included among the sources solicited.

(d) Prior to negotiation pursuant to § 3.108 of this title, the Secretarial determination and finding required by subpart C, Part 1003 of this chapter will be obtained.

§ 1003.150 *Notice of protest against award.* Notice will be given promptly to all bidders affected thereby of any protest or objection against the awarding of a contract to any particular bidder, in order that, if the parties interested so desire, they may take action in their behalf before further steps are taken in the matter of awarding the contract.

§ 1003.153 *Requests for proposals; percentage of subcontracting.* When an

FCR is contemplated as prescribed in Part 1052 of this chapter, the RFP will contain the following clause: "Bidder represents that the estimated percentage of subcontracting contemplated on this procurement is _____ percent."

NOTE. The "percentage of subcontracting" will be reported as a percentage of the prime contractor's selling price. "Subcontracting" means only contracts for the production of or work upon an item, component, or assembly and does not include: (i) any purchase of a standard commercial or catalog item, (ii) any purchase of a basic raw material, (iii) any purchase of supplies, or services for the general operation of the contractor's plant, or (iv) any purchase from a parent, subsidiary, or affiliate of the contractor.

§ 1003.154 *Award.* Award will be made with reasonable promptness by written notice to that contractor whose proposal will be most advantageous to the Government, price and other factors considered. Award will be effected by mailing or delivering to the contractor a properly executed award or preliminary notice of award.

SUBPART B—CIRCUMSTANCES PERMITTING NEGOTIATION

§ 1003.201 *National emergency.*

§ 1003.201–1 *Authorization.* On August 16, 1956, the Assistant Secretary of the Air Force executed the following determination and finding:

DETERMINATIONS AND FINDINGS

AUTHORITY TO NEGOTIATE PURCHASES AND CONTRACTS UNDER SECTION 2 (c) (1) OF THE ARMED SERVICES PROCUREMENT ACT OF 1947

A national emergency was declared by the President on 16 December 1950. On 18 December 1950 the Assistant Secretary of the Air Force executed a determination authorizing the negotiation of all purchases and contracts by the Department of the Air Force under Section 2 (c) (1) of the Armed Services Procurement Act of 1947. However, the continued use of the authority to negotiate pursuant to Section 2 (c) (1) was limited by the Materiel Secretaries Council for procurements initiated on and after 1 January 1956 to four categories as specified in ASPR 3–2001.2.

The national emergency declared by the President on 16 December 1950, being still in effect, it was determined by the Assistant Secretary of the Air Force, Materiel, acting in concert with the Assistant Secretaries of the Army and Navy, that the continued use of authority to negotiate, pursuant to Section 2 (c) (1) of the Armed Services Procurement Act of 1947, on the limited basis specified above, was necessary in the public interest. Accordingly, the negotiation of purchases and contracts by the Department of the Air Force is authorized under Section 2 (c) (1) of the Armed Services Procurement Act of 1947 during the period of said national emergency in accordance with ASPR 3–2012.

The determination of the Assistant Secretary of the Air Force, 18 December 1950, with respect to the use of Section 2 (c) (1) during the period of said national emergency is superseded in the manner and to the extent, and as of the effective date provided by ASPR 3–201.2.

[s] Dudley C. Sharp,
DUDLEY C. SHARP,
Assistant Secretary of the Air Force.

§ 1003.201–2 *Application.* (a) The term "procurements initiated" used in § 3.201–2 (b) of this title is defined as those procurements on which written solicitations of quotations have been accomplished, or in the case of letter contracts, the date of the letter contract. In addition to the four categories set forth in § 3.201.2 (b) of this title, purchases or contracts in excess of $1,000 but not in excess of $2,500 may be negotiated under authority of section 2 (c) (1), Public Law 413 (80th Congress) (62 Stat. 21; 41 U. S. C. 151).

(b) Negotiated procurements other than the five categories referred to in paragraph (a) of this section must be authorized under the appropriate subsection of section 2 (c) of Public Law 413 (80th Congress) (62 Stat. 21; 41 U. S. C. 151). Purchases or contracts negotiated under the five categories of paragraph (a) of this section will cite section 2 (c) (1) Public Law 413 (80th Congress) (62 Stat. 21; 41 U. S. C. 151) on the face of the DD Form 351, 702, 738, or 746–2 as appropriate and no further written determinations and findings are necessary.

§ 1003.202 *Public exigency.*

§ 1003.202–2 *Application.* The referenced ASPR illustrations of circumstances under which this authority may be used are not all inclusive.

§ 1003.204 *Personal or professional services.*

§ 1003.204–1 *Authorization.* (a) Section 15 of the act approved August 2, 1946 as amended (60 Stat. 810; 5 U. S. C. 55a), provides:

The head of any department, when authorized in an appropriation or other act, may procure the temporary (not in excess of 1 year) or intermittent services of experts or consultants or organizations thereof, including stenographic reporting services, by contract, and in such cases each service shall be without regard to the civil-service and classification laws (but as to agencies subject to the Classification Act at rates not in excess of the per diem equivalent of the highest rate payable under the Classification Act, unless other rates are specifically provided in the appropriation or other law) and except in the case of stenographic reporting services by organizations, without regard to section 3709, Revised Statutes, as amended by this act.

(b) Department of Defense Appropriations Act, 1956 (Public Law 157, 84th Congress) (69 Stat. 301), states:

SEC. 601. During the current fiscal year, the Secretary of Defense and the Secretaries of the Air Force, Army and Navy, respectively, if they should deem it advantageous to the national defense, and if, in their opinions, the existing facilities of the Department of Defense are inadequate, are authorized to procure services in accordance with Section 15 of the Act of August 2, 1946 (5 U. S. C. 55a), but at rates for individuals not in excess of $50 per day, and to pay in connection therewith travel expenses of individuals, including actual transportation and per diem in lieu of subsistence while traveling from their homes or places of business to official duty station and return as may be authorized by law: Provided, that such contracts may be renewed annually.

§ 1003.204–2 *Application.* The general authority contained in § 3.204–1 of this title will be used only with respect to contracts for personal or professional services which are otherwise specifically authorized by law, as in the preceding paragraph. A finding by the Secretary is required by acts of Congress other than the Armed Services Procurement Act (62 Stat. 21; 41 U. S. C. 151) and if such finding is obtained, no separate determination and finding is required.

(a) *Services authorized.* The provisions of the Appropriation Act quoted in § 1003.204–1 (b) affect each contract for expert or consultant services (such as architectural, engineering, technical, or professional services) made with any individual or made with a firm or corporation which is engaged primarily in the business of furnishing such services, and each contract for the employment of services of accountants or other experts to assist in inaugurating new or changing old methods of transacting business of the Air Force. Except as stated in this section, the provisions do not apply to any contracts with firms or corporations for services related to the development, invention, design, procurement, production, repair or maintenance of supplies, material, or facilities, or to any other type of contract.

(b) *Citation of statutory authorities.* Each contract or supplemental agreement described in paragraph (a) of this section will cite as authority section 2 (c) (4) of Public Law 413 (80th Congress) (62 Stat. 21; 41 U. S. C. 151), section 15 of the act approved 2 August 1946 (Public Law 600, 79th Congress), (60 Stat. 810; 5 U. S. C. 55a), and the applicable section of the current appropriation act.

§ 1003.207 *Medicines or medical supplies.*

§ 1003.207–2 *Application.* (a) In addition to meeting the two requirements set forth in § 3.207–2 of this title, the proposed procurement must concern supplies which are authorized for local purchase by § 1004.256–31 of this chapter or central procurement type items for which specific local purchase authority has been obtained.

(b) For procurements estimated to exceed $10,000, the requirement for "suitable advance publicity" will be deemed to be complied with if written requests for proposals are circulated to business concerns engaged in manufacture and/or sale of the supplies involved, including qualified dealers known to have current interest in selling such supplies to the Government (see § 1003.101–53 (d) (1) for selection of sources).

SUBPART D—TYPES OF CONTRACTS

§ 1003.401 *Authorized types of contracts.* The major types of authorized Air Force contracts are summarized and identified in the following chart. More detailed discussion relating to the nature and effect of individual types, conditions for use, rules for administration and the respective clauses where applicable, are set forth in the sections identified in the chart.

CHART—AUTHORIZED TYPES OF CONTRACTS

Type of contract	Identification	Instruction reference
(A) *Fixed price contracts:*		
1. Firm	FP	§ 1003.401-1.
2. With escalation	FPE	§ 1003.402-2.
(B) *Fixed price contracts with provision for redetermination:*	FPR	§ 1003.403.
1. Form I	FPR-I	§ 1003.403-6.
2. Form IIA	FPR-IIA	§ 1003.403-7.
3. Form IIB	FPR-IIB	§ 1003.403-8.
4. Form III	FPR-III	§ 1003.403-9.
5. Form IV	FPR-IV	§ 1003.403-10.
6. Form V	FPR-V	§ 1003.403-11.
7. Fixed price incentive:	FPI	§ 1003.404.
a. With target set at the outset.	FPIF	§ 1003.404-2 (d).
b. With target set during course of contract.	FPIR	§ 1003.404-2 (e).
(C) *Cost contracts:*		§ 1003.405.
1. Cost reimbursement (without fee).	CR	§ 1003.405-2.
2. Cost sharing	CS	§ 1003.405-3.
3. Cost-plus-a-fixed-fee.	CPFF	§ 1003.406.
4. Cost-plus-incentive-fee.	CPIF	§ 1003.404-3.
(D) *Time and material*	T-M	§ 1003.407.
(E) *Miscellaneous:*		
1. Letter contract	LC	§ 1003.408.
2. Basic agreements	BA	§ 1003.409-1.
3. Call contracts	CC	§ 1003.409-2 (b).
4. Open contracts	OC	§ 1003.409-2 (c).
5. Requirements contracts.	RC	§ 1003.409-2 (d).

§ 1003.402 *Fixed price contracts.*

§ 1003.402-1 *Firm fixed price.* This type of contract is preferred over any other, circumstances permitting, and should be used whenever feasible.

Description. This contract type is such that both parties are bound by the negotiated prices for the life of the contract. The Air Force is committed to pay the negotiated price upon delivery and acceptance of the items called for in the contract. No adjustment of the price is possible, except in those rare instances where Public Law 921 (64 Stat. 1257; 50 U. S. C. App. 611) procedures may be invoked.

§ 1003.402-2 *Fixed price with escalation*—(a) *Description.* This type of contract provides for limited upward and unlimited downward adjustment of the total contract price on the basis of increases or decreases from an agreed upon level in published prices of specific items or in price levels of the contract end items. Thus the business risk of a contractor in a firm fixed price contract is reduced by the inclusion of escalation provision in which the Government and the contractor agree to revise contract prices upon the happening of the prescribed contingency.

(b) The following limitations apply to the use of the "Abel" and "Baker" clauses in § 1003.402-2 (f) and (g):

(1) The "Abel" or "Baker" clauses may be used in negotiated procurements for electrical brass, copper, and chemical items, and machine tools, when the total amount of the procurement does not exceed $10,000.

(2) The "Abel" clause is authorized for use where standard commercial items are being procured which have established and published prices.

(3) The "Baker" clause is authorized where nonstandard items are being procured which are somewhat equivalent to a standard commercial item. Nonstandard items are those normally made by the manufacturer for its commercial business and which the contractor would not be able to sell in its commercial trade if the contract were terminated.

(4) A ceiling percentage in accordance with the following will be placed in the blank space in paragraph (2) (ii) of either the "Abel" or the "Baker" clause whenever used:

(i) If deliveries will be completed within 1 year from the effective date of the contract, the ceiling will not exceed 10 percent.

(ii) If delivery time will exceed 1 year from the effective date of the contract the minimum percentage necessary to effect the procurement will be used, but may not exceed 15 percent.

(5) In machine tool procurements where the quantities of tools being purchased exceeds the quantities normally sold annually by the seller, the "Abel" clause may be used with paragraph (3) of the "Baker" clause substituted for paragraph (3) of the "Abel" clause.

(c) *Price escalation for standard steel items or aluminum products.* The following contract clause is authorized for use in negotiated fixed-price contracts for the purchase of standard steel items or aluminum products (see paragraph (d) of this section for call contracts):

PRICE ESCALATION CLAUSE

(1) Contractor agrees that the prices herein set forth do not, and should any escalation of price be effected, will not exceed those charged by the contractor to any other customer purchasing the same items in like quantities. The contractor shall notify the contracting officer of each decrease in any of such established prices and each applicable contract unit price shall be decreased accordingly. Any decrease in a unit price shall become effective concurrently with the effective date of each applicable decrease in contractor's established price and the contract shall be amended accordingly.

(2) The contractor may at any time, or from time to time, during the performance of the contract request in writing an upward adjustment in any of the contract unit prices to be effective as from a date to be specified by the contractor, subject to the following conditions:

(i) No unit price as adjusted shall exceed the contractor's applicable established price.

(ii) The aggregate of the increases in any unit price made under this paragraph shall not exceed 10 percent of the original applicable contract unit price.

(iii) No adjusted unit price shall be effective earlier than the effective date of any increase in the applicable established price.

(3) In the event the requested adjustment in any contract unit price is acceptable to the contracting officer, he shall so notify the contractor, and the contract shall be modified accordingly. If any such requested adjustment in a unit price is not acceptable to the contracting officer, he shall so notify the contractor in writing, and unless an agreement can be reached as to the amount of increase, the Government may cancel without liability to either party the contractor's right to proceed with performance of the portion of the contract which is undelivered at the time of such cancellation, except that the contractor may make delivery of all or any of the supplies which a duly authorized officer of the company shall certify were completed or in the process of manufacture at the time of receipt of notice of such cancellation, and the Government shall pay for all supplies so delivered at the applicable unit price contained in contractor's said request and the contract shall be modified accordingly; provided, that such certification is made within 10 days after receipt of notice of such cancellation and such requested increase satisfies all of the conditions and does not exceed the limitations of paragraphs (1) and (2).

(4) During the period prior to such cancellation, the contractor shall continue deliveries according to the terms of the contract and shall be paid therefor at the applicable increased unit prices so requested; provided, such requested increases satisfy all of the conditions and do not exceed the limitations of paragraphs (1) and (2).

(5) If notice of cancellation is not sent to the Contractor within 30 days after receipt by the Contracting Officer of the Contractor's request, supplies delivered subsequent to the date specified in such request, and prior to the effective date of any subsequent increase or decrease in Contractor's applicable established prices shall be paid for at the applicable increased unit prices so requested; provided, such requested increases satisfy all of the conditions and do not exceed the limitations of paragraphs (1) and (2).

(d) *Price escalation for standard steel items or aluminum products* (Call Contracts). In fixed-price call contracts for standard off-the-shelf standard steel items or aluminum products the following clause is authorized:

PRICE ESCALATION CLAUSE (CALL CONTRACTS)

(1) The contractor agrees that the prices herein set forth do not, and should any escalation of the prices be effected, will not exceed those charged by the Contractor to any other customer purchasing the same items in like quantities. The contractor shall notify the contracting officer of each decrease in any of such established prices and each applicable contract unit price shall be decreased accordingly. Any decrease in a unit price shall become effective concurrently with the effective date of each applicable decrease in contractor's established price and the contract shall be amended accordingly.

(2) The contractor may at any time, or from time to time, during the performance of the contract request in writing an upward adjustment in any of the contract unit prices to be effective as from a date to be specified by the contractor, subject to the following conditions:

(i) No unit price as adjusted shall exceed the contractor's applicable established price.

(ii) The aggregate of the increases in any unit price made under this paragraph shall not exceed 10 percent of the original applicable contract unit price.

(iii) No adjusted unit price shall be effective earlier than the effective date of any increase in the applicable established price.

(3) In the event the requested adjustment in any contract unit price is acceptable to the contracting officer, he shall so notify the contractor, and the contract shall be modified accordingly. If any such requested adjustment in a unit price is not acceptable to the contracting officer, he shall so notify the contractor in writing, and unless an agreement can be reached as to the amount of increase, the Government may cancel without liability to either party the contractor's right to proceed with performance of the portion of the contract which is undelivered at the time of such cancellation.

(4) If notice of cancellation is not sent to the contractor within 30 days after receipt by the contracting officer of the contractor's request, supplies delivered subsequent to the date specified in such request, and prior to the effective date of any subsequent increase or decrease in contractor's applicable established prices, shall be paid for at the applicable increased unit prices so requested, provided, such requested increases satisfy all of the conditions and do not exceed the limitations to paragraph (1) and (2).

(e) *Price Escalation (Clause Abel).*

PRICE ESCALATION (CLAUSE ABEL)

(1) The contractor agrees that the prices herein set forth do not, and should any escalation of price be effected, will not exceed those charged by the contractor to any other customer purchasing the same items in like quantities. The contractor shall notify the contracting officer of each decrease in any of such established prices and each applicable contract unit price shall be decreased accordingly. Any decrease in a unit price shall become effective concurrently with the effective date of each applicable decrease in contractor's established price, and the contract shall be amended accordingly.

(2) The contractor may at any time, or from time to time, after the date of this contract, and during the performance of the contract, request in writing an upward adjustment in any of the contract unit prices to be effective as from a date to be specified by the contractor subject to the following conditions:

(i) No unit price shall be increased by a percentage greater than the percentage increase in the contractor's applicable established price.

(ii) For deliveries pursuant to the terms of this contract, the aggregate of the increases in any unit price made under this paragraph shall not exceed ____ percent of the original contract unit price.

(iii) No adjusted unit price shall be effective earlier than the effective date of any increase in the applicable established price, and no increase shall be granted unless the contractor's applicable established price has increased subsequent to the date of this contract.

(3) In the event that the requested adjustment in any contract unit price is acceptable to the contracting officer, he shall so notify the contractor, and the contract shall be modified accordingly. If any such requested adjustment in a unit price is not acceptable to the contracting officer, he shall so notify the contractor in writing, and unless an agreement can be reached as to the amount of increase, the Government may cancel without liability to either party the contractor's right to proceed with performance of the portion of the contract which is undelivered at the time of such cancellation.

(4) During the period prior to such cancellation, the contractor shall continue deliveries according to the terms of the contract and shall be paid therefor at the applicable increased unit prices so requested, provided that such requested increases satisfy all the conditions and do not exceed the limitations of paragraphs (1) and (2).

(5) If notice of cancellation is not sent to the contractor within 30 days after receipt by the contracting officer of the contractor's request, supplies delivered subsequent to the date specified in such request, and prior to the effective date of any subsequent increase or decrease in contractor's applicable established prices, shall be paid for at the applicable increased unit prices so requested, provided that such requested increases satisfy all the conditions and do not exceed the limitations of paragraphs (1) and (2).

(f) *Price Escalation (Clause Baker).*

PRICE ESCALATION (CLAUSE BAKER)

(1) The contractor warrants that the supplies covered by this contract are supplies which the contractor customarily offers for sale commercially, modified in accordance with specifications of this contract, and that any differences between the unit prices stated herein on the date of this contract and its established prices for like quantities of the supplies which are the nearest commercial equivalents of supplies covered by this contract (herein referred to as "the established prices") are due to differences in costs resulting from compliance with such specifications. The contractor agrees that the prices herein set forth do not, and should any escalation of price be effected, will not exceed those charged by the Contractor to any other customer purchasing the same items in like quantities. If at any time during the performance of this contract any of the established prices are reduced, each applicable contract unit price shall be reduced by the same percentage that such established price is reduced. Upon such reduction in any of the established prices the contractor shall promptly advise the contracting officer of the reduction in the applicable established price. Any such reduced price shall be effective as to deliveries made on and after the effective date of the reduction in the applicable established price and the contract shall be modified accordingly.

(2) The contractor may at any time, or from time to time, after the date of this contract and during the performance of the contract, request in writing an upward adjustment in any of the contract unit prices to be effective as from a date to be specified by the contractor, subject to the following conditions:

(i) No unit shall be increased by a percentage greater than the percentage increase in the contractor's applicable established price.

(ii) The aggregate of the increases in any unit price made under this section shall not exceed ____ percent of the original applicable contract unit price.

(iii) No adjusted unit price shall be effective earlier than the effective date of any increase in the applicable established price and no increase shall be granted unless the contractor's applicable established price has increased subsequent to the date of this contract.

(iv) Any adjusted unit price shall apply only to those supplies delivered pursuant to the terms of this contract.

(3) In the event the requested adjustment in any contract unit price is acceptable to the contracting officer, he shall so notify the contractor, and the contract shall be modified accordingly. If any such requested adjustment in a unit price is not acceptable to the contracting officer, he shall so notify the contractor in writing, and unless an agreement can be reached as to the amount of increase, the Government may terminate for convenience under the termination article the contractor's right to proceed with performance of that portion of the contract with respect to which the contracting officer has withheld approval of the requested adjustment and which is undelivered at the time of such termination.

(4) During the period prior to such termination, the contractor shall continue deliveries according to the terms of the contract and shall be paid therefor at the applicable increased unit prices so requested, to the extent that such requested increases satisfy all the conditions and do not exceed the limitations of paragraphs (1) and (2).

(5) If notice of termination is not sent to the contractor within 30 days after receipt by the contracting officer of the contractor's request, supplies delivered subsequent to the date specified in such request, and prior to the effective date of any subsequent increase or decrease in contractor's applicable established prices, shall be paid for at the applicable increased unit prices so requested, to the extent that such requested increases satisfy all the conditions and do not exceed the limitations of paragraphs (1) and (2).

§ 1003.403 *Fixed price contracts with provisions for redetermination of price.* Where the conditions precedent to the use of a firm fixed-price contract cannot be sufficiently satisfied to assure reasonable pricing, some other type of contract necessarily must be resorted to. Price redetermination clauses, coupled with price and cost analysis, are means by which close pricing may be achieved. Depending upon the particular form of price redetermination selected, the contract price may be adjusted upward or downward at times prescribed in the contract, or at the demand of either party, either during or after the period of contract performance, and may be prospective or retroactive in effect. The basic purpose underlying price redeterminable contracts is to shift the assumption of risk from a contractor to the Government, and this process involves the removal of contingencies from quoted prices to the extent practical. By such means the Government anticipates paying for contingencies only to the extent they occur or are reasonably predictable. The major problem, underlying this relatively simple objective, is to establish and maintain sufficient incentive through close target or prospective pricing to induce the contractor to control "controllable costs." This problem, however, is a difficult one and requires the exercise of sound judgment by both parties in the circumstances. Price redetermination should not be used as a substitute for an intelligent initial analysis of price.

§ 1003.403-4 *Optional interim cost data provision.* The clause set forth in this section is authorized for use in connection with types of contracts which provide for optional repricing on demand. The purpose of this clause is to provide the contracting officer with periodic information relative to significant changes in costs incurred in the performance of a contract. This clause may be modified in minor respects to meet individual situations providing the substance thereof is not changed.

COST DATA CLAUSE

Contractor agrees that he will furnish to the Contracting Officer sixty (60) days after the effective date of this contract, and at intervals of not more than ninety (90) days thereafter, so long as any of the supplies or services called for by this contract remain undelivered, a statement itemized so far as practical in the manner prescribed in DD Form 633 showing the costs expended and incurred to the date of such statement and the estimated percentage of completion of the work. Each such statement will show costs as of a date not more than ten (10) days prior to the date of submission of statement to the Government. The statement will be acceptable in summary form, segregated as to elements of cost, but without supporting schedules, provided it is signed by the president, the treasurer, or other chief financial officer of the company. The statement will, if possible, be by factory releases or production lots, and may state that it contains reservations for costs not yet recorded if the approximate extent of such reservations is indicated.

§ 1003.403-5 *Optional ceiling price provision.* Certain price redetermination contracts do not provide mandatory ceilings on price, but provide for unlimited upward or downward adjustment. A ceiling price provision may be included in the clauses referred to in this section at the discretion of the contracting officer. The following language is suggested:

In no event shall the redetermined prices hereunder exceed ____ This

factor may be expressed in dollars or as a percentage of the initial contract price. The percentage factor is preferable, particularly if provisional items are procured.

§ 1003.403–6 *Form I (FPR–I), periodic pricing at fixed intervals (prospective only)*—(a) *Description.* The Form I clause appearing in paragraph (b) of this section provides for unlimited upward or downward revision of the price at intervals fixed in paragraph (2) of the clause. The Government and the contractor are bound by the prices negotiated for the first period; thereafter revision of price is prospective only.

(b) *Form I clause (periodic prices at fixed intervals—prospective only).*

FORM I CLAUSE

(1) The prices set forth herein may be increased or decreased in accordance with this clause.

(2) *Price periods.* The Government and the contractor agree to revise the contract prices under this contract periodically in accordance with this clause and agree that the performance of this contract will be divided into successive periods for that purpose. The first period will extend from _____ to _____; and the second and each succeeding period will extend for _____ months from the end of the preceding period. The first day of the second and each succeeding period is hereinafter referred to as "the effective date of the price revision." _____ days before the end of each period hereunder, except the last, or at such time or times as the contracting officer may fix, the contractor shall furnish the statements and data referred to in paragraph (3) of this clause.

(3) *Submission of data.* At the time or each of the times specified or provided for in paragraph (2) of this clause, the contractor shall submit (i) a new estimate and breakdown of the unit cost and the proposed prices of the items to be delivered in the succeeding period under this contract, itemized so far as is prescribed in DD Form No. 633; (ii) an explanation of the differences between the original (or last preceding) estimate and the new estimate; (iii) such relevant shop and engineering data, cost records, overhead absorption reports and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimates; (iv) a statement of experienced costs of production hereunder to the extent that they are available at the time or times of the negotiation of the revision of prices hereunder; and (v) any other relevant data usually furnished in the case of negotiation of prices under a new contract. The Government may make such examination of the contractors accounts, records and books as the contracting officer may require and may make such audit thereof as the contracting officer may deem necessary.

(4) *Negotiations.* (a) Upon the filing of the statements and data required by paragraph (3) of this clause, the contractor and the contracting officer will negotiate promptly in good faith to agree upon prices for items to be delivered on and after the effective date of the price revision. Negotiations for price revision under this clause shall be conducted on the same basis, employing the same types of data (including, without limitation, comparative prices, comparative costs, and trends thereof) as in the negotiation of prices under a new Department of the Air Force contract.

(b) After each negotiation the agreement reached will be evidenced by a supplemental agreement stating the revised prices to be effective with respect to deliveries on and after the effective date of the price revision.

(5) *Disagreements.* If within 30 days after the effective date of the price revision (or such further period as may be fixed by written agreement) the contracting officer and the contractor fail to agree to revised prices for the period in question, the failure to agree shall be deemed to be a disagreement as to a question of fact which shall be disposed of in accordance with the clause herein entitled "Disputes."

(6) *Payments.* Until new prices shall become effective in accordance with this clause, the prices in force at the effective date of the price revision shall be paid upon all deliveries, subject to appropriate later revision made pursuant to paragraph (4) or (5) or (7) (b) (ii) of this clause.

(7) *Termination provisions.* For any of the purposes of the clause herein entitled "Termination for Convenience of the Government" of this contract (including without limitation, the computation of "the total contract price" and "the contract price of work not terminated"), the contract price of delivered articles shall be deemed to be:

(a) For all items delivered prior to the effective date of the price revision, the contract price (giving effect to any prior revisions under this clause) applicable to each such item;

(b) For all items delivered on or after the effective date of the price revision—

(i) the contract price as revised in accordance with this clause, if such revision shall have been agreed upon; and

(ii) if such revision shall not have been agreed upon, then such estimated prices as the contractor and the contracting officer may agree upon as reasonable under all the circumstances and in the absence of such agreement such reasonable prices as may be determined in accordance with the clause herein entitled "Disputes."

§ 1003.403–7 *Form IIA (FPR–IIA), Optional Periodic Pricing Upon Demand (Prospective Only)*—(a) *Description.* The Form IIA clause provides for an unlimited upward or downward revision of the price from time to time upon the written demand of either the Government or the contractor, subject to specified limitations on the frequency of demand.

(b) *Form IIA clause (optional periodic pricing upon demand, prospective only).*

FORM IIA CLAUSE

(1) The prices set forth herein may be increased or decreased in accordance with this clause.

(2) *Demand for negotiation.* (a) At any time and from time to time, subject to the limitations specified in this clause, either the Government or the contractor may deliver to the other a written demand that the parties negotiate to revise the prices under this contract. No such demand shall be made before _____ and thereafter neither party shall make a demand having an effective date within 120 days of the effective date of any prior demand. Each demand shall specify a date, not earlier than 30 days subsequent to the date of the delivery of the demand, as of which the revised prices shall be effective as to the deliveries made thereon and thereafter. This date is hereinafter referred to as "the effective date of the price revision." Any demand under this clause, if made by the contractor, shall state briefly the ground or grounds therefor and shall be accompanied by the statements and data referred to in paragraph (3) of this clause. If the demand is made by the Government, such statements and data will be furnished by the contractor within 30 days of the delivery of the demand.

(b) In the event all remaining work under this contract, as it may from time to time be amended, shall be terminated under the clause herein entitled "Termination for Convenience of the Government," no demand shall then or thereafter be made and any demand the effective date of which is less than 30 days before the effective date of such termination shall be void and of no effect.

(3) *Submission of data.* At the time or each of the times specified or provided for in paragraph (2) of this clause the contractor shall submit (i) a new estimate and breakdown of the unit cost and the proposed prices of the items remaining under this contract after the effective date of the price revision, itemized so far as practical in the manner prescribed on DD Form No. 633; (ii) an explanation of the difference between the original (or last preceding) estimate and the new estimate; (iii) such relevant shop and engineering data, cost records, overhead absorption reports and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimate; (iv) a statement of experienced costs of production hereunder to the extent that they are available at the time or times of the negotiation of the revision of prices hereunder; and (v) any other relevant data usually furnished in the case of negotiation of prices under a new contract. The Government may make such examination of the contractor's accounts, records and books as the contracting officer may require and may make such audit thereof as the contracting officer may deem necessary.

(4) *Negotiations.* (a) Upon the filing of the statements and data required by paragraph (3) of this clause, the contractor and contracting officer will negotiate promptly in good faith to agree upon prices for items to be delivered on and after the effective date of the price revision. Negotiations for price revisions under this clause shall be conducted on the same basis, employing the same types of data, including, without limitation, comparative prices, comparative costs and trends thereof as under a new Department of the Air Force contract.

(b) After each negotiation the agreement reached will be evidenced by a supplemental agreement stating the revised prices to be effective with respect to deliveries on and after the effective date of the price revision (or such other later date as the parties may fix in such supplemental agreement).

(5) *Disagreements.* If, within 30 days after the date on which the statements and data are required pursuant to paragraph (2) of this clause to be filed (or such further period as may be fixed by written agreement), the contracting officer and the contractor fail to agree to revised prices, the failure to agree shall be deemed to be a disagreement as to a question of fact which shall be disposed of in accordance with the clause herein entitled "Disputes," and the prices so fixed shall remain in effect for the balance of the contract notwithstanding any other provision of this clause.

(6) *Payments.* Until new prices shall become effective in accordance with this clause, the prices in force at the effective date of the price revision shall be paid upon all deliveries subject to appropriate later revision made pursuant to paragraph (4) or (5) or (7) (b) (ii) of this clause.

(7) *Termination Provisions.* For any of the purposes of the clause herein entitled "Termination for Convenience of the Government" (including, without limitation, the computation of "the total contract price," and "the contract price of work not terminated"), the contract price of delivered articles shall be deemed to be:

(a) For all items delivered prior to the effective date of the price revision, the contract price (giving effect to any prior revisions under this clause) applicable to each such items:

(b) For all items delivered on or after the effective date of the price revision,

(i) the contract price as revised in accordance with this clause, if such revision shall have been agreed upon; and

(ii) If such revision shall not have been agreed upon, then such estimated prices as the contractor and the contracting officer may agree upon as reasonable under all the circumstances and in the absence of such agreement such reasonable prices as may be determined in accordance with the clause herein entitled "Disputes."

§ 1003.403–8 *Form IIB (FPR–IIB), retroactive and prospective price redetermination (including further prospective redetermination upon demand)*—(a) *Description.* The Form IIB clause provides for a mandatory and unlimited upward or downward revision of the prices upon delivery of a specified percentage of the principal items called for by the contract. This revised price applies retroactively to the initial period and prospectively to the undelivered portion of the contract. Thereafter the price may remain firm or subsequently be revised on demand of either party in essentially the same manner as prescribed in the Form IIA. This form of contract therefor contemplates a situation where neither party can be bound by initial prices due to inexperience, the establishment of target prices for a limited period of time while experience is being recorded, and the negotiation of firm fixed prices in subsequent periods based on such experience.

(b) *Form IIB clause (retroactive and prospective price redetermination, including further prospective redetermination upon demand.)*

FORM IIB CLAUSE

(1) The prices of the supplies to be furnished hereunder may be increased or decreased in accordance with this clause.

(2) *Times for negotiation.* (a) Upon completion of delivery of __ percent of the (here specify the principal items to be furnished under the contract) to be furnished under this contract, the parties shall negotiate to revise the prices of all items theretofore and thereafter to be delivered ____ days prior to the completio of delivery of said ____ percent, the contractor shall furnish to the contracting officre the statements and data referred to in paragraph (3) of this clause. At any time and from time to time after the completion of delivery of said __ percent, subject to the limitations specified in this clause, either the Government or the contractor may deliver to the other a written demand that the parties neg tiate to adjust the prices under this contract. No demand shall be made prior to 120 days after the completion of delivery of said __ percent and thereafter neither party shall make a demand having an effective date within 120 days of the effective date of any prior demand. Each demand shall specify a date, not earlier than 30 days subsequent to the date of the delivery of the demand, as of which the revised prices shall be effective as to the deliveries made thereon and thereafter. This date is hereinafter referred to as "the effective date of the price revision." For the purposes of the first negotiation contemplated by this paragraph, the date of execution of this contract shall be deemed to be the effective date of the price revision. Any demand under this clause, if made by the contractor, shall state briefly the ground or grounds therefor and shall be accompanied by the statements and data referred to in paragraph (3) of this clause. If the demand is made by the Government, such statements and data will be furnished by the contractor within 30 days of the delivery of the demand.

(b) In the event all remaining work under this contract, as it may from time to time be amended, shall be terminated under the clause herein entitled "Termination for Convenience of the Government," no demand shall then or thereafter be made and any demand the effective date of which is less than 30 days before the effective date of such termination shall be void and of no effect.

(3) *Submission of data.* At the time or each of the times specified or provided for in paragraph (2) of this clause the contractor shall submit (i) a new estimate and breakdown of the unit cost and the proposed prices of the items remaining under this contract after the effective date of the price revision, itemized so far as is practicable in the manner prescribed by DD Form 784, "Cost Analysis for Contract Price Redetermination"; (ii) and explanation of the differences between the original (or last preceding) estimate and the new estimates; (iii) such relevant shop and engineering data, cost records, overhead absorption reports, and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimate; (iv) a statement of experienced cost of production hereunder to the extent that they are available at the time or times of the negotiation of the revision of prices hereunder; and (v) any other relevant data usually furnished in the case of negotiation of prices under a new contract. The Government may make such examination of the contractor's accounts, records, and books as the contracting officer may require and may make such audit thereof as the contracting officer may deem necessary.

(4) *Negotiations.* (a) Upon the filing of the statements and data required by paragraph (3) of this clause, the contractor and the contracting officer will negotiate promptly in good faith to agree upon prices for items delivered and to be delivered on and after the effective date of the price revision. Negotiations for price revisions under this clause shall be conducted on the same basis, employing the same types of data (including, without limitations, comparative prices, comparative costs, and trends thereof) as in the negotiation of prices under a new Department of the Air Force contract.

(b) After each negotiation the agreement reached will be evidenced by a supplemental agreement stating the revised prices to be effective with respect to delivered and to be delivered items as the case may be on and after the effective date of the price revision (or such other later date as the parties may fix in such supplemental agreement).

(5) *Disagreements.* If within 30 days after the date on which the statements and data are required pursuant to paragraph (2) of this clause to be filed (or such further period as may be fixed by written agreement) the contracting officer and the contractor fail to agree to revised prices, the failure to agree shall be deemed to be a disagreement as to a question of fact which shall be disposed of in accordance with the clause herein entitled "Disputes," and the prices so fixed shall remain in effect for the balance of the contract notwithstanding any other provision of this clause.

(6) *Payments.* Until new prices shall become effective in accordance with this clause, the prices in force at the effective date of the price revision shall be paid upon all deliveries, subject to appropriate later revision made pursuant to paragraph (4) or (5) or (7) (b) (ii) of this clause.

(7) *Termination provisions.* For any of the purposes of the clause herein entitled "Termination for Convenience of the Government" (including without limitation, the computation of "the total contract price" and "the contract price of work not terminated"), the contract price of delivered article shall be deemed to be:

(a) For all items delivered prior to the effective date of the price revision, the contract price (giving effect to any prior revisions under this clause) applicable to each item;

(b) For all items delivered on or after the effective date of the price revision; (i) the contract price as revised in accordance with this clause if such revision shall have been agreed upon; and (ii) if such revision shall not have been agreed upon, then such estimated prices as the contractor and the contracting officer may agree upon as reasonable under all the circumstances and in the absence of such agreement such reasonable prices as may be determined in accordance with the clause herein entitled "Disputes."

(8) *Termination during the initial period.* In the event that this contract is terminated under the clause herein entitled "Termination for Convenience of the Government" or the contractor's right to deliver is terminated under the clause herein entitled "Default," so that the last delivery under the contract as terminated is made prior to the completion of the initial period as specified in paragraph (2) of this clause, the contractor within ____ days after such last delivery shall furnish the data required by paragraph (3) of this clause and thereupon the parties shall negotiate in good faith to agree upon revised prices under this contract. The agreement reached shall be evidenced by a supplemental agreement to this contract stating the revised prices under the contract. Any disagreement as to the revised prices will be disposed of as a question of fact in accordance with the clause herein entitled "Disputes."

§ 1003.403–9 *Form III (FPR–III), retroactive price revision (mandatory unless determined otherwise by contracting officer)*—(a) *Description.* This type of contract provides for a wholly retroactive and downward only revision of the contract price upon completion of performance. The clause binds the parties, after completion or termination of the contract to negotiate to reduce the entire contract price, unless the contracting officer determines that the contract price is fair and reasonable within 45 days of receipt of contractor's cost data. It is designed primarily for use in research or development contracts, or for the procurement of supplies or services when the period of performance is so short as to preclude the use and administration of one of the other types of price redetermination contracts. This type contemplates initial pricing sufficiently close to enable the contracting officer, in many cases, to determine that initially negotiated prices are fair and reasonable.

(b) *Conditions for use.* (1) This type of contract may be used only when the amount of the procurement is $100,000 or less.

(2) The price initially negotiated should bear a reasonably close relationship to the expected final price thereunder.

(3) The procurement must call for research or development, or for supplies or services to be delivered within 9 months of date of execution of the contract.

(c) *Form III clause (retroactive price revision—mandatory unless determined otherwise by contracting officer).*

FORM III CLAUSE

(1) Within 60 days after the completion or termination of this contract, the contractor will submit to the contracting officer a detailed statement of performing this contract, itemized so far as is practical in the manner prescribed in DD Form No. 633. Then within forty-five (45) days after the submis-

sion of such statement, unless the contracting officer determines and notifies the contractor in writing that the prices are considered fair and reasonable, the contractor and the contracting officer will undertake negotiations to reduce the contract price to an amount representing fair and reasonable compensation for the performance of the contract. In such negotiations the efficiency of the contractor in production, buying and management will be given due weight.

(2) The contractor will furnish to the contracting officer such other statements of actual costs of production and such other financial statements, at such times and in such form and detail, as the contracting officer may prescribe, and will permit such audits and examination of its books, records and accounts as the contracting officer may request.

(3) If within thirty (30) days after the commencement of negotiations (or such further period as may be fixed by written agreement) the contracting officer and the contractor fail to agree to a revised price, the failure to agree shall be deemed to be a disagreement as to a question of fact which shall be disposed of in accordance with the clause herein entitled "Disputes."

(4) The Government shall retain from amounts otherwise due the contractor, or the contractor shall repay to the Government if paid to him, any amount by which the contract price is found as result of the application of this clause to exceed a fair and reasonable price, as the contracting officer may direct.

§ 1003.403-10 *Form IV (FPR-IV), retroactive price revision (mandatory, with limited upward revision)*—(a) *Description.* This type of contract provides for upward or downward retroactive price revision upon completion of performance. Under this type, a contract target price is agreed upon which it is believed will encourage the contractor to do as efficient a job as possible in the circumstances and at the same time, a maximum price is fixed as a ceiling on any upward revision under the clause. It is used primarily in research or development procurements, or for the procurement of supplies or services when the period of performance is so short as to preclude the use and administration of one of the other types of price redetermination contracts.

(b) *Conditions for use.* (1) This type of contract may be used when the procurement calls for research or development, or for supplies or services to be delivered within nine (9) months from the date of execution of the contract.

(2) The ceiling price should bear a reasonable relationship to the target price.

(3) Contingencies should be removed from the target price as consideration for the ceiling-price protection.

(c) *Form IV clause (retroactive price revision—mandatory, with limited upward revision).*

FORM IV CLAUSE

(1) Because of the nature of the work called for by this contract and the uncertainty as to the cost of performance hereunder, the parties agree that the contract price hereof may be increased or decreased in accordance with the provisions of this clause.

(2) Within ____ (not exceeding 60) days after the completion or termination of this contract, the contractor will file with the contracting officer a statement showing, in such form and detail as the contracting officer may prescribe, the contractor's cost of producing the supplies or furnishing the services called for hereunder, itemized so far as is practical in the manner prescribed by DD Form No. 633, together with such other information as may be pertinent in the negotiations for a revised price pursuant to this clause. Such statement of cost shall fairly reflect the normal operation of the Contractor's cost system. The contracting officer shall have the right at all reasonable times to make or cause to be made such examinations and audits of the contractor's books, records, and accounts as he may request.

(3) Upon the filing of the statement and other pertinent information required by paragraph (2) of this clause, the contractor and the contracting officer will promptly negotiate in good faith to agree upon a reasonable revised price for the entire contract which, upon the basis of such statement and other pertinent information, will constitute fair and just compensation to the contractor for the performance of this contract. In determining the extent of any estimated allowance for profit to be taken into account in fixing such revised price, consideration will be given to the extent to which the contractor has performed the contract with efficiency, economy, and ingenuity. In no event shall the revised price exceed the sum of $_____. The revised price shall be evidenced by a supplemental agreement to this contract.

(4) If within ____ (not exceeding 90) days after the completion or termination of this contract, the parties shall fail to agree upon a revised price in accordance with the provisions of this clause, the failure to agree shall be deemed to be a disagreement as to a question of fact which shall be disposed of in accordance with the clause herein entitled "Disputes."

(5) In the event of a price increase, the Government will pay or credit to the contractor the amount by which the revised price shall exceed the contract price aforesaid. In the event of a decrease in price, the contractor will repay or credit the amount of such decrease to the Government in such manner as the contracting officer may direct.

(6) For any of the purposes of the clause herein entitled "Termination for Convenience of the Government" (including without limitation, computation of "the total contract price" and "the contract price of work not terminated"), the contract price shall be the revised contract price agreed upon under paragraph (3) of this clause determined under paragraph (4) of this clause, as the case may be.

§ 1003.403-11 *Form V (FPR-V), price revision upon happening of specified contingency*—(a) *Description.* This type of contract provides for an equitable revision of prices, prospective only, upon the happening of a contingency specified in the clause as a "basic assumption." The revision may be upward to a specified limit, and unlimited downward. The purpose of this form is to limit any upward revisions to identified contingency situations beyond the contractor's control, or conversely, to provide that any benefits from these same contingencies will flow to the Government.

(b) *Conditions for use.* The clause is not authorized for use to cover any of the following contingencies: (1) changes in taxes or duties; (2) changes in wage rates or employment conditions; (3) risks arising in connection with patents; (4) termination of the contract in whole or in part.

(c) *Form V clause (price revision—upon happening of specified contingency).*

FORM V CLAUSE

(1) *Basic Assumption.* The contractor represents that the prices under this contract have been fixed on the following assumption (hereinafter called the basic assumption):

In the event that the basic assumption is not realized, in whole or in part, and that as a result the contractor's costs vary materially from its presently anticipated costs as specified above, the parties agree that an equitable adjustment shall be made in the contract price on account of any net increase or decrease in such costs resulting from that nonrealization.

(2) Within 30 days after the entire or partial nonfulfillment of the basic assumption, the contractor shall notify the contracting officer in writing of the fact and extent of such occurrence, and shall also, within such time (or within such further period as the contracting officer may in writing allow before the date of final settlement of the contract), present in writing to the contracting officer any claim which it may then have for adjustment under this clause. Within 30 days after the contractor's notification to him (or within such further time as the parties may agree upon writing), the contracting officer shall present in writing to the contractor any claim for adjustment under this clause which the Government may then have. The parties agree to negotiate in good faith concerning these claims and the amount and terms of any equitable adjustment which should be made. Any price revision hereunder shall be prospective only from the date of the entire or partial nonfulfillment of the basic assumption. If the parties fail to agree whether an equitable adjustment is required under this clause, or upon the terms or amount of such adjustment, the dispute shall be disposed of as a question of fact in accordance with the clause herein entitled "Disputes." But nothing provided in this clause shall excuse the contractor from proceeding with the contract in accordance with its terms. Any adjustment hereunder shall be evidenced by a supplemental agreement to this contract. Nothing provided in this clause is intended to alter, restrict or limit the terms of the clause herein entitled "Changes" or the authority of the contracting officer thereunder.

(3) *Warranty.* The contractor represents and warrants that there is not included in the price hereunder any charge, allowance, or reserve for the possible nonfulfillment, in whole or in part, of the basic assumption.

(4) *Relation to Default Clause.* To the extent that performance of this contract may be delayed because of the nonrealization of the basic assumption, in whole or in part, and that the contractor shall have been unable to prevent such delay, the delay shall be deemed to be excusable for the purposes of the clause herein entitled "Default."

§ 1003.404 *Incentive-type contracts.*

§ 1003.404-2 *Fixed-price incentive types.* There are two general types of fixed-price incentive contracts: the type providing for a firm target price (FPIF), and the type providing for a "billing price" with provisions for later establishment of a firm target price by negotiation (FPIR).

(a) *Description.* The incentive feature is provided by permitting the contractor's profit to increase as costs decrease; conversely it provides for a decrease in profit as costs increase in relation to a target established by negotiation. The use of either incentive price revision clause must be premised on the ability of the contractor to maintain ac-

counting records in accordance with generally accepted accounting principles and practices, to the extent and in such detail as is necessary for establishment of costs applicable to the contract. These clauses are designed to stimulate efficiencies in performance.

(b) *Fixed price incentive clause (FPIF) (with target set at the outset).*

FIXED PRICE INCENTIVE CLAUSE

(1) *Definitions.* As used in this clause, the following terms shall have the meanings set forth below:

(a) The term "billing price" means the stated prices which the contractor may receive upon delivery of any article or completion of services pending final price revision.

(b) The term "target price" means any price that is subject to adjustment in accordance with the final price revision provisions of these price revision clauses.

(c) The term "target cost" means that portion of any target prices which, at the time of negotiation thereof, was deemed to be the estimated cost of the articles or services being procured and which will be used as a basis for determining the amount of profit the contractor will realize at the time of establishing the final contract price.

(d) The term "target profit" means that portion of any target price agreed upon as being a reasonable profit for furnishing any item of articles or services if such item were produced for a cost equal to the target cost.

(e) The term "contract target price" means the sum of the target prices of articles and services being procured under the terms of the contract and under change orders and amendments thereto.

(f) The term "contract target cost" means the sum of the target costs of articles and services being procured under the terms of the contract and under change orders and amendments thereto.

(g) The term "contract target profit" means the sum of the target profits of articles and services being procured under the terms of the contract and under change orders and amendments thereto.

(h) The term "adjusted total contract cost" means the total cost, determined in accordance with paragraph (7) (i) of this clause, for only those items subject to final price revision in accordance with the provisions of this clause.

(i) The term "final contract price" means the final contract price for only those items subject to final price revision in accordance with the provisions of this clause.

(2) *General.* The Prices of Items ____ under this contract are target prices until revised in accordance with the provisions of this clause and including a target profit of ____ percentage of target cost. The prices of Items ____ are fixed prices and not subject to revisions in accordance with any of the provisions of this clause.

(3) *Submission of data.* Within ____ days after the end of the month in which the Contractor has delivered the last unit referred to in Items ____ of this contract, the Contractor shall forward to the contracting officer (i) a statement of all costs itemized so far as practical in manner prescribed by DD Form 633, incurred by the Contractor in performing all work under the items of this contract subject to price revision, and (ii) an estimate of costs of such further performance, if any, as may be necessary to complete performance of all work and obligations under such items. The Contractor may include as a separate item in the statement of costs to be submitted hereunder, an amount to be agreed upon by the Contractor and the contracting officer representing the difference between (i) the cost of materials, supplies, and subassemblies purchased for but not allocated to the performance of the contract by the Contractor which may be reasonably expected to remain on hand or which are on hand as surplus materials to the conclusion of the contract, and (ii) the value of such materials, supplies and subassemblies to the conclusion of the contract.

(4) *Accounting procedures.* The Contractor agrees to maintain books, records, documents and other evidence pertaining to the costs and expenses of this contract, in accordance with generally accepted accounting principles and practices, and to the extent and in such detail as is necessary for establishment of costs applicable to the items of this contract subject to price revision. The Contractor shall segregate the costs of any item, change or service, the price of which is fixed and not subject to revision in accordance with the provisions of this clause.

(5) *Certification.* An officer or other responsible official of the Contractor authorized by it to do so, shall certify on each statement of costs forwarded to the contracting officer in accordance with the requirements of this clause, that the incurred costs are based upon the accounting records of the Contractor, that such records have been kept in accordance with generally accepted accounting principles and practices normally followed by the Contractor, that such incurred costs are correct to the best of his knowledge and belief and that the estimate of costs to complete is considered reasonable.

(6) *Items prices pursuant to established provisioning procedures.* (i) Item ____, Spare Parts. The unit prices of spare parts shall exclude (include) the estimated cost of engineering and tooling and shall be determined in accordance with ____, which document is incorporated herein by reference. The Contractor shall furnish with priced spare parts order a detailed statement of the method used in pricing such order and separate cost breakdowns of a representative number of major parts included in the order. The aggregate target price for such spare parts shall be established by negotiation on the basis of information submitted in accordance with this subparagrpah. Spare parts unit prices, as so established, need not be recalculated for the purposes of this clause, however, the aggregate target price for spare parts Item ____, shall be subject to revision in accordance with the provisions of this clause. As target prices are established pursuant to this paragraph, they shall be added to the contract by amendment which shall indicate the effect on the contract target price, target profit and ceiling.

(ii) Item ____, ____

(Other items) (Any special provisions applicable)

(7) *Final price revision.* Upon submission of the information required by paragraph (3) above, the Contractor and the contracting officer shall promptly establish a final contract price for the items subject to revision in accordance with the provisions of this clause in the following manner:

(i) On the basis of the information required by paragraph (3) above, together with the results of such other investigation, as the contracting officer may deem appropriate, there shall be established by negotiation the adjusted total contract cost, excluding the actual cost incurred to date of any item or service that has been established on a fixed price basis and the estimated completion cost thereof. Failure to agree, shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(ii) The final contract price of such items shall be established by adding to the adjusted total contract cost, as negotiated under paragraph (i) above, an allowance for profit determined in accordance with the instructions set forth in paragraph (iii) below; provided, however, that in no event shall the final contract price exceed ____ percent of the contract target cost.

(iii) The allowance for profit with respect to such items shall be determined by adding to or deducting from the contract target profit an amount to be determined in accordance with the following schedule; provided, however, that in no event shall the final contract profit exceed ____ percent of the contract target cost:

When the adjusted total contract cost is—	The allowance for final contract profit is—
Equal to the contract target cost	Contract target profit.
Greater than contract target cost	Contract target profit less __ percent of the amount by which the adjusted total contract cost exceeds the contract target cost.
Less than the contract target cost	Contract target profit plus __ percent of the amount by which the adjusted total contract cost is less than the contract target cost.

(8) *Adjustment of payments.* If the final contract price, as determined under paragraph (7) of this clause, is greater than the aggregate of billing prices for items subject to price revision, as such billing prices may have been revised from time to time, and provided the contractor has met the other requirements of this contract, the contractor shall promptly be paid the amount of such excess. If such final contract price is less than the aggregate of such billing prices, provisions shall be made for prompt reimbursement by the contractor to the Government of the amount of the deficiency. The total amount so payable and the method of payment shall be set forth in an amendment to the contract.

(9) *Termination.* In the event this contract is terminated, in whole or in part, settlement shall be made in accordance with the provisions of the clause hereof entitled "Termination for the Convenience of the Government" or the provisions of the clause hereof entitled "Default," whichever is applicable, subject to the following: (i) If this contract is terminated in its entirety at any time prior to agreement upon revised prices hereunder, the Contractor and the contracting officer shall if the termination settlement is to be negotiated on an inventory basis, negotiate to establish such prices for completed articles and services, the price of which was subject to revision hereunder, as may be equitable under the circumstances. Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Dispute."

(ii) If this contract is partially terminated the Contractor and the contracting officer shall agree upon such revisions in the provisions of this clause, including target price, as may be equitable under the circumstances. Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(10) *Adjustment of billing price.* If at any time it appears that the final unit price will be substantially greater or less than the unit prices at which units under this contract are being billed, this contract may be amended to adjust such unit billing prices. The establishment of adjusted prices for billing purposes only shall in no way limit or affect the price revision to be computed in accordance with the provisions of this clause.

(c) *Fixed price incentive clause (FPIR) (with target set during course of contract).*

FIXED PRICE INCENTIVE CLAUSE

(1) *Definitions.* As used in this clause, the following terms shall have the meanings set forth below:

(a) The term "billing price" means the stated prices which the contractor may receive upon delivery of any articles or completion of services pending final price revision.

(b) The term "target price" means any price that is subject to adjustment in accordance with the final price revision provisions of these price revision clauses.

(c) The term "target cost" means that portion of any target price which, at the time of negotiation thereof, was deemed to be the estimated cost of the articles or services being procured and which will be used as a basis for determining the amount of profit the contractor will realize at the time of establishing the final contract price.

(d) The term "target profit" means that portion of any target price agreed upon as being a reasonable profit for furnishing any item of articles or services if such item were produced for a cost equal to the target cost.

(e) The term "contract target price" means the sum of the target prices of articles and services being procured under the terms of the contract and under change orders and amendments thereto.

(f) The term "contract target cost" means the sum of the target costs of articles and services being procured under the terms of the contract and under change orders and amendments thereto.

(g) The term "contract target profit" means the sum of the target profits of articles and services being procured under the terms of the contract and under change orders and amendments thereto.

(h) The term "adjusted total contract cost" means the total cost, determined in accordance with paragraph (7) (i) of this clause, for only those items subject to final price revision in accordance with the provisions of this clause.

(i) The term "final contract price" means the final contract price for only those items subject to final price revision in accordance with the provisions of this clause.

(2) *General.* The prices of Items ____ under this contract are billing prices until revised in accordance with the provisions of this clause. The prices of Items ____ are fixed prices and not subject to revision in accordance with any of the provisions of this clause.

(3) *Submission of data for establishment of target price.* Within ____ days after the end of the month in which the ____ unit (to be manufactured hereunder) or (to be manufactured under contract ----------) is (delivered) (shop completed), or at such other time as the contracting officer may direct, the contractor shall forward to the contracting officer (i) a statement of all costs, itemized so far as is practical in the manner prescribed by DD Form 633 incurred to the date of such (delivery) (shop completion) or such other time as directed by the contracting officer under this contract (and under the above Contract ----------), (ii) an estimate of costs to be incurred by the Contractor to complete performance of all work and obligations under items subject to price revision, and (iii) data to support the accuracy and reliability of such estimate.

(4) *Submission of data for final price revision.* Within ____ days after the end of the month in which the contractor has delivered the last unit referred to in Item(s) ------ of this contract, the contractor shall forward to the contracting officer in such form as the contracting officer may reasonably require (i) a statement of all costs itemized so far as is practical in the manner prescribed by DD Form 633 incurred by the contractor in performing all work under the items of this contract subject to price revision, and (ii) an estimate of costs of such further performance, if any, as may be necessary to complete performance of all work and obligations under such items. The contractor may include as a separate item in the statement of costs to be submitted hereunder, an amount to be agreed upon by the contractor and the contracting officer representing the difference between (i) the cost of materials, supplies, and subassemblies purchased for but not allocated to the performance of the contract by the contractor which may be reasonably expected to remain on hand or which are on hand as surplus materials to the conclusion of the contract, and (ii) the value of such materials, supplies and subassemblies to the conclusion of the contract.

(5) *Accounting procedures.* The contractor agrees to maintain books, records, documents, and other evidence pertaining to the costs and expenses of this contract, in accordance with generally accepted accounting principles and practices to the extent and in such detail as is necessary for the establishment of costs applicable to the items of this contract subject to price revision. The contractor shall segregate the costs of any item, change or service, the price of which is fixed and not subject to revision in accordance with the provisions of this clause.

(6) *Certification.* An officer or other responsible official of the contractor authorized by it to do so, shall certify on each statement of costs forwarded to the contracting officer in accordance with the requirements of this clause, that the incurred costs are based upon the accounting records of the contractor, that such records have been kept in accordance with generally accepted accounting principles and practices normally followed by the contractor, that such incurred costs are correct to the best of his knowledge and belief and that the estimate of costs to complete is considered reasonable.

(7) *Establishment of target price.* Items ____. Upon submission of the information required by paragraph (3) above, the contractor and the contracting officer shall promptly negotiate to establish the target costs, which when added to a target profit (see instructions in paragraph 3-404.2 (c) (4)) shall constitute the target prices. Such target prices of such items shall constitute the revised billing prices and shall be evidenced by an amendment to this contract. Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(8) *Items priced pursuant to established provisioning procedures.* (i) Item ____, Spare Parts. The unit prices of spare parts shall exclude (include) the estimated cost of engineering and tooling and shall be determined in accordance with ____, which document is incorporated herein by reference. The contractor shall furnish with the priced spare parts order a detailed statement of the method used in pricing such order and separate cost breakdowns of a representative number of major parts included in the order. If any priced spare parts order is received by the contracting officer from the contractor prior to establishment of the target prices of Item ____, the aggregate billing prices for spare parts set forth therein shall be established by negotiation. Spare parts billing unit prices as so established, need not be recalculated for the purpose of this clause; however, the aggregate target price for spare parts Item ____ shall be subject to revision in accordance with the provisions of this clause. In the event that billing prices for such spare parts orders have been so established prior to the establishment of the target prices, the aggregate target prices for spare parts under such order or orders shall be established by negotiation at the same time and in the same manner as for Items ____. Spare parts unit prices as so established, need not be recalculated for the purposes of this clause; however, the aggregate target price for spare parts Item ____ shall be subject to revision in accordance with the provisions of this clause. If any priced spare parts order is received by the contracting officer from the contractor subsequent to the establishment of the target prices of Items ____, the target prices for spare parts thereunder shall be similarly established by negotiation. The target prices established pursuant to this paragraph shall be added to the contract by amendment which shall indicate the effect on the contract target price, target profit, and ceiling.

(ii) Item ____, ----------

(Other items) (Any special provisions applicable)

(9) *Final price revision.* Upon submission of the information required by paragraph (4) above, the contractor and the contracting officer shall promptly establish a final contract price for the items subject to revision in accordance with the provisions of this clause in the following manner: (i) On the basis of the information required by paragraph (4) above, together with the results of such other investigation, as the contracting officer may deem appropriate, there shall be established by negotiation the adjusted total contract cost, excluding the actual cost incurred to date of any item or service that has been established on a fixed-price basis and the estimated completion cost thereof. Failure to agree shall constitute a question of fact within the meaning of the clause of this contract entitled "Disputes." (ii) The final contract price of such items shall be established by adding to the adjusted total contract cost, as negotiated under paragraph (i) above, an allowance for profit determined in accordance with the instructions set forth in paragraph (iii) below; provided, however, that in no event shall the final contract price exceed -- percent of the contract target cost. (iii) The allowance for profit with respect to such items shall be determined by adding to or deducting from the contract target profit an amount to be determined in accordance with the following schedule; provided, however, that in no event shall the final contract profit exceed -- percent of the contract target cost:

When the adjusted contract total is—	The allowance for final contract profit is—
Equal to the contract target cost	Contract target profit.
Greater than the contract target cost	Contract target profit less -- percent of the amount by which the adjusted total contract cost exceeds the contract target cost.
Less than the contract target cost	Contract target profit plus -- percent of the amount by which the adjusted total contract cost is less than the contract target cost.

(10) *Adjustment of payments.* If the final contract price, as determined under paragraph (9) of this clause, is greater than the aggregate of billing prices for items subject to price revision, as such billing prices may have been revised from time to time, and provided the contractor has met the other requirements of this contract, the contractor shall promptly be paid the amount of such excess. If such final contract price is less

than the aggregate of such billing prices, provisions shall be made for prompt reimbursement by the contractor to the Government of the amount of the deficiency. The total amount so payable and the method of payment shall be set forth in an amendment to the contract.

(11) *Termination.* In the event this contract is terminated, in whole or in part, settlement shall be made in accordance with the provisions of the clause hereof entitled "Termination for the Convenience of the Government" or the provisions of the clause hereof entitled "Default," whichever is applicable, subject to the following: (i) If this contract is terminated in its entirety at any time prior to agreement upon revised prices hereunder, the contractor and the contracting officer shall if termination settlement is to be negotiated on an inventory basis, negotiate to establish such prices for completed articles or services, the price of which was subject to revision hereunder, as may be equitable under the circumstances. Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." (ii) If this contract is partially terminated the contractor and the contracting officer shall agree upon such revisions in the provisions of this clause, including target prices, as may be equitable under the circumstances. Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(12) *Adjustment of billing price.* If at any time it appears that the final unit prices will be substantially greater or less than the unit prices at which units under this contract are being billed, this contract may be amended to adjust such unit billing prices. The establishment of adjusted prices for billing purposes only shall in no way limit or affect the price revision to be computed in accordance with the provisions of this clause.

§ 1003.404–3 *Cost-plus-incentive-fee contracts (CPIF).*—(a) *Description.* The cost-plus-incentive-fee-type contract is a cost-reimbursement contract with a provision for adjustment of fee by formula in accordance with the relationship which "actual," or reimbursable costs bear to "target" or estimated costs. Under this type contract there is negotiated initially a target cost, a target fee, a minimum and maximum fee, and a fee adjustment formula. After performance of the contract, the final fee payable to the contractor is determined in accordance with the formula. The formula provides, within limits, for increases in fee above target fee when actual costs are less than target costs, and decreases in fee below target fee when actual costs exceed target costs. This provision for increase or decrease in fee payment provides a tangible incentive for efficiency in performance, particularly as distinguished from the straight cost-plus-fixed-fee (CPFF) contract wherein the fee is not affected by the extent of costs incurred.

(b) *Conditions for use.* (1) This type of contract will be used only within the Directorate of Procurement and Production, Headquarters AMC. Use by any other procurement activity of the Air Force will constitute a deviation.

(2) This type will not be used unless it is first determined that no appropriate type of fixed-price contract (including redeterminable and incentive forms) will be satisfactory and (i) a cost-reimbursement type contract is preferable, and (ii) the use of the provision for incentive revision of fee may be expected to reduce the ultimate cost of the procurement.

(3) This type contract will be used only in production contracts. It may be appropriate for use when the procurement of supplies involves a reasonably long production run, and the contract is being let at a time when there is an expectation that there will be a substantial amount of development work.

(4) Estimated target costs should be reasonably close under the circumstances. Inflated or unrealistically low estimates may enhance or impair the incentive fee provision of the contract without relation to economy in performance. This incentive revision of fee clause should be used only when the target is realistic and contains no significant amount of contingencies.

(5) Negotiations for the establishment of target costs should be conducted in accordance with existing cost principles.

(6) Each contract which includes the revision of fee clause will be supported by determinations and findings. Normally the decision to use the incentive revision of fee clause will not be made until negotiations have progressed to a point where the contracting officer can determine that such form of contract is feasible. If a determinations and findings to utilize a CPFF contract has been made prior to the decision to incorporate an incentive revision of fee clause, a second determinations and findings covering the incentive factor must be made.

(c) *CPIF clause (incentive revision of fee).*

CPIF CLAUSE

(1) *General.* In order to foster economy by providing a tangible reward therefor, it is agreed that the fee established in the schedule shall be subject to adjustment in accordance with the provisions of this clause. The following definitions apply:

"Target cost" means the negotiated estimated cost of each item under this contract, as amended.

"Target fee" means the negotiated fee for each item under this contract, as amended, assuming such item were produced for a cost equal to the target cost.

(2) *Target and tentative target items.* The estimated cost and fee set forth opposite items (Note 1) are the target cost and target fee for each item. The estimated cost and fee set forth opposite items (Note 2) represent only an allocation of funds to be utilized to establish the target cost and target fee for such items by negotiation in accordance with established provisioning procedures or as otherwise set forth elsewhere in the contract, which negotiations shall be evidenced by a supplemental agreement hereto.

(3) *Submission of data.* Within 90 days after the end of the month in which the last unit referred to in item (Note 3) of this contract is delivered, or at such later date as may be approved by the contracting officer, the contractor shall forward to the contracting officer (i) a detailed statement of all reimbursable costs determined in accordance with the terms of this contract to such time, and (ii) a detailed estimate of reimbursable costs of such further performance, if any, as may be necessary to complete performance of all work and obligations under this contract. This statement and estimate shall be prepared in such form that, to the extent possible, they will disclose the approximate unit cost by cost elements of the various items on contract.

(4) *Final determination of fee.* Upon submission of the information required by paragraph (3) above, the contractor and the contracting officer shall negotiate promptly to establish the final contract fee as follows:

(i) The parties shall agree to a total contract cost to be utilized in determination of the final fee by adding to the reimbursable costs in paragraph (3) (i) above, the estimated cost, if any, in paragraph (3) (ii) determined, by negotiation by the parties, to be necessary for completion of performance in this contract.

(ii) The final fee for the performance of this contract shall be the aggregate of all target fees increased or decreased as follows:

The said sum shall be increased by (Note 4) cents for every dollar by which the total contract cost as determined in (4) (i) is less than the sum of the target costs; and the said sum shall be reduced by (Note 4) cents for every dollar by which the total contract cost as determined in (4) (i) exceeds the sum of the target costs. In no event shall the final fee be greater than (Note 5) percent nor less than (Note 5) percent of the sum of the target costs.

(5) *Finalization.* The final contract fee shall be evidenced by a supplemental agreement hereto. Upon execution of such supplemental agreement, contractor shall promptly reimburse the Government for excess fee payments theretofore made, if any; or the Government shall pay to the contractor the balance of fee due him, if any, subject to the release provisions of the contract.

NOTE 1. Insert items for which target costs and target fees have been negotiated.

NOTE. 2. Insert items, such as spare parts, for which target costs and target fees will be negotiated after the contract is executed.

NOTE. 3. Insert item number of some major contract items (usually item 1—the basic articles).

NOTE. 4. Insert the contractor's participation, both blanks should normally contain the same figure. Under some circumstances, it may be appropriate to use a sliding scale; for example, 0.01 cent for the first $100 of increased or decreased cost, 0.02 cent for the second $100, etc. Under such a philosophy the participation factor will be on an increasing scale for each increment, never on a decreasing scale, and the paragraph will necessarily have to be tailored to fit the negotiations.

NOTE. 5. Insert the "ceiling" and "floor" on fee. The target fee and ceiling percentages are subject to ASPR 3-406.2. The floor and ceiling should normally be equidistant from the target percentage of fee.

§ 1003.405 *Cost contract.* There are two major types of cost contracts; the cost reimbursement (CR), and the cost sharing type (CS).

§ 1003.405–2 *Cost reimbursement contract (CR).* Description: This type of contract provides reimbursement to the contractor for "allowable costs" incurred in performance of the contract. This type of contract establishes a total estimated cost to serve as a basis for obligating current funds and establishing a ceiling beyond which the contractor cannot incur costs (except at his own expense) without the prior approval of the contracting officer. Under this form of contract the Government assumes full risk for allowable costs. There is no "fee" or "profit" allowance under this type of contract.

§ 1003.405–3 *Cost sharing contract (CS).* Under this type of contract, the contractor is not reimbursed for all of the allowable costs incurred in performance (as he is in the cost reimbursement type) but assumes a portion of the cost

himself predetermined by negotiation. This contract provides therefore that the contractor will assume an agreed upon percentage of the allowable costs. Its use is particularly appropriate in research and development procurements where the contractor stands to benefit substantially from subsequent Government supply contracts, or profitable commercial applications.

§ 1003.406 *Cost-plus-a-fixed-fee contract*—(a) *Description.* (1) This type of contract is the same as the cost reimbursement type, except that it provides for the payment of a fixed, or predetermined fee. There is no guarantee that the work can or will be accomplished within the initially estimated costs. The fixed fee cannot be adjusted for estimating inaccuracies, but only in event of a change in the original scope of the work.

(2) An "estimated cost" is established in this contract for the work specified. This estimated cost serves as a basis for the establishment of fee limitations and for the obligation of funds. It serves also as a maximum amount beyond which the contractor cannot legally commit the Government to further expenditure of funds without the prior approval of the contracting officer. If at any time during performance, the contractor has reason to believe that costs will exceed 85 percent of the estimated costs, or that the total costs, exclusive of fee, will be substantially greater or less than the estimated costs he is obliged to so advise the contracting officer giving a revised estimate for performance of the contract. In event additional funds are necessary to complete the work the Government may decide, upon a review of the status of work to (i) add the additional money, or (ii) terminate the work.

(3) Under this type of contract the Government assumes full risk for allowable costs incurred in connection with performance. The main risk a contractor faces (particularly one unfamiliar with this type of contract), is the possibility of cost disallowances in current audit by cognizant military audit agency, or in post audit by the General Accounting Office. Experience considerably minimizes this possibility.

§ 1003.406–2 *Limitation on fixed fee.* In no case will the fixed fee exceed the percentages of estimated cost authorized by section 4 (b), Public Law 413, 80th Congress (62 Stat. 23; 41 USC 153), and only in the most unusual circumstances will authority be granted to exceed the percentages set forth in § 3.406–2 of this title.

§ 1003.407 *Time and materials contract (T–M).* Description: This type of contract provides for reimbursement of material costs on an actual basis, and direct labor (including overhead and profit) at a predetermined rate, based on the number of direct labor hours expended on the contract.

§ 1003.408 *Letter contract or letter of intent*—(a) *Conditions and limitations.* (1) Letter contracts may be used only when one of the conditions set forth in § 3.408 of this title exists.

(2) Each letter contract will provide that the resulting definitive contract contain all required standard clauses in addition to such optional standard clauses necessary to protect fully the interest of the Government.

(3) Letters of intent are not authorized for use within the Air Force.

§ 1003.409 *Other types of contracts.*

§ 1003.409–1 *Basic agreement (BA).* A basic agreement is a written instrument entered into by mutual understanding and signed by authorized representatives of the contractor and the Government, that establishes standard terms and conditions which are to apply to any negotiated contracts of a specific type which may be executed by the two parties during the life of the basic agreement.

§ 1003.409–2 *Indefinite quantity and delivery contract*—(a) *Call contracts (CC).* Call contracts do not obligate the Government to call for any supplies or services but do contain detailed descriptions and prices of the supplies or services which the Government may call for during a specified period of time. Prices will be established therein on a fixed-price basis.

(b) *Open contracts (OC).* Open contracts do not obligate the Government to order any supplies or services but do contain either general or detailed descriptions of the supplies or services which the Government may order during a specified period of time. No prices are contained in the contract, but provision is made for the method by which pricing is to be effected.

(c) *Requirements contracts (RC).* In contrast to call and open contracts, requirements contracts do obligate the Government to order supplies or services from the contractor if a requirement for the supplies or services is found to exist at the issuing installation during a specified period of time.

SUBPART E—ADVANCE PAYMENTS

§ 1003.501 *Nature of advance payments.* (a) AF policy is to require contractors furnishing supplies or services to be able to perform the contract with their own funds or with private financial assistance with or without Government guarantee. In negotiated procurements, Government assistance may be granted contractors by providing for expeditious reimbursements to contractors for proper expenditures under cost and cost-reimbursement-type contracts and by the use of progress payments in connection with fixed-price contracts. The benefits of Government assistance to the contractor will be reflected in the negotiations of any particular procurement.

(b) Exceptions to the above policy may be made in such instances in negotiated procurements where the contractor is particularly adapted in the supplying of the items or services to be procured but whose capital is limited and where commercial or private financing is unobtainable. In such cases, consideration will be given to the use of Government financing by way of advance payments under such terms and conditions as the Assistant Secretary of the Air Force (Management) may prescribe.

§ 1003.502 *Authority to make advance payments.* Requests for authority to make advance payments (original and eight copies) in each instance will be submitted through the Commander, AMC, or the Commander, ARDC, (as appropriate) to the Director of Procurement and Production, Hq USAF, who will obtain the coordination of the Director of Finance and forward to the Assistant Secretary for approval or disapproval. Requests for approval of advance payments may be presented before or after awarding of contract. The requests will contain or be accompanied by:

(a) A statement that no other means of adequate financing is available to the contractor. (This will not be required in connection with nonprofit, research and development contracts with educational institutions.)

(b) A statement that no other contractors which do not require advance payments are available to furnish the desired supplies or services.

(c) Detailed information as to proposed security and expression of opinion as to the adequacy thereof. A recommendation whether advance payment bonds should be required will also be submitted.

(d) Information as to the general character and responsibility of the contractor as well as comments as to technical ability to perform the contract.

§ 1003.504 *Security provisions.* (a) Advance payments will be authorized only when adequate security is furnished by the contractor.

(b) In connection with the depository bank provisions, the contractor will obtain, execute, and transmit to the Commander, AMC, or the Commander, ARDC (as appropriate) copies of an agreement executed by each bank in which a special bank account is established.

§ 1003.505 *Interest on advance payments.* Interest on advance payments will be charged according to the policy stated in § 3.505 of this title and will be computed according to the procedure stated in the contract clause.

§ 1003.550 *Definitions.* The definitions listed in this section are set forth as they apply to advance payments.

(a) "Special bank account" means a restricted bank account opened in the name of the contractor and earmarked "special."

(b) "Subcontractor" means a contractor or vendor who performs work for, or furnishes material, supplies, or equipment to a prime contractor.

(c) "Financial Branch" means the Financial Branch (MCPZF), Hq AMC, or the Financial Section (RDSKC), Hq ARDC, where appropriate.

§ 1003.552 *Payment of advance payment moneys to contractor.* Actual advance payments to the contractor will be approved by contracting officers in the Financial Branch, who are authorized to approve such payments. Payments so approved will be immediately deposited by the contractor in his special advance payment account and will be in amounts sufficient to satisfy the requirements of the contractor during a limited period.

§ 1003.553 *Submission of contractor's request for payment of advance moneys into the special bank account.* (a) Requests for advance payments will be submitted periodically to the Financial Branch. Such requests will be accompanied by a schedule of the contractor's cash requirement during the ensuing period covered by the contract. The contractor will be advised that his initial request for advance payments authorized under a contract and supporting schedule must be submitted in triplicate, together with a Standard Form 1034, "Public Voucher for Purchases and Service Other Than Personal," in sextuplicate duly signed by the contractor. It will be routed directly to the Financial Branch with a statement by the contractor that the estimates contained in the request and supporting statement are reasonable, accurate and payment is necessary

(b) All subsequent Standard Form 1034 requests for payment of advance payments wil be prepared in sextuplicate and routed through the administrative contracting officer who will add his comments and recommendations and forward them to the Financial Branch.

§ 1003.555 *Supervisory duties in connection with withdrawals from special bank accounts.* The duties of the administrative contracting officer in connection with the supervision of withdrawals from special accounts are as follows:

(a) All checks effecting withdrawls from advance payment accounts will be countersigned by the administrative contracting officer.

(b) The administrative contracting officer will notify the depository bank in writing that all withdrawals will be subject to countersignature and will place with the bank, specimens of his signature, with a request that they be acknowledged.

(c) The administrative contracting officer will notify the contractor of the procedure to be followed in effecting withdrawals from the advance-payment account.

(d) The contractor may withdraw funds for anticipated cash requirements or for expenditures already made or obligations already incurred in connection with performance of the contract. Anticipated requirements should be for the shortest practicable period, and will be supported by a statement showing in detail the proposed use of the funds. If the requested withdrawal is for expenditures already made or obligations already incurred, supporting data satisfactory to the administrative contracting officer will be submitted by the contractor. Such statements and data will be retained by the administrative contracting officer in his files.

(e) If, after expenditure of the advance payment funds, it is determined that the funds were expended for an improper purpose, demand will be made on the contractor to redeposit in the special account the amount so expended. If the amount is not restored to the special account within a period specified by the administrative contracting officer, it will be recovered by deducting the amount from the next requisition for withdrawals submitted by the contractor; however, the contractor will be charged the full amount requested.

(f) In the event of the termination of the Government contract, the administrative contracting officer will determine whether the unliquidated balance of advance payments exceeds the total amount to be paid under the contract, including the contractor's own termination charges and termination charges of subcontractors.

(1) If the unliquidated balance of advance payments does not exceed the total amount to be paid under the contract, including termination charges, the administrative contracting officer will permit withdrawal as provided for in the contract and according to this subchapter.

(2) If the administrative contracting officer determines that the unliquidated balance of advance payments exceeds the total amount to be paid under the contract, including the contractor's own termination charges and those of subcontractors, he will so advise the Financial Branch.

§ 1003.556 *Withdrawals for purpose of making subadvances to subcontractors.* (a) Withdrawals for the purpose of making subadvances to subcontractors are included in the amounts which may be advanced under § 1003.555 (d) if the contract involved provides for such subadvances, and may be approved by the administrative contracting officer if the subcontractor has been approved by the administrative contracting officer as a source for the placement of business by the prime contractor. Withdrawals from special accounts for the purpose of making subadvances are subject to the rules in § 1003.555.

(b) Unless other security is furnished, the subcontract or purchase order must contain, as security for the repayment of the subadvances, covenants, expressly made for the benefit of the Government, providing for a subspecial account with Government lien thereon and for a Government lien on property purchased with funds advanced under such subcontract or purchase order, and must impose upon the subcontractor substantially the same obligations as are provided in the prime contract in connection with the contractor's advance payments.

(c) If the prime contractor arranges for the subcontractor to furnish other security rather than providing in the subcontract or purchase order involved for a subspecial account, the administrative contracting officer will not undertake to determine whether such security is adequate. However, if the administrative contracting officer is of the opinion that the prime contractor's financial position is such that the Government is not assured that he will be able to repay amounts advanced, the administrative contracting officer will bring the matter to the attention of the Financial Branch, through channels.

(d) Normally, withdrawals from subspecial accounts will not require countersignature by the administrative contracting officer. However, whenever the administrative contracting officer believes that the financial condition of the prime contractor or subcontractor is such that supervision of withdrawals from the subcontractors subspecial bank account is desirable, he will notify the Financial Branch, through channels, and will not authorize the subadvance until clearance has been obtained.

(e) Administrative contracting officers will be designated to supervise the subspecial accounts of subcontractors where the subcontract or purchase order in question requires such supervision, and will permit withdrawals from such subspecial account according to the principles in § 1003.555 for withdrawals by prime contractors from their special accounts.

(f) Approval for the making of subadvances by a prime contractor to a subcontractor or for the withdrawal by a subcontractor of advance payments from its subspecial account does not constitute a waiver or release of the liability of the prime contractor to the Government for the advance payments involved.

§ 1003.558 *Change in contractor's ability to perform contract.* Since the amount and nature of the security for advance payments is determined in the Financial Branch, the administrative contracting officer will notify the Financial Branch of any change in the contractor's technical or financial ability to perform the contract which may come to his attention and send a copy of his letter to the buyer.

§ 1003.559 *Use of advance payments under terminated contracts.* (a) All AF offices having cognizance of contract termination matters (i. e., the Readjustment Division, Hq AMC) will notify administrative contracting officers promptly of each partial or total termination of a contract under which advance payments are outstanding, so administrative contracting officers may be fully informed in connection with any further withdrawals. Withdrawals from special advance-payment bank accounts under contracts terminated for contractor's default will be stopped immediately.

(b) Where a contract has been terminated for the convenience of the Government, the administrative contracting officer may continue after the termination to exercise supervision over advance-payment accounts or such responsibility may be assigned to the termination contracting officer. If the administrative contracting officer is other than the termination contracting officer, the former will maintain close coordination with the latter and will furnish whatever information is requested.

(c) Copies of all notices of termination of contracts, both partial and complete, whether for convenience of the Government or for default of the contractor, under contracts having advance payments outstanding will be sent to the Financial Branch.

(d) In cases of terminated contracts, both partial and complete, under contracts having advance payments, the termination contracting officer will advise the Financial Branch, through channels of the status of the advance-payment account when circumstances warrant.

§ 1003.560 *Repayment of advance payments.* (a) Liquidation of advance payments will be made according to the terms of the contract. Under certain circumstances, contractors are obligated to make repayment upon demand. The authority to making such demands has been delegated to the contracting officer in the Financial Branch. Except as provided in paragraph (b) (5) of this section, or as specifically authorized in a particular case by the Deputy Director/Procurement, Hq AMC, or the Director of Procurement, Hq ARDC, no demand for repayment of advance payments will be made by other contracting officers.

(b) Demands will be made whenever the contracting officer in the Financial Branch deems them advisable. Demands will be made under the following circumstances and in accordance with the terms of the contracts:

(1) When the balance of advance payments in the special bank account exceeds current needs, demand will be made for repayment of the excess. When such excess is the result of a partial or total termination for the convenience of the Government, no demand will be made without coordination with the termination contracting officer.

(2) When the unliquidated balance of advance payments exceeds the unpaid portion of the contract price, demand will be made for repayment of the excess.

(3) When it is determined after completion of a contract and final audit of accounts thereunder that sums due the contractor are insufficient to cover the balance of advance payments due the Government, demand will be made for payment of the deficiency in cash. The basis for such determination in the case of a contract terminated for the convenience of the Government will be the determination of the termination contracting officer for the amount due under the terminated portion of the contract.

(4) When a contract is terminated for the convenience of the Government and, although final audit of accounts thereunder has not been made, the contracting officer in the Financial Branch believes that deductions should be made from payment due the contractor under the contract to secure the eventual repayment in full of the advance payments, he will so inform the accounting and disbursing officer. The accounting and disbursing officer will not be so advised without concurrence of the termination contracting officer handling the settlement of the contract.

(5) Each notice from a contracting officer terminating a contract for the default of the contractor will include a demand that the contractor immediately repay to the Government without setoff, the unliquidated balance of outstanding advance payments, if any, made to him under the contract.

(c) All contracting officers administering advance payment accounts and all termination contracting officers will bring to the attention of the Financial Branch any case in which, in their opinion, demand should be made upon the contractor for the return of all or any portion of the outstanding balance of advance payments.

(d) Copies of all demands on contractors for repayment of advance payments will immediately be forwarded by the contracting officer in the Financial Branch to the appropriate accounting and disbursing officer. In addition, such contracting officers will immediately call to the attention of accounting and disbursing officers any case where contractors have failed to comply with their obligations to repay advance payments to the Government.

§ 1003.562 *Limitation of authority of contracting officers to make and administer advance payments.* Contracting officers in the Financial Branch have been delegated authority to make and administer advance payments and act as the duly authorized representatives of the Commander, AMC. Contracting officers, including those exercising the functions outlined in §§ 1003.553 through 1003.559, are not authorized to perform functions specifically delegated to contracting officers in the Financial Branch as indicated herein.

SUBPART F—SMALL PURCHASES

§ 1003.601 *Purpose.* To accomplish the objective cited in § 3.601 of this title, administrative requirements not contained in Chapter I of this title or this part for additional copies or wider distribution of small purchase contracts or the addition of certificates with regard to the use or purpose of items being purchased, required for accounting or other purposes, will *not* be observed by contracting officers. Any exceptions deemed necessary will be authorized in the future through the issuance of changes to this part.

§ 1003.604 *Imprest funds (petty cash) method*—(a) *Policy.* (1) This section establishes procedures for making small purchases of supplies and services other than personal through the use of imprest funds. Imprest funds will be set up for designated cash purchasing officers who may use these funds to make otherwise authorized procurements with a minimum of accounting procedures. Cash purchasing is, however, just one of a number of simplified small purchase procedures prescribed by Subpart F, Part 3 of this title.

(2) Cash purchasing will be limited, to the greatest extent practicable, to the contracting office. Exceptions to this policy may be made only under unusual circumstances, such as at isolated activities where no contracting office is located, or where purchases will involve highly technical material like medical supplies, and then only with the prior written approval of the major air commander or a designated representative within his headquarters. See § 1003.604–1 (d) (1) and (2).

(b) *Definitions.* For the purpose of this section, the following definitions will apply:

(1) "Base commander:" The officer, or in his absence his deputy, who has command over the installation and who is responsible to higher authority for the execution of the mission of the installation.

(2) "Cash purchasing officer:" Any officer, warrant officer, airman (first three grades), or civilian under the command or jurisdiction of the base commander who has been appointed a cash purchasing officer (imprest fund cashier) and designated a Class "C" agent finance officer by competent authority.

(3) "Accounting officer:" The officer or civilian employee who performs the functions.

(4) "Finance officer:" The officer who performs the functions.

(5) "Subvoucher:" A receipt for authorized goods or services purchased and payments made.

§ 1003.604–1 *Conditions for use*—(a) *Requirements.* Supplies will be procured by cash purchase only if:

(1) All of the conditions prescribed in § 3.604–1 of this title are present (also see § 3.602 of this title).

(2) A cash purchasing officer has been appointed, is bonded and has been intrusted with funds.

(3) The supplies to be procured are authorized for purchase by existing regulations or directives.

(b) *Limitations.* (1) Supplies will not be procured by cash purchase if one or more of the following conditions prevail:

(i) Purchase of the supplies is not authorized by existing regulations or directives.

(ii) The purchase is for $3 or more and the signature of the vendor or his agent cannot be obtained.

(iii) The cost of the item is considered unreasonable.

(iv) The cost of the supplies proposed to be purchased for one activity from one vendor at one time is in excess of $100. Purchases for each activity, i. e., air installations or base supply will be considered separate transactions if based upon separate purchase requests, Issue Slips, Material Transaction Slips, or other authorized requisition forms (see paragraphs (c) (1) and (2) of this section).

(v) Requirements have been intentionally understated or divided into parts solely to take advantage of the cash purchase procedure.

(vi) The supplies are not available for pickup or delivery at the time of payment.

(vii) Additional action following payment for the supplies and the signing of the receipt by the vendor is required to complete the procurement. Assigning a defense order rating or execution of a hand receipt by the vendor for equipment delivered to him for repair are not considered "Additional action."

(2) Except in justified emergencies, purchases of articles or services in quantities or amounts covered by mandatory contracts or mandatory sources of supply are to be made from the appropriate contractor or source according to established procedures. However, imprest funds may be used to make payments for articles or services obtained from such mandatory contracts or sources of supply.

(3) Imprest funds will not be used to pay for personal services, to pay trans-

portation charges on bills of common carriers, to cash checks or other negotiable instruments, or for any other payment that is not for authorized small purchases contemplated by these instructions.

(c) *Effecting procurement.* (1) The contracting officer, or cash purchasing officer, upon receipt of a purchase request or an Issue Slip, Material Transaction Slip, or other authorized requisition form or informal written request, will make the final determination, based on paragraphs (a) and (b) of this section If he decides to purchase by cash, the contracting officer, or cash purchasing officer, will select a source (see § 3.603 of this title) and effect payment in cash upon delivery. At the time of payment, a signed receipt will be obtained from the vendor on AF Form 385, "Cash Purchase Receipt."

(2) At the discretion of the cash purchasing officer, quantities in excess of those requisitioned by the using activity may be procured if the standard unit pack of such item can be purchased more economically than the exact quantity requested. The full unit pack will be accepted by the requisitioning activity.

(d) *Cash purchasing officers*—(1) *Appointment and termination authority.* Any base commander is authorized to appoint any qualified officer, warrant officer, airman (first three grades), or civilian under his jurisdiction as a cash purchasing officer and to terminate such appointment whether made by him or a predecessor.

(2) *Appointment and termination orders.* Each appointment and termination of appointment will be made by the base commander in writing, together with special orders or letter orders, which will: (i) Include designation as a cash purchasing officer (imprest fund cashier) and as a Class "C" agent finance officer; (ii) identify the appropriate finance officer by name; and (iii) cite the maximum amount of funds which may be advanced.

(e) *Personal responsibility.* (1) Attention is directed to the following sections contained in Title 18, U. S. Code Annotated, crimes and criminal procedure, which provide:

(i) *Sec. 653, Disbursing officer misusing public funds.*

Whoever, being a disbursing officer of the United States, or any Department or agency thereof, or a person acting as such, in any manner converts to his own use, or loans with or without interest, or deposits in any place or in any manner, except as authorized by law, any public money intrusted to him; or, for any purpose not prescribed by law, withdraws from the Treasury or any authorized depositary, or transfers, or applies, any portion of the public money intrusted to him, is guilty of embezzlement of the money so converted, loaned, deposited, withdrawn, transferred, or applied, and shall be fined not more than the amount embezzled or imprisoned not more than ten years, or both; but if the amount embezzled is $100 or less, he shall be fined not more than $1,000 or imprisoned not more than one year or both.

(ii) *Sec. 1001, Statements or entries generally.*

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(iii) *Sec. 2073, False entries and reports of moneys or securities.*

Whoever, being an officer, clerk, agent, or other employee of the United States or any of its agencies, charged with the duty of keeping accounts or records of any kind, with intent to deceive, mislead, injure, or defraud, makes in any such account or record any false or fictitious entry or record of any matter relating to or connected with his duties; or

Whoever, being an officer, clerk, agent, or other employee of the United States or any of its agencies, charged with the duty of receiving, holding, or paying over moneys or securities to, for, or on behalf of the United States, or of receiving or holding in trust for any person any moneys or securities, with like intent, makes a false report of such moneys or securities—

Shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

(2) The cash purchasing officer will be responsible for the legality of all payments made by him and personally accountable for any unauthorized payments he may make.

(3) When the cash purchasing officer is in doubt as to the propriety of any particular purchase he may refer the matter to the base commander who, if he considers the purchase proper, will give specific approval in writing for the purchase before it is made.

(4) The base commander will be responsible for insuring that sufficient surveillance of the cash purchasing system is maintained to assure that pertinent laws and regulations are observed.

(f) *Request for deviations and interpretations.* Deviations from the requirements of §1003.604 will be made only by and with the prior approval of the Director of Procurement and Production, DCS/M, Hq USAF who will be responsible for coordination and clearance of all proposed deviations within the Department of Defense. Requests for deviations or interpretations of § 1003.604 will be sent to Hq USAF through channels including Commander, AMC, attn: MCPPP.

§ 1003.604–2 *Documentation*—(a) *Cash purchase receipt.* AF Form 385, "Cash Purchase Receipt," and AF Form 385a, "Cash Purchase Receipt—Memorandum," April 16, 1956, are authorized for use in lieu of Standard Form 1165. AF Form 385 (original) will be procured in pads and AF Form 385a will be procured in pads with interleaved carbon. These forms will be available on or about August 1, 1956. AF Form 385, March 1, 1955, may be used until stock is exhausted.

(1) AF Form 385 and five copies of AF Form 385a will be prepared, except as provided in subparagraph (3) of this paragraph, using ballpoint pen, indelible pencil, or typewriter, to include the following:

(i) Date.

(ii) Receipt No. The receipt number will consist of the last two numbers of the fiscal year in which prepared, followed by a dash and then numbered serially for the fiscal year, beginning with the number 1. If more than one cash purchasing officer has been appointed at the installation, each officer will be assigned a letter (A, B, etc.) to be suffixed to the fiscal year symbol. (For example: 57A–1, 57A–2, etc.)

(iii) Station.

(iv) Delivery to (organization or unit). Enter delivery data.

(v) Location. Enter location of organization or unit to which delivery is to be made.

(vi) Reference No. Cross-reference to the voucher number on the Purchase Request, Issue Slip, Material Transaction Slip, or other authorized requisition form.

(vii) Name of dealer.

(viii) Address. Enter dealer's address.

(ix) Account Symbol. Enter stock record account symbol.

(x) Work Order, Property Class, or USAF Cost Code.

(xi) Organizational Code or MPA No. (Applicable only to installations.)

(xii) Description of Items.

(xiii) Quantity.

(xiv) Unit.

(xv) Unit Price.

(xvi) Amount. Enter dollar amount of each item.

(xvii) Applicable Authority for Purchase. Enter the authority for making the purchase cited on the Purchase Request, Issue Slip, Material Transaction Slip, or other authorized requisition form.

(xviii) Approved by. Enter the name of the person or office authorizing the purchase as it appears on the Purchase Request, Issue Slip, Material Transaction Slip, or other authorized requisition form.

(xix) Total. Enter the total dollar amount of Cash Purchase Receipt. Where purchase is made in foreign currency, the total will be inserted by the cash purchasing officer in United States dollar amounts, showing the rate of exchange.

(xx) Signature of cash purchasing officer certifying that the purchase has been made according to § 1003.604–1.

(xxi) Name of seller or agent of seller.

(xxii) Signature of seller or agent of seller, on original AF Form 385 only, certifying that cash payment has been received. The total amount in words and figures will be inserted by the seller or his agent prior to entering his signature. Where purchase is made in foreign currency the words and figures will be inserted by the seller or his agent in terms of the foreign currency, and converted by the cash purchasing officer into United States dollar amounts as set forth in subdivision (xix) of this subparagraph. Where it is impossible to secure the seller's signature and the amount of the purchase does not exceed $3, the cash purchasing officer will note the fact on the Cash Purchase Receipt, delete the certification of receipt of payment made, and sign his own name in the place set forth for signature by the seller. See § 1003.604–4(a) authorizing the carrier to sign the receipt

for the total cash received for a C. O. D. Shipment.

(xxiii) Signature of consignee or receiver, certifying that the supplies have been received and accepted for intended use. The copy of AF Form 385 retained by the cash purchasing officer need not be signed by the consignee or receiver.

(xxiv) Organization or Unit of consignee or receiver.

(xxv) Receiving Report No. (To be assigned by consignee or receiver when appropriate.)

(2) If delivery of the supplies is made to central receiving, two completed copies of the AF Form 385a will be given to the receiver upon delivery. If delivery is made to an organization other than central receiving, the cash purchasing officer will forward to the base accountable supply officer or his designee two completed copies of the AF Form 385a not later than the morning following the date of delivery except, where the items procured are either supplies for resale, medical supplies, or nonpersonal services, in which case, the two copies of the AF Form 385a will be forwarded to the office which authorized the cash purchase. The accountable supply officer's voucher number will be inserted on the copies of the AF Form 385a and one of the completed copies will be forwarded to the Inventory Accounting (Monetary) Unit not later than the day following the day of delivery.

(3) A copy of AF Form 385a may be furnished to a vendor upon his request in every instance where such action will result in a saving to the Government. An example of a saving is a case where the vendor is permitted by local or state authorities to use the copy of AF Form 385a, as evidence that a local or state tax was not included in the price to the Government. In addition, when purchase is made against an "obligation authority" established by an AF depot air materiel area, a copy of the AF Form 385a will be furnished to the appropriate AF depot or air materiel area for support of its obligation authority. Except when a copy of the Cash Purchase Receipt is required by the vendor or by an AF depot or air materiel area, only the original AF Form 385 and five copies of AF Form 385a will be prepared.

(b) *Standard Form 1129, "reimbursement voucher."* Standard Form 1129 will be completed by cash purchasing officers in accordance with the sample form set forth in this section.

§ 1003.604–4 *Delivery of cash purchases by suppliers.*—(a) *C. o. d. shipments.* Local vendors should be encouraged to institute a free delivery service on a c. o. d. basis. Pickup service is costly and should be avoided whenever practicable. Vendors should be reminded that to ship c. o. d. will eliminate certain bookkeeping and invoicing procedures and place the Air Force in the same position as their many other cash customers. When supplies are not available in the local trade area and the total cost including delivery and c. o. d. charges will be less than $100, a cash purchasing officer who is also a contracting officer, or who is under the immediate jurisdiction of a contracting officer, or a cash purchasing officer assigned to an isolated activity where no contracting officer is located, may instruct the vendor to ship c. o. d. These instructions may be verbal or written, but will, in any event, represent an obligation against the imprest fund. Sufficient cash must be held in reserve in the imprest fund for all c. o. d. orders.

(b) *Orders placed on a c. o. d. basis but received prepaid.* When the cash purchasing officer has placed an order on a c. o. d. basis to be shipped by parcel post, freight, express or other public carrier, and the shipment, through error, is not shipped c. o. d., it may not be paid under the cash purchasing procedure. Under such circumstances, a confirming purchase order (for instance a DD Form 738) may be issued instructing vendor to submit a certified invoice to the finance officer, and payment may then be made by check.

§ 1003.605 *Order-invoice-voucher method.* Standard Form 44, "U. S. Government Purchase Order-Invoice-Voucher," is available in books of 25 sets, five copies each, with interleaved carbons.

§ 1003.605–1 *Limitations on use.* An additional condition is hereby added to the conditions set forth in § 3.605–1 of this title as follows: (e) The finance officer and appropriation accounting officer are located at the same installation.

§ 1003.606 *Blanket purchase agreement method.*

§ 1003.606–1 *General.* The blanket purchase agreement method will be used to the greatest extent practicable. Each separate call placed against a blanket agreement must be placed after conduct of negotiation and justification appropriate to the action, except where the order is for $100 or less and price is known to be reasonably competitive. In every case when a call is made, whether made orally or by informal memorandum, the applicable call number and name of person placing the call will be furnished the vendor at the time the call is placed, in

Standard Form No. 1129—Rev. Form prescribed by Comp. Gen., U. S. March 10, 1948 General Regulations No. 125
ATTACH SUBVOUCHERS HERE

REIMBURSEMENT VOUCHER

For use of
D. O. Vou. No. Finance Officer
Bur. Vou. No. .....

PAID BY

U. S. Air Force — Finance
(Department, bureau or establishment)

Payee's name John Doe, Class "C" Agent Officer

Mailing address Blank AF Base

(AF Form 385)

For payments made on account of official business as per attached subvouchers numbers (Insert Number) to (Insert Number), inclusive, for the period (Insert date), 19....., to (Insert date)..., 19....., and reclaimed subvouchers numbers (Insert Numbers) →

AMOUNT	
DOLLARS	CENTS
(Insert Amount)	

STATUS OF FUND	DOLLARS	CENTS
This Voucher	(Insert Amount)	
Unpaid Reimbursement Vouchers Dated	*	
Unscheduled Subvouchers	**	
Interim Receipts for Cash	***	
Cash on Hand	****	
TOTAL	(Total of Above)	

Differences (For use of Finance Officer only)

Amount verified; correct for

(Signature or initials)
(For Administrative Use)

I certify that the disbursements claimed herein are correct and proper, that payment has not been received, and that the status of the imprest fund for which I am accountable is as stated above.

(Insert Date) (Date) John Doe (Imprest Fund Cashier)

SIGN ORIGINAL ONLY Title Cash Purchasing Officer

Approved: (Not to be completed)

Pursuant to authority vested in me, I certify that this voucher is correct and proper for payment.

(For use of Finance Officer)

(Date) Authorized Certifying Officer.

(SIGN ORIGINAL ONLY)

Number of reimbursement checks desired .....

in the amounts of (Insert Amounts)

ACCOUNTING CLASSIFICATION (Appropriation symbol must be shown—other classification optional)

(To be completed by Comptroller's Office)

* Insert amount of voucher submitted to finance officer for which reimbursement has not as yet been received.

** Insert dollar and cents amount of AF Forms 385 on hand for which reimbursement has not been requested.

*** Insert amount of cash in hands of others for which interim receipts are being held.

**** Insert amount of cash and checks on hand.

Paid by check(s) on Treasurer of the United States in favor of payee named above No.(s)

(For use of Finance Officer)

Paid by cash, $ (For use of Finance Officer) on (Date)

Payee

(SIGN ORIGINAL ONLY)

order that he may ascertain that the call is proper against the blanket agreement.

§ 1003.606–2 *Establishment of blanket purchase agreement.* Notwithstanding the provisions of § 16.302 (a) (1) (i), DD Form 1155, "Order for Supplies or Services," will be used to establish the "Blanket Purchase Agreement." The agreement will be numbered according to § 1053.201–4 (a) of this chapter.

(a) The contracting officer will negotiate with each proposed charge account vendor to obtain a prior understanding of pricing basis for noncompetitive orders (less than $100). Usually this will be a matter of discount from some recognized list price. The contracting officer will prepare a memorandum for record, briefly outlining understanding of the parties, and will maintain the memorandum in the blanket agreement file. This memorandum need not be redrawn at the beginning of each blanket purchase agreement period, but should at all times represent the current understanding. Periodic spot checks will be made to assure that billings conform to the understandings.

(b) In establishing blanket purchase agreements, contracting officers will attempt to induce vendors to provide delivery of supplies purchased thereunder. Vendors should not be expected to make multiple deliveries of small dollar value purchases. However, an agreement wherein vendors would deliver all purchases in excess of a specified monetary value is considered feasible and advisable.

§ 1003.606–3 *Conditions for use.* (a) The maximum period of time covered by a blanket purchase agreement will not exceed 3 months or extend beyond the end of the fiscal quarter in which issued. The maximum aggregate amount of requests to be issued against one blanket purchase agreement will not exceed $15,000.

(b) To eliminate an unnecessary administrative burden, no calls will be placed against blanket purchase agreements unless delivery can be accomplished within the effective period of the agreement.

§ 1003.607 *Use of Department of Defense or departmental procurement forms.* Small purchases as defined in § 3.600 of this title will normally be accomplished on AF Form 385, AF Form 385a, SF 44, or DD Form 1155. When DD Form 1155 is used, it will be prepared and processed according to Subpart C, Part 16 of this title and Subpart C, Part 1016 of this chapter. When the procurement necessitates the addition of clauses other than those on the reverse side of the DD Form 1155, any appropriate authorized negotiated (two-signature) contract form (e. g., DD Form 351) will be used.

§ 1003.651 *Credit cards.* This section provides a procedure for processing payment invoices covering service station purchases made on credit cards.

§ 1003.651–2 *General.* (a) All requests to oil companies for credit cards will be made according to Federal Supply Schedule classes 7 and 14 and by a properly appointed contracting officer who will be accountable for all such cards issued to the installation.

(b) Whenever a purchase is made against a credit card, the individual making the purchase will secure from the service station attendant a copy of the delivery ticket and, immediately upon return from a trip, will turn in such delivery ticket to the officer responsible for the credit card.

(c) Oil companies will be instructed to submit all invoices for credit card purchases to the contracting office.

(d) Upon receipt of the invoice and supporting delivery tickets, the contracting officer will match the copies of delivery tickets in his suspense files with those attached to the invoice and verify the amount due. Upon verification of the amount due, the contracting officer will prepare a DD Form 1155, "Order for Supplies or Services," under the applicable Federal Supply Schedule contract. The contracting officer's certification will be predicated on the certificates from the officer responsible for the purchase. The duplicate delivery tickets and certifications of responsible officers will be retained in the files of the contracting office.

(e) Delivery orders prepared and issued will not:

(1) Itemize the supplies and services shown on the invoice, but will merely contain a reference to the contractor's invoice and amount, less State and local taxes, if any.

(2) Be written for a portion of the invoiced amount. (If a discrepancy is discovered, such an error in the amount of the invoice or of the tickets attached, or an unauthorized purchase, such discrepancies will be rectified prior to preparation of the order.)

(3) Be distributed to the contractor (order is for internal Air Force purposes).

(4) Be issued to such organizations as the National Credit Card Association (invoice must be submitted by the oil company concerned).

(f) If an invoice is received supported by a delivery ticket, a copy of which has not been received from the responsible officer, the contracting officer may, if the ticket appears to cover an authorized purchase and if there are uninvoiced tickets of the oil company concerned on file in amounts exceeding the amount of the missing ticket, prepare a dummy copy of the ticket and process the invoice for payment. When this is done, the contracting officer must take immediate action to secure the certified copy of delivery ticket or a certificate signed by the officer responsible for the purchase that the supplies or services were satisfactorily rendered and are not to be used in violation of legal restrictions of Public Law 600 (60 Stat. 810; 5 U. S. C. 550). If uninvoiced tickets in excess of the amount of the missing ticket are not on hand, or if the ticket attached to the invoice does not appear to cover an authorized purchase, the contracting officer will take action to secure the certified delivery ticket or otherwise resolve the discrepancy prior to processing the invoice for payment.

(g) Original and one copy of the order, the invoice with attached original or copies of signed delivery receipts, and the tax exemption certificate will be forwarded to the finance officer for payment according to existing procedures.

§ 1003.651–3 *Issuance of tax exemption certificates.* Standard Form 1094, "U. S. Government Tax Exemption Certificates," will be issued by the contracting officer according to Part 1011 of this chapter.

SUBPART G—NEGOTIATED OVERHEAD RATES

§ 1003.703 *Applicability.* This subpart applies to the Directorate of Procurement and Production, Hq AMC, AMC field procurement activities, and ARDC. Air Force purchasing offices outside of Hq AMC or its field purchasing activities and ARDC will not use negotiated overhead rates without obtaining prior approval of the Pricing Staff Division (MCPPB), Hq AMC. Predetermined overhead rates will not be used for: research and development contracts with educational institutions unless a proposal based on such rates was received before July 1, 1956 and the contract was executed before October 1, 1956, and any other contract executed on or after July 1, 1956. Contracts executed before the applicable aforementioned date containing predetermined overhead rates will continue to use such rates until the particular fixed overhead rate period expires. Except as to research and development contracts, negotiated overhead rates will not be used without a prior written determination by the contracting officer that their use is advantageous to the Government. However, where a predetermined overhead rate expires and is to be followed by a negotiated overhead rate, such written determination is not required.

§ 1003.704 *Contract clauses.*

§ 1003.704–1 *Contracts with commercial concerns.* It is AF policy, wherever practicable, not to incorporate provisional rates in contracts with commercial organizations.

§ 1003.704–2 *Contracts with nonprofit and educational institutions.* In the case of nonprofit and educational institutions, it is AF policy to incorporate provisional rates in contracts with such organizations pending establishment of negotiated final overhead rates.

SUBPART H—PRICING

§1003.800 *Scope of subpart.* This subpart sets forth pricing policies and procedures to be followed by all AF procurement activities in negotiating prime contracts, and in reviewing subcontracts where applicable.

§ 1003.801 *Pricing policy.* Price is an important element of any AF procurement. It is the AF procurement objective to secure required supplies and services of the desired quality, when needed, at fair and reasonable prices. A fair and reasonable price does not necessarily mean the lowest price but rather should be considered the most economical price to the Air Force, quality, life, ease and cost of maintenance, storage, distribution, and other factors considered. To realize this objective it is AF

policy to encourage and develop competition and to negotiate close, firm prices whenever possible. The incentive, or increased profit approach, should be applied in negotiation, recognizing that profit is the motivating force in inducing contractors to use labor and materials economically and efficiently. Pricing cannot be reduced to a few simple terms or formulas. In the long run, sound pricing is an art requiring the exercise of common sense, a keen sense of fairness, and a recognition of certain basic pricing considerations.

§ 1003.801–1 *Importance of sound pricing.* Air Force appropriations constitute a substantial share of the defense budget and expenditures thereunder have a tangible effect upon the stability and health of the national economy. The Air Force is responsible for spending these public funds wisely and judiciously to obtain the supplies and services necessary to carry out its assigned mission. Close, sound pricing is a logical aid in the discharge of this responsibility. Its objectives are to:

(a) Make the most economical use of appropriated funds.

(b) Provide an incentive to contractors to minimize the cost of contract performance.

(c) Minimize Government and contractor administrative expense.

(d) Avoid budgetary adjustments and deficits.

(e) Avoid the generation of excessive profits and inflation.

§ 1003.801–2 *Responsibility.* (a) The contracting officer, aided by supervisory, technical, and management personnel, will obtain fair and reasonable prices in buying AF equipment and services. Pricing offices are available to aid the contracting officer in this endeavor. These offices are staffed with pricing specialists whose main duty is to assist the contracting officer in resolving the more complex pricing problems. The contracting officer, at his discretion, will seek the advice of these analysts on important pricing matters. It is well to bear in mind that the more these offices are burdened with simple and routine requests, the less time they have to devote to complex matters requiring more intensive analysis. However, the final negotiation of price, including price redetermination and cost estimating, remains the responsibility of the contracting officer.

(b) This pricing responsibility of the procuring contracting officer is assigned to the administrative contracting officer in the following instances:

(1) Where an existing contract provides for retroactive price redetermination after completion of the contract. Fixed-price-incentive contracts are not included in this assignment.

(2) Where AF equipment, including spare parts, ground handling equipment, special tools, and test equipment, is procured by open contracts. This assignment includes both initial pricing of exhibits and price redetermination, if any.

(3) Where support items are procured under a provisioning document concurrently with the end items to which they relate. This assignment covers initial pricing of exhibits only.

(4) Where changes are made to the supplies being procured under existing contracts.

(5) Exercise of the authority assigned to the administrative contracting officer by subparagraphs (2), (3), and (4) of this paragraph may be restricted by provisions in the contract.

§ 1003.801–3 *Pricing individual contracts.* Each individual contract must be priced separately and independently from every other contract, whether initial prices or redetermined prices are negotiated. Offsetting price adjustments will not be made in one contract action for losses or excessive profits accrued or anticipated in the performance of another contract.

§ 1003.801–4 *Cost, profit, and price relationships.* Under fixed-price-type contracts, including redeterminable and incentive types, prices are to be negotiated, not costs plus profit. In many cases a breakdown of price into costs and profit elements may be necessary in the negotiation process. A negotiated price is the basis for payment to a contractor under fixed-price-type contracts; allowable costs are the basis for reimbursement under cost-reimbursement-type contracts. A negotiated price, once firm, becomes an obligation of the Air Force; it is the amount of money the Air Force is legally obliged to pay. Fixed-price contracts should specify therefor only prices and never elements of cost.

§ 1003.801–9 *Price warranty.* In connection with the procurement of standard commercial items or semicommercial items where cost estimates are not available or not deemed practical by the contracting officer, it is AF policy to obtain a price warranty statement from the contractor. This in effect assures the Air Force that it will receive as favorable treatment pricewise as any other customer of the supplier under comparable circumstances and is based on the sound premise that the Government should not be discriminated against pricewise. A price warranty clause for this purpose is set forth in § 1007.4038. of this chapter.

§ 1003.801–10 *Architect-engineer fees.* The fees for architect-engineer services include all cost and profit in connection with such services for the design of real property construction projects.

§ 1003.802 *Pricing concepts.* The following concepts apply chiefly to negotiated fixed-price-type contracts, including redeterminable and incentive, unless otherwise indicated. However, many of these concepts have application to the negotiation of cost-reimbursement-type contracts within the framework of Part 15, Chapter I of this title and Part 1015 of this chapter.

§ 1003.802–1 *Incentive approach.* (a) To encourage a high degree of efficiency and economy on the part of AF contractors, it is AF policy to negotiate contracts from the incentive, or increased profit, approach both at the time of original price negotiation and at the time of price redetermination, if any. This approach is based on the expectation that the ultimate cost to the Government will be less than it otherwise would be and, if less, the profit to the contractor will be greater. The concept recognizes that the prospect of greater earned profit reward is the strongest incentive to induce contractors to become more efficient in performing AF contracts. Profits, negotiated in pricing or repricing under this concept, should be commensurate with the risks assumed by a contractor and the overall efficiency with which the contract is performed.

(b) The foregoing should not be construed to mean that only the specific incentive-type contracts should be employed. This incentive approach can be applied in some real measure to all negotiated fixed-type contracts, including price redetermination and incentive types. For example, one of the best forms of incentive is provided by the firm fixed-price contract.

§ 1003.802–5 *Types of pricing.* There are two distinct types of pricing which merit consideration: Prospective pricing, and retroactive pricing.

(a) *Prospective pricing.* Prospective pricing is the negotiation of prices for items or services which are to be supplied in the future. It is applied to the pricing of firm fixed-price-type contracts, to the pricing of prospective portions of redeterminable contracts, to the establishment of target prices under incentive-type contracts and other redeterminable types providing for retroactive adjustment, and to the hourly rate portion of time and material-type contracts.

(b) *Retroactive pricing.*

(1) Retroactive pricing is the negotiation of prices for items or services which have been supplied or completed. It is applied to the pricing of the retroactive portion of the FPR–C, FPR–D, and FPR–E contract (old Form IIB, III, and IV) and to the fixed-price-incentive-type contract.

§ 1003.802–6 *Cost estimating for cost-reimbursement-type contracts.* Cost estimating for cost-reimbursement-type contracts is the process of negotiating an amount of money to be established on such contracts, including CPIF, as the "estimated costs" and sometimes a rate or fixed dollar amount to serve as the basis for reimbursement of overhead. The negotiated estimated amount serves as the basis for obligating funds under such contracts, establishes a limitation on expenditures, and provides a base to which fixed fees may be related.

§ 1003.804 *Price analysis.* Price analysis may be considered to include not only the analysis of price but, under certain circumstances, the analysis of elements of cost and profit as well.

§ 1003.804–3 *When price analysis is required.* (a) Every proposed contract price requires some degree of analysis, regardless of the size of the order of value thereof. The size of the purchase in fact may have significant relationship to the degree of analysis required, but this will actually depend upon the individual circumstances. As examples, where real competition is achieved, the

comparative price technique may be adequate to assure reasonableness of price; where competition is not present and the procurement involves a substantial dollar amount, cost analysis generally will be necessary; in retroactive repricing, cost analysis must be employed.

(b) Detailed cost analysis, as a part of price analysis, normally be required under the following circumstances (they should not be required normally on procurements below $50,000) when:

(1) It is proposed to award a contract to other than the low bidder.

(2) The prices quoted appear to be either too high or too low by comparison with previous or current quotations, or mistakes in estimates appear possible.

(3) It is proposed to award a contract of a significant dollar amount to a sole source supplier.

(4) A contract represents a substantial portion of a contractor's total volume of business.

(5) New or radically modified equipment in a significance dollar amount is being purchased for the first time.

(6) A price redeterminable or cost-reimbursement-type contract is contemplated.

(7) Other circumstances indicate the need for detailed analysis.

§ 1003.804–4 *Cost analysis.* Cost analysis is the technique of evaluating specific elements of cost or price to ascertain whether the cost of any elements can be influenced by closer pricing. The aim of this technique is not to control profits, but rather to encourage cost control and reduction. Excessive profits are generated more from the inclusion in prices of contingencies which do not occur, and from other causes of overestimating than from overstatement of profit allowances themselves. Cost analysis is concerned not only with the reasonableness of amounts but also with the necessity for incurrence of certain estimated costs.

§ 1003.805 *Major elements of price.*

§ 1003.805–2 *Fixed, variable, and mixed categories of cost.* (a) Fixed costs are costs which result from a contractor being in business. They represent: Money which a contractor has already put into buildings or production machinery, and money which will have to be paid out in the future regardless of the number of units produced in the plant, such as property taxes.

(b) Variable costs are costs which a contractor incurs specifically in the performance of a given contract. They represent cash which must be paid out currently or in the future to enable performance. Variable costs include such items as direct material, direct labor and maintenance costs due to wear and tear of buildings and equipment as a result of the work performed. They do not include such costs as obsolescence, which would occur whether a contractor's facilities were idle or usefully employed.

(c) There are many types of costs which are partly variable and partly fixed, commonly known as mixed costs.

§ 1003.805–3 *Direct and indirect costs.* (a) Because costs are not easily divisible for accounting purposes into fixed and variable costs, particularly because of the mixed variety, accountants usually consider costs in terms of direct or indirect costs.

(b) Direct costs are costs which can be closely and directly associated with a product so that it is possible to determine the amount of cost attributable to a single unit, lot, or product line. They normally constitute the most significant cost elements of price, and afford the greatest opportunity for cost reduction. There are three major types of direct costs: direct materials, purchased parts or components, including subcontracting, and direct labor (engineering, tooling, manufacturing, etc.).

(c) Indirect costs are those costs which it is difficult or impossible to ascribe to a specific unit or lot of production. These costs are also referred to as overhead or burden. There are three fundamentally different types of indirect costs: (1) Fixed overhead, or indirect costs, represent such fixed items as property taxes and plant insurance. Since these costs must be paid whether anything is produced, it is impossible to say that any particular unit or product, or contract is responsible for generating such costs. These costs must be allocated on some basis to the products sold if a company is to recover such costs. (2) Semivariable overhead costs are costs which are partly fixed and partly variable, like the cost of lighting cited above. Common examples of such costs are heat, light, maintenance, and factory supervision. As in the case of fixed overhead costs, it is impossible to ascribe a particular amount of such costs to a unit or lot of production. (3) Overhead often includes another group of costs, which are partly fixed and partly variable, known as start-up or preproduction costs. These costs are incurred specifically for the purpose of getting into production, but fixed in amount regardless of the number of units produced. These costs often create peculiar problems in allocation, and frequently it is possible and often desirable to account for a portion of these costs on a direct costing basis.

§ 1003.805–4 *Cost accounting systems.* (a) Costs usually are accounted for in business in one of two general ways, although there are variations: Actual or historical costs or estimated or standard costs. Depending upon the type of production, and other criteria, these costs may be recorded under either job or process cost systems. The actual cost system is designed to accumulate the costs (hours of labor times wage rates or pounds of material times price per pound, for examples) for each unit of product, process, or department through which the work is put, or for each contract or purchase order. In either case, costs are accumulated after they have been incurred. The system based upon predetermined estimates or standards establishes in advance of production the value of labor and material that will be used in each unit of production in each department or process through which the work will progress. These estimates or standards may be compared with actual costs incurred to determine variations from estimate or standard so that causes of unfavorable variations can be eliminated.

(b) Either system of accounting is acceptable in developing data in support of estimates for pricing purposes, providing it is well conceived in the circumstances and soundly and consistently applied. To ascertain these points, systems surveys may be made by cognizant Government audit agencies upon the request of the contracting officer. (See § 1015.153 of this chapter.)

§ 1003.805–6 *Direct labor.* (a) Direct labor constitutes the other significant and major cost element in AF pricing. There are three important pricing considerations involved in direct labor costs: (1) The number of hours estimated to perform the work, (2) the wage rate per hour of work, and (3) overtime.

§ 1003.803–7 *Preproduction or startup costs.* (a) Preproduction costs are usually substantial in the initial procurement of complex items. These costs can be attributed to a particular production item, but they are not affected by any particular unit. The treatment afforded these costs in pricing is significant in price redeterminations and subsequent production runs and unless they are segregated and allocated carefully as nonrecurring costs in the initial pricing negotiation it will be difficult to price subsequently on a sound basis. The chief elements in startup costs are the following: (1) Design or product engineering, or both, (2) plant rearrangement and installation of equipment, (3) training of labor force, (4) tools, dies, jigs, and fixtures, and (5) purchase of new equipment.

(b) For accounting purposes preproduction costs may be treated as direct or indirect costs, or both. They may be prorated to the units produced over one or more contracts, or to a portion of the units produced on one contract. If preproduction costs are prorated over an initial production quantity, care must be exercised in subsequent pricing to determine that no such costs are projected in follow-on procurements. If all or a part of these costs are included in overhead, care must be exercised in determining reasonable overhead rates for the future, for the inclusion of such costs in overhead tends to increase such accounts temporarily.

§ 1003.805–8 *Factory overhead.* (a) Factory overhead, or indirect manufacturing expense, often constitutes an important cost element of price. The relationship between direct labor estimates and overheads has been noted. It is often more fruitful in price analyses to establish the reliability and reasonableness of direct labor estimates than to become preoccupied with the applicability of component elements of overhead costs. The reasonableness and pertinence of elements of overhead costs to pricing are not as readily determined as direct costs.

(b) In evaluating overhead projections, or forecasts, relating to an AF contract, the following procedures are suggested where the total overhead pool can be ascertained for a company, division, or department, whichever may be

pertinent: (1) Determine that the period considered in estimating overhead costs is consistent with the type of contract or of pricing action contemplated, (2) review the component elements of overhead for applicability to AF contracts, (3) establish an estimate of the total amount of applicable overhead costs, and (4) arrive at a reasonable estimate of the overhead dollars to a specific contract.

(c) In any review of the component elements of overhead it may be noted that there are three distinct categories of expense: (1) Indirect labor, consisting of such items as foremen or maintenance men, (2) indirect supplies such as lubricating oils or cleaning compounds, and (3) fixed charges such as depreciation on plant and equipment, rent, property taxes, or plant insurance. There are no simple rules governing the applicability of such costs for pricing purposes other than reasonableness and necessary incidence to the performance of Government contracts. Among some of the more troublesome elements which may require negotiation are such factors as depreciation, general research programs, strikes, pension and retirement plans, bonus plans, and travel expense. When items ordinarily treated as indirect costs are included in an estimate as direct costs, similar costs applicable to other work of the contractor should be eliminated from the overhead pool.

§ 1003.805–9 *General and administrative expense.* This category includes the expenses of a company's general offices such as supervisor's salaries, rent, heat, light, office equipment, and clerical and stenographic salaries. Selling expense is either included in this account, or accounted for separately. Allocation of general and administrative expense is usually accomplished on a dollar basis in one of two ways: (a) On an "input" basis as a factor of total manufacturing costs, or (b) on an "output" basis as a factor of cost of sales. This type of indirect expense neither lends itself to, nor requires the degree of, departmentalization that can be applied to factory overhead. General and administrative expense does, however, comprise several component elements that may require analysis and special consideration, such as the reasonableness of total executive compensation. (For treatment of costs of salaries and wages see Subpart I, Part 1054 of this chapter.) Financing charges, such as interest and bond discount, usually appear as separate items in an operating statement, but regardless of the manner presented by the contractor these items normally are excluded in pricing considerations on the basis that it is the responsibility of the contractor to provide adequate financing, and the costs incurred in providing that financing should be borne by the contractor.

§ 1003.805–10 *Selling expense.* This category includes expenses incident to the marketing, distributing, and selling of products, such as salesmen's salaries and commissions, sales office expenses, and advertising. Some selling expense can be allocated directly to specific types of sales, for example, a salesman's commission. Others can be identified with certain product lines, or certain types of customers such as advertising of specific lines of items or in specific trade journals. Certain of these expenses such as institutional advertising are in the gray area as to allocability and must be allocated on some arbitrary basis. Common bases for estimating selling expenses are total cost and selling price. It is general AF policy that selling expenses be excluded as costs in pricing unless they can be shown to be beneficial to the Air Force or incidental to and required for the performance of a contract. Clearly the advertising of a commercial product in popular magazines does not appear to benefit the Air Force nor do bad-debt losses.

§ 1003.805–11 *Profit.* Profit, from the Government point of view, should always be considered for negotiation purposes as gross profit before Federal income taxes. On cost estimates, such as that required by DD Form 633, "Cost and Price Analysis," profit should be estimated as a percent of cost. Some suppliers, however, customarily relate profit estimates to sales, but these quotations can be readily converted to a cost basis.

§ 1003.806 *Special pricing instructions.*

§ 1003.806–1 *Pricing of support items*—(a) *General.* By definition, the term "support items" will include spare parts, modification kits, technical data, ground handling equipment, special tools, and test equipment. Where instructions obviously apply only to one of these categories, that particular group will be cited.

(b) *Techniques.* In general the pricing policies and methods of analyzing contractors proposals also apply to the negotiation of spare parts contracts. Spare parts will usually be priced in the same manner as the end items, when produced concurrently and when spare parts volume was taken into consideration in establishing prices for the end items. However, if conditions existing at the time of pricing the end items have changed, the established price level may no longer be valid. In that event, it will be the responsibility of the contracting officer to negotiate fair and reasonable prices after giving due consideration to changes in volume, business trends, production methods, or other pertinent factors.

SUBPART I—DEPRECIATION ON EMERGENCY FACILITIES COVERED BY CERTIFICATES OF NECESSITY FOR CONTRACT PRICING PURPOSES

§ 1003.902 *Definitions.* (a) The term "Board" as used herein means the "Air Force Emergency Facilities Depreciation Board" (MCPPB–1), appointed by the Commander, AMC, or his duly authorized representative, and located at Hq AMC.

(b) The term "normal depreciation" as used herein means the depreciation rate currently approved by the Internal Revenue Service for income tax purposes.

(c) The term "true depreciation" as used herein is defined in paragraph III of Department of Defense Instruction 4105.34. (See § 1003.904.)

§ 1003.903 *Air Force Emergency Facilities Depreciation Board.* (a) The Commander, AMC, will establish and appoint a board designated the "Air Force Emergency Facilities Depreciation Board" (hereinafter referred to as the Board). The Board will consist of three members, one of whom will be designated chairman. Any two members of the Board will constitute a quorum. The concurrence of any two members of the Board will be necessary in arriving at decisions of the Board.

(b) The Board, upon written requests of the contractors therefor, will determine true depreciation of emergency facilities for which the Defense Production Administration or the Office of Defense Mobilization (ODM) issues or has issued Certificates of Necessity, in accordance with the basic principles and other provisions of Department of Defense Instruction 4105.34. The determinations of the Board will be binding upon all AF purchasing and contract auditing activities and other military departments with respect to the amount of true depreciation which will be used by such activities in computing and allocating depreciation costs of emergency facilities covered by Certificates of Necessity in the contract pricing of negotiated contracts. The Board will designate a liasion representative to act with representatives of the Departments of the Army and Navy to perform such coordinating functions as may be required under DOD Instruction 4105.34.

(c) Requests for determination of true depreciation with respect to Certificates of Necessity will be submitted by the contractors to the Board through the administrative contracting officer. In the event the contractor sends the request directly to the Board, it will be the responsibility of the Board to provide the appropriate administrative contracting officer with a copy of the request. In its discretion, the Board may:

(1) Provide for hearing oral presentations by contractors.

(2) Conduct plant visits by its members or representatives.

(3) Develop by other available means the facts required for making a determination.

§ 1003.903–1 *Delegation of authority.* Authority to appoint members of the Board and to designate a chairman (see § 1003.903) has been delegated by the Commander, AMC, to the Director of Procurement and Production, Hq AMC, with power of redelegation to the Deputy Director/Procurement, Hq AMC. Such redelegation has been made.

§ 1003.904 *Department of Defense Instruction No. 4105.34.* DOD Instruction 4105.34, July 1, 1954, subject: "Treatment of Depreciation on Emergency Facilities Covered by Certificates of Necessity for Contract Pricing Purposes," reads as follows:

I. PURPOSE

The purpose of this instruction is to restate and amend Department of Defense implementation of Defense Mobilization Order No. III–1 (former DMO–11), Amendment 1, issued by the Acting Director of Defense Mobilization, effective 21 July 1952, as amended by Amendment 2, issued by the

Director of Defense Mobilization, effective 10 May 1954, with respect to the extent to which accelerated amortization may be allowed as a cost in negotiated contract pricing. The pertinent paragraphs of this amended order read as follows:

6. For the purpose of cost computations in negotiated contract pricing, true depreciation, which includes any extraordinary obsolescence reasonably assignable to the emergency period, is allowable. Any accelerated amortization of depreciation which is in excess of true depreciation, regardless of whether such excess is included in tax amortization certificates, is not allowable as an element of cost in negotiated contract pricing.

7. It is recognized that cost determination in negotiated contract pricing is a function of the procurement agency concerned. With respect to facilities to be used in the performance of negotiated contracts for which certificates have been or will be issued, the procurement agencies concerned will, to the extent required for the purpose of cost computations in connection with the negotiation of contract prices, have the responsibility for determining true depreciation. The Office of Defense Mobilization will, on request, furnish the procurement agency concerned with such information as it has or is readily available to it which is pertinent to the determination of true depreciation.

II. Applicability

A. The principles and procedures set forth in this instruction shall be applicable in the consideration of costs for purposes of pricing or repricing of all negotiated contracts of the Departments of the Army, Navy, and Air Force, the performance of which requires the use of emergency facilities. The term "negotiated contracts," as used herein, means all contracts, other than those awarded pursuant to formal advertising, in which costs are a factor in contract pricing; it includes cost-reimbursement-type contracts, contracts containing price redetermination clauses, incentive-type contracts, and fixed-price contracts where estimated costs are used in negotiating firm prices. The term "negotiated contracts," as used herein, also covers subcontracts of the same types as prime contracts to the extent that the policies of the respective military departments make their representatives responsible for the approval or disapproval of prices or costs of such subcontracts. With respect to subcontracts under negotiated prime contracts the procurement agency concerned shall have no greater responsibility than heretofore.

B. These principles and procedures shall be applicable to all negotiated contracts placed after the effective date hereof and to all existing negotiated contracts (including letters of intent) at that date where firm prices have not been finally determined or redetermined and to all existing cost-reimbursement-type contracts not completed at that date except as to predetermined overhead rates or fixed amounts of overhead which have finally been agreed upon for particular periods.

III. Basic Principles

A. As indicated by DMO-11, Amendment 1, "for the purpose of cost computations in negotiated contract pricing, true depreciation which includes extraordinary obsolescence reasonably assignable to the emergency period, is allowable. Any accelerated amortization of emergency facilities which is in excess of true depreciation, regardless of whether such excess is included in tax amortization certificates, is not allowable as an element of cost in negotiated contract pricing."

B. The meaning of the term "true depreciation" shall conform to the generally accepted concept of depreciation accounting which may be defined as follows: A system of accounting which aims to distribute to the cost of operations, the cost of capital assets calculated to have expired for any accounting period due to such causes as wear and tear, action of the elements, and prospective inadequacy or obsolescence. Obsolescence of facilities may be brought about by reduced economic utility of facilities without loss of productive utility, such as by technological changes affecting the demand for the products of an industry, as well as by changes affecting the economic use of individual machines. Special requirements for relocation of facilities may also result in obsolescence.

C. Obsolescence of emergency facilities due to prospective loss of economic utility after the emergency period is a special hazard in some industries. However, in some cases possible overcapacity in an industry is really represented in preexisting facilities which are in fact obsolete; in such cases the new facilities may be expected to displace the old facilities after the emergency, and it may not be said necessarily that there is extraordinary obolescence applicable to the new facilities during the emergency period. In cases where the introduction of emergency facilities may cause prospective obsolescence of existing facilities after the emergency period (when such existing facilities are not already obsolete, in fact), true depreciation for emergency facilities should not include allowances for prospective extraordinary obsolescence of the existing facilities; however, in such cases extraordinary obsolescence applicable to the existing facilities, when used in military production, should be considered separately to the extent appropriate in the circumstances.

D. In the case of emergency facilities covered by Certificates of Necessity, for the purpose of depreciation computations in contract pricing, and arbitrary assignment of five years from date of completion of construction or acquisition of the respective facilities shall be made as representing the period of the emergency. The entire cost of such facilities first shall be fairly apportioned as between the emergency period and the post-emergency period; secondly, the portion of the cost of such facilities assigned to the emergency period shall be prorated over the fiscal periods thereof for purposes of determining overhead costs in any fiscal period to be allocated to the cost of performance of defense or other contracts.

E. The allocation of the cost of facilities as between the emergency period and post-emergency period shall be made with consideration of the following:

1. The estimated prospective post-emergency usefulness of the facilities in number of years of useful productive life. Consideration should be given to the post-emergency use (both civilian and military) which it is expected the facilities will have. In this connection, the character of the expected post-emergency use may be different than the emergency-period use.

2. The additional costs of special-construction features of the facilities fairly assignable exclusively to defense requirements.

3. Subject to the application of the principles outlined herein, consideration shall be given to the portion of the cost of emergency facilities certified for amortization plus so-called normal depreciation for tax purposes during the emergency period on the uncertified portion of the cost of such facilities. (See particularly paragraphs F and G of this section.)

4. The normal peacetime life facilities having a normal peacetime utility. If Bulletin F of the Bureau of Internal Revenue is used in connection herewith, care must be exercised in its use, as its data may not be typical of any specific contractor or industry, especially in the emergency period.

It must be emphasized that this is a process of cost allocation which does not contemplate an appraisal of the resale value (other than residual salvage value) or replacement cost of emergency facilities at the end of the emergency period. Potential "use value" to the particular contractor concerned after the emergency period should be the primary basis on which loss of economic usefulness, and therefore true depreciation, is determined.

F. Certificates of Necessity have been issued in some cases providing for the amortization of emergency facilities for tax purposes during the emergency period in amounts in excess of true depreciation. It is also possible that Certificates of Necessity may have been issued in isolated cases providing for the amortization of emergency facilities for tax purposes in amounts less than true depreciation. Such variances may be attributable to the granting of other incentives than true depreciation, or to the practice of following industry-wide patterns of certification without reference to true depreciation in specific cases. The excess of tax amortization over estimated true depreciation shall not be allowable as a cost for the purpose of pricing negotiated contracts, either directly or indirectly as a factor of "contingencies" or profit allowance.

G. It is the intent of this instruction to give contractors a reasonable and properly allocable allowance to cover the estimated loss of economic usefulness of their emergency facilities in production under defense contracts. The procedures for determining such allowances must be such as will expedite determination; this requires avoidance of an impossible perfectionism. There is no intent to limit the cost allowance to depreciation that would be allowable for income tax purposes if there were no Certificates of Necessity, nor to necessarily require that the allowance be below tax amortization covered by certificates. Each case must be judged on its merits in the light of these principles. If the result obtained by the application of the principles outlined herein indicates substantial justification of the total amount of amortization and depreciation allowable for tax purposes during the emergency period, as a reasonable measure of true depreciation, such amount shall be accepted, without adjustment, as true depreciation. In those isolated cases where substantial justification can be shown for a larger amount of true depreciation than the total amount of amortization and depreciation allowable for tax purposes during the emergency period, the larger amount shall be allowable as a cost for purposes of contract pricing.

H. Contract pricing for the post-emergency period will be based upon allowing as a cost, depreciation on emergency facilities, computed by allocating the undepreciated cost of such facilities as the end of the emergency period (cost less true depreciation for that period) over the estimated remaining life of the facilities.

IV. Procedures

A. Cost determination in negotiated contract pricing is a function of the procurement agency concerned. With respect to emergency facilities used in the performance of negotiated contracts for which Certificates of Necessity have been or will be issued, the procurement agency concerned shall be solely responsible for estimates of such depreciation for contract pricing purposes in the light of the principles set forth herein. The Office of Defense Mobilization will, on request, furnish the procurement agency concerned with such information as it has or is readily available to it which is pertinent to the determination of true depreciation—such requests should be held to a minimum.

B. In order to expedite administration of the determination of true depreciation for the emergency period for a specific contrac-

tor, it will be appropriate to make overall determinations of true depreciation of emergency facilities covered by Certificates of Necessity on a plantwide or productwide basis of classification of such facilities by such groupings as may be appropriate in consideration of general similarity of the facilities from the standpoint of length of useful productive life.

C. In the case of contracts to which this instruction is applicable which are in force at the effective date of this instruction, price redeterminations, cost-incentive adjustments, and cost reimbursements may continue to be made in accordance with the pricing formula established in the initial pricing negotiations, provided the contractors are agreeable, and provided there is no evidence that the contractor has been allowed more than true depreciation in pricing, either directly or indirectly. When costs of such contracts are redetermined in the light of the principles set forth herein, consideration shall be given to possible redetermination of the entire allowable costs and profit (or fees), as pricing factors, to the extent required to avoid excessive or duplicate allowances in costs or profits for such true depreciation. Allowances for contingencies and profits in initial price negotiations in some cases may have included indirect allowances for the excess of true depreciation or tax amortization over normal depreciation; in such cases no more should be allowed in total pricing for this factor than true depreciation.

D. Contractors shall be required to set forth to the authorized representatives of the procurement agencies, all the pertinent facts having a bearing on estimates of true depreciation together with their evaluation thereof. Such authorized representatives of the procurement agencies wil be expected to exercise reasonable judgment in their review and evaluation of the facts in arriving at estimates of true depreciation, in the light of the basic principles set forth herein, recognizing the impossibility of having absolutely demonstrable proof of the conclusions reached.

E. Where the emergency facilities of any contractor at one plant or at one general location are used in the performance of contracts for more than one of the military departments, one of these departments shall make determinations of true depreciation binding upon each other department. The responsible department shall be the one, if any, having plant cognizance procurement assignment; in the absence of such assignment the responsible department shall be the one, if any, having single-service audit responsibility; otherwise the responsible department shall be the one having the largest interest in effecting current procurement at the time of the determination. Similarly, each military department shall be responsible for delegating responsibility therein in a manner to avoid duplications in determinations of true depreciation within that department.

F. The following additional procedure is applicable to Emergency Facilities covered by Certificates of Necessity issued after 1 July 1954:

Whenever a major portion of the cost of facilities in substantial amount is to be reimbursed to a contractor as an element of product prices during a relatively short period, it will be expected in appropriate cases that consideration will be given in negotiation to protecting, by appropriate agreement, the Government's interest in the continued availability of the facilities for Defense use.

V. CANCELLATION

This Instruction cancels Department of Defense Directive 4105.34, dated 10 December 1952, and Department of Defense Directive Transmittal 54-43, dated 30 April 1954.

VI. IMPLEMENTATION

Such implementing regulations, directives, or instructions as may be necessary shall be issued within each military department, and copies shall be furnished to the Assistant Secretary of Defense (Comptroller) and the Assistant Secretary of Defense (Supply & Logistics) within forty-five (45) days from date hereof.

VII. EFFECTIVE DATE

This instruction is effective on the day of issuance.

T. P. PIKE,
Assistant Secretary of Defense
(Supply and Logistics).

§ 1003.905 *Duties and responsibilities of Board.* (a) The primary function of the Board is to determine, upon written request of contractors, the amount of true depreciation of emergency facilities covered by Certificates of Necessity. In making this determination the Board is authorized to rely upon the accuracy of the information submitted by contractors in accordance with § 1003.910. The extent to which depreciation of emergency facilities is considered to be true depreciation will depend upon contractor's demonstration of loss of economic usefulness.

(b) In determining the amount of true depreciation to be apportioned to the 5-year emergency period, the Board will consider as factors pertinent to the case including but not limited to the following:

(1) The reason the contractor planned its expansion program. (Consideration must be given to rapid advances in recent years both in military and commercial fields and normal facilities improvements or expansions which may have been required for the contractor to maintain its competitive status.)

(2) The depreciation policy followed by the contractor in computing prices in connection with commercial production.

NOTE. The effect on the financial structure of the contractor of the increased expenditure for capital investments should have no bearing on the determination of true depreciation.

(c) The Board's responsibility is limited to determinations on facilities covered by Certificates of Necessity.

(d) The Board will make separate determinations for each type of facility; e. g., buildings, machine tools, other equipment.

(e) The Board will keep minutes of its proceedings and maintain a permanent record of the facts and other considerations entering into the determinations made.

(f) The Board, in special or unusual cases, may request Defense Production Administration (DPA) to furnish available information which would be pertinent in determining true depreciation in those cases where DPA has previously issued a Certificate of Necessity.

§ 1003.906 *Procedures.* (a) Contractors may request a determination of true depreciation of an emergency facility by submitting all pertinent information to the Board through the administrative contracting officer. To the extent practicable, contractors will include all certificates issued in connection with any individual plant or location which they desire to have considered for determination of true depreciation in connection with defense contracts, providing separate summary schedules (see item 1 (c) of § 1003.910–1) of those certificates issued prior to and subsequent to December 10, 1952. Subcontractors may similarly request a determination of true depreciation by submitting all pertinent information to the cognizant prime contractor which in turn may refer the request to its administrative contracting officer for transmission to the Board. If more than one prime contractor is involved, the subcontractor may submit the request to one prime contractor and should not duplicate the submission to other prime contractors. The administrative contracting officer will promptly forward all requests to the Board through the AMA.

(b) Before proceeding with a case for study and review, the Board will determine that the Air Force has jurisdiction in the case. Requests for determination received by the Board, involving facilities concerning which the Department of the Army or Navy is responsible for making determinations of true depreciation pursuant to the provisions of paragraph IV E of DOD Instruction 4105.34, will be forwarded by the Board to the Emergency Facilities Depreciation Board of the responsible department. Assignments to each departmental Board will be made according to the provisions of paragraph IV E of the above Instruction. A liaison committee consisting of one representative to be designated by each Board, in addition to such other functional duties as may be assigned to it by joint action of the three Boards, will make assignments in doubtful cases and will compile and maintain a master assignment list.

(c) Determinations of the Board will be transmitted by the Board to the contractor concerned, AF procurement activities concerned, the Auditor General, Headquarters Liaison Office, Wright-Patterson Air Force Base, Ohio, and the Emergency Facilities Depreciation Board of the Departments of the Army and the Navy. The Board will make similar distribution of determinations received from the Army and Navy Boards.

(d) On emergency facilities covered by certificates of necessity issued on or after July 1, 1954, whenever a major portion of the cost of facilities in substantial amount is to be reimbursed to a contractor as an element of product prices during a relatively short period, it will be expected in appropriate cases that consideration will be given in negotiation to protecting, by appropriate agreement, the Government's interest in the continued availability of the facilities for defense use.

§ 1003.907 *Duties and responsibilities of Industrial Resources Division, Hq AMC.* Industrial Resources Division (MCPB), Hq AMC, in reviewing the need for facilities for defense purposes, will consider the possible cost to the Government of such facilities. If the Air Force is prime sponsor, MCPB will include, with the notification to ODM of the need of the facility for defense purposes, the required data and a statement of all the

factual information of the facility available to the Air Force which might be useful to ODM.

§ 1003.908 *Duties and responsibilities of AF buying personnel.* (a) Only after the Board has made a determination of true depreciation will such true depreciation be considered an allowable element of cost.

(b) In negotiating new contract prices or estimated costs or in redetermining prices or overhead rates on existing contracts, the cost of true depreciation may be considered, subject to the provisions of this subpart. Unless otherwise provided for by a specific contract clause, price, ceilings, and final overhead rates which have been firmly established are not subject to adjustment.

(c) Clauses providing for adjustment of price because of subsequent determination of true depreciation will not be included in any firm fixed-price contract awarded on a competitive basis.

(d) Existing cost-reimbursement type contracts may be subject to adjustment of allowable costs, without specific amendment. Under audited reimbursement of overhead, administrative contracting officers are authorized to reimburse the cost of true depreciation computed according to determination of the Board for the entire period of the contract, except where buyers have informed the administrative contracting officer in writing that true depreciation has been indirectly considered in negotiation of the fee. Buyers are responsible for examining active cost-plus-fixed-fee contracts and for notifying the administrative contracting officer of such consideration. Reimbursement for true depreciation under such circumstances depends upon fee adjustment and written release from the buyer to the administrative contracting officer.

(e) Certain contracts, both fixed-price and CPFF, contain a clause which permits adjustment of price or costs and fee if the national-defense policy changed to recognize true depreciation. In negotiating such adjustments the policies set forth in this subchapter apply.

(f) With regard to contracts currently being negotiated and where a determination has not been made by the Board, if the contractor insists on the inclusion of a clause providing for later adjustment of prices (or estimated costs) to reflect the determination of true depreciation, the following clauses will be used as appropriate:

(1) *For currently negotiated fixed-price contracts.* Contractor warrants that the prices specified herein do not contain any element reflecting more than normal depreciation of the emergency facilities constructed or acquired by the contractor under Certificates of Necessity. If the contractor elects to file a request for determination of true depreciation within 12 months from date of approval of this contract, then within 6 months from the date of such determination made in accordance with DODI 4105.34, dated 1 July 1954, and applicable directives or such additional times as the contracting officer may approve, an equitable adjustment of contract prices for the supplies or services called for hereunder shall be negotiated and evidenced by an amendment to this contract.

(2) *For currently negotiated final rates of overhead.* Contractor warrants that the final rate of overhead specified herein for the period(s) _____ do not contain any element reflecting more than normal depreciation of emergency facilities constructed or acquired by the contractor under Certificates of Necessity. If the contractor elects to file a request for determination of true depreciation within 12 months from date of approval of this contract, then within 6 months, or such additional time as the contracting officer may approve, from the date of such determination made in accordance with DODI 4105.34, dated 1 July 1954, and applicable directives, an equitable adjustment of final rate of overhead specified above shall be negotiated and evidenced by an amendment to this contract.

(3) *For current price redetermination negotiations.* Contractor warrants that the redetermined prices specified herein for the period(s) _____ do not contain any element reflecting more than normal depreciation of emergency facilities constructed or acquired by the contractor under Certificates of Necessity. If the contractor elects to file a request for determination of true depreciation within 12 months from date of approval of this supplemental agreement, then within 6 months, or such additional time as the contracting officer may approve, from the date of such determination made in accordance with DODI 4105, dated July 1, 1954, and applicable directives, an equitable adjustment of contract prices for the supplies or services called for hereunder shall be negotiated and evidenced by an amendment to this contract.

(g) Buyers will ascertain from the contractor the status of settlements with the Renegotiation Board for prior years, and if the contractor has returned excess funds for any period, no adjustment in contract costs will be made for that period.

§ 1003.910 *Contractors' requests for determinations of true depreciation.* Requests for determination of true depreciation submitted by contractors will:

(a) Set forth the information called for by § 1003.910–1. Contractors are required to furnish five copies of the information, properly certified (see (c) below), and three copies of the Certificate applications (see item 2 of § 1003.910–1) including supporting schedules.

(b) Be signed by a responsible official of the contractor.

(c) Contain the following certification by the official signing the request:

I hereby certify that the information contained in the foregoing request is true and correct to the best of my knowledge and belief.

§ 1003.910–1 *List of contractor information.* Following is the information to be submitted by contractors to the Board to support requests for determination of true depreciation on emergency facilities covered by Certificates of Necessity:

INFORMATION TO BE SUBMITTED BY CONTRACTORS TO THE BOARD OF SUPPORT REQUESTS FOR DETERMINATION OF TRUE DEPRECIATION ON EMERGENCY FACILITIES COVERED BY CERTIFICATES OF NECESSITY

The Contractor will submit to the Army, Navy, or Air Force Emergency Facilities Depreciation Board (as appropriate), his request for a determination of true depreciation by an original and four copies of items other than item 2, and three copies for item 2. The request will contain the information indicated below. The contractor, to the extent practicable, will include all certificates issued in connection with any individual plant or location which he desires to have considered for determination of true depreciation in connection with the defense contracts. The responses to these questions may be in narrative or tabular form as the contractor deems best suited to his circumstances with such amplification as he considers necessary. If the contractor considers a given question to be inapplicable in his particular case, he should so state and give reasons therefor. The reporting and/or record keeping requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942 (AF Bul 51, 1951). (Bureau of the Budget No. 21–R060 (expiration—indefinite)).

1. (a) Name and address of contractor.

(b) Location of the facility or facilities.

(c) Summary of the cost of the facilities (segregated by individual necessity certificates) substantially as follows:

	Cost					
Land	Buildings and fixed installations	Equipment	Other	Total	Date of completion	Percent certified

Necessity Certificate No. ____:

Location of Facilities (City and State).

2. Photostats or similar facsimiles of Necessity Certificate(s) (Forth DPAL–101), and a copy of the application(s) (including supporting documentation) to the Defense Production Administration or the Office of Defense Mobilization therefor.

3. (a) When did you first authorize your expansion program in connection with the Necessity Certificate(s)?

(b) Why did you plan this expansion program?

4. What military contracts and subcontracts do you now have requiring the use of each facility? For each contract and subcontract furnish the following:

(a) Contract number.

(b) Total dollar value.

(c) Undelivered dollar value.

(d) Estimated completion date.

(e) Type of contract (CPFF, CPFF-fixed overhead, fixed price, fixed price-redetermination, fixed price-incentive, etc.).

5. With which military departments or military contractors are you now negotiating or do you expect to negotiate for proposed new procurements? Indicate type of product, end item estimated dollar amount.

6. Have you requested a determination of "true depreciation" for other facilities from any other military department(s)?

(a) Yes or no.

(b) Department(s).

(c) Certificate file number(s).

7. State for each item or by groups or categories comprising similar type of items on Appendix A of Necessity Certificate(s):

(a) (1) Annual normal depreciation rate currently approved by the Bureau of Internal Revenue for income tax purposes.

(2) Rate at which item is being depreciated by you in your operating accounting records.

(3) Rate being used for military contract pricing.

(b) Is this item, group or category integrated in or isolated from the production process to the extent that special consideration should be given to it in determining true depreciation?

(c) Is this item, group or category convertible to your possible post-emergency operations?

(1) Fully or partially and percent of original cost not convertible.

(2) Estimate of useful remaining life in years.

(3) Not convertible.

(d) What plans do you have for the use or disposition of this facility, item, group, or category after the emergency period?

(e) Explain to what extent, if any, the facility, item, group or category may cause prospective extraordinary obsolescence of pre-existing facilities which are not, in fact, already obsolete.

SUBPART J—USE OF PRICE DIFFERENTIALS IN PLACING PROCUREMENT BY NEGOTIATION

§ 1003.1000 *Scope of subpart.* This subpart pertains to payment of justifiable price differentials for broadening or maintaining the industrial base of suppliers.

§ 1003.1001 *Applicability of subpart.* (a) The provisions of this subpart are applicable to all personnel of the Directorate of Procurement and Production, Hq AMC, and AMC field procurement activities concerned with the awarding of negotiated contracts.

(b) This subpart is not applicable to procurements placed by formal advertising.

§ 1003.1002 *Policy.* Payment of justifiable price differentials is authorized in negotiated procurements to accomplish the objective of broadening or maintaining the industrial base of suppliers.

§ 1003.1003 *Justifiable price differentials.* (a) Justifiable price differentials may include, but are not limited to, cost of initial tooling, engineering expense, and training expense; cost of construction and test of sample articles; cost over contractor's normal commercial cost for indirect expense incident to Government contractual requirements; difference in labor market; difference in cost of materials used in construction of the item in smaller lots; and difference in delivery costs.

(b) Multiple awards for the purpose of establishing "second" sources are subject to the provisions of this subchapter.

SUBPART T—ADMINISTRATION OF ALL TYPES OF PRICE REVISION CLAUSES

§ 1003.2008 *Tax credits in price redetermination proceedings.* (a) Upon redetermination of an AF contract, the contractor is obligated to repay to the Air Force any excess profits. However, under section 1481 of the Internal Revenue Code of 1954 (section 3806 of the Internal Revenue Code of 1939) if the redetermination takes place after the contractor has filed his Federal income tax return, and the excessive profits have been included in taxable income, the contractor may deduct from his repayment to the Air Force the amount of the tax applicable to the excessive profits. Money paid by the contractor in taxes goes into the General Fund and is lost to the Air Force.

(b) If redetermination takes place prior to the filing by the contractor of his income and excess profits tax returns for the preceding taxable year, the contractor may reduce his income for such year by the amount of the redetermined excesive profits applicable to that year and pay taxes only on the balance of his income. The Commissioner of Internal Revenue has ruled (Rev. Rul. 53 C. B. 1953–1, 479 later clarified by Rev. Rul. 54–83, I. R. B. 1954–9) that although formal redetermination has not been accomplished prior to the filing of contractor's income tax return, the contractor may deduct from taxable income for the prior year amounts repayable which are "definitely determinable" by the time he files his complete tax return for the year. "Definitely determinable" can be evidenced by a credit memorandum issued by the contractor or a definite commitment to reduce the contract price made to the contracting officer, preferably in writing, prior to the filing of the return.

(c) To minimize the loss of AF appropriations, the following policy is established:

(1) Every effort must be made to accomplish and definitize price redetermination actions prior to the date the contractor files income tax return for the year in which the contract prices were received and accrued.

(2) To the extent that any amounts repayable under a price redetermination clause are definitely determinable at or prior to the time the contractor files the complete income tax return for the year such profits were realized, the contracting officer will provide in the redetermination settlement agreement that the contractor will repay to the Air Force the excessive profits under the contract.

(3) Where redetermination takes place after the contractor has filed his income tax return, and the contractor claims a tax credit, the contracting officer will require the contractor to furnish a certificate, signed by a responsible officer, that the profits for which a tax credit is claimed and which have been determined to be excessive were included in income tax return for the year claimed. Additionally, the contracting officer will require the contractor to furnish the Air Force a certificate executed by a responsible officer of the Internal Revenue Service, certifying the amount of the tax credit applicable to the profits determined to be excessive. The contracting officer will provide in the redetermination settlement agreement that the contractor will repay to the Air Force the excessive profits under the contract less the amount of tax credit certified by the Internal Revenue Service.

PART 1004—COORDINATED PROCUREMENT

Sec.

1004.002 Procurement agreements.

Subpart B—Policies and General Principles

1004.203–6 Local purchase as normal means of supply.

1004.250–1 List of Department of Defense procurement assignments.

AUTHORITY: §§ 1004.002 to 1004.250–1 issued under sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314.

§ 1004.002 *Procurement agreements.* This section sets forth the Department of Defense policy with respect to the making of procurement agreements and the delegation of procurement responsibilities from one department to another for specific commodity areas.

SUBPART B—POLICIES AND GENERAL PRINCIPLES

§ 1004.203–6 *Local purchase as normal means of supply.* (a) Scope of section: This section sets forth the policy with respect to AF authority to make direct purchase of nonmilitary type items assigned to the Army or Navy for procurement, without dollar limitation, when such items are coded local purchase within the Air Force.

(b) Applicability of section: This section applies to all AF activities affecting procurements within the continental United States.

(c) Items which are assigned to the Army or Navy for procurement, but which are currently coded "LP" in AF stock lists and funded for local purchase, may be purchased in any quantity, without dollar limitation, regardless of the small local purchase limitations set forth in the purchase assignment implementing procedures and the direct purchase authorization. When an item is coded "LP" for a future fiscal year, this authority will become effective with the effective date of "LP" coding.

(d) This extended local purchase authority does not apply to items assigned to the General Services Administration for procurement.

§ 1004.250–1 *List of Department of Defense procurement assignments.* This section disseminates the list of commodities under DOD procurement assignments and commodities under DOD-GSA interagency procurement assignments. Changes to the list will be made as they occur.

LIST OF DOD ASSIGNED COMMODITIES

FSC code	Commodities	Procurement responsibility assigned to
	ANTI-FREEZE	
6850 P	Anti-freeze Includes: Those compounds which contain Ethylene Glycol, only. Excludes: Ethylene Glycol in pure form for use as a coolant in aircraft.	Army.
	BATTERIES, DRY CELL	
6135 P	Batteries, Primary Includes: JAN Type, Dry Cell Batteries, only.	Army.
	CANVAS, DUCK, AND WEBBING	
8305 P	Textile Fabrics Includes: Canvas, Duck, and Webbing, only.	Army.
	CHEMICAL WARFARE EQUIPMENT AND SUPPLIES [1]	
4230 P	Decontaminating and Impregnating Equipment Includes: Truck Mounted Equipment; Impregnating Sets, Clothing, Field; Impregnating Machines for Fixed and Mobile Impregnating Plants; Apparatus, Decontaminating, Portable and Accessories; Set, Equipment Maintenance and Repair, CW; Repair Set, CW Equipment.	Army.
4240 P	Safety and Rescue Equipment Includes: Military Respiratory Protective Equipment.	Army.
6630 P	Chemical Analysis Instruments Includes: Instruments peculiar to Chemical Warfare, only.	Army.
6640 P	Laboratory Equipment and Supplies Includes: Chemical Laboratories (Assembled Outfits).	Army.
6665 P	Hazard-Detecting Instruments and Apparatus Includes: Military Gas Detection Devices, CW; and Laboratory Testing Instruments and Apparatus (Related to Military Gas Detection Devices, CW).	Army.
6810 P	Chemicals Includes: Agents Decontaminating; and Calcium Hypochlorite.	Army.
6820 P	Dyes Includes: Dyes peculiar to Chemical Warfare Equipment and Supplies herein assigned.	Army.
6850 P	Miscellaneous Chemical Specialties Includes: Impregnites for Military Protective Clothing.	Army.
6910 P	Training Aids Includes: Training Aids related to Chemical Warfare Equipment and Supplies herein assigned.	Army.
	CONSTRUCTION AND AGRICULTURAL EQUIPMENT AND TRACTORS	
2410	Tractors, Full Track, Low Speed	Army.
2420	Tractors, Wheeled	Army.
2430	Tractors, Track Laying, High Speed	Army.
2320 P	Vehicular Power Transmission Components Includes: Components peculiar to Construction, Excavating, Highway Maintenance, Agricultural Machinery and Equipment, and Tractors, only.	Army.
2330 P	Vehicular Brake, Steering, Axle, Wheel and Track Components Includes: Components peculiar to Construction, Excavating, Highway Maintenance, Agricultural Machinery and Equipment, and Tractors, only.	Army.
2340 P	Vehicular Furniture and Accessories Includes: Furniture and accessories peculiar to Construction, Excavating, Highway Maintenance, Agricultural Machinery and Equipment, and Tractors, only.	Army.
2350 P	Miscellaneous Vehicular Components Includes: Miscellaneous components peculiar to Construction, Excavating, Highway Maintenance, Agricultural Machinery and Equipment, only.	Army.
3220 P	Sawmill and Planing Machinery Includes: Sawmills (Complete Units), only.	Army.
3695 P	Miscellaneous Special Industry Machinery Includes: Specialized Logging Equipment, only.	Army.
3710	Soil Preparation Equipment	Army.
3720	Harvesting Equipment	Army.
3740	Pest, Disease, and Frost Control Equipment	Army.
3750 P	Gardening Implements and Tools Includes: Garden Tractors, Walking Type, only.	Army.
3805	Earth Moving and Excavating Equipment	Army.
3810	Cranes and Crane-Shovels	Army.
3815	Crane and Crane-Shovel Attachments	Army.
3820 P	Mining, Rock Drilling, Earth Boring, and Related Equipment Excludes: Mining Machinery and Equipment.	Army.
3825	Road Clearing and Cleaning Equipment	Army.
3830	Truck and Tractor Attachments	Army.
3895	Miscellaneous Construction Equipment	Army.

[1] The implementing procedures for this DOD Procurement Assignment also covers selected mechanical smoke generators, which are classified under FSC Class 1040 Chemical Weapons and Equipment. The entire FSC Class 1040 is under DOD Procurement Assignment to the Department of the Army.

LIST OF DOD ASSIGNED COMMODITIES—Continued

FSC code	Commodities	Assigned to
	CONSTRUCTION AND AGRICULTURAL EQUIPMENT AND TRACTORS—continued	
5420	Bridges, Fixed and Floating	Army.
5440 P	Scaffolding Equipment and Concrete Forms	Army.
5680 P	Miscellaneous Construction Materials Includes: Landing mats, landing mat sets, and parts peculiar.	Army.
	DRUMS AND CANS	
7240 P	Household and Commercial Utility Containers Includes: 5-Gallon Metal Containers, only.	Army.
8110 P	Drums and Cans Includes: 55 Gallon, 16 Gauge and 5 Gallon Metal Drums and Cans, only.	Army.
	ECCLESIASTICAL EQUIPMENT AND SUPPLIES	
6910 P	Training Aids Includes: Visual aids, Chaplain, non-projected; only.	Navy.
7195 P	Miscellaneous Furniture and Fixtures Includes: Board, bulletin, chapel; only.	Navy.
9625	Ecclesiastical Equipment and Supplies	Navy.

Altar bells.
Altar cloths.
Altar covers.
Altar curtains.
Altar hangings.
Altar, portable.
Altar and retable, portable.
Ark sets, eternal light and bema.
Bags, Bible.
Bags, chalice, communion.
Bags, chaplains' kit.
Bags, cruet tray, communion.
Bags, paten, communion.
Baptismal bowls.
Baptismal sprinklers.
Bases, communion tray.
Bells, altar.
Bells, sanctus.
Bibles.
Boats, censer.
Bowls, baptismal.
Bowls, lavabo.
Boxes, host.
Bread plates, communion.
Candelabra, chapel.
Candelabra inserts, Star of David.
Candles, chapel, beeswax.
Candles, chapel, eights.
Candles, chapel, fours.
Candles, chapel, mass.
Candles, chapel, sanctuary.
Candles, votive.
Candles, chapel, 7 day.
Candles, taper, altar.
Candle, votive, 7-day.
Candle, votive, 30-hour, 100 percent beeswax.
Candle, votive, 15-hour, 51 percent beeswax.
Candle, taper, altar, eights, 100 percent beeswax.
Candle, taper, altar, fours, 51 percent beeswax.
Candle, taper, altar, fours, 100 percent beeswax.
Candle burners.
Candle burners, chapel.
Candlelighters and snuffers, chapel.
Candlesticks, altar.
Candlesticks, chapel.
Case, altars, communion set.
Cases, communion set.
Cases, field altar set.
Censers.
Censer boats.
Chairs, pulpit.
Chalice inserts.
Chalices.
Chaplain's kits.
Chaplain's kit, Catholic, combat.
Chaplain's kit, Christian.
Chaplain's kit, combat.
Chaplain's kit, Jewish.
Chaplain's kit, Jewish, combat.
Chests, hymn book.
Chimes, chapel.
Collection plates.
Communion cups.
Communion glasses.
Communion patens.
Communion sets, chalice, chapel.
Communion sets, chalice, visitational.
Communion sets, chapel.
Communion sets, individual cup, chapel.
Communion sets, individual cup, visitational.
Corporals, communion.
Covers, altar.
Covers, communion tray.
Covers, lid, chaplains' set.
Crosses, ecclesiastical.
Crosses, processional.
Cross-crucifixes.
Cross-crucifix, chapel.
Cross-crucifix, shipboard.
Crucifixes.
Crucifix, with chain (religious medal).
Cruets, communion.
Cups, communion, individual.
Cups, intinction, chalice.
Dossals, ecclesiastical.
Fair linens, altar.
Fillers, communion set.
Flagons, communion.
Folders, service, chapel.
Font, baptismal.
Glasses, communion.
Glasses, votive.
Glasses, votive light.
Grape juice, sacramental.
Hangings, dossal.
Hanging sets, altar-lectern-pulpit.
Hangings, pulpit.
Holders, candle, votive.
Holders, votive glass.
Host boxes.
Hymnbooks.
Inserts, chalice.
Intinction cups.
Juice, grape, sacramental.
Kiddush cups.
Kiddush service sets.
Lavabo bowls.
Lectern hangings.
Menorahs.
Missal, Roman Catholic, altar.
Missals.
Missal stands.
Palls, chalice.
Paschal candlesticks.
Patens, communion.
Plates, bread, communion.
Plates, habdalah.
Pointers, torah.
Pro-dieus.
Program folders, chapel service.

LIST OF DOD ASSIGNED COMMODITIES—Continued

FSC code	Commodities	Assigned to
	ECCLESIASTICAL EQUIPMENT AND SUPPLIES—continued	
9925	Ecclesiastical Equipment and Supplies	Navy.
	Program folder sets, chapel service.	
	Pulpit, portable.	
	Pulpits, portable, folding.	
	Pulpit and lectern hangings.	
	Purificatoes, communion.	
	Rosary.	
	Rug sets, chapel.	
	Sanctuary lamps.	
	Sanctuary lights.	
	Scarves, chaplains'.	
	Scarf, chaplains', Christian.	
	Scarf, chaplains', Jewish.	
	Stands, Bible and missal.	
	Stands, Bible and missal, shipboard.	
	Stands, missal.	
	Stands, votive light.	
	Statuary, ecclesiastical.	
	Supports, communion tray set.	
	Tapers, candlelighter.	
	Tapers, candlelighter, chapel.	
	Testament, Catholic.	
	Testament, Jewish.	
	Testament, Protestant.	
	Trays, communion.	
	Trays, cruet, communion.	
	Trays, wine and water cruets.	
	Tray sections, communion tray set.	
	Tray sets, communion.	
	Vases, altar.	
	Vases, altar, shipboard.	
	Vestments, ecclesiastical.	
	Votive light glasses.	
	Wine, sacramental.	
	Wine, sacramental, angelica.	
	Wine, sacramental, kosher.	
	FIBERS, FIBER ROPE, CORDAGE, AND TWINE	
4020	Fiber Rope, Cordage, and Twine	Navy.
	Abaca fiber rope.	
	Agave sisilena fiber rope.	
	Berth lashing.	
	Boat halyards.	
	Boat lines, fiber.	
	Clothesline.	
	Cord, cotton.	
	Cord, fibrous glass.	
	Cord, halyard.	
	Cord, linen.	
	Cord, nylon.	
	Cord, plumb bob.	
	Cord, rayon.	
	Cord sash.	
	Cord, seizing.	
	Cord silk.	
	Cotton mattress twine.	
	Cotton rope.	
	Cotton seine twine.	
	Cotton wrapping twine.	
	Fiber rope.	
	Fiber rope assemblies, single leg.	
	Flax mattress twine.	
	Flax twine.	
	Guys, fiber rope, multi-application.	
	Guy sets, fiber rope, multi-application.	
	Hambroline.	
	Hemp twine.	
	Houseline.	
	Jute rope.	
	Jute twine.	
	Lanyards, ship.	
	Laniats.	
	Lines, chalk.	
	Lines, cotton.	
	Lines, flax.	
	Lines, manila.	
	Linen cord.	
	Linen twine.	
	Manila rope.	
	Marline.	
	Nylon parachute line.	
	Ratline, hemp.	
	Ratline, jute.	
	Ratline, sisal.	
	Rayon parachute line.	
	Rope, abaca fiber.	
	Rope, agave sisilana.	
	Rope, bunk lashing.	
	Rope, cotton.	
	Rope, cotton braided.	
	Rope, deck, fiber.	
	Rope, fibrous glass.	
	Rope, hemp.	
	Rope, henequen.	
	Rope, jute.	
	Rope, linen.	
	Rope, manila.	
	Rope, nylon.	
	Rope, orlon.	
	Rope, rayon.	
	Rope, silk.	
	Rope, sisal.	
	Roundline.	
	Rowlock lanyard.	
	Sail twine.	
	Sash cord.	
	Seizing stuff, hemp.	
	Seizing stuff, jute.	
	Seizing stuff, sisal.	
	Spun yarn, hemp.	
	Spun yarn, jute.	
	Spun yard, sisal.	
	Tholepin lanyard.	
	Twine, cotton.	
	Twine, flax.	
	Twine, hemp.	
	Twine, jute.	
	Twine, linen.	
	Twine, machine.	
	Twine, marline.	
	Twine, sail.	
	Twine, sisal.	
	Wrapping twine.	
	Yacht marline.	

LIST OF DOD ASSIGNED COMMODITIES—Continued

FSC code	Commodities	Assigned to
	FIBERS, FIBER ROPE, CORDAGE, AND TWINE—continued	
9420 P	Fibers, Vegetable, Animal, and Synthetic	Navy.
	Ceylon coir.	
	Cochin coir.	
	Coons fibers.	
	Coconut fibers.	
	Coir.	
	Fibers, broom root.	
	Fibers, coconut.	
	Fibers, coir.	
	Fibers, crin vegetal.	
	Fibers, figue.	
	Fibers, mauritius, including piteira.	
	Fibers, pita floja.	
	Fibers, pochote.	
	Fibers, redwood.	
	Fibers, sansevieria.	
	Fibers, typha.	
	Fibers, yucca.	
	Milkweed floss.	
	Spanish moss.	
	Excludes: The following items which are not under Department of Defense procurement assignments: cotton, raw; fibers, hemp; fibers, henequen; fibers, horsehair; fibers, jute; fibers, manila; fibers, nylon; fibers, rayon; fibers, silk; fibers, sisal; linters, cotton; wool, raw.	
	FIRE FIGHTING, RESCUE, AND SAFETY EQUIPMENT (AIRPORT)	
2330 P	Trucks and Truck-Tractors	Air Force.
	Includes: Airport Crash Rescue Vehicles, only.	
2330 P	Trailers	Air Force.
	Includes: Airport Crash Rescue Trailer Units, only.	
4210 P	Fire Fighting Equipment	Air Force.
	Includes: Airport Crash Fire Chemical Trailer Units; Airport Crash Fire Trucks; Airport Crash Fire Trailer Units; Airport Crash Fire Water Tender Trucks; Airport Crash Fire Water Tender Trailer Units; Crash Fire Trucks; and Crash Trailer, Fire Fighting.	
	Excludes: Selected Fire Fighting Vehicles (other than Crash and Airport) under Department of Defense procurement assignment to the Army. Cf. below.	
	FIRE FIGHTING, WATER PURIFICATION AND SEWAGE TREATMENT EQUIPMENT	
4210 P	Fire Fighting Equipment	Army.
	Brush Fire Trucks.	
	Carbon Dioxide Fire Trucks.	
	Chemical Fire Trucks.	
	Fire Fighting Trailers.	
	Fire Fighting Trucks.	
	Fire Pumper Trailers.	
	Hook and Ladder Trucks.	
	Ladder Trucks.	
	Trailers, Fire Fighting.	
	Trailers, Fire Pumper.	
	Trucks, Fire Fighting.	
	Excludes: Airport and Crash Fire Fighting Equipment Under DOD Procurement Assignment to the Air Force. Cf. above.	
4610 P	Water Purification Equipment	Army.
	Bags, water sterilizing.	
	Bypass connection assemblies, water purification.	
	Cases, water purification kit	
	Chemical solution feeders.	
	Chlorinators, water purification.	
	Feeders, chemical solution, water purification.	
	Filter pads, water purification.	
	Filter units, water purification, frame mounted.	
	Filter units, water purification, trailer mounted.	
	Filter units, water purification, unmounted.	
	Hangers, water bag, triangular.	
	Hypochlorination units, water purification frame mounted.	
	Hypochlorination units, water purification, skid mounted.	
	Hypochlorination units, water purification, trailer mounted.	
	Hypochlorination units, water purification, truck mounted.	
	Hypochlorination units, water purification, unmounted.	
	Injectors, chemical solution.	
	Nozzles, sanitary, water purification.	
	Pads, filter, water purification.	
	Pumping and hypochlorination units, frame mounted.	
	Pumping and hypochlorination units, trailer mounted.	
	Pumping and hypochlorination units, unmounted.	
	Rolls, water purification equipment.	
	Sanitary nozzles, water purification.	
	Water purification chlorinators.	
	Water purification units, frame mounted.	
	Water purification units, knapsack type.	
	Water purification units, skid mounted.	
	Water purification units, stationary knockdown type.	
	Water purification units, trailer mounted.	
	Water purification units, truck mounted.	
	Water purification units, unmounted.	
	Water softener units.	
	Water stills, fuel heated, lifesaving.	
	Excludes: Stills, water, solar heated, lifesaving, under DOD Procurement Assignment to the Navy.	

LIST OF DOD ASSIGNED COMMODITIES—Continued

FSC code	Commodities	Assigned to
	FIRE FIGHTING, WATER PURIFICATION AND SEWAGE TREATMENT EQUIPMENT—con.	
4620 P	Water Distillation Equipment, Marine and Industrial Distillation units, water, steam operated Distillation units, water, thermocompression Distilling units, water, vapor compression Excludes: Distilling plants when purchased for use aboard those vessels under DOD Procurement Assignment to the Navy.	Army.
4630	Sewage Treatment Equipment Distributor and dosing equipment. Ejectors, sewage. Ejector systems, sewage. Pumping units, sewage. Sewage ejection systems. Sewage lifting stations. Sewage pump and tank units. Sump pump tank units, sewage. Tank units, sewage pumping.	Army.
	FOOD PREPARATION AND SERVING EQUIPMENT	
7310 P	Food Cooking, Baking, and Warming Equipment Includes: Covers, steam table inset; Covers, steam table pan; Insets, steam table; and Pans, steam table.	Army.
7330 P	Kitchen Hand Tools and Utensils Excludes: Blades, bakers' peel; Bottles, insulated; Bottles, vacuum; Boxes, spice; Cases, insulated food container; Covers, insert, insulated food container; Covers, insulated food container; Fillers, vacuum bottle; Food containers, insulated; Food containers, vacuum; Handles, bakers' peel, wood; Inserts, insulated food containers; Jugs, insulated; Jugs, vacuum; Liners, baking cup; Openers, can, electric; Spice boxes; Stands, heating, canteen cup; and Tube, dough mixing.	Army.
7340 P	Cutlery and Flatware Excludes: Forks, paper; Forks, picnic; Forks, wood; Knives, Boy Scout; Knives, hunting; Knives, pocket; Picnic forks; Picnic spoons; Scissors, embroidery; Scissors, ladies'; Scissors, pocket; Shears, pinking; Spoons, paper; Spoons, picnic; Spoons, plastic; Spoons, wood; and all items of silverware and paper not specifically named among these exclusions.	Army.
7350 P	Tableware Excludes: Brackets, bulkhead, vacuum pitcher; Breakers, bread; Breakers, bread, metal; Breakers, water, metal; Breakers, water, wood; Butter chips, paper; Cups, breaker, water; Carafes, vacuum; Coffee servers, vacuum; Cups, paper; Dishes, paper, butter, individual; Dispensers, drinking water, portable; Fillers, vacuum pitcher; Lids, paper cup; Paper drinking cups; Paper ice cream cups; Pitchers, vacuum; Plates, paper; Toothpicks; Tubes, drinking; and all items of silverware and paper not specifically named among these exclusions.	Army.
7360 P	Sets, Kits, and Outfits, Food Preparation and Serving Includes: Sets, Kits, and Outfits of Food Preparation and Serving Equipment in the FSC Classes 7310 (P), 7330 (P), 7340 (P), and 7350 (P) Under DOD Procurement Assignment to the Department of the Army.	Army.
	FUELS, SOLID	
9110 P	Fuels, Solid Anthracite Coal. Bituminous Coal. Coal, Anthracite. Coal, Bituminous. Coal, Semi-anthracite. Coal, Sub-bituminous. Coal, Lignite. Coal, Miscellaneous. Coke, Coal. Fuel Briquettes, Coal. Excludes: Solid Fuels not derived from Coal or Coal Products.	Navy.
	HAND TOOLS	
3432 P	Welding, Flame Cutting, and Metalizing Equipment and Supplies Handle, electric soldering iron. Soldering guns. Soldering irons, electric. Soldering irons, nonelectric. Soldering iron holders. Soldering iron sets. Soldering iron stands. Tips, electric soldering gun. Tips, electric soldering iron. Excludes: All equipment and supplies, except Soldering irons, guns and related parts and accessories.	Navy.
3730 P	Gardening Implements and Tools Pruners, tree. Rakes, garden, hand. Rakes, lawn, hand. Saws, pruning. Scythes. Scythe handle nibs. Scythe snaths. Scythettes. Shears, hedge trimming. Shears, pruning, hand. Shears, grass cutting. Shovels, hand, garden. Snath nibs. Sod lifters, hand. Spades, hand, garden. Trimmers, tree, pole mounted. Weed cutters (gardening). Weeding hoes. Excludes: All Implements and Tools, except hand held and hand operated devices.	Navy.
	Handles, manure fork, wood. Handles, rake, garden. Handles, spading fork, wood. Handles, tree trimmer, wood. Heads, tree trimmer. Hoes, accomac. Hoes, garden. Hoes, grub. Hoes, hazel. Hooks, manure. Hooks, potato. Knives, hay. Planters' hoes. Pruners, pole.	

LIST OF DOD ASSIGNED COMMODITIES—Continued

FSC code	Commodities	Assigned to
	HAND TOOLS—continued	
5110	Hand Tools, Edged, Non-powered	Navy.
5120	Hand Tools, Non-edged, Non-powered	Navy.
5133 P	Drill Bits, Counterbores, and Countersinks: Hand and Machine Includes: Bits, Counterbores, and Countersinks, hand, only. Excludes: Bits, Counterbores, and Countersinks, machine.	Navy.
5136 P	Taps, Dies, and Collets: Hand and Machine Includes: Taps, Dies, and Collets, hand only. Excludes: Taps, Dies, and Collets, machine.	Navy.
5140	Tool and Hardware Boxes	Navy.
5180 P	Sets, Kits, and Outfits of Hand Tools (Non-powered) Includes: Sets, kits, and outfits of non-powered hand tools. Excludes: Sets, kits, and outfits of powered hand tools.	Navy.
5210	Measuring Tools, Craftsmans'	Navy.
5280 P	Sets, Kits, and Outfits of Measuring Tools Includes: Sets, kits and outfits of measuring tools, craftsmans', only. Excludes: Sets, kits and outfits of inspection gages.	Navy.
	LIFESAVING EQUIPMENT, MARINE[1]	
1940 P	Small Craft Includes: Lifeboats, pneumatic, airborne and shipborne (all other small craft are under DOD Procurement Assignment cf. page 4210.19.)	Navy.
2040 P	Marine Hardware and Hull Items Includes: Anchor, sea; Oars, sectional, aluminum; Paddles; and Paddles, telescoping, hand; only.	Navy.
4220 P	Marine Lifesaving and Diving Equipment Includes: The following items only: Basket, search and rescue. Buoy, breeches. Cases, carrying, deflated raft. Cases, pararaft kit. Containers, emergency equipment life raft. Containers, pararaft kit. CO_2 cylinders for inflatable life preservers and life rafts. Cushions, buoyant. Equipment, containers, coated nylon. Harness, for lifting personnel aboard ship. Inflation gear, complete and parts therefor (life raft). Kits, accessory, life raft. Kits, canvas repairing, for lifeboats, rafts and jackets. Kits, fishing, survival. Kits, rubber repairing, for lifeboats, rafts and jackets. Life buoys, ring. Life floats (platform net rigging). Life preservers. Life preservers, pneumatic. Life rafts, pneumatic, airborne and shipborne. Life suits, waterproof, inflatable. Life vest, shark chaser. Reflectors, corner, life raft. Water lifesaving nets and ladders.	Navy.
4320 P	Power and Hand Pumps Includes: Pump, hand, only.	Navy.
4610 P	Water Purification Equipment Includes: Kits, desalter; and Water stills, solar heated, lifesaving, only.	Navy.
6230 P	Electric Portable and Hand Lighting Equipment Includes: Lantern, electric, automatic, floating; and Lights, life preserver, only.	Navy.
6350 P	Miscellaneous Alarm and Signal Systems Includes: Mirrors, signalling, only.	Navy.
6665 P	Navigational Instruments Includes: Compasses, boat and raft, only.	Navy.
6830 P	Dyes Includes: Dye, sea marker, only.	Navy.
8340 P	Tents and Tarpaulins Includes: Paulin, lifesaving, only.	Navy.
8405 P	Outerwear, Men's Includes: Ponchos, lifesaving only.	Navy.
8415 P	Clothing, Special Purpose Includes: Exposure suits, lifesaving; and Life suits, waterproof, only.	Navy.
8465 P	Individual Equipment Includes: Bag, water storage, only.	Navy.
8960 P	Beverages, Nonalcoholic Includes: Water, canned drinking, only.	Navy.

[1] The items listed in this DOD Procurement Assignment are only included to the extent they are for Marine Life saving use.

LIST OF DOD ASSIGNED COMMODITIES—Continued

FSC code	Commodities	Assigned to
	LIGHTING FIXTURES, AIRPORT	
6210 P	Indoor and Outdoor Electric Lighting Fixtures Includes: Fixtures for airport lighting, alarm and signal systems, only.	Air Force.
	LUMBER, MILLWORK, PLYWOOD, AND VENEER	
5430 P	Storage Tanks Includes: Tanks, wood, storage, only.	Army.
5450 P	Miscellaneous Prefabricated Structures Includes: Cooling towers, wood; and Silos, wood; only.	Army.
5510	Lumber and Related Basic Wood Materials	Army.
5520	Millwork	Army.
5530	Plywood and Veneer	Army.
5630 P	Pipe and Conduit, Non-metallic Includes: Pipe, wood, only.	Army.
5640 P	Roofing and Siding Materials Includes: Shingles, wood, only.	Army.
5660 P	Fencing, Fences, and Gates Includes: Fence sections and gates, wood; only.	Army.
8110 P	Drums and Cans Includes: Cooperage Stock and Vats, wood (containers); only.	Army.
8115 P [1]	Boxes, Cartons, and Crates Includes: Box, Crate, and Package Shook, only.	Army.
	MATERIALS HANDLING EQUIPMENT	
2530 P	Vehicular Power Transmission Components Includes: Peculiar Parts, Attachments, and Accessories for the Materials Handling Equipment herein assigned to the Navy, only.	Navy.
2530 P	Vehicular Brake, Steering, Axle, Wheel, and Track Components Includes: Peculiar Parts, Attachments, and Accessories for the Materials Handling Equipment herein assigned to the Navy, only.	Navy.
2540 P	Vehicular Accessories Includes: Peculiar Parts, Attachments, and Accessories for the Materials Handling Equipment herein assigned to the Navy, only.	Navy.
3910 P	Conveyors Includes: Portable Conveyor Units (Commercial Warehouse Type), only.	Navy.
3920 P	Materials Handling Equipment, Non-Self-Propelled Carts, lumber. Caster wheels, industrial trailer. Dollies, micro, lever. Dollies, propeller. Dollies, truck. Handcarts, general hauling. Lever dollies. Propeller dollies. Sleds, cargo. Sled-tobaggans, convertible. Stackers, hand-propelled. Toboggans, cargo carrying. Trailers, boat moving. Trailers, platform, airborne. Trailers, platform, warehouse. Trucks, barrel. Trucks, box, hand. Trucks, casket. Trucks, dish. Trucks, dolly. Trucks, gun trail. Trucks, lift, hand, non-propelled. Trucks, meat. Trucks, pan, bakers'. Trucks, platform, hand. Trucks, pry bar. Trucks, sausage. Trucks, shelf, hand, except surgical dressing. Trucks, stevedore. Trucks, two-wheeled, hand. Wheels, caster, industrial trailer. Wheels, industrial trailer. Wheelbarrows. Excludes: Parts, attachments, and accessories for pushcarts, handcarts and wheelbarrows.	Navy.
3930	Warehouse Trucks and Tractors, Self-Propelled Arms, lift truck. Arms, loading truck. Dock tractors. Drum handling attachments, fork lift truck. Fingers, fork lift truck. Forks, lift truck. Forks, loading truck. Industrial Trucks. Prongs, lift truck. Stackers, pallet, power propelled. Stackers, platform, power propelled. Tractors, wheeled, warehouse. Trucks, fixed platform, powered. Trucks, fork lift. Trucks, lift, hand, self-propelled. Trucks, platform lift. Trucks, ram lift. Trucks, straddle. Warehouse tractors.	Navy.

[1] Navy and Marine Corps requirements for Box, Crate, and Package Shook are excluded from this assignment

LIST OF DOD ASSIGNED COMMODITIES—Continued

FSC code	Commodities	Assigned to
	MATERIALS HANDLING EQUIPMENT—continued	
3940 P	Blocks, Tackle, Rigging and Slings Antitoppling blocks. Awning blocks. Boom End blocks. Cable Laying tackle blocks. Cargo hoisting blocks. Cargo runner blocks. Clump blocks. Conductor stringing blocks. Davit blocks. Dock blocks. Dragon snatch blocks. Fairlead blocks. Fall blocks. Fiber rope blocks. Fiddle blocks. Gaff blocks. Gin blocks. Guy blocks. Haul blocks. Haulback blocks. Highlead blocks. Hoister blocks. Life boat blocks. Link snatch blocks. Loading blocks. Manila rope blocks. Rigging blocks. Safety tackle blocks Signal Halyard blocks. Skidder blocks. Snatch blocks. Tackle blocks. Team snatch blocks. Trolley blocks. Universal snatch blocks. Includes: Tackle, Blocks other than Aircraft, only.	Navy.
3950 P	Winches, Hoists, Cranes, and Derricks Cranes, locomotive diesel. Cranes, locomotive, gasoline. Cranes, locomotive, steam. Cranes, locomotive, diesel electric. Includes: Locomotive Cranes and their peculiar parts, attachments and accessories, only. Excludes: Specialized types of locomotive cranes used in overseas areas with other than U. S. Standard Gauges and Standard Clearances.	Navy.
3990	Miscellaneous Materials Handling Equipment Binders, load. Car loading plates. Cargo pallets. Cargo rollers. Frame, pallet end, material handling. Frames, pallet side, material handling. Jacks, semi-live skid. Loading plates. Loading platforms, portable. Loading standards, liquid transfer bulk. Pallets, material handling. Pallets, sled type. Pallets, warehouse. Plates, car loading. Platforms, vehicle loading ramp. Pumping assemblies, flammable liquid, bulk transfer. Racks, drain, barrel. Ramps, loading, vehicle. Rollers, material handling. Skids, barrel. Skids, platform. Skids, semi-live. Skids, sled. Skip boxes, ammunition. Stands, 55 gal. drum, folding.	Navy.
6140 P	Batteries Secondary Includes: Industrial Batteries for Electrically Operated Materials Handling Equipment, only.	Navy.
	MEDICAL ITEMS RELATING TO MEDICINES AND MEDICAL, SURGICAL, HOSPITAL, DENTAL, AND VETERINARY SUPPLIES [4]	
3030 P	Belting, Drive Belts, Fan Belts, and Accessories Belts, power transmission, designed for dental equipment: Belts, round, flat and V type.	ASMPA.
3375 P	Welding, Flame Cutting, and Metallizing Equipment and Supplies Solder, gold and silver alloy, for construction of dental and optical appliances only; soldering machine for construction of spectacles only; soldering torch and gas burner (dental blowpipes) for dental laboratory procedures only.	ASMPA.
3455 P	Cutting Tools for Machine Tools Threaded taps (for spectacle frames only).	ASMPA.
3460 P	Machine Tool Accessories Diamond nibs, wheel dressing, for edging machine (ophthalmic lens only).	ASMPA.
4240 P	Safety and Rescue Equipment Goggles, industrial, safety (ultraviolet protective, for patients only).	ASMPA.
4310 P	Compressors and Vacuum Pumps Vacuum pump, rotary, power driven (for medical laboratory use only).	ASMPA.

[4] This assignment is limited to the requirements of the Military Medical Services, and those requirements of the Federal Civil Defense Administration for which ASMPA has been assigned procurement responsibility.

LIST OF DOD ASSIGNED COMMODITIES—Continued

FSC code	Commodities	Assigned to
	MEDICAL ITEMS RELATING TO MEDICINES AND MEDICAL, SURGICAL, HOSPITAL, DENTAL, AND VETERINARY SUPPLIES [4]—continued	
4710 P	Pipe and Rigid Tubing, Metal Tubing, Brass (for dental soldering equipment only).	ASMPA.
4720 P	Hose and Tubing, Flexible Tube, Rubber (for medical, dental, surgical and laboratory use only).	ASMPA.
5110 P	Hand Tools, Edged, Nonpowered Special purpose dental, opticians and veterinary hand tools.	ASMPA.
5120 P	Hand Tools, Nonedged, Nonpowered Special purpose dental, opticians, and veterinary hand tools.	ASMPA.
5130 P	Hand Tools, Power Driven Cutting machines, fabric, electric (gauze cutter for hospital use only).	ASMPA.
5305 P	Bolts, Studs, and Screws Spectacle Screws only.	ASMPA.
5330 P	Packing and Gasket Materials Oakum (Specially packaged oakum for veterinary surgical use only).	ASMPA.
5935 P	Metal Screening Wire Cloth (splint only).	ASMPA.
5340 P	Miscellaneous Hardware Casters, Swivel (for hospital beds only).	ASMPA.
5450 P	Miscellaneous Prefabricated Structures Latrine, folding, portable (for medical field use only).	ASMPA.
5960 P	Electron Tubes, Transistors, and Rectifying Crystals Electron Tube (Rectifying tubes (valves) with special connections for medical X-ray equipment only).	ASMPA.
6220 P	Electric Portable and Hand Lighting Equipment Light, bed (for hospital bed only).	ASMPA.
6240 P	Electric Lamps Miniature lamps (bulbs) for diagnostic and operating instruments and equipment, except as included as mandatory in Federal Supply Schedules.	ASMPA.
6500	Medical, Dental, and Veterinary Equipment and Supplies	ASMPA.
6505	Drugs, Biologicals, and Official Reagents	ASMPA.
6510	Surgical Dressing Materials	ASMPA.
6515	Medical and Surgical Instruments, Equipment, and Supplies	ASMPA.
6520	Dental Instruments, Equipment, and Supplies	ASMPA.
6525	X-ray Equipment and Supplies, Medical, Dental, and Veterinary	ASMPA.
6530	Hospital Furniture, Equipment, Utensils, and Supplies	ASMPA.
6535	Veterinary Instruments, Equipment, and Supplies	ASMPA.
6540	Opticians' Instruments, Equipment, and Supplies	ASMPA.
6545	Medical Sets, Kits, and Outfits	ASMPA.
6630 P	Chemical Analysis Instruments Medical, dental, and veterinary equipment and supplies (except for detection of chemical warfare agents).	ASMPA.
6640 P	Laboratory Equipment and Supplies Medical, dental, and veterinary equipment and supplies only.	ASMPA.
6650 P	Optical Instruments Microscope, optical, and microscope disks, eyepieces, funnel stops, mechanical stages, mirror assemblies, objectives, condenser, shield, stage micrometer; spectrophotometer and parts peculiar for malaria studies. For medical, dental, and veterinary practice only. Light, microscope (illuminator, microscope) for laboratory use only.	ASMPA.
6665 P	Hazard-Detecting Instruments and Apparatus Radine Set. R-meter, Condenser type, designed for quantitative measurement of X-radiation from therapeutic X-ray equipment only.	ASMPA.
6670 P	Scales and Balances Scales, person-weighing, clinical, infant, physicians' examining; scales, autopsy, dietetic, egg-weighing; scales, alloy and mercury proportioning (dental); balances, dental precious metals and parts; balances, laboratory, and parts; balances, prescription, and parts. For medical, dental, laboratory and veterinary use only.	ASMPA.
6685 P	Pressure, Temperature, and Humidity Measuring and Controlling Instruments Manometer gages; vacuum and pressure gages for testing canned foods; thermometers, bulb, ward, breeders, incubator, medical X-ray film processing, and paraffin arm bath. For medical, dental, laboratory and veterinary use only.	ASMPA.
6695 P	Combination and Miscellaneous Instruments Egg candler, samplers, butter-cheese-lard, grain, and meat. For Veterinary Corps food inspections.	ASMPA.
6740 P	Photographic Developing and Finishing Equipment Items peculiar to medical X-ray photography and related processing functions only.	ASMPA.
6810 P	Chemicals Chemicals (reagents) used only in connection with the work of the medical and allied professions.	ASMPA.
6820 P	Dyes Biological stains and dyes used only in connection with the work of the medical and allied professions.	ASMPA.
6840 P	Pest Control Agents and Disinfectants Disinfectants, germicidal-fungicidal, medicinal grade.	ASMPA.
6850 P	Miscellaneous Chemical Specialties Chemical Specialties used only in connection with the work of the medical and allied professions.	ASMPA.

[4] This assignment is limited to the requirements of the Military Medical Services, and those requirements of the Federal Civil Defense Administration for which ASMPA has been assigned procurement responsibility.

LIST OF DOD ASSIGNED COMMODITIES—Continued

FSC code	Commodities	Assigned to
	MEDICAL ITEMS RELATING TO MEDICINES AND MEDICAL, SURGICAL, HOSPITAL, DENTAL, AND VETERINARY SUPPLIES [4]—continued	
6910 P	Training Aids Training Aids used only in connection with the work of the medical and allied professions.	ASMPA.
7240 P	Household and Commercial Utility Containers Hospital utensils except cooking: Foot tube: seamless, foot operated receptacles for waste matter in clinics; seamless, round-bottom metal pails for waste matter in operating rooms.	ASMPA.
7290 P	Miscellaneous Household and Commercial Furnishings and Appliances Corrosion-resisting frame for hospital soiled linen bag.	ASMPA.
7310 P	Food Cooking, Baking, and Warming Equipment Fuel operated stoves (burners) for use with field sterilizers.	ASMPA.
7320 P	Kitchen Equipment and Appliances Food carts, electrical and nonelectrical, for hospital use, and food containers and food cabinets for hospital food carts.	ASMPA.
7350 P	Tableware Tube, Drinking, (bent, sterilizable, for hospital patients only).	ASMPA.
7600 P	Books, Maps, and Other Publications Instruction pamphlets, operating manuals, charts, and other publications for medical and allied professions only.	ASMPA.
7920 P	Brooms, Brushes, Mops, and Sponges Sanitary bedpan brush, brush, scrub (surgeons' sterilizable hand brush); laboratory brushes (beaker, bottle, burette, flask and test tube).	ASMPA.
8105 P	Bags and Sacks Bags, small, cotton, empty, for buckshot and sand, for orthopedic appliances and medical X-ray procedures; hospital soiled linen bag for use with special design of corrosion-resisting frame; specially designed plastic and textile bags for protection of small medical items in medical field kits and chests; emesis sack.	ASMPA.
8110 P	Drums and Cans Specially designed metal mailing cases for specimens; specially designed metal containers for medical items packed in medical field assemblies.	ASMPA.
8115 P	Boxes, Cartons, and Crates Specially designed folding box for shipment and permanent storage of embedded pathological specimens; slotted mailing case section for microscope slides; ointment and tablet boxes; specially designed box for mailing spectacles; specially designed boxes for mailing dental models and artificial teeth; insulated shipping containers for whole blood.	ASMPA.
8125 P	Bottles and Jars Drainage, prescription, dropping, specimen, vaccine, and tablet bottle; ointment, specimen, powder, and suture jars; special stoppers for medical and allied use only.	ASMPA.
8135 P	Packaging and Packing Bulk Materials Parchment paper, cut and specially packaged for use as covering for surgical supplies during sterilization; parchment paper, cut and specially packaged into one-use pads for mixing dental cement for field use.	ASMPA.
8415 P	Clothing, Special Purpose Aprons and gloves, X-ray protective, for hospital use.	ASMPA.
8460 P	Luggage Physicians' satchels only.	ASMPA.
9160 P	Waxes and Miscellaneous Fats and Oils Wax, paraffin, refined, for histopathological and dental use; embedding compound for histopathological use only.	ASMPA.
9340 P	Glass Fabricated Materials Glass rods for medical laboratory use only.	ASMPA.
9450 P	Nonmetallic Scrap Waste, Matted Yarns. Cotton waste, specially packaged for surgical procedures (plastic surgery, etc.) only.	ASMPA.
9535 P	Plate, Sheet, Strip, and Foil, Nonferrous Base Metal Tin strip for dental procedures; lead foil and lead sheet for medical X-ray procedures only.	ASMPA.
9545 P	Plate, Sheet, Strip, Foil, and Wire, Precious Metal Wire, Precious Metal. Platinum and platinum-iridium wire for medical laboratory use only.	ASMPA.
	MOTOR VEHICLES, TRAILERS, AND CYCLES	
2310	Passenger Motor Vehicles	Army.
2320 P	Trucks and Truck-Tractors Excludes: Tracked Landing Vehicles, which are not under DOD procurement assignment; and Airport Crash Rescue Vehicles, which are under DOD procurement assignment to the Air Force.	Army.
2330 P	Trailers Excludes: Two-Wheel Lubrication Trailers, Two-Wheel Steam Cleaning Trailers, and Troop Transporter Semi-Trailers, which are not under DOD procurement assignment; and Airport Crash Rescue Trailer Units, which are under DOD procurement assignment to the Air Force.	Army.
2340 P	Motorcycles, Motor Scooters, and Bicycles Excludes: Bicycles and Tricycles.	Army.
2510 P	Vehicular Cab, Body, and Frame Structural Components Includes: Components peculiar to military motor vehicles, only.	Army.
2520 P	Vehicular Power Transmission Components Includes: Components peculiar to military motor vehicles, only.	Army.

LIST OF DOD ASSIGNED COMMODITIES—Continued

FSC code	Commodities	Assigned to
	MOTOR VEHICLES, TRAILERS, AND CYCLES—continued	
2530 P....	Vehicular Brake, Steering, Axle, Wheel, and Track Components Includes: Components peculiar to military motor vehicles, only.	Army.
2540 P....	Vehicular Furniture and Accessories Includes: Furniture and accessories peculiar to military motor vehicles, only.	Army.
2590 P....	Miscellaneous Vehicular Components Includes: Components peculiar to military motor vehicles, only.	Army.
2910 P....	Engine Fuel System Components, Nonaircraft Includes: Components peculiar to military motor vehicles, only.	Army.
2920 P....	Engine Cooling System Components, Nonaircraft Includes: Components peculiar to military motor vehicles, only.	Army.
2940 P....	Engine Air and Oil Filters, Strainers, and Cleaners, Nonaircraft Includes: Filters, Strainers, and Cleaners peculiar to military motor vehicles, only.	Army.
2990 P....	Miscellaneous Engine Accessories, Nonaircraft Includes: Accessories peculiar to military motor vehicles, only.	Army.
	MORTUARY EQUIPMENT AND SUPPLIES	
4110 P....	Self-Contained Refrigeration Units and Accessories Includes: Mortuary refrigerators only.	Army.
5340 P....	Miscellaneous Hardware Includes: The following items of casket hardware: Fasteners, cam action, burial casket; finials, handrail, burial casket; handrails, burial casket, end; handrails, burial casket, side; handrail holders, burial casket; plates, handrail, burial casket; and spring locks, cremation urn.	Army.
9930.....	Memorials, Cemeterial and Mortuary Equipment and Supplies	Army.
	OFFICE FURNITURE [1]	
7105 P....	Household Furniture Chairs, Easy. Davenports. Settees. Stands, Smoking. Wardrobes.	GSA.
7110 P....	Office Furniture Address Plate Filing Cabinets. Address Plate Filing Cabinet Bases. Address Plate Filing Cabinet Tops. Bases, Sectional Bookcase. Bases, Filing Cabinet. Bookcases, Sectional. Cabinets, Visible File. Chairs, Straight, Office Type. Chairs, Swivel, Office Type. Chairs, Typist. Desks, Flat Top, Office Type. Desks, Typists'. Dictionary Holders. Drawers, Filing Cabinet. Filing Cabinets—Including insulated fire resistant and combination lock types. Filing Trays, Cabinet. Stands, Adding Machine. Stands, Dictionary. Stands, Typewriter. Stools, Straight, Office Type. Stools, Revolving, Office Type. Tables, Conference. Tables, Office. Tops, Filing Cabinet. Tops, Sectional Bookcase.	GSA.
7125 P....	Cabinets, Lockers, Bins, and Shelving Cabinets, Storage. Cabinets, Supply. Supply Cabinets.	GSA.
7195 P....	Miscellaneous Furniture and Fixtures Bulletin Boards. Containers.	GSA.
	OFFICE MACHINES [2]	
7410.....	Punched Card System Machines Collating machines. Interpreting machines. Key punch machines. Sorting machines. Tabulating machines.	GSA.
7420.....	Billing and Computing Machines Accounting machines. Adding and subtracting machines. Adding machines. Billing machines. Bookkeeping machines. Calculating machines. Cases, field, office machine.	GSA.
7430.....	Typewriters and Office-type Composing Machines Cases, field, office machine. Cases, typewriter. Composing machines, changeable-type-plate style. Covers, typewriter. Typewriters.	GSA.

[1] This Assignment:
Includes: General Use and Executive Type Office Items Only.
Excludes: Built-in Furniture, Shipboard Furniture, Special Items for Military Field Use, Modified Designs for Special Technical or Special Clerical Work.

[2] Electronic "brain" type computing machines are not included in this assignment.

LIST OF DOD ASSIGNED COMMODITIES—Continued

FSC code	Commodities	Assigned to
	OFFICE MACHINES [2]—continued	
7490.....	Miscellaneous Office Machines Address machines. Address plate machines. Cases, record cylinder. Cases, sound recorder reproducer (dictating machine type). Cases, stenographic shorthand machine. Cash registers. Check-cutting and stacking machines. Check-inserting and mailing machines. Check listing and tabulating machines. Check protector machines. Check-signing machines. Check-writing machines. Coin changing machines. Coin-counting machines. Collators, paper mechanical. Collectors, record shavings (office machine). Covers, address plate machine. Currency denominators. Cylinders, recording (dictating machine type). Daters, address plate machine. Dictating machines. Embossing machines, address plate. Embossing machines, cardboard. Embossing machines, identification plate. Embossing machines, office. Envelope opening machines. Envelope sealing machines. Envelope stuffing machines. Erasers, electric. Heads, recorder reproducer, sound (dictating machine type). Letter opening machines. Letter sealing machines. Letter stuffing machines. Listers, address plate machine. Mailing machines, electric. Multigraphers, address plate machine. Payroll machines. Perforating and cancelling machines. Record shavings collectors (office machine type). Recorder reproducer sets, sound (dictating machine type). Recorder reproducer, sound (dictating machine type). Recorder reproducer cases (dictating machine type). Shaving machines, recording cylinder. Shelves, address plate machine. Shorthand writing machines. Signature machines, five pen. Signature machines, ten pen. Sound recorder reproducers, office machine. Stamp cancelling machines. Stamping machines, name plate. Stencil cutting machines, electric. Stencil cutting machines, hand operated. Stylli, recording, sound (dictating machine type). Tabs, selection, address plate. Transcribing machines, dictation.	GSA.
	OFFICE SUPPLIES	
7510 P....	Office Supplies Excludes: Albums, scrapbook; and those Office Supplies, including special inks, when DOD requirements of such items are procured through Government Printing Office channels.	GSA.
7520 P....	Office Devices and Accessories Excludes: Seals, hand impression; and those Office Devices and Accessories when DOD requirements of such items are procured through Government Printing Office channels.	GSA.
7530 P....	Stationery and Record Forms Excludes: Stationery and Record Forms when DOD requirements of such items are procured through Government Printing Office channels.	GSA.
	PAINTS AND SEALERS	
8010 P....	Paints, Dopes, Varnishes, and Related Products Beads, retrodirective. Button lacs. Coating compound kits, phosphorescent. Coating compounds, fluorescent. Coating compounds, fluorescent-radioactive. Coating compounds, phosphorescent. Coating compounds, radioactive. Colors, white lead. Colors in japan. Colors in oil. Dantar varnishes. Dopes, fabric. Driers, japan. Driers, paint. Dry pigments. Enamels. Extenders, paint. Fabric dopes. Fillers, engraving. Fillers, wood. Fillers, wood, paste. Flatting oils. Gold size. Grained lacs. Gum lacs. Lacs. Lacquer kits, vinyl resin. Lacquers. Lampblack pigments. Lead, red. Lead, white. Linseed oil, alkali-refined. Linseed oil, boiled. Linseed oil, heat polymerized. Linseed oil mixture, thinned. Linseed oil, raw. Linseed oil, technical. Linseed oil, thinned. Masking pastes. Metal primers. Mixing oils, paint. Oils, flatting. Oils, mixing, dry red lead. Orticia oil. Paint, antifouling. Paint driers. Paint primers. Paint removers. Paint, rubber. Paint, stencil. Paint, temporary. Paint, traffic. Paint, water, paste. Paint, water, powder. Paints.	Navy.

LIST OF DOD ASSIGNED COMMODITIES—Continued

FSC code	Commodities		Assigned to
	PAINTS AND SEALERS—continued		
8010 P	Paints, Dopes, Varnishes, and Related Products		Navy.
	Paste pigments.	Pigment, zinc oxide.	
	Pastes, wood filler.	Pigment, zinc yellow.	
	Pigment, aluminum.	Pigments.	
	Pigment, antimony oxide.	Pigments, dry.	
	Pigment, black iron oxide.	Pigments in oil.	
	Pigment, bone black.	Plastic wood substitutes.	
	Pigment, bright red iron oxide.	Primer coating.	
	Pigment, burnt sienna.	Primers, paint.	
	Pigment, burnt umber.	Prussian blue paste, bearing surface.	
	Pigment, calcium carbonate.	Red lead.	
	Pigment, carbon black.	Removers, paint.	
	Pigment, chrome green.	Sealers, floor.	
	Pigment, chrome orange.	Sealers, surface.	
	Pigment, chrome yellow.	Sealers, wood.	
	Pigment, chromium oxide green.	Sealer varnishes.	
	Pigment, copper-cuprous oxide.	Shellac, cut.	
	Pigment, diatomaceous earth.	Shellac, dry.	
	Pigment, expanded vermiculite.	Shellac sticks.	
	Pigment, Indian red iron oxide.	Shellac varnishes.	
	Pigment, iron blue.	Spar varnishes.	
	Pigment, lampblack.	Stains (surface finishing).	
	Pigment, magnesium silicate.	Stains, oil.	
	Pigment, mercuric oxide.	Surfacers, liquid.	
	Pigment, metallic brown.	Surfacers, wood, liquid.	
	Pigment, mica.	Tung oil.	
	Pigment, pulverized silica.	Turpentine.	
	Pigment, raw sienna.	Varnish removers.	
	Pigment, raw umber.	Varnish-stains.	
	Pigment, titanium dioxide.	Varnishes.	
	Pigment, titanium-barium.	Varnishes, asphalt.	
	Pigment, titanium-calcium.	Varnishes, shellac.	
	Pigment, ultramarine blue.	White lead, basic carbonate.	
	Pigment, Venetian red.	White lead, basic sulfate.	
	Pigment, yellow iron oxide.	Wood fillers.	
	Pigment, yellow ocher.	Wood sealers.	
	Pigment, zinc chromate, insoluble type.	Wood substitutes, plastic.	
	Pigment, zinc dust.		
	Excludes: Dope thinners; Enamel thinners; Lacquer thinners; Paint thinners (Except Turpentine and Dipentene); Thinners; dope and lacquer; Thinners, synthetic resin enamel; Thinners, paint, mineral spirits; these thinners are under DOD Procurement Assignment to ASPPA.		
8030 P	Preservative and Sealing Compounds		Navy.
	Includes: Caulking compounds, glazing compounds, and putties, only.		
	PAPER AND PAPER PRODUCTS[1]		
3970 P	Electrical Insulators and Insulating Materials		Army.
	Insulating paper, electrical.		
7210 P	Household Furnishings		Army.
	Doilies, paper.	Napkins, table, paper.	
7340 P	Cutlery and Flatware		Army.
	Forks, paper.	Spoons, paper.	
7350 P	Tableware		Army.
	Butter Chips, paper.	Ice cream cups, paper.	
	Cups, paper.	Lids, paper cup.	
	Dishes, paper, butter individual.	Plates, paper.	
8105 P	Bags and Sacks		Army.
	Bags, paper, coffee.	Envelopes, packaging, paper.	
	Bags, paper, flour.	Envelopes, packing list, paper.	
	Bags, paper, garment.	Fiberboard packing list, protectors.	
	Bags, paper, kraft.	Liners, bag, crepe paper.	
	Bags, paper, shipping, multiwall.	Sacks, paper, shipping, multiwall.	
	Bags, paper, waterproof.		
8110 P	Drums and Cans		Army.
	Chipboard mailing tubes.	Drum sets, fiber, nested.	
	Drums, fiber.	Filing Tubes, fiber.	
	Drums, fiberboard, overseas type.	Tubes, mailing and filing, fiber.	
8115 P	Boxes, Cartons, and Crates		Army.
	Baskets, fiber shipping.	Boxes, set-up paperboard.	
	Boxes, chipboard, folding.	Cartons, folding, paperboard.	

[1] This listing reflects the approval of the recommendations of the Procurement Assignment Review Committee to delete selected items considered not susceptible to single procurement. This decision had not been previously promulgated. Those paper products classified in Federal Supply Classification Group 75 are not included in this assignment, but are under assignment to the General Services Administration.

LIST OF DOD ASSIGNED COMMODITIES—Continued

FSC code	Commodities		Assigned to
	PAPER AND PAPER PRODUCTS[1]—continued		
8150 P	Reels and Spools		Army.
	Reels, paperboard.	Spools, paperboard.	
8135 P	Packaging and Packing Bulk Materials		Army.
	Boards, baling, fiber.	Paper, wrapping, kraft.	
	Chipboard.	Paper, wrapping, meat.	
	Fiberboard, sheet, corrugated.	Paper, wrapping, tissue.	
	Paper, corrugated.	Paper, wrapping, vegetable parchment.	
	Paper, kraft, untreated.	Paper, wrapping, waxed.	
	Paper, meat interleaving.	Paper, wrapping, white, fiber.	
	Paper, meat wrapping.	Paperboard, baling.	
	Paper, wrapping, dispensary.	Paperboard, container.	
8540	Toiletry Paper Articles		Army.
	Covers, headrest, paper.	Tissue, facial.	
	Covers, toilet seat, paper.	Towels, paper.	
	Paper, toilet.		
9530	Paper and Paperboard		Army.
	Binder board.	Paper, label.	
	Board, die stock, vegetable fiber.	Paper, lithograph.	
	Bristol board.	Paper, manila file.	
	Cardboard.	Paper, map.	
	Covers, manila paper.	Paper, newsprint.	
	Crepe paper, display.	Paper, postal card.	
	Lithograph offset printing paper.	Paper, stencilboard.	
	Map and chart printing paper.	Paper, tag.	
	Paper, blueprint, unsensitized.	Paper, template.	
	Paper, book, coated.	Paper, watchmakers'.	
	Paper, book, uncoated.	Paperboard, blank, coated.	
	Paper, bookliner.	Paperboard, blank, uncoated.	
	Paper, bristol.	Paperboard, mounting.	
	Paper, chart, lithographic.	Pressboard.	
	Paper, cover.	Railroad board.	
	Paper, crepe, display.	Stencilboard.	
	Paper, document, manila.	Tag board.	
	Paper, index.		
9920 P	Smokers' Articles and Matches		Army.
	Cigarette paper packaged.		
	PEST CONTROL AGENTS		
9840 P	Pest Control Agents and Disinfectants		Navy.
	Insect repellent, clothing application.	Insecticide, DDT, emulsion, concentrate.	
	Insect repellent, personal application.	Insecticide, DDT, emulsion, concentrate, non-explosive.	
	Insecticide, acrylonitrile.	Insecticide, DDT, emulsion, concentrate, xylene.	
	Insecticide, aldrin.	Insecticide, DDT, larvicide powder, residual.	
	Insecticide, aldrin, emulsifiable concentrate.	Insecticide, DDT-lindane.	
	Insecticide, aldrin, water dispersible powder.	Insecticide, DDT, liquid spray, residual.	
	Insecticide, aliphatic thiocyanate-aromatic thiocyanate.	Insecticide, DDT, louse powder.	
	Insecticide, aliphatic thiocyanate-DDT.	Insecticide, DDT, powder, concentrated.	
	Insecticide, benzene hexachloride.	Insecticide, DDT, powder, 100 percent technical grade.	
	Insecticide, benzene hexachloride, dust.	Insecticide, DDT-pyrethrin.	
	Insecticide, benzene hexachloride, spray.	Insecticide, DDT, residual spray.	
	Insecticide, boric acid.	Insecticide, DDT, water-dispersible powder.	
	Insecticide, carboxide.	Insecticide, DDT and aliphatic thiocyanates, liquid.	
	Insecticide, chlordane.	Insecticide, DDT and allethrin, aerosol.	
	Insecticide, chlordane, technical grade.	Insecticide, DDT-allethrin, space spray.	
	Insecticide, chlordane, aerosol.	Insecticide, DDT benzyl benzoate.	
	Insecticide, chlordane-DDT.	Insecticide, DDT and chlordane, residual spray.	
	Insecticide, chlordane, dust.	Insecticide, DDT and lindane, indoor fogging.	
	Insecticide, chlordane, emulsifiable concentrate.	Insecticide, DDT and pyrethrin, space spray.	
	Insecticide, chlordane, emulsion concentrate.	Insecticide, DDT-pyrethrum.	
	Insecticide, chlordane, liquid spray.	Insecticide, DDT solution.	
	Insecticide, chlordane, residual spray.	Insecticide, dieldrin.	
	Insecticide, chlordane and DDT, dust.	Insecticide, dieldrin, emulsifiable concentrate.	
	Insecticide, chlordane and DDT, emulsion.	Insecticide, dieldrin, water-dispersible powder.	
	Insecticide, chlordane and DDT, emulsion, concentrate.	Insecticide, dimethyl phthalate.	
	Insecticide, copper acetoarsenite.	Insecticide, dormant spray, water-emulsifiable.	
	Insecticide, DDT.		
	Insecticide, DDT, aerosol.		
	Insecticide, DDT, airplane spray.		
	Insecticide, DDT-allethrin.		
	Insecticide, DDT, delousing, spray.		

LIST OF DOD ASSIGNED COMMODITIES—Continued

FSC code	Commodities	Assigned to
	PEST CONTROL AGENTS—continued	
9840 P	Pest Control Agents and Disinfectants	Navy.
	Insecticide, dusting powder, 10 percent DDT.	
	Insecticide, fly spray.	
	Insecticide, high sulfonate petroleum.	
	Insecticide, lead arsenate.	
	Insecticide, lead arsenate, water-dispersible powder.	
	Insecticide, lime-sulfur.	
	Insecticide, lindane.	
	Insecticide, lindane, dusting.	
	Insecticide, lindane, emulsified concentrate.	
	Insecticide, lindane, indoor fogging.	
	Insecticide, lindane, water-dispersible powder.	
	Insecticide, liquid lime sulphur, concentrate.	
	Insecticide, low sulfonated petroleum oil.	
	Insecticide, methoxychlor.	
	Insecticide, methoxy DDT.	
	Insecticide, methyl bromide.	
	Insecticide, naphthalene flakes.	
	Insecticide, nicotine sulfate.	
	Insecticide, nicotine sulfate, liquid.	
	Insecticide, nicotine sulfate, powder.	
	Insecticide, paradichlorobenzene crystals.	
	Insecticide, p-dichlorobenzene.	
	Insecticide, powder, personal application.	
	Insecticide, pyrethrin.	
	Insecticide, pyrethrum.	
	Insecticide, pyrethrum, concentrate.	
	Insecticide, pyrethrum, dust.	
	Insecticide, pyrethrum-piperonyl derivative, liquid spray.	
	Insecticide, pyrethrum-sesame oil.	
	Insecticide, pyrethrum and synthetics powder.	
	Insecticide, roach compound.	
	Insecticide, roach and water-bug powder.	
	Insecticide, roach and water-bug tablets.	
	Insecticide, sodium arsenate solution.	
	Insecticide, sodium fluoride.	
	Insecticide, sodium fluoride, dusting.	
	Insecticide, sulfur.	
	Insecticide spray, personal application.	
	Insecticide, sulphur dusting.	
	Insecticide, thiocyanate and DDT.	
	Insecticide, thiocyanate-isthiames and thanites.	
	Insecticide, water emulsifiable, oil, summer spray.	
	Repellent, insect, clothing treatment.	
	Repellent, insect, personal application.	
	Repellent, veterinary, insect.	
	Rodenticide, calcium cyanide.	
	Rodenticide, sodium monofluoroacetate.	
	Rodenticide, red squill.	
	Rodenticide, thallous (thallium) sulfate.	
	Rodenticide, warfarin.	
	Rodenticide, zinc phosphide.	
	Excludes: Deodorants, toilet; Disinfectant, cetyl trimethyl ammonium bromide tablets; Disinfectant, cleaning; Disinfectant, cresol, saponated; Disinfectant, food service; Disinfectant, germicidal and fungicidal; Fungicide; Herbicide, ammonium sulfamate; Herbicide, borate-chlorate; Herbicide, boron trioxide; Herbicide, 2,4-dichlorophenoxyacetic acid; Herbicide, 2,4-dichlorophenoxybutylacetate; Herbicide, sodium arsenite; Herbicide, 2,4,5-trichlorophenoxybutyl-acetate; and Weed killers.	
	PETROLEUM AND PETROLEUM PRODUCTS	
6810 P	Chemicals	ASPPA.
	*Acetone, technical.	
	*n-Atryl acetate, technical.	
	*Benzene.	
	*Benzol.	
	*n-Butyl acetate, technical.	
	*n-Butyl alcohol, technical.	
	Distillate, petroleum.	
	Ether, petroleum, technical.	
	*Ethyl acetate, technical.	
	*Ethylene glycol, monobutyl ether, technical.	
	*Isopropyl Acetate.	
	*Ketone solvent-methyl isobutyl.	
	Lead, tetraethyl (TEL).	
	*Methyl ethyl ketone, technical.	
	*Methyl isobutyl ketone, technical.	
	Naphtha, aliphatic.	
	Naphtha, aromatic.	
	Naphtha, cleaners.	
	Petroleum ether, technical.	
	Rubber solvent.	
	Solvent, Stoddard's.	
	*Solvent, methyl isobutyl ketone.	
	Stoddard's solvent.	
	Tetraethyl lead (TEL).	
	*Toluene, technical.	
	*Trichlorobenzene, technical.	
	Tricresyl phosphate (TCP), technical (for use as a fuel additive).	
	*Xylene, technical.	
	Excludes: All other items classified in FSC Class 6810.	
6850 P	Miscellaneous Chemical Specialties	ASPPA.
	Cleaner, anti-static.	
	Cleaners, metal.	
	Cleaning Compounds, high pressure cleaner.	
	Cleaning Compounds, scale removing.	
	Cleaning solutions, instrument and watch.	
	Fluid, calibrating, for aircraft fuel system components.	
	Fluid, reference, rubber swell.	
	Fluid, reference, shear stability.	
	Heat transfer fluids.	
	Hydrocarbon fluid, standard test.	
	Magnetic inspection oils.	
	Metal cleaners.	
	Removers, spot.	
	Spot removers.	
	Includes: Petroleum Base Chemical Specialties, only.	
7930 P	Cleaning and Polishing Compounds and Preparations	ASPPA.
	Cleaning oil, turbine.	
	Includes: Petroleum Base Compounds and Preparations, only.	

*These items marked with an asterisk are assigned to the extent that such items are procured for use as solvents or thinners in paints, dopes, lacquers, enamels, etc.

LIST OF DOD ASSIGNED COMMODITIES—Continued

FSC code	Commodities	Assigned to
	PETROLEUM AND PETROLEUM PRODUCTS—continued	
8010 P	Paints, Dopes, Varnishes, and Related Products	ASPPA.
	Dope thinners.	
	Enamel thinners.	
	Lacquer thinners.	
	Paint thinners (except Turpentine and Dipentene).	
	Thinners, dope and lacquer.	
	Thinners, paint, mineral spirits.	
	Thinners, synthetic resin enamel.	
	Excludes: All other items classified in FSC Class 8010; these excluded items are under Department of Defense procurement assignment to the Department of the Navy, page 4(9.10).	
8030 P	Preservative and Sealing Compounds	ASPPA.
	Coatings, underbody, for motor vehicles.	
	Compound, anti-seize.	
	Compound, fingerprint remover.	
	Corrosion preventives, petrolatum.	
	Corrosion preventives, solvent cut back.	
	Fingerprint remover compounds.	
	Metal conditioning compounds.	
	Pastes, thread sealing.	
	Rust preventive compounds.	
	Thread compounds.	
	Includes: Petroleum Base Compounds, only.	
9130 P	Fuel Gases	ASPPA.
	BB cut (butane butene mixture).	
	Butane.	
	Butenes (butylenes).	
	LPG (liquefied petroleum gases).	
	Propane.	
	Propane-butane mixture.	
	Excludes: Artificial Gas; Illuminating Gas; Gas, Manufactured, Illuminating; Gas, Natural, Dry; and Natural Gas.	
9130	Gasoline and Jet Fuel	ASPPA.
	Aircraft fuel.	
	Alkylate.	
	Fuel, aircraft engine.	
	Gasoline, automotive.	
	Gasoline, aviation.	
	Gasoline, combat, automotive.	
	Gasoline, components.	
	Gasoline, leaded.	
	Gasoline, premium.	
	Gasoline, regular.	
	Gasoline, unleaded.	
	Gasoline, white.	
	Jet fuel.	
	Jet fuel, JP-1 grade.	
	Jet fuel, JP-3 grade.	
	Jet fuel, JP-4 grade.	
	Jet fuel, JP-5 grade.	
	Jet fuel, referee.	
	Motor fuel.	
9140	Fuel Oils	ASPPA.
	Compass liquid.	
	Distillate fuel oil.	
	Fuel oil, boiler.	
	Fuel oil, bunker.	
	Fuel oil, burner.	
	Fuel oil, diesel.	
	Gas oil.	
	Illuminating oil.	
	Kerosene (Kerosene).	
	Lamp oil.	
	Mineral seal oil.	
	Range oil.	
	Residual fuel oil.	
	Tractor fuel.	
9150 P	Lubricants and Cutting Oils	ASPPA.
	Air compressor oil.	
	Aircraft engine oil.	
	Aircraft machine gun oil.	
	Automotive gear oil.	
	Aviation lubricating oil.	
	Axle lubricating grease.	
	Ball and roller bearing grease.	
	Bearing grease.	
	Bearing oil.	
	Bombsight oil.	
	Breechblock lubricant.	
	Breechblock lubricating oil.	
	Cable lubricant.	
	Car and locomotive oil.	
	Car journal oil.	
	Chassis lubricating grease.	
	Clock and watch oil.	
	Coolants, cutting.	
	Corrosion preventive lubricating oil.	
	Crank pin and rod cup lubricating grease.	
	Crankcase oil.	
	Cup grease lubricating.	
	Cutting compound, paste.	
	Cutting coolants.	
	Cutting oil.	
	Damping fluid.	
	Diesel engine oil.	
	Dynamo oil.	
	Engine oil.	
	Fluids, hydraulic.	
	Fluids, power-transmission.	
	Fog oil.	
	Gasoline and oil resistant grease.	
	Gear oil.	
	Gear lubricant.	
	Graphite, colloidal.	
	Graphite lubricating grease.	
	Graphite oil.	
	Grease, aircraft.	
	Grease, aircraft and instrument.	
	Grease, automotive.	
	Grease, automotive and artillery.	
	Grease, axle lubricating.	
	Grease, ball and roller bearing.	
	Grease, bearing.	
	Grease, gasoline and oil resistant.	
	Grease, general purpose.	
	Grease, graphite.	
	Grease, instrument.	
	Grease, laboratory stopcock.	
	Grease, lubricating.	
	Grease, mineral, lubricating.	
	Grease, Ordnance, extreme pressure.	
	Grease, Ordnance bearing and ammunition.	
	Grease outboard motor.	
	Grease, plug valve.	
	Grease, railway.	
	Grease, rifle.	

LIST OF DOD ASSIGNED COMMODITIES—Continued

FSC code	Commodities	Assigned to
	PETROLEUM AND PETROLEUM PRODUCTS—continued	
9150 P	Lubricants and Cutting Oils	ASPPA.
	Grease, roller bearing.	Machine oil.
	Grease, silicone insulated electric motor.	Mineral cutting oil.
	Grease, stern-tube lubricating.	Mineral lubricating grease.
	Grease, torpedo tail.	Motor oil.
	Grease, tunnel bearing.	Oil, air compressor.
	Grease, water pump.	Oil, aircraft machine gun.
	Grease, wire rope-exposed gear.	Oil, aviation lubricating.
	Gyro oil.	Oil, bearing.
	Hydraulic fluid, non-petroleum base aircraft.	Oil, bombsight.
	Hydraulic fluid, non-petroleum base automotive.	Oil, car and locomotive.
	Hydraulic fluid, petroleum base.	Oil, car journal.
	Hydraulic oils.	Oil, clock and watch.
	Hypoid gear lubricant.	Oil, compressor, refrigerating machine.
	Instrument oil.	Oil, crank case.
	Jet aircraft engine oil.	Oil, cutting.
	Lubricant, ball and roller bearing.	Oil, cylinder, compound steam.
	Lubricant, blade root.	Oil, cylinder, mineral.
	Lubricant, breechblock.	Oil, diesel engine, lubricating.
	Lubricant, flexible drive shaft.	Oil, dynamo.
	Lubricant, gear.	Oil, elevator.
	Lubricant, inner tube.	Oil, engine.
	Lubricant, polishing wheel.	Oil, floor, mineral.
	Lubricant, plug valve.	Oil, fog.
	Lubricant, scupper valve.	Oil, gas engine.
	Lubricant, tire and rim.	Oil, gear.
	Lubricant, tractor.	Oil, graphite.
	Lubricant, transmission.	Oil, gyro.
	Lubricant, turret and roller pinion.	Oil, instrument.
	Lubricating grease.	Oil, lubricating.
	Lubricating oil.	Oil, penetrating, graphite.
	Lubricating oil, aircraft gas turbine engine.	Oil, steam cylinder, lubricating.
	Lubricating oil, aircraft Jet engine.	Oil, thread cutting.
	Lubricating oil, aircraft reciprocating engine.	Penetrating oil.
	Lubricating oil base stocks.	Petrolatum, aeronautical.
	Lubricating oil, colloidal graphite.	Petrolatum, technical.
	Lubricating oil, chain-wire rope-exposed gear.	Plug valve lubricant.
	Lubricating oil, compound.	Power-transmission fluids.
	Lubricating oil, gear.	Silicone fluid, diffusion pump.
	Lubricating oil, general purpose.	Scupper valve lubricant.
	Lubricating oil, hydraulic.	Soluble cutting oil.
	Lubricating oil, instrument.	Steam cylinder lubricating oil.
	Lubricating oil, internal combustion engine.	Stern-tube lubricating grease.
	Lubricating oil, mineral, steam cylinder.	Tempering oil.
	Lubricating oil, railway car and locomotive.	Torpedo gyroscope oil.
	Lubricating oil, refrigerant compressor.	Torpedo-tail grease.
	Lubricating oil, steam turbine.	Tractor lubricant.
	Lubricating oil, vacuum pump.	Transmission lubricant.
	Lubricating oil, watch.	Tunnel bearing grease.
	Lubricating wax.	Turbine lubricating oil.
		Typewriter lubricating oil.
		Universal gear lubricant.
		Universal gear oil.
		Water pump lubricating grease.
		Wheel bearing lubricating grease.
		Worm gear lubricant.
	Excludes: Castor oil, technical; lard oil; lubricant mold; lubricant stopcock; soap, lubricating; and sperm oil.	
9160 P	Miscellaneous Waxes, Oils, and Fats	ASPPA.
	Insulating oil, electrical.	Wax, microcrystalline.
	Wax, desensitizing.	Wax, paraffin, technical.
	Includes: Petroleum base waxes and oil, only.	
9620	Minerals, Natural and Synthetic	ASPPA.
	Includes: Crude petroleum; crude shale oil; and petroleum, crude, only.	
	PHOTOGRAPHIC EQUIPMENT [1]	
6635 P	Physical Properties Testing Equipment	Air Force.
	Includes: Industrial X-ray film, only.	
6710 P	Cameras, Motion Picture	Air Force.
	Excludes: Submarine Periscope and Underwater Cameras.	
6720 P	Cameras, Still Picture	Air Force.
	Excludes: Submarine Periscope and Underwater Cameras.	

[1] Photographic Equipment listed herein peculiar to the following type processes are excluded from this procurement assignment: photolithography, phototemplate, blueprinting, oralid, photostat, photo copy and microfilm. Photographic equipment listed herein used in the foregoing processes that are common to photography are not excluded from this procurement assignment.

LIST OF DOD ASSIGNED COMMODITIES—Continued

FSC code	Commodities	Assigned to
	PHOTOGRAPHIC EQUIPMENT [1]—continued	
6730 P	Photographic Projection Equipment	Air Force.
	Excludes: 35 mm Theatre Projectors.	
6740	Photographic Developing and Finishing Equipment	Air Force.
6750 P	Photographic Supplies	Air Force.
	Excludes: Photoflash Lamps, which are mandatory for purchase under the provisions of Federal Supply Schedule Class 17, Part VI, ELECTRIC LAMPS.	
6760	Photographic Equipment and Accessories	Air Force.
6780	Photographic Sets, Kits, and Outfits	Air Force.
	PREFABRICATED AND PORTABLE BUILDINGS [2]	
5410 P	Prefabricated and Portable Buildings	Navy.
	Includes: The following prefabricated buildings covered by the designated military specifications:	
	Building, arch rib 20' x 48', MIL-B-12568.	
	Building, arch rib 20' x 48', MIL-B-12569.	
	Building, arch rib 40' x 100', MIL-B-16606.	
	Building, (CAS) Complete Assembly Structure, MIL-B-17379 (DOCKS).	
	Building, rigid frame 40' x 100', MIL-B-16071A.	
	Magazine, MIL-B-15049B.	
	Magazine, MIL-B-16040A.	
	QUARTZ CRYSTALS, RAW	
9620 P	Quartz Crystals, Raw	GSA.
	Includes: Quartz Crystals Covered by Mil. Spec. MIL-C-15729, only.	
	RAILWAY EQUIPMENT	
2210 P	Locomotives	Army.
	Locomotives, auto-railer.	Locomotives, gasoline mechanical.
	Locomotives, Diesel electric.	Locomotives, oil electric.
	Locomotives, Diesel mechanical.	Locomotives, steam.
	Locomotives, electric.	Locomotives, storage battery.
	Locomotives, fireless.	Road-rail locomotives.
	Locomotives, gasoline electric.	
	Excludes: Locomotives, industrial (including surface mining locomotives) when of special design or when peculiar to a particular Department.	
2220 P	Rail Cars	Army.
	Baggage cars, railway.	Railway cars, baggage-mail.
	Baggage-express cars, railway.	Railway cars, box.
	Baggage-mail cars, railway.	Railway cars, caboose.
	Boxcars, railway.	Railway cars, caboose-box.
	Box-caboose cars, railway.	Railway cars, cafe.
	Cabin cars, railway.	Railway cars, coach.
	Caboose boxcars, railway.	Railway cars, diner.
	Caboose cars, railway.	Railway cars, express.
	Cafe cars, railway.	Railway cars, fire control.
	Carriages, marine railway.	Railway cars, flat.
	Coach cars, railway.	Railway cars, flat, depressed center.
	Coal cars, railway.	Railway cars, flat, well.
	Conductor cars, railway.	Railway cars, gondola.
	Diner cars, railway.	Railway cars, hopper.
	Dumpcars, railway.	Railway cars, hopper, covered.
	Express cars, railway.	Railway cars, hospital unit.
	Fire control cars, railway.	Railway cars, kitchen.
	Flatcars, railway.	Railway cars, mail.
	Freight-passenger cars, railway.	Railway cars, mortuary.
	Gondola cars, railway.	Railway cars, refrigerator.
	Hopper cars, railway.	Railway cars, side dump.
	Hospital cars, railway.	Railway cars, sleeper.
	Hospital unit cars, railway.	Railway cars, stock.
	Kitchen cars, railway.	Railway cars, tank.
	Mail cars, railway.	Railway motor cars, freight-passenger.
	Mail-passenger cars, railway.	Railway motor cars, mail.
	Mortuary cars, railway.	Railway motor cars, mail-passenger.
	Motorcars, railway.	Railway motor cars, passenger.
	Passenger cars, railway.	Refrigerator cars, railway.
	Passenger coaches, railway.	Side dumpcars, railway.
	Passenger-freight cars, railway.	Sleeper cars, railway.
	Passenger-mail cars, railway.	Stock cars, railway.
	Railway cars, ammunition.	Tank cars, railway.
	Railway cars, baggage.	Troop kitchen cars, railway.
	Railway cars, baggage-express.	Well cars, railway.
	Excludes: Industrial and mine rail cars, when of special design or when peculiar to a particular Department.	

[2] As additional items are covered by military or Federal specifications, they will be considered for possible addition to this Department of Defense Procurement Assignment.

LIST OF DOD ASSIGNED COMMODITIES—Continued

FSC code	Commodities	Assigned to
	RAILWAY EQUIPMENT—continued	
2230	Right-of-Way Construction and Maintenance Equipment, Railroad	Army.
	Adzing machines, railway tie, gasoline engine driven.	Railway cars, push.
	Bars, powered tie tamper.	Railway cars, stores.
	Burners, weed, railway car mounted.	Railway cars, trailer.
	Derrick cars, railway.	Railway construction sets.
	Drilling machines, rail, gasoline engines.	Railway motor cars, inspection.
	Drilling machines, rail, hand operated.	Railway motor cars, maintenance
	Dynamometer cars railway.	Sawing machines, rail, power driven.
	Extractors, track spike, gasoline engine driven.	Section gang cars, railway.
	Hammers, track spike, gasoline engine driven.	Snowplows, railway, push.
	Hump cars, railway.	Stores cars, railway.
	Inspection cars, railway.	Supply cars, railway.
	Jacks, railway track, gasoline engine driven.	Tamping machines, railway, gasoline-electric driven.
	Machine shop cars, railway.	Tampers, tie, electric.
	Maintenance cars, railway.	Tampers, tie, gasoline engine.
	Plows, snow, railway.	Tampers, tie, pneumatic.
	Push cars, railway.	Track aligners, railway.
	Railway cars, derrick.	Track shifters, railway, gasoline engine driven.
	Railway cars, dynamometer.	Trailer cars, railway.
	Railway cars, machine shop.	Wrecking cranes, railway, mounted.
		Wrenches, track, gasoline engine.
2240	Locomotive and Rail Car Accessories and Components	Army.
	Axles, electric railway, motor.	Keys, railway car brake shoe.
	Axles, locomotive driving.	Lever connections, railway brake.
	Axles, locomotive tender.	Lever connections, railway truck.
	Axles, locomotive trailer-truck.	Lids, railway journal box.
	Axles, railway.	Locomotive driving axles.
	Axles, railway car.	Locomotive tender axles.
	Axles, tender-truck.	Locomotive tender wheels.
	Axle and wheel sets, railway.	Locomotive trailer wheels.
	Axle boxes, railway.	Locomotive trailer-truck axles.
	Bearings, plain, railway axle.	Locomotive truck wheels.
	Blowers, locomotive draft.	Locomotive wheels.
	Bottom connections, railway truck.	Oil boxes, railway.
	Brake beams, railway car.	Passenger car axles.
	Brake hangers, railway.	Passenger car wheels.
	Brake lever connections, railway truck.	Pedestal boxes, railway.
	Brake shoes, locomotive tender.	Railway air hose.
	Brake shoes, railway car.	Railway car axles.
	Buffers, railway, screw coupling.	Railway couplers.
	Buffer slack gatherers, railway.	Railway locomotive wheels.
	Center connections, railway truck.	Railway motor car axles.
	Couplers, railway, automatic.	Railway wheels.
	Couplers, railway, screw.	Sand hose, railway.
	Diesel electric car wheels.	Screw couplers, railway.
	Diesel electric locomotive wheels.	Shoes, brake, railway car.
	Dust guards, railway journal.	Slack gatherers, railway buffer.
	Freight car axles.	Tender tank hose, railway.
	Freight car wheels.	Top connections, railway trucks.
	Grease boxes, railway.	Wedges, railway journal bearing.
	Hangers, railway brake beam.	Wheels, Diesel electric car.
	Hose, air brake, railway.	Wheels, Diesel electric locomotive.
	Hose, air signal, railway.	Wheels, electric railway car.
	Hose, sand, railway.	Wheels, freight car.
	Hose, tender tank, railway.	Wheels, locomotive tender.
	Hose, vacuum brake, railway.	Wheels, locomotive trailer.
	Hose and couplings, railway.	Wheels, locomotive truck.
	Housing boxes, railway.	Wheels, passenger car.
	Journal bearing wedges.	Wheels, railway.
	Journal boxes, railway.	Wheel and axle sets, railway.
	Journal box keys, railway.	Wheel sets, locomotive.
	Journal box lids, railway.	Wheel sets, railway.
2250	Track Materials, Railroad	Army.
	Anchors, rail.	Derails, railway.
	Angle bars, rail.	Engine replacers, railway.
	Anti-creepers, rail.	Engine rerailers, railway.
	Bars, rail joint.	Fish plates, rail.
	Bars, splice, railroad.	Flange frogs, railway.
	Blocks, railway guard rail spacer.	Frogs, railway.
	Bonds, rail.	Frogs, rerailing.
	Braces, railway rail.	Frogs, spring-rail.
	Braces, railway switch.	Frogs, wrecking, railway.
	Car replacer, railway.	Gage rods, rail.
	Car rerailers, railway.	Guard rails, railway.
	Clips, rail, railway.	Insulated split switches, railway.
	Curved split switches, railway.	Joint bars, rail.

LIST OF DOD ASSIGNED COMMODITIES—Continued

FSC code	Commodities	Assigned to
	RAILWAY EQUIPMENT—continued	
2250	Track Materials, Railroad	Army.
	Locomotive replacers.	Rerailers, railway.
	Locomotive rerailers.	Rerailing frogs.
	Plates, fish, railway.	Rods, railway track gauge.
	Plates, rail splice.	Spikes, railroad.
	Plates, railway tie.	Spikes, track, square shank.
	Plates, switch, railway.	Splice bars, railway rail.
	Plates, tie, railway.	Splice plates, railway rail.
	Rails, tee, railway.	Split switches, railway.
	Rail anchors, railway.	Spring switches, railway.
	Rail bonds.	Spring-rail frogs.
	Rail clips, railway.	Stands, switch, railway.
	Rail sections.	Stops, railway car.
	Rail-bound frogs.	Switches, railway.
	Railroad spikes.	Switch, points, railway.
	Railway derails.	Switches, split, railway.
	Railway frogs.	Switches, spring, railway.
	Railway split switches.	Switch point assemblies, railroad.
	Railway spring switches.	Switch stands, railway.
	Railway switch stands.	Tie plates, railway.
	Railway turnouts.	Tracks, railroad.
	Replacers, car, railway.	Track braces, railway.
	Replacers, engine, railway.	Transfer track sub-assemblies, marine railway.
	Replacers, locomotive.	
	Retrailers, car, railway.	Turnouts, railway.
	Rerailers, engine, railway.	Wrecking frogs, railway.
	Rerailers, locomotive.	
	SEXTANTS, AIRCRAFT	
6605 P	Navigational Instruments Includes: Sextants, Aircraft, only.	Navy.
	SHIPS, SMALL CRAFT, AND RELATED MARINE EQUIPMENT	
1905 P	Combat Ships and Landing Vessels Includes: Landing Vessels, only.	Navy.
1910 P	Transport Vessels, Passenger and Troop Includes: Ferryboats, only.	Navy.
1920	Fishing Vessels	Navy.
1925	Special Service Vessels	Navy.
1930	Barges and Lighters, Cargo	Navy.
1935 P	Barges and Lighters, Special Purpose Excludes: Derrick, Pile Driver, Rock Cutter, Concrete Mixing Plant, Mechanical Bank Grader Barges, Other Bank Revetment Barges; and Power Plant, Barges.	Navy.
1940	Small Craft	Navy.
1945 P	Pontoons and Floating Docks Includes: BuDock Type Pontoons, only.	Navy.
1950	Floating Dry Docks	Navy.
1990 P	Miscellaneous Vessels Includes: Commercial Sailing Vessels, only.	Navy.
2010 P [25]	Ship and Boat Propulsion Components	Navy.
2020 P [25]	Rigging and Rigging Gear	Navy.
2030 P [25]	Deck Machinery	Navy.
2040 P [25]	Marine Hardware and Hull Items	Navy.
2060	Commercial Fishing Equipment	Navy.
2090 P [25]	Miscellaneous Ship and Marine Equipment	Navy.
2805 P [25]	Gasoline Reciprocating Engines, Except Aircraft; and Components Includes: Gasoline Engines, Marine; only. Excludes: Outboard, Motors, Gasoline.	Navy.
2815 P [25]	Diesel Engines and Components Includes: Diesel Engines, Marine; only.	Navy.
2820 P	Steam Engines, Reciprocating, and Components Includes: Marine Main Propulsion Steam Engines, only.	Navy.
2825 P	Steam Turbines and Components Includes: Marine Steam Turbines, only.	Navy.
3950 P [25]	Winches, Hoists, Cranes, and Derricks Includes: Cranes and Hoists, Shipboard; Hoists, Shipboard; Towing Engines and Winches; Windlasses, Shipboard; Capstans, Shipboard; only.	Navy.
4010 P [25]	Chain and Wire Rope Includes: Anchor Chain, Shipboard; and Anchor Chains (Shot, no attachments) Shipboard; only.	Navy.
4110 P [25]	Self-Contained Refrigeration Units and Accessories Includes: Shipboard Units and Accessories, only.	Navy.
4120 P [25]	Self-Contained Air Conditioning Units and Accessories Includes: Shipboard Units and Accessories, only.	Navy.
4130 P [25]	Refrigeration and Air Conditioning Plants and Components Includes: Shipboard Plants and Components, only.	Navy.
4140 P [25]	Fans and Air Circulators, Non-Industrial Includes: Shipboard Units and Accessories, only.	Navy.

[25] Assigned only when for use aboard those vessels herein assigned to the Navy.

LIST OF DOD ASSIGNED COMMODITIES—Continued

FSC code	Commodities	Assigned to
	SHIPS, SMALL CRAFT, AND RELATED MARINE EQUIPMENT—continued	
4220 P[32]	Marine Lifesaving and Diving Equipment Includes: Diving Equipment, only.	Navy.
4310 P[32]	Compressors and Vacuum Pumps Includes: Reciprocating Air Compressors, Shipboard; and Rotary Air Compressors, Shipboard, only.	Navy.
4320 P[32]	Power and Hand Pumps Includes: Power Driven Pumps, Shipboard; and Air Ejector Assemblies, Shipboard; only.	Navy.
4330 P[32]	Centrifugals, Separators, and Pressure and Vacuum Filters Includes: Oil Purifiers, Shipboard; and Oil Filters, Shipboard; only.	Navy.
4410 P[32]	Industrial Boilers Includes: Boilers, Marine, only.	Navy.
4420 P[32]	Heat Exchangers and Steam Condensers Includes: Heat Exchangers, Shipboard, only.	Navy.
4450 P[32]	Industrial Fan and Blower Equipment Includes: Fans and Blowers, Shipboard, only.	Navy.
4510 P[32]	Plumbing Fixtures and Accessories Includes: Troughs, Wash, (Personnel), Shipboard; Troughs, Water Closet, Shipboard; and Troughs, Urinal, Shipboard; only.	Navy.
4520 P[32]	Water Distillation Equipment, Marine and Industrial Includes: Distilling Plants, Shipboard, only.	Navy.
5430 P[32]	Storage Tanks Includes: Tanks, Metal (Enclosure only, not part of Ship's Structure), Shipboard, only.	Navy.
5670 P[32]	Architectural and Related Metal Products Includes: Gratings and Floors, Metal (Does Not Include Deck Structure) Shipboard, only.	Navy.
5985 P[32]	Antennae, Waveguides, and Related Equipment Includes: Antenna Poles, Shipboard; and Masts, Antenna, Shipboard; only.	Navy.
6105 P[32]	Motors, Electrical Includes: Motors, Electric, Shipboard, only.	Navy.
6115 P[32]	Generators and Generator Sets Includes: Gasoline, Diesel and Steam Engine—Generator Sets, Shipboard; Generators, Electric, Shipboard; and Steam Turbine—Generator Sets, Shipboard; only.	Navy.
6125 P[32]	Converters, Electrical Includes: Motor—Generator Sets, Shipboard; only.	Navy.
6220 P[32]	Electric Vehicular Lights and Fixtures Includes: Fixed Lights, Shipboard; only.	Navy.
6320 P[32]	Shipboard Alarm and Signal Systems Includes: Alarm Systems, Shipboard; Fire Alarm Systems, Shipboard; Indicating Systems, Shipboard; Telegraph Systems (Signals and Signaling) Shipboard (Less Electronic Type); only.	Navy.
6605 P[32]	Navigational Instruments Includes: Hand Leads (Soundings); Lead Reels, Shipboard; Sounding Machines Shipboard; Stands, Pelorus, Shipboard; only.	Navy.
6650 P[32]	Optical Instruments Includes: Stands, Telescope, Shipboard; only.	Navy.
6665 P[32]	Hazard-Detecting Instruments and Apparatus Includes: Hazard-Determining Safety Devices, Shipboard; only.	Navy.
7195 P[32]	Miscellaneous Furniture and Fixtures Includes: Boards, Absentee Shipboard; Boards, Signal Flag, Shipboard; Boards, Sounding (Tank and Bilge Record); Boards, Status, Shipboard; only.	Navy.
8140 P[32]	Ammunition Boxes, Packages, and Special Containers Includes: Boxes, Ammunition, Shipboard; only.	Navy.
8345 P[32]	Flags and Pennants Includes: Boxes, Signal Flag, Shipboard; only.	Navy.
	SUBSISTENCE[33][34]	
8905	Meat, Poultry, and Fish	Army.
8910	Dairy Foods and Eggs	Army.
8915	Fruits and Vegetables	Army.
8920	Bakery and Cereal Products	Army.
8925	Sugar, Confectionery, and Nuts	Army.
8930	Jams, Jellies, and Preserves	Army.
8935	Soups and Bouillons	Army.
8940	Special Dietary Foods and Food Specialty Preparations	Army.
8945	Food Oils and Fats	Army.
8950	Condiments and Related Products	Army.
8955	Coffee, Tea, and Cocoa	Army.
8970	Composite Food Packages	Army.

[32] Assigned only when for use aboard those vessels herein assigned to the Navy.

[33] The following classes in FSC Group 89—SUBSISTENCE—are not under this DOD Procurement Assignment: 8960 Beverages, Non-alcoholic; 8965 Beverages, Alcoholic; 8975 Tobacco Products.

[34] Exceptions:

a. The Navy shall continue to make use of its monthly provisions bulletin for those ships and stations whose size or scope of operations is such that it is not practical or expedient to use the Army Market Centers.

b. The Navy will continue to purchase those items that are not components of the Army ration, or are bought in such small volume as not to realize the benefit of large scale purchasing by the Army.

LIST OF DOD ASSIGNED COMMODITIES—Continued

FSC code	Commodities	Assigned to
	TELEPHONE AND TELEGRAPH EQUIPMENT AND COMPONENTS, MILITARY	
5805 P	Telephone and Telegraph Equipment Includes: Military (Wire) Equipment, Field Type Only.	Army.
5815 P	Teletype and Facsimile Equipment Includes: Military (Wire) Equipment, Field Type Only.	Army.
5830 P	Intercommunication and Public Address Systems Includes: Military (Wire) Equipment, Field Type Only.	Army.
5915 P	Filters and Networks Includes: Components of Military (Wire) Equipment, Field Type Only.	Army.
5950 P	Coils and Transformers Includes: Components of Military (Wire) Equipment, Field Type Only.	Army.
5965 P	Headsets, Microphones, and Speakers Includes: Components of Military (Wire) Equipment, Field Type Only.	Army.
5985 P	Antennae, Waveguides, and Related Equipment Includes: Cases, wire dispenser for Military (Wire) Equipment, Field Type Only.	Army.
5995 P	Cable, Cord, and Wire Assemblies; Communication Equipment Includes: Components of Military (Wire) Equipment Field Type Only.	Army.
6145 P	Wire and Cable, Electrical Includes: Wire and Cable for Military (Wire) Equipment, Field Type Only.	Army.
6625 P	Electrical and Electronic Properties Measuring and Testing Instruments Includes: Instruments for testing Military (Wire) Equipment, Field Type Only.	Army.
6940 P	Communication Training Devices Includes: Code Training Sets, Code Practice Equipment, and other Telephone and Telegraph Training Devices.	Army.
8130 P	Reels and Spools Includes: Reels and spools for Military (Wire) Equipment, Field Type Only.	Army.
	TIME MEASURING INSTRUMENTS[35]	
6645 P	Time Measuring Instruments Aircraft Clocks. Aircraft Panel Clocks. Athletic Timers. Cases, Carrying, Navigation Watch. Cases, Master Navigational Watch. Cases, Watch, Pocket. Clocks, Aircraft, Mechanical. Holders, Watch. Navigation Watches, Master Pocket Watches. Stop Watches. Watches, Navigation, Master. Watches, Pocket. Watches, Pocket, Time and Stop. Watches, Stop. Watches, Wrist. Watches, Wrist, Second, Setting. Watch Case Assemblies. Watch Holders. Watch Movements. Wrist Watches. Includes: All Watches; Aircraft Instrument Panel Clocks; and Spare Parts thereof; and all Jewel Bearings.	Army.
6645 P	Time Measuring Instruments Alarm Clocks. Boat Clocks. Cans, Chronometer Shipping and Storage. Carrying Cases, Chronometer. Carrying Cases, Make-Break Circuit, Chronometer. Cases, Carrying, Chronometer. Cases, Chronometer. Cases, Chronometer, Gimbel. Cases, Chronometer, Padded. Chronometers. Chronometers, Make-Break, Circuit. Clocks, Alarm. Clocks, Direct Reading. Clocks, Electric. Clocks, Floor. Clocks, Interval Timer. Clocks, Marine, Mechanical. Clocks, Master Control. Clocks, Master Program. Clocks, Master Regulating. Clocks, Mechanical. Clocks, Message Center. Clocks, Nurses'. Clocks, Program. Clocks, Shelf. Clocks, Wall. Clocks, Watchmen's. Clock Motors. Clock Movements. Clock Movements, Electric. Deck Clocks. Dials, Clock. Direct Reading Clocks. Floor Clocks. Hourmeters. Interval Timers. Keys, Clock. Marine Clocks. Master Program Clocks. Master Regulating Clocks. Meters, Engine Running Time. Meters, Hour Recording. Meters, Time Totalizing, Electric. Program Clocks. Program Control Instruments. Program Timers. Shelf Clocks. Stop Clocks. Time Period Counters. Timers, Bombing. Timers, Engine Hour. Timers, Interval. Timers, Stop. Wall Clocks. Includes: All clocks, chronometers, and spare parts thereof.	Navy.

[35] The following items in FSC 6645 are not assigned: Chronographs; Clocks, Job Recorders; Job Recording Devices; Racks, Time Card; Recorders, Payroll Time; Recorders, Time; Recorders, Watch Movement; Stamps, Time; Stations, Watchmen's Clock; Time Recorders; and Time Stamps.

LIST OF DOD ASSIGNED COMMODITIES—Continued

FSC code	Commodities	Assigned to
	TIRES AND TUBES [24]	
2610	Tires and Tubes, Pneumatic, Except Aircraft	Army.
	Automobile tires and tubes.	Pneumatic tires, except aircraft.
	Bicycle tires and tubes.	Snow and mud tread tires.
	Bus and truck tires and tubes.	Tires, pneumatic, except aircraft.
	Implement tires and tubes.	Tractor tires and tubes.
	Inner tubes, pneumatic tire, except aircraft.	Trailer tires and tubes.
	Motor scooter tires and tubes.	Truck and bus tires and tubes.
	Motorcycle tires and tubes.	Tubes, inner, except aircraft.
2620	Tires, Solid and Cushion	Army.
	Tires, bogie wheel.	Tires, solid rubber.
	Tires, cushion.	Treads, track laying, rubber.
	Tires, semi-pneumatic.	
	WEAPONS, FIRE CONTROL EQUIPMENT, AMMUNITION AND EXPLOSIVES [25]	
1005 P	Guns, through 30mm	Army.
	Includes: Small arms; machine guns; aircraft cannons; subcaliber weapons; (and parts and equipment for the foregoing), as listed in Army Supply Manuals ORD 3 SNL A-1, Section 1 (Mar 54), ORD 3 SNL B-1 (Mar 54) and ORD 3 SNL C-1 (Apr 54).	
	Excludes: Naval Ordnance type [26]; Mk-12, 20mm gun; aircraft gun mounts; and all other types not included above.	
1010 P	Guns, over 30mm up to 75mm	Army.
	Includes: Aircraft cannons; mortars; recoilless weapons; anti-aircraft guns; field artillery howitzers and guns; subcaliber weapons; (and parts and equipment for the foregoing), as listed in Army Supply Manuals ORD 3 SNL A-1, Section 1 (Mar 54), ORD 3 SNL C-1 (Apr 54), Army Supply Catalogs ORD 3 SNL A-1, Section 2 (Oct 48) and Change 1 (Sept 49), ORD 3 SNL D-2 (Oct 48) and Change 1 (May 49).	
	Excludes: Naval Ordnance type; aircraft gun mounts; and all other types not included above.	
1015 P	Guns, 75mm through 125mm	Army.
	Includes: Aircraft cannons; mortars; recoilless weapons; anti-aircraft guns; field artillery howitzers and guns; (and parts and equipment for the foregoing), as listed in Army Supply Manuals ORD 3 SNL A-1, Section 1 (Mar 54), ORD 3 SNL C-1 (Apr. 54), ORD 3 SNL D-1 (Mar. 54), Army Supply Catalog ORD 3 SNL D-2 (Oct. 48) and Change 1 (May 49).	
	Excludes: Naval Ordnance type; aircraft gun mounts; and all other types not included above.	
1020 P	Guns, over 125mm	Army.
1025 P	Includes: Recoilless weapons; field artillery howitzers and guns; and anti-aircraft	
1030 P	weapons, as listed in Army Supply Manuals ORD 3 SNL C-1 (Apr. 54) and ORD 3	
1035 P	SNL D-1 (Mar. 54).	
	Excludes: Naval Ordnance type and all other types not included above.	
1040 [27]	Chemical Weapons and Equipment	Army.
	Includes: Flame throwers and associated equipment; smoke pots; smoke generators; smoke generating equipment; mixing and transfer units and kits; airplane smoke and spray tanks; incendiary axle, file, and equipment destroying; (and parts and equipment for the foregoing), as listed in Army Supply Catalog CML 3-1 (Apr. 52), Change 1 (Mar. 53), Change 2 (Oct. 53), Change 3 (Oct. 54), Change 4 (Jan. 55), and Army Supply Manual 3-2 (June 54) and Change 1 (Oct. 54).	

[24] Requirements of Commercial Tires and Tubes, when the item to be procured is less than $10,000 per line item (for tires costing less than $1,000 per tire) or when the item to be procured is less than $25,000 per line item (for tires costing $1,000 or more per tire), shall be purchased in accordance with the mandatory provisions of Federal Supply Schedule Class 8—Part II, Tires and Tubes (other than aircraft). These mandatory provisions do not apply to Military Tires and Tubes, which shall be procured together with those quantities of Commercial Tires and Tubes over the above specified dollar amounts in accordance with the procedures implementing this DOD Procurement Assignment.

This DOD Procurement Assignment does not include airplane tires and tubes. These items are mandatory for purchase in accordance with the provisions of Federal Supply Schedule Class 83—Aircraft Tires (Casings and Tubes).

[25] The Department of the Army portion of this DOD Procurement Assignment is covered by two sets of Implementing Procedures. One set covers items under the cognizance of the Army Ordnance Corps and the other covers items under the cognizance of the Army Chemical Corps.

[26] In cases where the term "Naval Ordnance Type" is indicated, the following definition will apply: For purposes of procurement, Naval Ordnance comprises all arms, armor, and armament for the Department of the Navy (as defined in Public Law 253, Section 206, 80th Congress) and includes all offensive and defensive weapons, together with their components, controlling devices and ammunition used in executing the Navy's mission in National Defense (except small arms and those items of aviation ordnance procured from the Army).

[27] Mechanical smoke generators included in this FSS Class are covered in the Implementing Procedures for Chemical Warfare Equipment and Supplies.

LIST OF DOD ASSIGNED COMMODITIES—Continued

FSC code	Commodities	Assigned to
	WEAPONS, FIRE CONTROL EQUIPMENT, AMMUNITION AND EXPLOSIVES [25]—con.	
1055 P	Launchers, Rocket and Pyrotechnic	Army.
	Includes: Launchers, rocket and pyrotechnic, as listed in Army Supply Manuals ORD 3 SNL B-1 (Mar. 54) and ORD 3 SNL C-1 (Apr. 54).	
	Excludes: Naval Ordnance type, airborne type; and all others not included above.	
1060	Biological Weapons	Army.
1095 P	Miscellaneous Weapons	Army.
	Includes: Carts; caissons; transport wagons; firing platforms, etc., as listed in Army Supply Manuals ORD 3 SNL A-1, Section 1 (Mar. 54); ORD 3 SNL B-1 (Mar. 54); ORD 3 SNL C-1 (Apr. 54); ORD 3 SNL D-1 (Mar. 54); Army Supply Catalogs ORD 3 SNL A-1, Section 2 (Oct. 48) and Change 1 (Sept. 49); ORD 3 SNL D-2 (Oct. 48) and Change 1 (May 49).	
	Excludes: Naval Ordnance type; guns, line throwing (which are under DOD procurement assignment to the Navy); aircraft type miscellaneous weapons; and all others not included above.	
1210 P	Fire Control Equipment	Army.
1220 P		
1230 P	Includes: Fire control equipment for use with small arms; automatic guns; mortars; tank	
1240 P	and combat vehicles; field, anti-aircraft, and harbor defense artillery, as listed in Army	
1250 P	Supply Catalogs ORD 3 SNL F-1 (Dec. 50) and ORD 3 SNL F-2 (Oct. 54).	
1260 P	Excludes: Naval Ordnance type and aircraft type.	
1290 P		
1305 P	Ammunition, through 30mm	Army.
	Includes: Ammunition for small arms; machine guns; aircraft cannons; subcaliber weapons, as listed in Army Supply Catalogs ORD 3 SNL R-1 (Feb. 51) and Change 1 (Oct. 51), ORD 3 SNL R-6 (Dec. 51) and Change 1 (Oct. 53), ORD 3 SNL T-1 (Nov. 51), Change 1 (May 52) and Change 2 (Sept. 53), ORD 3 SNL T-2 (Nov. 51), ORD 3 SNL T-3 (Mar. 52), ORD 3 SNL T-4 (Mar. 52) and Change 1 (Aug. 53), ORD 3 SNL T-5 (Mar. 52).	
	Excludes: Naval Ordnance type; ammunition for the Mk-12, 20mm gun; and all other types not included above.	
1310 P [28]	Ammunition, over 30mm up to 75mm	Army.
	Includes: Ammunition for aircraft cannons; mortars; recoilless weapons; anti-aircraft guns; field artillery howitzers and guns; sub-caliber weapons, as listed in Army Supply Manuals ORD 3 SNL P-5 (Jan. 55), ORD 3 SNL R-4 (Jan. 55), Army Supply Catalogs ORD 3 SNL P-8 (Jan. 50), ORD 3 SNL R-1 (July 50), ORD 3 SNL R-2 (Aug. 52), ORD 3 SNL R-6 (Dec. 51) and Change 1 (Oct. 53).	
	Excludes: Naval Ordnance type; 40mm ammunition (which is under DOD procurement assignment to the Navy); and all other types not included above.	
1315 P [28]	Ammunition, 75mm through 125mm	Army.
	Includes: Ammunition for aircraft cannons; mortars, recoilless weapons; anti-aircraft guns; field artillery howitzers and guns; sub-caliber weapons, as listed in Army Supply Manuals ORD 3 SNL P-5 (Jan. 55), ORD 3 SNL R-4 (Jan. 55), Army Supply Catalogs ORD 3 SNL P-8 (Jan. 50), ORD 3 SNL R-1 (Feb. 51), Change 1 (Oct. 51), Change 2 (June 52), Change 3 (July 53), ORD 3 SNL R-2 (Oct. 51) and Change 1 (Oct. 53), ORD 3 SNL R-5 (Aug. 52), ORD 3 SNL R-6 (Dec. 51) and Change 1 (Oct. 53), and Smoke Canisters, as listed in Army Supply Catalog CML 5-1-1 (Nov. 52), Change 1 (Oct. 53), Change 2 (Sept. 54) and Change 3 (Jan. 55).	
	Excludes: Naval Ordnance type; and all other types not included above.	
1320 P [28]	Ammunition, over 125mm	Army.
	Includes: Ammunition for recoilless weapons; field artillery howitzers and guns; and anti-aircraft weapons, as listed in Army Supply Manuals ORD 3 SNL P-1 (Sept. 53), ORD 3 SNL P-2 (Sept. 53), Army Supply Catalogs ORD 3 SNL P-8 (Jan. 50), ORD 3 SNL R-2 (Oct. 51) and Change 1 (Oct. 53), and Smoke Canisters, as listed in Army Supply Catalog CML 5-1-1 (Nov. 52), Change 1 (Oct. 53), Change 2 (Sept. 54) and Change 3 (Jan. 55).	
	Excludes: Naval Ordnance type; and all other types not included above.	
1325 P	Bombs	Army.
	Includes: Bombs, assembled, fragmentation, general purpose; semi-armor piercing; photo-flash; personnel; leaflet; target identification; incendiary; smoke and toxicological; and components and practice bombs therefor, as listed in Army Supply Catalogs ORD 3 SNL S-1 (Feb. 51), Change 1 (Jan. 52) and Change 2 (Oct. 52); ORD 3 SNL S-2 (Aug. 51), Change 1 (Jan. 53) and Change 2 (Apr. 54); Army Supply Manual ORD 3 SNL S-3 (Sept. 54); Army Supply Manual CML 3-2 (June 54) and Change 1 (Oct. 54).	
	Excludes: Those bombs herein assigned to the Navy; and all others not included above.	
1330	Grenades	Army.
1340 P	Rockets and Rocket Ammunition	Army.
	Includes: HE, AT, 3.5 In., M28A2; Practice, 3.5 In., M29A2; Smoke, WP, 3.5 In., M30; Drill, 4.5 In., M24; HE, 4.5 In., M32; Practice, 4.5 In., M33; Gas, CG, 7.2 In., M25.	
	Excludes: Rockets herein assigned to the Navy; and all others not included above.	

[28] Army responsible for loading, assembling and packing toxicological, smoke and incendiary shells.

LIST OF DOD ASSIGNED COMMODITIES—Continued

FSC code	Commodities	Assigned to
	WEAPONS, FIRE CONTROL EQUIPMENT, AMMUNITION AND EXPLOSIVES [32]—con.	
1345	Land Mines	Army.
1365	Chemical Warfare Agents	Army.
1370 P	Pyrotechnics Excludes: Shipboard and aircraft pyrotechnics.	Army.
1375 P	Explosives, Bulk Propellants and Explosive Devices Blasting Agents and Supplies: Includes: Blasting agents and supplies such as: Blocks, demolition. Caps, blasting, electric and non-electric. Charges, shaped and demolition. Detonators, all types. Dynamite. Explosive, ernterng, ammonium nitrate. Firing Devices. Fuses, detonating and safety. Bangalore torpedo. Kit, demolition. Lighter, fuze. Primer, percussion cap. Cable, detonating. Demolition equipment sets, with ancillary items. Chests, demolition platoon and squad. Machine, blasting. Excludes: Navy underwater demolition requirements. Explosives: Includes: The following items, only: Ammonium Picrate (Explosive D) JAN-A-166A. Trinitrotoluene (TNT) JAN-T-248. Tetryl JAN-T-339. Pentaerythrite Tetranitrate (PETN) JAN-P-387. RDX JAN-R-398. Composition B JAN-C-401. Pentolite 50/50 JAN-P-408. Composition C-3 JAN-C-427. Composition A-3 JAN-C-440. Nitroguanidine (Picrite) JAN-N-494. Excludes: Production capacity for any of the above listed explosives at the Naval Powder Factory, Indian Head, Maryland; and all other explosives not included above. Propellants: Includes: Propellant (for Small Arms Ammunition, 20mm) MIL-P-528A. Propellant (for Small Arms Ammunition, Cal .45) MIL-P-3207. Propellant, Increment, M8 MIL-P-19537. Propellant, Ignition Cartridge (M9) 60mm and 81mm Mortar MIL-P-20306. Powder, Rocket Propellant, Type N-4 MIL-P-16406. Propellant, E.C. for Blank Cartridges and Fragmentation Hand Grenades MIL-P-20496. Propellant Cannon, M1, M6, M14 JAN-P-309. Propellant, Cannon, M2, M5 JAN-P-323. Propellant, 4.2 In. Chemical Mortar JAN-P-381. Propellant, M7 JAN-P-459. Propellant, M15 and M17 JAN-P-663. Propellant, M10 JAN-P-715. Propellant (for Small Arms Ammunition, Cals. .30 and .50) JAN-P-733. Propellant, Cartridge, Grenade Carbine, Cal. .30, M6 and M7 JAN-P-761. Propellant, M13, 7/8 Inch Stick 50-12-22. Propellant (Powder for Small Arms Ammunition, Cal. .30, Lightweight Weapons) MIL-P-10080A (Ord). Propellant (Powder, Smokeless, for Cartridge, Carbine, Cal. .30, M1) U. S. Army 50-12-13. Rocket Propellant Powder NAVORD OS 3383. Excludes: Production capacity for any of the above listed propellants at the Naval Powder Factory, Indian Head, Maryland; and all other propellants not included above.	Army.

[32] The Department of the Army portion of this DOD Procurement Assignment is covered by two sets of Implementing Procedures. One set covers items under the cognizance of the Army Ordnance Corps and the other covers items under the cognizance of the Army Chemical Corps.

LIST OF DOD ASSIGNED COMMODITIES—Continued

FSC code	Commodities	Assigned to
	WEAPONS, FIRE CONTROL EQUIPMENT, AMMUNITION AND EXPLOSIVES [32]—con.	
1380	Biological Warfare Agents	Army.
1390 P	Fuzes and Primers Includes: Fuzes and primers for Army assigned ammunition and V. T. fuzes, non-rotating types. Excludes: Naval Ordnance type; V. T. fuzes, rotating type, under DOD procurement assignment to the Navy; guided missile fuzes; and all other fuzes and primers not included above.	Army.
2350	Tanks and Self-propelled Weapons	Army.
6910 P	Training Aids Includes: Training aids as listed in Army Supply Catalogs ORD 3 SNL L-1 (July 48); ORD 3 SNL L-2 (Jan 48), and Training Aids used in connection with Chemical Warfare items herein assigned. Excludes: All other training aids not included above.	Army.
6920 P	Armament Training Devices Includes: Armament training devices as listed in Army Supply Catalogs ORD 3 SNL L-1 (July 48); ORD 3 SNL L-2 (Jan 48). Excludes: Clay pigeons; all other training devices not included above.	Army.
8140 P	Ammunition Boxes, Packages, and Special Containers Includes: Boxes, packages and containers for ammunition herein assigned to the Army. Excludes: All other boxes, packages and containers not assigned herein.	Army.
1095 P	Miscellaneous Weapons Includes: Guns, line throwing, only.	Navy.
1310 P	Ammunition, over 30mm up to 75mm Includes: 40mm ammunition only.	Navy.
1325 P [33]	Bombs Includes: Armor-piercing; depth bombs; externally suspended low drag bombs; and components and practice bombs therefor, as listed in Ord Pamphlet 1280 (C) (Aug 45) and OP 988 (Jun 55).	Navy.
1340 P [34]	Rockets and Rocket Ammunition Includes: 2.25 In.: Rocket SCAR, Practice. Heads Mk 3 and Mods. Motors Mk 15 and Mods. Motors Mk 16 and Mods. 2.75 In.: Rocket FFAR, service and practice. Heads Mk 1 and Mods (General Purpose). Heads Mk 5 and Mods (HEAT). Motors Mk 1 and Mods. Motors Mk 2 and Mods. Motors Mk 3 and Mods. 5 In.: Rocket HVAR, service and practice. Heads Mk 2 and Mods (common) Mk 6 and Mods (GP). Heads Mk 4 and Mods (Smoke) Mk 25 and Mods. Motor Mk 10 and Mods (ATAR). Excludes: Rockets included under above assignment to the Army.	Navy.
1390 P	Fuzes and Primers Includes: Fuzes and primers for Navy assigned ammunition and V. T. fuzes, rotating type, only.	Navy.
4935 P	Ammunition Maintenance and Repair Shop Specialized Equipment Includes: Sets, kits, and outfits of explosive Ordnance tools and equipment as defined in OPNAV 8020.1; AR 735-145, AFR 136-8 (May 51) and further, as described in Ord Pamphlet 1851 (C) (July 51) and other similar documents of other services. Excludes: All others not included above.	Navy.
8140 P	Ammunition Boxes, Packages, and Special Containers Includes: Boxes, packages and containers for 40mm ammunition, only.	Navy.

[33] Army responsible for loading, assembling and packing toxicological, smoke and incendiary shells.
[34] Loading, assembling and packing in excess of Navy owned capacity to be done by Army.
[35] Filler and filling of all smoke and toxicological rockets are assigned to the Army.

PART 1005—INTERDEPARTMENTAL PROCUREMENT

Subpart A—Procurement Under Federal Supply Schedule Contracts

Sec.

1005.101 Federal Supply Schedule contracts.
1005.101–50 Performance under Federal Supply Schedule contracts.
1005.102 Distribution of Federal Supply Schedules and related publications.
1005.103 Mandatory use of Federal Supply Schedules.
1005.103–2 List of Federal Supply Schedule contracts which are mandatory upon the Department of Defense.
1005.106 Federal Supply Schedules with multiple award provisions.
1005.150 Procurement of utility services by use of General Services Administration area contracts.
1005.150–1 Mandatory use of area contracts.

Subpart B—Procurement From General Services Administration Stores Depot

1005.201 General.

Subpart C—Procurement Through Federal Supply Service Consolidated Purchasing Programs

1005.301 Federal Supply Service consolidated purchasing programs.
1005.302 Mandatory use of consolidated purchasing programs.

AUTHORITY: §§ 1005.101 to 1005.302 issued under sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply sec. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314.

SUBPART A—PROCUREMENT UNDER FEDERAL SUPPLY SCHEDULE CONTRACTS

§ 1005.101 *Federal Supply Schedule contracts.* Procurement under contracts executed by the Federal Supply Service, General Services Administration will be made by placing a delivery order on the contractor under the applicable Federal Supply Schedule contract. DD Form 1155, "Order for Supplies or Services," will be used when ordering supplies or services under Federal Supply Schedules. (See § 16.303 of this title.)

§ 1005.101–50 *Performance under Federal Supply Schedule contracts*—(a) *Supervision.* While the General Services Administration awards and exercises general supervision over its contracts, it is the responsibility of agencies whose requirements are included in the contracts to place orders with contractors, make payment, and, in the first instance, determine whether performance meets the contract terms. Agencies whose orders are accepted by the contractor pursuant to the optional use provisions have like responsibilities. Subject to the provisions of the contracts and the conditions stated in this part, ordering offices will deal directly with contractors concerning their performance, and may accept or reject the supplies or services.

(b) *Inspection.* Arranging for inspection of supplies delivered or services performed by a contractor will be the responsibility of the ordering office. If inspection assistance is desired by the ordering office, the nearest General Services Administration regional office will be contacted. The General Services Administration regional office executing the contract will be notified of all significant instances where defective articles and services are received by an ordering office.

(c) *Defective supplies or services; default of order.* Ordering offices may accept defective items and services, according to the provisions of § 7.103–5 (b) of this title, or have the contractor declared in default and terminate the right of the contractor to proceed further under the delivery order. However, before declaring a contractor in default, ordering offices will notify the contractor in writing that, unless satisfactory performance occurs within a specified time (allowing a reasonable time for performance), the ordering office will terminate the contractor's right to proceed further under the delivery order and will hold him liable for any excess costs resulting from purchasing the supplies or services elsewhere. Such notice need not be given when the default involves an attempted fraud on the United States or when it would obviously be futile, for example, when the contractor has already declined to perform. The General Services Administration regional office executing the contract will be notified in writing of all cases where an ordering office has declared a Federal Supply Schedule contractor in default.

(d) *Reordering; excess costs.* When a delivery order is terminated for default, the ordering office may procure elsewhere the undelivered portion of the supplies or services covered by the order and charge the contractor with any resulting excess costs. Where excess costs are anticipated, the ordering office may withhold sufficient funds otherwise due the contractor as offset security. Ordering offices will try to minimize excess costs to be charged against the contractor and will attempt to collect by setoff or otherwise any such excess costs.

(e) *Excusable delay.* Should the contractor allege that the failure in performance was due to an excusable cause precluding assessment of excess costs under the provisions of the contract, the deputy regional director, Federal Supply Service, of the regional office executing the schedule contract will be notified promptly. The determination of whether the failure is excusable will be made only by the contracting officer of the General Services Administration, or by the Administrator of General Services, or his duly authorized representative, on appeal. When the ordering office is aware that the defaulting contractor has alleged the failure to be excusable, it may elect to postpone the assessment of excess costs until a decision is made to avoid unnecessary accounting actions.

(f) *Default of entire contract.* The General Services Administration may declare a contractor in default on an overall basis for any or all items covered by the contract, as distinguished from the ordering office action on individual orders set forth in paragraph (c) of this section. When notified of such action by the General Services Administration, ordering offices will not thereafter accept further performance by the contractor or place new orders with him, and they will purchase against the account of the contractor from replacing contractors designated by the General Services Administration, or in such other manner as directed by the Administration.

(g) *Disputes.* All disputes concerning questions of fact arising under the contract which cannot be settled satisfactorily between the ordering office and the contractor will be decided by the General Services Administration contracting officer executing the contract or by the Administrator of General Services, or his duly authorized representative, on appeal.

§ 1005.103 *Mandatory use of Federal Supply Schedules.*

§ 1005.103–2 *Exceptions to mandatory use. Emergency procurement:* Authority to make the determination set forth in § 5.103–3 (a) of this title, within the Air Force, has been delegated to the Commander, AMC. It has been redelegated solely to staff officers responsible for procurement: (a) Within major command headquarters, (b) within headquarters of the first echelon of command subordinate to the major command, and (c) at installations under the jurisdiction of the subordinate command. The determination will clearly set forth the circumstances of the emergency and specific reasons why the time element makes necessary purchase from sources other than the Federal Supply Schedule.

§ 1005.106 *Federal Supply Schedules with multiple award provisions.* Certain mandatory Federal Supply Schedules afford a choice of different makes or brands of a particular type of equipment at different prices. In ordering from these schedules, the choice of equipment will be governed by price except when the using activity furnishes the contracting officer a written justification for ordering a particular make or brand. Justification may be based on considerations, such as, but not limited to, operator efficiency, time of delivery, service, difference in performance characteristics, compatibility with existing equipment or systems. The justifications will be used by the contracting officer as the basis for ordering a particular make or brand at other than the lowest schedule price for the type of equipment involved. No formal determination or finding need be filed with either the General Services Administration or the General Accounting Office.

§ 1005.150 *Procurement of utility services by use of General Services Administration area contracts.* A "Statement of Areas of Understanding in the Matter of Procurement of Utility Services" was agreed upon by the Secretary of Defense and the Administrator of General Services, effective November 2, 1950. As set forth in that statement, the General Services Administration executes "Area Contracts" (open-end contracts) which provide for furnishing utility services to all, or substantially all, activities of the Government located within a specified geographical area. These contracts are published as General Services Administration Public Utility Schedules.

§ 1005.150–1 *Mandatory use of area contracts.* Utility services required by AF activities in localities within an area

where these services are available under a General Services Administration Area Contract will be procured thereunder unless an exemption is obtained from the General Services Administration.

SUBPART B—PROCUREMENT FROM GENERAL SERVICES ADMINISTRATION STORES DEPOTS

§ 1005.201 *General.* The decision whether items and material (except commodities under DOD-GSA interagency purchase assignment) will be procured from General Services Administration (GSA) Stores depots or from commercial sources pursuant to § 5.201 of this title will be made by administrative determination arrived at jointly by the procurement and supply activities at each AF installation authorized to effect local purchases within the continental limits of the United States.

(a) Prices paid to GSA stores depots and commercial sources will be informally reviewed and compared at regular intervals not to exceed once a quarter, taking into consideration the overall delivered cost, including price of the item, transportation costs, and administrative costs in effecting payment. Records will be retained as necessary to evidence that the reviews were in fact made. Formal solicitation of bids or requests for quotations from GSA stores depots in competition with commercial sources will not be employed to accomplish this end.

(b) Determination with respect to the quality of service rendered by GSA stores depots in comparison with the services obtainable from commercial sources will normally be based on past experience, and should be a matter of continuing review to insure: Timely delivery of required items and elimination of the need for repeated back ordering which tends to increase the administrative costs in the acquisition of required supplies.

SUBPART C—PROCUREMENT THROUGH FEDERAL SUPPLY SERVICE CONSOLIDATED PURCHASING PROGRAMS

§ 1005.301 *Federal Supply Service consolidated purchasing programs.* By agreement between the Department of Defense and the General Services Administration, the General Services Administration has been assigned procurement responsibility for the Department of Defense requirements in certain commodity areas. Implementing procedures to these assignments have been developed by the military departments and General Services Administration and approved by the Assistant Secretary of Defense (Supply and Logistics).

§ 1005.302 *Mandatory use of consolidated purchasing programs.* Procurement of assigned items from or through the General Services Administration is mandatory, except as otherwise provided in the implementing procedures, on all AF activities located within the continental limits of the United States and Alaska.

PART 1006—FOREIGN PURCHASES

Subpart A—Buy American Act and Other Statutory Prohibitions on Foreign Purchases

Sec.
1006.103 Applicability of Buy American Act.
1006.103-1 Kinds of supplies.
1006.103-2 Origin of supplies used in manufactured supplies.
1006.104 Authority to grant exceptions to Buy American Act.

Subpart B—Canadian Purchases

1006.201 Purchases from Canadian suppliers.
1006.251 Research contracts placed in Canada.

Subpart T—Offshore Procurement

1006.2000 Definitions.
1006.2001-1 USAF Procurements.
1006.2001-2 MDAP Procurements.
1006.2002 Functions and responsibilities; MDAP program.
1006.2005 Prohibitions.

AUTHORITY: §§ 1006.103 to 1006.2005 issued under sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U. S. C. 2301-2314.

SUBPART A—BUY AMERICAN ACT AND OTHER STATUTORY PROHIBITIONS ON FOREIGN PURCHASES

§ 1006.103 *Applicability of Buy American Act.* It is emphasized that the Buy American Act only applies to purchases "for public use." Exemption should be requested only if the Air Force will acquire title to the property by direct purchase, or through a contractor's purchase. If a contractor desires to purchase foreign articles for his own use under such circumstances that the Government will not become the owner of such articles, request for exemption from the Buy American Act will not be submitted even though the contractor may intend to use the foreign articles (e. g., production machinery) to aid him in performance of an AF contract as well as for his private business. If the purchase is being made by an AF contractor, the importation of the foreign material may be dutiable.

§ 1006.103-1 *Kinds of supplies.* Foreign periodicals and publications (books, periodicals, magazines, and newspapers) which are available through vendors located within the continental United States may be procured, unless there is a question of security involved.

§ 1006.103-2 *Origin of supplies used in manufactured supplies.* Pending revision of Part 6, Chapter I of this title, is a result of Executive Order No. 10582 (19 F. R. 8723), and notwithstanding the provisions of § 6.103-2 of this title, supplies will be considered to be manufactured "substantially all" from the United States supplies whenever the cost of foreign supplies used in such manufacture constitutes less than 50 percent of the cost of all supplies used in such manufacture.

SUBPART B—CANADIAN PURCHASES

§ 1006.201 *Purchases from Canadian suppliers*—(a) *Requirement.* All AF contracts placed with a supplier or contractor located in the Dominion of Canada will be made with the Canadian Commercial Corporation through their Washington Office. However, AF bases located in Canada and the 3101st Logistical Control Group may make direct purchases from Canadian suppliers for items of supplies and services authorized for purchase.

(b) *Agreement between Canada and the U. S. Departments of the Army, Navy, and Air Force regarding purchase of supplies in Canada.* The purpose of the following is to circularize the present understanding between the departments of the Army, Navy, and Air Force and the Deputy Minister of Defence Production, Canada, regarding purchasing of military supplies in Canada. The policies announced herein were transmitted by the Deputy Minister of Defence Production, Canada, in a letter, February 18, 1952, and were approved by the Under Secretary of the Army, Assistant Secretary of the Navy, and the Under Secretary of the Air Force February 1952.

§ 1006.251 *Research contracts placed in Canada.* The Canadian Government through the Permanent Board of Defence has requested that all research contracts with agencies in the Dominion of Canada be cleared through a central point to eliminate competition for research projects and to prevent further subsidies from the various agencies of the United States for research in universities already supported by various Canadian federal agencies.

SUBPART T—OFFSHORE PROCUREMENT

§ 1006.2000 *Definitions.* For purposes of this subpart, separate definitions are given for USAF and MDAP offshore procurements.

(a) For USAF procurements, "Offshore Procurements (OSP)" means procurement of material, supplies, or services by foreign procurement activities, AMFPA, and AMFEA from indigenous sources for delivery and use outside the continental United States, its Territories and possessions; "Indigenous Sources" are those procurement sources outside the continental United States, its Territories and possessions; "Services" include repairs and utilities projects and service contracts involving private contractors.

(b) For MDAP procurements, "Offshore Procurement (OSP)" means the procurement in friendly foreign countries of military equipment, materials, or services included in the Mutual Defense Assistance Program.

§ 1006.2001-1 *USAF procurements.* The Under Secretary of the Air Force has directed that a maximum quantity of the supplies, materials, and services required to logistically support United States forces overseas be procured from indigenous sources, provided that such procurement will not result in one or more of the following:

(a) Unjustifiable cost in comparison with procurement in the United States.

(b) Delay in delivery unacceptable to the Department of the Air Force.

(c) Serious adverse effects upon the United States economy, employment or industrial mobilization.

(d) Threats to the security interests of the United States.

§ 1006.2001-2 *MDAP procurements.* (a) To the extent that friendly foreign forces are able to support themselves in peacetime and time of combat from

local production, such capability is of strategic and logistic advantage to the United States. It is Department of Defense policy to assist in the development of this capability by procuring the maximum justifiable amount of material and equipment from offshore sources. Consistent with this basic objective, offshore procurement programs will be implemented to support other United States Foreign policy objectives.

(b) Normally, offshore procurement contracts will be awarded when they meet sound military procurement practices with respect to price, quality, delivery, and reliability of contractor. In instances where contracts are to be written for items previously procured offshore, appropriate reductions from initial offshore procurement prices should be insisted upon to the extent reasonably possible due to cost reducing factors of follow-in orders.

(c) The policy for normal offshore procurement, as outlined in paragraph (b) of this section, will be continued to the extent circumstances warrant. It is recognized that it may be desirable for overriding considerations to undertake actions that may be in conflict with normal procurement procedures or programming criteria. Such instances are not limited to but may arise as follows:

(1) Where it can be determined that extending delivery schedules of existing contracts or establishing production schedules of new contracts at a minimum economical production rate would assist in maintaining a desired defense production base, delivery schedules should be so arranged; provided there is no increase in contract prices and the delivery schedule so changed will have no significant adverse effect upon supply objectives. Delivery schedules on delinquent contracts may be extended under this policy according to § 1053.102 of this chapter.

(2) When one or more country governments, by means of a firm commitment, undertake to make a satisfactory contribution from its own resources for the preservation or expansion of a critical defense production base, circumstances may warrant joint participation by the United States through an offshore procurement program that may deviate from normal procedures.

(3) Where it can be determined that United States participation in establishing a production base offshore for newly designed weapons will aid in accomplishing United States objectives, such as weapons standardization or correlated production planning and participation, an offshore procurement program over and above approved programs may be warranted.

§ 1006.2002 *Functions and responsibilities; MDAP program.* In developing offshore procurement programs to purchase maximum justifiable quantities from sources in friendly foreign countries, Hq USAF will place emphasis on items: (1) Having high combat mortality, the production of which overseas will result in decreased demands on the United States for logistic support in time of war, (2) where production sources in the United States are either nonexistent or limited and it is not desirable to establish or expand such sources, (3) for which production offshore will perpetuate or expand an existing desirable defense production base. Selection of items will further be based upon procurement abroad not resulting in one or more of the following:

(a) Serious adverse effects on the United States defense production base.

(b) Unjustifiable costs in comparison with procurement costs in the United States, including transportation from the United States to recipient countries.

(c) Delays in delivery incompatible with United States defense objectives.

(d) Production offshore which would be detrimental to the security interests of the United States.

§ 1006.2005 *Prohibitions*—(a) *Supplies originating in the United States.* Unless otherwise authorized by the Air Force, no oversea commander will engage in the procurement of supplies (defined by § 1.201–8 of this title) normally centrally procured, from oversea manufacturers or suppliers if the supplies in complete and finished form, are to be obtained by such oversea manufacturers or suppliers from sources within the continental United States, its Territories or possessions. This prohibition does not apply to supplies which are coded for local purchase in USAF Supply Catalogs, or as otherwise authorized by applicable AF regulation.

PART 1007—CONTRACT CLAUSES

Subpart A—Clauses for Bilateral Fixed-Price Supply Contracts

Sec.
1007.103 Required clauses.
1007.103–1 Definitions.
1007.103–2 Changes and disposition of inventory resulting from changes.
1007.103–3 Extras.
1007.103–4 Variation in quantity.
1007.103–5 Inspection.
1007.103–6 Responsibility for supplies.
1007.103–7 Payments.
1007.103–8 Assignment of claims.
1007.103–9 Additional bond security.
1007.103–10 Federal, state, and local taxes.
1007.103–11 Default.
1007.103–12 Disputes.
1007.103–13 Renegotiation.
1007.103–14 Buy American Act.
1007.103–16 Eight-hour law of 1912.
1007.103–17 Walsh-Healey Public Contracts Act.
1007.103–18 Nondiscrimination in employment.
1007.103–19 Officials not to benefit.
1007.103–20 Covenant against contingent fees.
1007.103–21 Termination for convenience of the government.
1007.103–22 Authorization and consent.
1007.103–23 Notice and assistance regarding patent infringement.
1007.103–50 Subcontracts.
1007.104 Clauses to be used when applicable.
1007.104–1 Davis-Bacon Act.
1007.104–2 Copeland Act.
1007.104–5 Patent indemnity.
1007.104–6 Filing of patent applications.
1007.104–7 Patent rights.
1007.104–8 Reporting of royalties.
1007.104–9 Copyright.
1007.104–10 Aircraft in the open.
1007.104–11 Vinson-Trammell Act.
1007.104–12 Military security requirements.
1007.104–13 Domestic food, clothing, cotton, spun silk yarn for cartridge cloth, or wool.
Sec.
1007.104–14 Utilization of small business concerns.
1007.104–15 Examination of records.
1007.104–16 Gratuities.
1007.104–17 Convict labor.
1007.104–18 Priorities, allocations and allotments.
1007.104–50 Shipments.
1007.104–51 Delay in delivery of data.
1007.104–52 Superseding specifications.
1007.104–53 Quality control specification.
1007.104–54 Government-furnished property.
1007.104–55 Overtime and premium wage compensation.
1007.104–56 Discounts.
1007.104–57 Special tooling.
1007.104–58 Inspection and audit.
1007.104–59 Reproduction and use of technical data.
1007.105 Additional clauses.
1007.105–1 Alterations in contract.
1007.105–2 Approval of contract.
1007.105–3 Notice to the Government of labor disputes.
1007.105–4 Notice of shipments.
1007.105–5 Liquidated damages.
1007.105–6 Bill of materials.
1007.105–7 Material inspection and receiving report.
1007.105–50 Furnishing of materials or supplies by the Government at its option.
1007.105–51 Additional inspection requirements.
1007.105–52 Certificate acceptance.
1007.105–53 General.
1007.106 Price escalation clauses (established prices).
1007.106–1 Escalation clause for basic steel, aluminum, brass, bronze, or copper mill products.
1007.106–2 Escalation clause for non-standard steel items.
1007.106–3 Escalation clause for standard supplies.
1007.106–4 Escalation clause for semistandard supplies.

Subpart B—Clauses for Cost-Reimbursement Supply Contracts

1007.200 Scope of subpart.
1007.202 Applicability.
1007.203 Required clauses.
1007.203–1 Definitions.
1007.203–2 Changes.
1007.203–3 Limitation of cost.
1007.203–4 Allowable cost, fixed fee and payment.
1007.203–5 Inspection of supplies and correction of defects.
1007.203–6 Assignment of claims.
1007.203–7 Records.
1007.203–8 Subcontracts.
1007.203–9 Utilization of small business concerns.
1007.203–10 Termination.
1007.203–11 Excusable delays.
1007.203–12 Disputes.
1007.203–13 Renegotiation.
1007.203–14 Buy American Act.
1007.203–15 Convict labor.
1007.203–16 Eight-Hour Law of 1912.
1007.203–17 Walsh-Healey Public Contracts Act.
1007.203–18 Nondiscrimination in employment.
1007.203–19 Officials not to benefit.
1007.203–20 Covenant against contingent fees.
1007.203–21 Government property.
1007.203–22 Insurance; liability to third persons.
1007.203–23 Authorization and consent.
1007.203–24 Notice and assistance regarding patent infringement.
1007.203–50 Alterations in contract.
1007.204 Clauses to be used when applicable.
1007.204–1 Davis-Bacon Act.
1007.204–2 Copeland Act.
1007.204–5 Patent indemnity.

Sec.
1007.204–6 Filing of patent application.
1007.204–7 Patent rights.
1007.204–8 Reporting of royalties.
1007.204–9 Copyright.
1007.204–11 Vinson-Trammell Act.
1007.204–12 Military security requirements.
1007.204–13 Domestic food, clothing, cotton, spun silk yarn for cartridge cloth, or wool.
1007.204–14 Gratuities.
1007.204–15 Priorities, allocations and allotments.
1007.204–16 Negotiated overhead rates.
1007.204–50 Shipments.
1007.204–51 Delay in delivery of data.
1007.204–52 Superseding specifications.
1007.204–53 Quality control specification.
1007.204–54 Reproduction and use of technical data.
1007.205 Additional clauses.
1007.205–1 Alterations in contract.
1007.205–2 Approval of contract.
1007.205–3 Notice to the Government of labor disputes.
1007.205–4 Bill of materials.
1007.205–5 Federal, State, and local taxes.
1007.205–6 Materiel inspection and receiving report.
1007.205–50 Certificate acceptance.
1007.205–51 General.

Subpart C—Clauses for Fixed-Price Research and Development Contracts

1007.300 Scope of subpart.
1007.302 Definitions.
1007.303 Required clauses.
1007.303–1 Definitions.
1007.303–2 Changes.
1007.303–3 Extras.
1007.303–4 Inspection.
1007.303–5 Quality control specification.
1007.303–6 Responsibility for contract work.
1007.303–7 Payments.
1007.303–8 Assignment of claims.
1007.303–9 Federal, State, and local taxes.
1007.303–10 Default.
1007.303–11 Disputes.
1007.303–12 Notice and assistance regarding patent infringement.
1007.303–13 Buy American Act.
1007.303–14 Convict labor.
1007.303–15 Eight-hour law of 1912.
1007.303–16 Walsh-Healey Public Contracts Act.
1007.303–17 Nondiscrimination in employment.
1007.303–18 Officials not to benefit.
1007.303–19 Covenant against contingent fees.
1007.303–20 Termination for convenience of the Government.
1007.303–21 Subcontracts.
1007.303–22 Authorization and consent.
1007.303–23 Utilization of small business concerns.
1007.303–24 Patent rights.
1007.303–25 Reproduction and use of technical data.
1007.303–26 Renegotiation.
1007.304 Clauses to be used when applicable.
1007.304–1 Gratuities.
1007.304–2 Government-furnished property.
1007.304–3 Reporting of royalties.
1007.304–5 Military security requirements.
1007.304–6 Delay in delivery of data.
1007.304–7 Superseding specifications.
1007.304–8 Copyright.
1007.304–9 Filing of patent applications.
1007.304–10 Examination of records.
1007.304–11 Approval of contract.
1007.304–12 Alterations in contract.
1007.304–13 Inspection and audit.
1007.304–14 Priorities, allocations, and allotments.
1007.305 Additional clauses.
1007.305–1 Furnishing of materials or supplies by the Government at its option.
1007.305–2 Notice to the Government of labor disputes.

Sec.
1007.305–3 Shipments.
1007.305–4 General.

Subpart D—Clauses for Cost-Reimbursement-Type Research and Development Contracts

1007.400 Scope of subpart.
1007.402 Definitions.
1007.403 Required clauses.
1007.403–1 Definitions.
1007.403–2 Changes.
1007.403–3 Limitation of cost.
1007.403–4 Allowable cost, fixed fee and payment.
1007.403–5 Inspection.
1007.403–6 Assignment of claims.
1007.403–7 Records.
1007.403–8 Subcontracts.
1007.403–9 Utilization of small business concerns.
1007.403–10 Termination.
1007.403–11 Excusable delays.
1007.403–12 Disputes.
1007.403–13 Notice and assistance regarding patent infringement.
1007.403–14 Buy American Act.
1007.403–15 Convict labor.
1007.403–16 Eight-hour law of 1912.
1007.403–17 Nondiscrimination in employment.
1007–403–18 Officials not to benefit.
1007.403–19 Covenant against contingent fees.
1007.403–20 Patent rights.
1007.403–21 Government property.
1007.403–22 Insurance liability to third persons.
1007.403–23 Authorization and consent.
1007.403–24 Quality control specification.
1007.403–25 Reproduction and use of technical data.
1007.403–26 Renegotiation.
1007.404 Clauses to be used when applicable.
1007.404–3 Filing of patent applications.
1007.404–4 Reporting of royalties.
1007.404–5 Copyright.
1007.404–7 Military security requirements.
1007.404–8 Walsh-Healey Public Contracts Act.
1007.404–9 Gratuities.
1007.404–10 Alterations in contract.
1007.404–11 Approval of contracts.
1007.404–12 Redetermination of overhead rates.
1007.404–13 Delay in delivery of data.
1007.404–14 Superseding specifications.
1007.404–15 Limitation of cost.
1007.404–16 Priorities, allocations and allotments.
1007.405 Additional clauses.
1007.405–1 Notice to the government of labor disputes.
1007.405–2 Shipments.
1007.405–3 General.

Subpart E—Clauses for Personal Services Contracts

1007.500 Scope of subpart.
1007.502 Applicability.
1007.503 Required clauses.
1007.503–1 Definitions.
1007.503–2 Payments.
1007.503–3 Assignment of claims.
1007.503–4 Disputes.
1007.503–5 Officials not to benefit.
1007.503–6 Covenant against contingent fees.
1007.503–7 Termination.
1007.503–8 Approval of contract.
1007.503–9 Patents.
1007.503–10 Copyright.
1007.503–50 Subcontracts.
1007.504 Clauses to be used when applicable.
1007.504–1 Military security requirements.
1007.504–50 Reproduction and use of technical data.
1007.504–51 Filing of patent applications.
1007.505 Additional clauses.
1007.505–1 Alterations in contract.

Subpart T—Clauses and Arrangements for Personal Service Contracts With Foreign Nationals

Sec.
1007.2000 Scope of subpart.
1007.2002 Definition.
1007.2003 Required clauses and arrangements.
1007.2003–1 Cover page.
1007.2003–2 Introduction.
1007.2003–3 Scope of employment.
1007.2003–4 Administration.
1007.2003–5 Security regulations.
1007.2003–6 Report of espionage.
1007.2003–7 Period of performance and compensation.
1007.2003–8 Hours of work.
1007.2003–9 Leave.
1007.2003–10 Patents and copyrights.
1007.2003–11 Transportation.
1007.2003–12 Housing.
1007.2003–13 Subsistence.
1007.2003–14 Medical services.
1007.2003–15 Burial and effects.
1007.2003–16 Injuries.
1007.2003–17 Dependents.
1007.2003–18 Visa.
1007.2003–19 Officials not to benefit.
1007.2003–20 Covenant against contingent fees.
1007.2003–21 Disputes.
1007.2003–22 Termination.
1007.2003–23 Definitions.
1007.2003–24 Disclosure of information.
1007.2003–25 Certification.
1007.2003–26 Approval of contract.
1007.2003–27 Alterations in contract.
1007.2003–28 Conclusion and signatures.

Subpart U—Clauses for Fixed-Price Nonpersonal Service Contracts

1007.2103 Required clauses.
1007.2103–1 Definitions.
1007.2103–2 Changes.
1007.2103–3 Inspection.
1007.2103–4 Payments.
1007.2103–5 Assignment of claims.
1007.2103–6 Federal, State, and local taxes.
1007.2103–7 Default.
1007.2103–8 Disputes.
1007.2103–9 Notice and assistance regarding patent infringement.
1007.2103–10 Buy American Act.
1007.2103–11 Convict labor.
1007.2103–12 Eight-hour law of 1912.
1007.2103–13 Nondiscrimination in employment.
1007.2103–14 Officials not to benefit.
1007.2103–15 Covenant against contingent fees.
1007.2103–16 Termination for convenience of the Government.
1007.2103–17 Subcontracts.
1007.2103–18 Utilization of small business concerns.
1007.2103–20 Examination of records.
1007.2103–21 Gratuities.
1007.2103–22 Renegotiation.
1007.2104 Clauses to be used when applicable.
1007.2104–1 Walsh-Healey Public Contracts Act.
1007.2104–3 Military security requirements.
1007.2104–4 Government-furnished property.
1007.2104–5 Reporting of royalties.
1007.2104–6 Filing of patent applications.
1007.2104–7 Patent indemnity.
1007.2104–8 Copyright.
1007.2104–9 Patent rights.
1007.2104–10 Reproduction and use of technical data.
1007.2104–11 Authorization and consent.
1007.2104–12 Inspection and audit.
1007.2104–13 Priorities, allocations and allotments.
1007.2104–14 Approval of contract.
1007.2104–15 Alterations in contract.
1007.2105 Additional clauses.

Sec.
1007.2105–1 Furnishing of materials and supplies by the Government at its option.
1007.2105–2 Notice to the Government of labor disputes.
1007.2105–3 General.

Subpart V—Clauses for Technical Services Contracts

1007.2203 Required clauses.
1007.2203–1 Definitions.
1007.2203–2 Changes.
1007.2203–3 Inspection.
1007.2203–4 Payments.
1007.2203–5 Assignment of claims.
1007.2203–6 Federal, State, and local taxes.
1007.2203–7 Default.
1007.2203–8 Disputes.
1007.2203–9 Convict labor.
1007.2203–10 Eight-hour law of 1912.
1007.2203–11 Nondiscrimination in employment.
1007.2203–12 Officials not to benefit.
1007.2203–13 Covenant against contingent fees.
1007.2203–14 Termination for convenience of the Government.
1007.2203–15 Subcontracts for work or services.
1007.2203–16 Inspection and audit.
1007.2203–17 Examination of records.
1007.2203–18 Gratuities.
1007.2203–19 Renegotiation.
1007.2203–20 Contractor personnel.
1007.2203–21 Period of performance.
1007.2203–22 Services furnished by the Government.
1007.2204 Clauses to be used when applicable.
1007.2204–1 Military security requirements.
1007.2204–2 Government-furnished property.
1007.2204–3 Capture and detention.
1007.2204–4 Copyright.
1007.2204–5 Filing of patent applications.
1007.2204–6 Notice and assistance regarding patent infringements.
1007.2204–7 Reproduction and use of technical data.
1007.2204–8 Approval of contract.
1007.2204–9 Alterations in contract.
1007.2205 Additional clauses.
1007.2205–1 Reports.
1007.2205–2 General.
1007.2206 Required schedule provisions.
1007.2206–1 Part I; services to be furnished.
1007.2206–2 Part II; consideration and payment.
1007.2206–3 Part III; period of performance.
1007.2207 Schedule provisions to be used when applicable.
1007.2207–1 Period of performance beyond the end of the fiscal year.
1007.2207–2 Option to extend services at same rates.
1007.2207–3 Option to extend services at provisional rates.

Subpart W—Clauses for Time and Materials Contracts

1007.2303 Required clauses.
1007.2303–1 Definitions.
1007.2303–2 Changes.
1007.2303–3 Inspection.
1007.2303–4 Payments.
1007.2303–5 Assignment of claims.
1007.2303–6 Excusable delays.
1007.2303–7 Disputes.
1007.2303–8 Notice and assistance regarding patent infringement.
1007.2303–9 Buy American Act.
1007.2303–10 Convict labor.
1007.2303–11 Eight-hour law of 1912.
1007.2303–12 Walsh-Healey Public Contracts Act.
1007.2303–13 Nondiscrimination in employment.
1007.2303–14 Officials not to benefit.
1007.2303–15 Covenant against contingent fees.
1007.2303–16 Termination.
1007.2303–17 Renegotiation.
1007.2303–18 Subcontracts.
1007.2303–19 Records.
1007.2303–20 Gratuities.
1007.2303–21 Government-furnished property.
1007.2303–22 Reporting of royalties.
1007.2304 Clauses to be used when applicable.
1007.2304–2 Shipments.
1007.2304–3 Military security requirements.
1007.2304–4 Copyright.
1007.2304–5 Reproduction and use of technical data.
1007.2304–6 Authorization and consent.
1007.2304–7 Filing of patent applications.
1007.2304–8 Patent indemnity.
1007.2304–9 Priorities, allocations and allotments.
1007.2304–10 Approval of contract.
1007.2304–11 Alterations in contract.
1007.2305 Additional clauses.
1007.2305–1 Notice to the government of labor disputes.
1007.2305–2 General.

Subpart X—Clauses, Schedule Provisions, and Exhibits for Instruction of Military Personnel at Civilian Schools, Colleges, and Universities

1007.2403 Required clauses.
1007.2403–1 Definitions.
1007.2403–2 Inspection.
1007.2403–3 Disputes.
1007.2403–4 Convict labor.
1007.2403–5 Eight-hour law of 1912.
1007.2403–6 Nondiscrimination in employment.
1007.2403–7 Officials not to benefit.
1007.2403–8 Covenant against contingent fees.
1007.2403–9 Termination.
1007.2403–10 Revised fees.
1007.2403–11 Change in curriculum.
1007.2403–12 Reports and withdrawal of students.
1007.2403–13 Gratuities.
1007.2403–14 Examination of records.
1007.2404 Clauses to be used when applicable.
1007.2404–1 Alterations in contract.
1007.2406 Schedule provisions.
1007.2406–1 Part I; Services to be furnished.
1007.2406–2 Part II; Consideration, payment, and voucher.
1007.2407 Exhibits.
1007.2407–1 Exhibit for enrollment.
1007.2407–2 Exhibit for approving courses and allotment of funds.
1007.2408 Changes to be made for contracts issued under AFR 34–8.

Subpart Y—Clauses and Arrangements for Letter Contracts

1007.2503 Arrangements for letter contracts.
1007.2503–1 Cover page.
1007.2503–2 Introduction.
1007.2503–3 Signatures and acceptance.
1007.2504 Required clauses for fixed price letter contracts.
1007.2504–1 Introductory paragraph.
1007.2504–2 Direction to proceed.
1007.2504–3 Contract clauses for incorporation by reference.
1007.2504–4 Provision for definitizing contract.
1007.2504–5 Authority to obligate funds.
1007.2504–6 Termination.
1007.2504–7 Quality control specification.
1007.2504–8 Subcontracts.
1007.2504–9 Provision for execution.
1007.2505 Required clauses for cost-reimbursement letter contracts.
1007.2505–1 Introductory paragraph.
1007.2505–2 Direction to proceed.
1007.2505–3 Contract clauses incorporated by reference.
1007.2505–4 Provisions for definitizing contract.
1007.2505–5 Authority to obligate funds.
1007.2505–6 Termination.
1007.2505–7 Quality control.
1007.2505–8 Provision for execution.
1007.2506 Required clauses for facilities letter contracts.
1007.2506–1 Introductory paragraph.
1007.2506–2 Direction to proceed.
1007.2506–3 Contract clauses introduced by reference.
1007.2506–4 Provision for definitizing contract.
1007.2506–5 Authority to obligate funds.
1007.2506–6 Use charge.
1007.2506–7 Date for completion of work.
1007.2506–8 Termination.
1007.2506–9 Provision for execution.

Subpart Z—Clauses for Open Contracts for Equipment

1007.2603 Required clauses.
1007.2603–1 Definitions.
1007.2603–2 Changes.
1007.2603–3 Extras.
1007.2603–4 Inspection.
1007.2603–5 Responsibility for supplies.
1007.2603–6 Assignment of claims.
1007.2603–7 Additional bond security.
1007.2603–8 Federal, State, and local taxes.
1007.2603–9 Default.
1007.2603–10 Disputes.
1007.2603–11 Notice and assistance regarding patent infringement.
1007.2603–12 Buy American Act.
1007.2603–13 Convict labor.
1007.2603–14 Eight-hour law of 1912.
1007.2603–15 Walsh-Healey Public Contracts Act.
1007.2603–16 Nondiscrimination in employment.
1007.2603–17 Officials not to benefit.
1007.2603–18 Covenant against contingent fees.
1007.2603–19 Termination for convenience of the Government.
1007.2603–20 Renegotiation.
1007.2603–21 Examination of records.
1007.2603–22 Gratuities.
1007.2603–23 Authorization and consent.
1007.2603–24 Subcontracts.
1007.2603–25 Inspection and audit.
1007.2603–27 Delay in delivery of data.
1007.2603–28 Superseding specifications.
1007.2603–29 Quality control specification.
1007.2603–35 Additional tax provision.
1007.2603–36 Shipments.
1007.2603–37 Time for issuance of production lists.
1007.2603–38 Forms.
1007.2603–39 Sample production list.
1007.2603–40 Sample exhibit.
1007.2603–41 Sample spare parts change request.
1007.2603–42 Sample analysis of spare parts change.
1007.2603–44 Government-furnished property.
1007.2604 Clauses to be used when applicable.
1007.2604–1 Utilization of small business concerns.
1007.2604–3 Military security requirements.
1007.2604–4 Redetermination of prices.
1007.2604–5 Discounts.
1007.2604–6 Reporting of royalties.
1007.2604–7 Filing of patent applications.
1007.2604.8 Copyrights.
1007.2604–9 Eeproduction and use of technical data.
1007.2604–10 Priorities, allocations, and allotments.
1007.2605 Additional clauses.
1007.2605–1 Furnishing of materials and supplies by the Government at its option.
1007.2605–2 Additional inspection requirements.
1007.2605–3 Certificate acceptance.

Sec.
1007.2605–4 Notice to the Government of labor disputes.
1007.2605–5 Patent indemnity.
1007.2605–6 General.
1007.2606 Schedule.
1007.2606–1 Articles and supplies to be furnished.
1007.2606–2 Design changes.
1007.2603–3 Procedure for pricing.

Subpart AA—Clauses for Facilities Contracts

1007.2703 Required clauses
1007.2703–1 Definitions.
1007.2703–2 Facilities to be provided.
1007.2703–3 Factual appendices.
1007.2703–4 Reports to be furnished by the contractor.
1007.2703–5 Use and charges therefor.
1007.2703–6 Reimbursements.
1007.2703–7 Taxes and utilities.
1007.2703–8 Inspection and access.
1007.2703–9 Assignment of claims.
1007.2703–10 Records.
1007.2703–11 Subcontracts.
1007.2703–12 Utilization of small business concerns.
1007.2703–13 Termination.
1007.2703–14 Cancellation of subcontracts.
1007.2703–15 Continuing plant clearance.
1007.2703–16 Disputes.
1007.2703–17 Notice and assistance regarding patent infringement.
1007.2703–18 Buy American Act.
1007.2703–19 Convict labor.
1007.2703–20 Eight-hour law of 1912.
1007.2703–21 Walsh-Healey Public Contracts Act.
1007.2703–22 Nondiscrimination in employment.
1007.2703–23 Officials not to benefit.
1007.2703–24 Covenant against contingent fees.
1007.2703–25 Title.
1007.2703–26 Possession.
1007.2703–27 Liability for Government-owned property.
1007.2703–28 Maintenance.
1007.2703–29 Right of diversion.
1007.2703–30 Responsibility for damages.
1007.2703–31 Reservation of rights.
1007.2703–32 Renegotiation.
1007.2704 Clauses to be used when applicable.
1007.2704–1 Labor standards in construction contracts.
1007.2704–2 Patent indemnity.
1007.2704–3 Reporting of royalties.
1007.2704–4 Gratuities.
1007.2704–5 Government bills of lading.
1007.2704–6 Loading, blocking, and bracing requirements.
1007.2704–7 Patent rights.
1007.2704–8 Priorities, allocations and allotments.
1007.2704–9 Approval.
1007.2704–10 Alterations in contract.
1007.2705 Additional clauses.
1007.2705–1 Notice to the Government of labor disputes.
1007.2705–2 Authorization and consent.
1007.2705–3 General.

Subpart BB—Clauses for Short-Form Facilities Contracts

1007.2802 Definition.
1007.2803 Required clauses.
1007.2803–1 Definitions.
1007.2803–2 Facilities to be furnished.
1007.2803–3 Factual appendices.
1007.2803–4 Reports to be furnished by the contractor.
1007.2803–5 Use and charges therefor.
1007.2803–6 Taxes and utilities.
1007.2803–7 Inspection and access.
1007.2803–8 Records.
1007.2803–9 Termination.
1007.2803–10 Continuing plant clearance.
1007.2803–11 Disputes.
1007.2803–12 Convict labor.
1007.2803–13 Eight-hour law of 1912.
1007.2803–14 Nondiscrimination.
1007.2803–15 Officials not to benefit.
1007.2803–16 Covenant against contingent fees.
1007.2803–17 Title.
1007.2803–18 Possession.
1007.2803–19 Liability for Government-owned property.
1007.2803–20 Maintenance.
1007.2803–21 Right of diversion.
1007.2803–22 Responsibility for damages.
1007.2803–23 Reservation of rights.
1007.2804 Clauses to be used when applicable.
1007.2804–1 Gratuities.
1007.2804–2 Government bills of lading.
1007.2804–3 Loading, blocking, and bracing requirements.
1007.2804–4 Approval.
1007.2804–5 Alterations in contract.

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1007.2904 Cover page, introductory recitals, and signature page.
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1007.3403-14 Officials not to benefit.
1007.3403-15 Covenant against contingent fees.
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1007.3403-18 Utilization of small business concerns.
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Subpart II—Clauses for Packing and Crating Contracts

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1007.3503 Required clauses.
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1007.3503-2 Inspection.
1007.3503-3 Responsibility for supplies.
1007.3503-4 Payments.
1007.3503-5 Assignment of claims.
1007.3503-6 Default.
1007.3503-7 Disputes.
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1007.3503-9 Buy American Act.
1007.3503-10 Convict labor.
1007.3503-11 Eight-hour law of 1912.
1007.3503-12 Walsh-Healey Public Contracts Act.
1007.3503-13 Nondiscrimination in employment.
1007.3503-14 Officials not to benefit.
1007.3503-15 Covenant against contingent fees.
1007.3503-16 Termination for convenience of the Government.
1007.3503-18 Utilization of small business concerns.
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1007.3703-7 Assignment of claims.
1007.3703-8 Convict labor.
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1007.3703-10 Disputes.
1007.3703-11 Definitions.
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1007.3706-2 Definitions.
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1007.3706-12 Officials not to benefit.
1007.3706-13 Covenant against contingent fees.
1007.3706-14 Gratuities.
1007.3706-15 Conflicts.
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1007.3707-2 Multiple service location.
1007.3707-3 Approval of contract.
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1007.3803-2 Index page.
1007.3803-3 Section A—General provisions.
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1007.4205–13 Walsh-Healey Public Contracts Act.
1007.4205–14 Nondiscrimination in employment.
1007.4205–15 Davis-Bacon Act.
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1007.4205–19 Military security requirements.
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1007.4207–14 Notice to the United States Government of labor disputes.
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1007.4303–6 Officials not to benefit.
1007.4303–7 Assignment of claims.
1007.4303–8 Eight-hour law of 1912.
1007.4303–9 Convict labor.
1007.4303–10 Nondiscrimination in employment.
1007.4303–11 Covenant against contingent fees.
1007.4303–12 Renegotiation.
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1007.4303–19 Release of information.
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1007.4403–1 Definitions.
1007.4403–2 Assignment of claims.
1007.4403–3 Disputes.
1007.4403–4 Officials not to benefit.
1007.4403–5 Covenant against contingent fees.
1007.4403–6 Termination for convenience of the Government.
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1007.4404 Clauses to be used when applicable.
1007.4404–1 Alterations in contract.
1007.4405 Required schedule clauses for contracts with full-time teachers.
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1007.4406–2 Part II—Period of performance.
1007.4406–3 Part III —Consideration and payment.
1007.4406–4 Part IV—Qualifications.
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1007.4407–2 Part II—Period of performance.
1007.4407–3 Part III—Leave of absence.
1007.4407–4 Part IV — Consideration and payment.
1007.4407–5 Part V—Qualifications.
1007.4407–6 Part VI—Renewal.

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SUBPART A—CLAUSES FOR BILATERAL FIXED-PRICE SUPPLY CONTRACTS

§ 1007.103 *Required clauses.* The following clauses will be inserted in all bilateral fixed-price supply contracts. "General Provisions (Supply Contract)," will be used instead of printing and reproducing the clauses contained therein. Any directed or authorized changes will be set forth in the Alterations in Contract clause.

§ 1007.103–1 *Definitions.* See § 7.103–1 of this title.

§ 1007.103–2 *Changes and disposition of inventory resulting from changes.* If considered desirable by the contracting officer, the period of 30 days within which any claim for adjustment must be asserted may be increased to 60 days.

§ 1007.103–3 *Extras.* See § 7.103–3 of this title.

§ 1007.103–4 *Variation in quantity.* See § 7.103–4 of this title and § 1053.406–4 of this chapter.

§ 1007.103–5 *Inspection.* See § 7.103–5 of this title.

§ 1007.103–6 *Responsibility for supplies.* § 7.103–6 of this title.

§ 1007.103–7 *Payments.* § 7.103–7 of this title.

§ 1007.103–8 *Assignment of claims.* The last sentence of paragraph (a) of the Assignment of Claims clause is generally referred to as the "no setoff" provision. In special circumstances, where a contractor is indebted to the Government and another Government agency has so requested, or an authorized AF office so directs, the "no setoff" provision will be omitted from negotiated contracts.

§ 1007.103–9 *Additional bond security.* See § 7.103–9 of this title.

§ 1007.103–10 *Federal, State, and local taxes.* See § 11.401 of this title and § 1011.401 of this chapter.

§ 1007.103–11 *Default.* See § 7.103–11 of this title.

§ 1007.103–12 *Disputes.* See § 7.103–12 of this title.

§ 1007.103–13 *Renegotiation.* See § 7.-103–13 of this title.

§ 1007.103–14 *Buy American Act.* See § 7.103–14 of this title.

§ 1007.103–16 *Eight-hour law of 1912.* See § 12.303 of this title.

§ 1007.103–17 *Walsh-Healey Public Contracts Act.* See § 12.604 of this title.

§ 1007.103–18 *Nondiscrimination in employment.* See § 12.802 of this title.

§ 1007.103–19 *Officials not to benefit.* See § 7.103–19 of this title.

§ 1007.103–20 *Covenant against contingent fees.* See § 7.103–20 of this title.

§ 1007.103–21 *Termination for convenience of the Government.* See § 8.701 of this title.

§ 1007.103–22 *Authorization and consent.* Insert the clause set forth in § 9.102–1 of this title, except if the contract calls for both supplies and experimental, developmental, or research work the clause set forth in § 9.102–2 of this title may be inserted in lieu of the clause set forth in § 9.102–1 of this title.

§ 1007.103–23 *Notice and assistance regarding patent infringement.*

§ 1007.103–50 *Subcontracts.* Insert the clause set forth in § 1007.4030 (a).

§ 1007.104 *Clauses to be used when applicable.*

§ 1007.104–1 *Davis-Bacon Act.* See § 12.403 of this title and § 1012.403 of this chapter.

§ 1007.104–2 *Copeland Act.* See § 12.403 of this title and § 1012.403 of this chapter.

§ 1007.104–5 *Patent indemnity.* See § 7.104–5 of this title.

§ 1007.104–6 *Filing of patent applications.* See § 7.104–6 of this title.

§ 1007.104–7 *Patent rights.* See § 7.104–7 of this title.

§ 1007.104–8 *Reporting of royalties.* See § 7.104–8 of this title.

§ 1007.104–9 *Copyright.* See § 7.104–9 of this title.

§ 1007.104–10 *Aircraft in the open.* See § 7.104–10 of this title.

§ 1007.104–11 *Vinson-Trammell Act.* See § 7.104–11 of this title.

§ 1007.104–12 *Military security requirements.* See § 7.104–12 of this title.

§ 1007.104–13 *Domestic food, clothing, cotton, spun silk yarn for cartridge cloth, or wool.* See § 7.104–13 of this title.

§ 1007.104–14 *Utilization of small business concerns.* See § 7.104–14 of this title.

§ 1007.104–15 *Examination of records.* Add to the clause set forth in § 7.104–15 of this title the following paragraph (c):

(c) The provisions of paragraphs (a) and (b) above are in addition to any other provisions of this contract relating to access to, retention of or inspection of records.

§ 1007.104–16 *Gratuities.* See § 7.104–16 of this title.

§ 1007.104–17 *Convict Labor.* See § 12.293 of this title.

§ 1007.104–18 *Priorities, allocations and allotments.* See § 7.104–18 of this title.

§ 1007.104–50 *Shipments.* According to the requirements of § 1007.4004 insert the clause set forth in that section.

§ 1007.104–51 *Delay in delivery of data.* According to the requirements of §1007.-4036, insert the clause set forth in that section.

§ 1007.104–52 *Superseding specifications.* According to the requirements of § 1007.4024, insert the clause set forth in that section.

§ 1007.104–53 *Quality control specification.* According to the requirements of § 1007.4013, insert the clause set forth in that section.

§ 1007.104–54 *Government-furnished property.* According to the requirements of § 13.502 of this title, insert the clause set forth in § 13.502 of this title.

§ 1007.104–55 *Overtime and premium wage compensation.* According to the requirements of § 1007.4031, insert the clause set forth in paragraph (a) thereof as a suitably designated paragraph of any price redetermination clause.

§ 1007.104–56 *Discounts.* According to the requirements of § 1007.4034, insert the clause set forth in that section.

§ 1007.104–57 *Special tooling.* See § 13.504 of this title and § 1013.504 of this chapter.

§ 1007.104–58 *Inspection and audit.* According to the requirements of § 1007.4023, insert the clause set forth in that section.

§ 1007.104–59 *Reproduction and use of technical data.* If the contractor is required to furnish technical data under the contract, such as reports, drawings, blueprints, or data, insert the clause set forth in § 9.112 of this title.

§ 1007.105 *Additional clauses.* The following clauses may be used when desirable or necessary to cover the subject matter contained in such clauses.

§ 1007.105–1 *Alterations in contract.* This clause will only be used for the purpose of describing additions, deletions, or changes, and will not be used to set forth additional clauses.

§ 1007.105–2 *Approval of contract.* Whenever the contract requires manual approval, other than by the contracting officer, prior to becoming effective, insert the clause set forth in § 7.105–2 of this title supplying the word "Secretary" in the blank space in that clause.

§ 1007.105–3 *Notice to the Government of labor disputes.* See § 7.105–3 of this title.

§ 1007.105–4 *Notice of shipments.* This clause will not be used if the Shipments clause set forth in § 1007.4004 is used.

§ 1007.105–5 *Liquidated damages.* See § 7.105–5 of this title.

§ 1007.105–6 *Bill of materials.* See § 7.105–6 of this title.

§ 1007.105–7 *Materiel inspection and receiving report.* Pending revision of Chapter I of this title, use of the following clause is authorized:

MATERIEL INSPECTION AND RECEIVING REPORT

At the time of each delivery under this contract, the Contractor shall prepare and furnish to the Government, in the manner and to the extent required by the Contracting Officer, a Materiel Inspection and Receiving Report (DD Form 250 or comparable form). The Government shall furnish the required forms to the Contractor upon request.

§ 1007.105–50 *Furnishing of materials or supplies by the Government at its option.* According to the provisions of § 1007.4009, the clause in that section may be inserted.

§ 1007.105–51 *Additional inspection requirements.* According to the instructions of § 1007.4015, the clause in that section may be inserted.

§ 1007.105–52 *Certificate acceptance.* According to hte instructions of § 1007.4014, the clause in that section may be inserted.

§ 1007.105–53 *General.* Any other clauses authorized by chapter I of this title or this chapter, according to instructions for use, may be used when necessary or desirable to cover the subject matter contained in such clauses.

§ 1007.106 *Price escalation clauses (established prices).* See § 7.106 of this title.

§ 1007.106–1 *Escalation clause for basic steel, aluminum, brass, bronze, or copper mill products.* See § 7.106–1 of this title.

§ 1007.106–2 *Escalation clause for nonstandard steel items.* See § 7.106–2 of this title.

§1007.106–3 *Escalation clause for standard supplies.* See § 7.106–3 of this title.

§ 1007.106–4 *Escalation clause for semistandard supplies.* See § 7.106–4 of this title.

SUBPART B—CLAUSES FOR COST-REIMBURSEMENT SUPPLY CONTRACTS

§ 1007.200 *Scope of subpart.* This subpart sets forth clauses for use in cost-reimbursement supply contracts.

§ 1007.202 *Applicability.* See § 7.202 of this title.

§ 1007.203 *Required clauses.* The following clauses will be inserted in all cost-reimbursement supply contracts. DD Form 748, "General Provisions (Department of Defense Cost-Reimbursement Supply Contract)," will be used as prescribed in § 16.204 of this title instead of printing or reproducing the clauses contained therein. Any directed or authorized changes in DD Form 748 will be set forth in the Alterations in Contract clause. Clauses used in any contract in addition to those contained in DD Form 748 will be entitled "Additional General Provisions" and numbered consecutively starting with No. 32.

§ 1007.203–1 *Definitions.* See § 7.203–1 of this title.

§ 1007.203–2 *Changes.* If considered desirable by the contracting officer, the period of 30 days within which any claim for adjustment must be asserted may be increased to 60 days.

§ 1007.203–3 *Limitation of cost.* See § 7.203–3 of this title.

§ 1007.203–4 *Allowable cost, fixed fee and payment.* According to the requirements of § 1007.4031, insert the clause set forth in paragraph (b) thereof and designate it paragraph "(i)" of the ASPR clause.

§ 1007.203–5 *Inspection of supplies and correction of defects.* See § 7.203–5 of this title.

§ 1007.203–6 *Assignment of claims.* See § 1007.103–8.

§ 1007.203–7 *Records.* See § 7.203–7 of this title.

§ 1007.203–8 *Subcontracts.* According to the instructions of § 1007.105–1, insert the following paragraph:

Clause 8, Subcontracts, is amended by the addition of the following paragraph (f):

(f) The contracting officer may approve all or any part of the contractor's purchasing system and from time to time rescind or reinstate such approval. Such approval shall be deemed to fulfill the requirements for obtaining the contracting officer's consent to subcontracts as prescribed in paragraph (b) of this section.

§ 1007.203–9 *Utilization of small business concerns.* See § 7.203–9 of this title.

§ 1007.203–10 *Termination.* See § 8.702 of this title.

§ 1007.203–11 *Excusable delays.* See § 7.203–11 of this title.

§ 1007.203–12 *Disputes.* See § 7.203–12 of this title.

§ 1007.203–13 *Renegotiation.* See § 7.203–13 of this title.

§ 1007.203–14 *Buy American Act.* See § 7.203–14 of this title.

§ 1007.203–15 *Convict labor.* See § 12.203 of this title.

§ 1007.203–16 *Eight-hour law of 1912.* See § 12.303 of this title.

§ 1007.203–17 *Walsh-Healey public contracts act.* See § 12.604 of this title.

§ 1007.203–18 *Nondiscrimination in employment.* See § 12.804 of this title.

§ 1007.203–19 *Officials not to benefit.* See § 7.203–19 of this title.

§ 1007.203–20 *Covenant against contingent fees.* See § 7.203–20 of this title.

§ 1007.203–21 *Government property.* See § 13.503 of this title.

§ 1007.203–22 *Insurance; Liability to third persons.* See § 7.203–22 of this title.

§ 1007.203–23 *Authorization and consent.* Insert the clause set forth in § 9.102–1 of this title, except that if the contract calls for both supplies and experimental, developmental, or research work the clause set forth in § 9.102–2 of this title may be inserted in lieu of the clause set forth in § 9.102–1 of this title.

§ 1007.203–24 *Notice and assistance regarding patent infringement.* See § 7.203–24 of this title.

§ 1007.203–50 *Alterations in contract.* Insert the clause set forth in § 7.105–1 of this title in the schedule.

§ 1007.204 *Clauses to be used when applicable.* Any of the following clauses included in DD Form 748 which are inapplicable to a contract may be deleted according to § 1007.105–1.

§ 1007.204–1 *Davis-Bacon Act.* See § 12.403 of this title.

§ 1007.204–2 *Copeland Act.* See § 12.403 of this title.

§ 1007.204–5 *Patent indemnity.* See § 7.204–5 of this title.

§ 1007.204–6 *Filing of patent application.* See § 7.204–6 of this title.

§ 1007.204–7 *Patent rights.* See § 7.204–7 of this title.

§ 1007.204–8 *Reporting of royalties.* See § 7.204–8 of this title.

§ 1007.204–9 *Copyright.* See § 7.204–9 of this title.

§ 1007.204–11 *Vinson-Trammell Act.* See § 7.204–11 of this title.

§ 1007.204–12 *Military security requirements.* See § 7.204–12 of this title.

§ 1007.204–13 *Domestic food, clothing, cotton, spun yarn for cartridge cloth, or wool.* See § 7.204–13 of this title.

§ 1007.204–14 *Gratuities.* See § 7.204–14 of this title.

§ 1007.204–15 *Priorities, allocations and allotments.* See § 7.204–15 of this title.

§ 1007.204–16 *Negotiated overhead rates.* See § 7.204–16 of this title.

§ 1007.204–50 *Shipments.* According to the requirements of § 1007.4004, insert the clause set forth in that section.

§ 1007.204–51 *Delay in delivery of data.* According to the requirements of § 1007.4036, insert the clause set forth in that section.

§ 1007.204–52 *Superseding specifications.* According to the requirements of § 1007.4024, insert the clause set forth in that section.

§ 1007.204–53 *Quality control specification.* According to the requirements of § 1007.4013, insert the clause set forth in that section.

§ 1007.204–54 *Reproduction and use of technical data.* If the contractor is required to furnish technical data under the contract, such as reports, drawings, blueprints, or data, insert the clause set forth in § 9.112 of this title.

§ 1007.205 *Additional clauses.* The following clauses may be used when desirable or necessary to cover the subject matter contained in such clauses. Any of the following clauses included in DD Form 748 which are inapplicable to a contract may be deleted according to § 1007.105–1.

§ 1007.205–1 *Alterations in contract.* This clause is covered in § 1007.203–50.

§ 1007.205–2 *Approval of contract.* Insert the clause set forth in § 7.105–2 of this title whenever the contract requires manual approval, other than by the contracting officer, before becoming effective.

§ 1007.205–3 *Notice to the Government of labor disputes.* See § 7.205–3 of this title.

§ 1007.205–4 *Bill of materials.* See § 7.205–4 of this title.

§ 1007.205–6 *Materiel inspection and receiving report.* Pending revision of Chapter I of this title, the clause set forth in § 1007.105–7 may be used.

§ 1007.205–50 *Certificate acceptance.* According to the instructions of § 1007.4014, the clause set forth in that section may be inserted.

§ 1007.205–51 *General.* Any other clauses authorized by Chapter I of this title or this chapter, according to instructions for use, may be used when necessary or desirable to cover the subject matter contained in such clauses.

SUBPART C—CLAUSES FOR FIXED-PRICE RESEARCH AND DEVELOPMENT CONTRACTS

§ 1007.300 *Scope of subpart.* This subpart sets forth clauses for use in fixed-price-type research and development contracts.

§ 1007.302 *Definitions.* As used throughout this subpart, the term "fixed-price research and development contract" means any definitive contract entered into on a fixed-price basis with or without provision for redetermination of price, for experimental, developmental, or research work.

§ 1007.303 *Required clauses.* The following clauses will be inserted in all fixed-price research and development contracts:

§ 1007.303–1 *Definitions.* Insert the clause set forth in § 7.103–1 of this title, and add the following paragraph (d):

(d) The term "contract work" means all work to be performed under this contract including any studies covering fundamental, theoretical, or experimental investigations; any extension of the investigative findings and theories of a scientific or technical nature into practical application; any tangible items, hereinafter referred to as "supplies," furnished to the Government; and any reports, data, computations, plans, drawings, and specifications with respect to any of the foregoing.

§ 1007.303–2 *Changes.* Insert the clause set forth in § 1007.4025.

§ 1007.303–3 *Extras.* Insert the clause set forth in § 7.103–3 of this title.

§ 1007.303–4 *Inspection.* Insert the clause set forth in § 1007.4037.

§ 1007.303–5 *Quality control specification.* Insert the clause set forth in § 1007.4013.

§ 1007.303–6 *Responsibility for contract work.*

RESPONSIBILITY FOR CONTRACT WORK

Except as otherwise provided in this contract, (i) the contractor shall be responsible for the contract work until it is delivered at the designated delivery point, regardless of the point of inspection; and (ii) the contractor shall bear all risks as to rejected contract work after notice of rejection.

§ 1007.303–7 *Payments.*

PAYMENT

The contractor shall be paid, upon the submission of properly certified invoices or vouchers, the prices stipulated herein for contract work delivered and accepted, less deduction, if any, as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by the Government when the amount due on such deliveries so warrants; or when requested by the contractor, payment for accepted partial deliveries shall be made whenever such payment would equal or exceed either $1,000 or 50 percent of the total amount of this contract.

§ 1007.303–8 *Assignment of claims.* Insert the clause set forth in § 7.103–8 of this title, but see § 1007.103–8.

§ 1007.303–9 *Federal, State, and local taxes.* Insert the clause set forth in § 11.401 of this title.

§ 1007.303–10 *Default.*

DEFAULT

(a) The Government may, subject to the provisions of paragraph (b) below, by written Notice of Default to the contractor, terminate the whole or any part of this contract in any one of the following circumstances:

(i) If the contractor fails to make delivery of, or to perform, the contract work within the time specified herein or any extension thereof; or

(ii) If the contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the contracting officer may authorize in writing) after receipt of notice from the contracting officer specifying such failure.

(b) The contractor shall not be liable for any excess costs if any failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the contractor. Such causes include, but are not restricted to, acts of God or of the public enemy, acts of the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and defaults of subcontractors due to any of such causes unless the contracting officer shall determine that the contract work to be furnished by the subcontractor was obtainable from other sources in sufficient time to permit the contractor to meet the required delivery schedule.

(c) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the contracting officer may deem appropriate, contract work similar to that so terminated and the contractor shall be liable to the Government for any excess costs for such similar contract work: *Provided*, That the contractor shall contifiue the performance of this contract to the extent not terminated under the provisions of this clause.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the contracting officer, (i) any completed contract work, and (ii) such partially completed contract work and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the contractor shall, upon direction of the contracting officer, protect and preserve property in possession of the contractor in which the Government has an interest. The Government shall pay to the contractor the contract price for completed contract work delivered to and accepted by the Government, and the amount agreed upon by the contractor and the contracting officer for manufacturing materials delivered to and accepted by the Government and for the protection and preservation of property. Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

(e) If, after notice of termination of this contract under the provisions of paragraph (a) of this clause, it is determined that the failure to perform this contract is due to causes beyond the control and without the fault or negligence of the contractor pursuant to the provisions of paragraph (b) of this clause, such Notice of Default shall be deemed to have been issued pursuant to the clause of this contract entitled "Termination for Convenience of the Government," and the rights and obligations of the parties hereto shall in such event be governed by such clause.

(f) If the Contractor becomes unable to complete the contract work and make delivery at the time specified in the Schedule because of technical difficulties, notwithstanding the exercise of good faith and diligent efforts in the performance of the work called for hereunder, it may give the Contracting Officer written notice of the anticipated default with reasons therefor. Such notice and reasons shall be delivered not less than forty-five (45) days before the completion date specified in the Schedule or within such time as the Contracting Officer deems sufficient. If such notice is duly given, then to the extent the interest of the Government makes an extension desirable the Contracting Officer may, in his discretion, extend the period of time specified in the Schedule for such period as he deems advisable, and this contract shall then be modified in writing accordingly.

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

§ 1007.303–11 *Disputes.* Insert the clause set forth in § 7.103–12 of this title.

§ 1007.303–12 *Notice and assistance regarding patent infringement.* Insert the clause set forth in § 9.104 of this title.

§ 1007.303–13 *Buy American Act.* Insert the clause set forth in § 7.103–14 of this title.

§ 1007.303–14 *Convict labor.* Insert the clause set forth in § 12.203 of this title.

§ 1007.303–15 *Eight-hour law of 1912.* Insert the clause set forth in § 12.303–1 of this title.

§ 1007.303–16 *Walsh-Healey Public Contracts Act.* Insert the clause set forth in § 12.604 of this title.

§ 1007.303–17 *Nondiscrimination in employment.* Insert the clause set forth in § 12.802 of this title.

§ 1007.303–18 *Officials not to benefit.* Insert the clause set forth in § 7.103–19 of this title.

§ 1007.303–19 *Covenant against contingent fees.* Insert the clause set forth in § 7.103–20 of this title.

§ 1007.303–20 *Termination for convenience of the Government.* Insert the clause set forth in § 8.701 of this title.

§ 1007.303–21 *Subcontracts.* Insert the clause set forth in § 1007.4030 (a).

§ 1007.303–22 *Authorization and consent.* Insert the clause set forth in § 9.102–2 of this title.

§ 1007.303–23 *Utilization of small business concerns.* Insert the clause set forth in § 7.104–14 of this title.

§ 1007.303–24 *Patent rights.* According to the requirements of § 9.107 of this title, insert the appropriate clause or clauses, with additional provisions as prescribed, set forth in that section.

§ 1007.303–25 *Reproduction and use of technical data.* Insert the clause set forth in § 9.112 of this title.

§ 1007.303–26 *Renegotiation.* Insert the clause set forth in § 7.103–13 of this title.

§ 1007.304 *Clauses to be used when applicable.*

§ 1007.304–1 *Gratuities.* According to the requirements of § 7.104–16 of this title, insert the clause set forth in that section.

§ 1007.304–2 *Government-furnished property.* According to the requirements of § 13.502 of this title, insert the clause set forth in that section.

§ 1007.304–3 *Reporting of royalties.* According to the requirements of § 9.110 of this title, insert the clause set forth therein, but see § 9.110–2 of this title.

§ 1007.304–5 *Military security requirements.* According to the requirements of § 7.104–12 of this title, insert the clause set forth in that section.

§ 1007.304–6 *Delay in delivery of data.* According to the requirements of

§ 1007.4036, insert the clause set forth in that section.

§ 1007.304–7 *Superseding specifications.* According to the requirements of § 1007.4024, insert the clause set forth in that section.

§ 1007.304–8 *Copyright.* According to the requirements of subpart B, Part 9 of this title and subpart B, Part 1009 of this chapter, insert the clause set forth in § 9.202 or § 9.204 of this title, or as the case may be.

§ 1007.304–9 *Filing of patent applications.* According to the requirements of § 9.106 of this title, insert the clause set forth therein, but see § 9.106–1 of this title.

§ 1007.304–10 *Examination of records.* According to the requirements of § 7.104–15 of this title, insert the clause set forth in that section and add thereto the paragraph (c) set forth in § 1007.104–15.

§ 1007.304–11 *Approval of contract.* Whenever the contract requires manual approval, other than by the contracting officer, prior to becoming effective, insert the clause set forth in § 7.105–2 of this title.

§ 1007.304–12 *Alterations in contract.* According to instructions for use, insert the clause set forth in § 7.105–1 of this title.

§ 1007.304–13 *Inspection and audit.* According to the requirements of § 1007.4023, insert the clause set forth in that section.

§ 1007.304–14 *Priorities, allocations and allotments.* According to the requirements of § 1.308–2 of this title, insert the clause set forth in § 7.104–18 of this title.

§ 1007.305 *Additional clauses.* The following clauses may be used when desirable or necessary to cover the subject matter contained in such clauses:

§ 1007.305–1 *Furnishing of materials or supplies by the Government at its option.* According to the provisions of § 1007.4009, the clause in that section may be inserted.

§ 1007.305–2 *Notice to the Government of labor disputes.* The clause set forth in § 7.105–3 of this title may be inserted.

§ 1007.305–3 *Shipments.* If supplies are to be delivered to the Government, the clause set forth in § 1007.4004 may be inserted.

§ 1007.305–4 *General.* Any other clause authorized by Chapter I of this title, or this chapter, according to instructions for use, may be used when necessary to cover the subject matter contained in such clause.

SUBPART D—CLAUSES FOR COST-REIMBURSEMENT-TYPE RESEARCH AND DEVELOPMENT CONTRACTS

§ 1007.400 *Scope of subpart.* This subpart sets forth clauses for use in cost-reimbursement-type research and development contracts.

§ 1007.402 *Definitions.* As used throughout this subpart the term "cost-reimbursement-type research and development contract" means any cost, cost-sharing, or cost-plus-a-fixed-fee contract (other than a letter contract, notice of award, or amendment or modification to a contract) which provides for experimental, developmental or research work. This subpart includes both:

(a) Clauses for use in contracts with nonprofit institutions or organizations receiving no fee.

(b) Clauses for use in contracts with commercial contractors, or other contractors receiving a fee.

§ 1007.403 *Required clauses.* The following clauses will be inserted in all cost-reimbursement-type research and development contracts.

§ 1007.403–1 *Definitions.* Insert the clause set forth in § 7.103–1 of this title and add the paragraph (d) set forth in § 1007.303–1.

§ 1007.403–2 *Changes.* The following clause will be inserted in all contracts with commercial contractors, or other contractors receiving a fee. This clause need not be included in contracts with nonprofit institutions of organizations receiving no fee.

CHANGES

The contracting officer may, at any time by a written order, make changes in or additions to the drawings and specifications, issue additional instructions, require additional work within the general scope of the contract, or change the place of delivery, method of shipment, or the amount of Government-Furnished property. If any such change causes an increase or decrease in the estimated cost of, or the time required for performance of this contract, or otherwise affects any other provision of this contract, an equitable adjustment shall be made (i) in the estimated cost or delivery schedule, or both (ii) in the amount of any fixed fee to be paid to the contractor, and (iii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the contractor for adjustment under this clause must be asserted within sixty (60) days from the date of receipt by the contractor of the notification of change: *Provided, however,* That the contracting officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the contractor from proceeding with the contract as changed.

§ 1007.403–3 *Limitation of cost.* Insert the clause set forth in § 7.203–3 of this title.

§ 1007.403–4 *Allowable cost, fixed fee, and payment.* Insert the clause set forth in § 7.203–4 of this title unless the contract is with a nonprofit institution or organization receiving no fee, in which case insert the following clause:

ALLOWABLE COST AND PAYMENT

(a) For the performance of this contract, the Government shall pay to the contractor the cost thereof determined by the contracting officer to be allowable in accordance with part 3 of section XV of the Armed Services Procurement Regulation as in effect on the date of this contract and the schedule (hereinafter referred to as "Allowable Cost"). It being understood and agreed, without limiting the generality of the foregoing, the following shall be considered as allowable items of cost hereunder when incurred or paid by the contractor and when necessary and required and used for the performance of the work hereunder:

(1) *Salaries and wages.* Expenditures by the contractor for the salaries and wages of its personnel and borrowed personnel directly engaged in the performance of work hereunder and properly allocable thereto including salaries and wages for vacation and sick leave pay of its personnel pursuant to the established practice of the contractor, plus Federal and State social security taxes paid by the contractor and properly allocable to such salaries and wages: *Provided, however,* That the premium portion of overtime wage payments shall be an allowable item of cost hereunder only if and to the extent that the overtime work for which such payments are made shall have been expressly authorized in writing by the contracting officer.

(2) *Materials and services.* Expenditures by the contractor for such materials, supplies, apparatus, tooling, equipment, and other articles (including processing and testing thereof by others and rental of apparatus and equipment from others) properly allocable to performance of the work hereunder and for the services of others not reimbursed under subparagraph (1), as are necessary for performance of its undertakings hereunder.

(3) *Communication and shipping.* Expenditures by the contractor necessary for performance of its undertakings hereunder for long-distance telephone calls, telegrams, cablegrams, radiograms, postage, freight, express, and drayage.

(4) *Travel.* Expenditures by the contractor for transportation of the persons directly engaged in the performance of the work hereunder as approved by the Contracting Officer, plus, as provided in the Schedule, either reasonable actual subsistence expenses or per diem: *Provided,* That the expense for transportation hereunder by motor vehicle, other than common carrier or rented automobile, shall be reimbursed on an actual cost basis, or, at the Contractor's option, on a mileage basis at a rate not exceeding eight (8) cents per mile per vehicle, in lieu of the actual expenses of such transportation.

(5) *Subcontracts.* Expenditures by the contractor representing payments to subcontractors performing any contract work hereunder.

(6) *Government-owned or rented equipment.* Expenditures by the contractor hereunder for protection and maintenance of Government-owned or of rented equipment.

(7) *Rearrangement or relocation.* Notwithstanding paragraph (m) of the clause hereof entitled "Government Property," expenditures by the contractor for rearrangement or relocation of facilities or plant sites or for restoring such facilities or plant sites to substantially the same condition as prior to such rearrangement or relocation: *Provided, however,* That in the event the contractor elects to retain the benefit of such rearrangement or relocation, the contractor shall return to or credit the Government with the portion of the reimbursement by the Government for its expenditure therefor determined by negotiation between the contractor and the contracting officer to be fair and proper.

(8) *Overhead.* Such amounts representing Contractor's overhead costs determine according to the clause of the contract entitled "Negotiated Overhead Rates".

(b) Contractor shall exercise due diligence to secure materials and services at the most advantageous prices available, having due regard to quality.

(c) Once each month (or at more frequent intervals, if approved by the Contracting Officer) the Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute "Allowable Cost." Each statement of cost shall be certified by an officer or other responsible official of the Contractor authorized by it to certify such statements.

(d) As promptly as may be practicable after receipt of each invoice or voucher and statement of cost, the Government shall, except as hereinafter provided and subject to the provisions of paragraph (e) below, make payment thereon as approved by the Contracting Officer. After payment of eighty (80) percent of the total estimated cost of performance of this contract, as from time to time amended, further payment on account of "Allowable Cost" shall be withheld until a reserve of either (i) one (1) percent of such total estimated cost, or (ii) $10,000, whichever amount is less, shall have been set aside, such reserve or the balance thereof to be retained until the execution and delivery of a release by the Contractor as provided in paragraph (f) hereof.

(e) At any time or times prior to final payment under this contract, the Contracting Officer may cause to be made such audit of the invoice or vouchers and statements of cost as shall be deemed necessary. Each payment theretofore made shall be subject to reduction to the extent of amounts included in the related invoice or voucher and statement of cost which are found by the Contracting Officer on the basis of such units not to constitute "Allowable Cost," and shall also be subject to reduction for overpayments or to increase for underpayments on preceding invoices or vouchers. On receipt of the voucher or invoice designated by the Contractor as the "completion voucher" or "completion invoice" and statement of cost, which shall be submitted by the Contractor as promptly as may be practicable following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may, in his discretion, approve in writing) from the date of such completion, and following compliance by the Contractor with all provisions of this contract (including, without limitation, provisions relating to patents and the provisions of pars. (f) and (g) of this clause), the Government shall as promptly as may be practicable pay any balance of "Allowable Cost."

(f) The Contractor 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 where the amounts are not susceptible of exact statement by the Contractor.

(2) Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Contractor to third parties arising out of the performance of the contract, which 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 six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

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

(g) The Contractor agrees that any refunds, rebates, or credits (including any interest thereon) accruing to or received by the Contractor which arise out of the performance of this contract and on account of which the Contractor has received reimbursement shall be paid by the Contractor to the Government. The Contractor 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 refunds, rebates, or credits (including any interest thereon) arising out of the performance of this contract, in form and substance satisfactory to the Contracting Officer. Reasonable expenses incurred by the Contractor for the purpose of securing any such refunds, rebates or credits shall constitute "Allowable Cost" when approved by the Contracting Officer.

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

§ 1007.403–5 *Inspection.* Insert either the clause set forth below or the clause set forth in § 1007.4037.

INSPECTION AND CORRECTION OF DEFECTS

(a) All work under this contract shall be subject to inspection and test by the Government, to the extent practicable at all reasonable times and places including the period of performance, and in any event prior to final acceptance. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work hereunder. The Government, through any authorized representative, may inspect the plant or plants of the Contractor or of any of its subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premise of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work. Final inspection and acceptance by the Government shall be made as promptly as practicable after delivery. The time and place of delivery, final inspection, and acceptance shall be as set forth in the schedule.

(b) The Contractor warrants that the services rendered in the performance of this contract will conform to the requirements of this contract and to high professional standards in the field, and that any article delivered to the Government under this contract will conform to the requirements of this contract and will not be defective in material or workmanship.

(c) At any time during performance of this contract, but not later than six (6) months (or such other period as may be provided in the schedule) after final acceptance, the Government may require the Contractor to remedy by correction or replacement as directed by the Contracting Officer, any failure by the contractor to comply with its obligations under paragraph (b) hereof. Except as otherwise provided in paragraph (d) hereof, the cost of any such replacement or correction shall be included in "Allowable Cost" determined as provided in the clause of this contract entitled "Allowable Cost, Fixed Fee and Payment," but no additional fee shall be payable with respect thereto. Corrected articles shall not be tendered again for acceptance unless the former tender and the requirement of correction is disclosed. If the contractor fails to proceed with reasonable promptness to perform such replacement or correction, the Government (i) may by contract or otherwise perform such replacement or correction and charge to the contractor any increased cost occasioned the Government thereby, or may reduce any fixed fee payable under this contract (or require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances; or (ii) in the case of articles not delivered, may require the delivery of such articles, and shall have the right to reduce any fixed fee payable under this contract (or to require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances; or (iii) may terminate this contract for default as provided in the clause of this contract entitled "Termination." Failure to agree on the amount of any such increased cost to be charged to the Contractor or to such reduction in, or repayment of, the fixed fee shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(d) Notwithstanding the provisions of paragraph (c) hereof, the Government may at any time require the contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with its obligations under paragraph (b) hereof, if such failure is due to fraud, lack of good faith, or willful misconduct on the part of any of the contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the Contractor's business; or (ii) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or (iii) a separate and complete major industrial operation in connection with the performance on this contract. Fraud, lack of good faith, or willful misconduct on the part of any of such supervisory personnel shall be deemed to include the selection of individual employees or the retention of employees after any of such supervisory personnel has reason to believe that such employees are habitually careless or otherwise unqualified.

(e) Corrected articles tendered as replacements shall be subject to the provisions of this clause in the same manner and to the same extent as supplies originally delivered under this contract.

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

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

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

§ 1007.403–6 *Assignment of claims.* Insert the clause set forth in § 7.103–8 of this title unless the contract is with a

nonprofit institution or organization receiving no fee, in which case insert the following clause:

ASSIGNMENT PROHIBITED

Neither this contract, nor any interest therein, nor any claim arising hereunder, shall be transferred or assigned by the Contractor to any other person.

§ 1007.403–7 *Records.* Insert the clause set forth in § 7.203–7 of this title.

§ 1007.403–8 *Subcontracts.* Insert the clause set forth in § 7.203–8, substituting a comma for the period after the word "basis" in paragraph b (iv) thereof, adding the following "(v) or involves research and development work" and add the paragraph (f) set forth in § 1007.203–8.

§ 1007.403–9 *Utilization of small business concerns.* Insert the clause set forth in § 7.104–14 of this title.

§ 1007.403–10 *Termination.* Insert the clause set forth in § 8.702 of this title unless the contract is with a nonprofit institution or organization receiving no fee, in which case insert the clause set forth in § 8.704 of this title.

§ 1007.403–11 *Excusable delays.* Insert the clause set forth in § 7.203–11 of this title which will be designated "(a)" and add paragraph (f) of the clause set forth in § 1007.303–10 which will be designated "(b)."

§ 1007.403–12 *Disputes.* Insert the clause set forth in § 7.103–12.

§ 1007.403–13 *Notice and assistance regarding patent infringement.* Insert the clause set forth in § 9.104 of this title.

§ 1007.403–14 *Buy American Act.* Insert the clause set forth in § 7.103–14 of this title.

§ 1007.403–15 *Convict labor.* Insert the clause set forth in § 12.203 of this title.

§ 1007.403–16 *Eight-hour law of 1912.* Insert the clause set forth in § 12.303–1 of this title. Note the introductory provisions required by § 12.303–2 of this title in the case of contracts with a State or political subdivision thereof.

§ 1007.403–17 *Nondiscrimination in employment.* Insert the clause set forth in § 12.802 of this title.

§ 1007.403–18 *Officials not to benefit.* Insert the clause set forth in § 7.103–19 of this title.

§ 1007.403–19 *Covenant against contingent fees.* Insert the clause set forth in § 7.103–20 of this title.

§ 1007.403–20 *Patent rights.* According to the requirements of § 9.107 of this title, insert the appropriate clause or clauses set forth in that section, with additional provisions as prescribed.

§ 1007.403–21 *Government property.* Insert the clause set forth in § 13.503 of this title, unless the contract is with a nonprofit institution or organization receiving no fee, in which case insert the clause set forth in § 13.506 of this title.

§ 1007.403–22 *Insurance liability to third persons.* Insert the clause set forth in § 7.203–22 of this title, except that if the contract is with a nonprofit institution or organization receiving no fee, the title of the clause referred to in the last line of paragraph (c) thereof will be amended to read "Allowable Cost and Payment."

§ 1007.403–23 *Authorization and consent.* Insert the clause set forth in § 9.102–2 of this title.

§ 1007.403–24 *Quality control specification.* The clause set forth in § 1007.4013 will be inserted in all contracts with commercial contractors, or other contractors receiving a fee. This clause need not be included in contracts with nonprofit institutions or organizations receiving no fee.

§ 1007.403–25 *Reproduction and use of technical data.* Insert the clause set forth in § 9.112 of this title.

§ 1007.403–26 *Renegotiation.* Insert the clause set forth in § 7.103–13 of this title.

§ 1007.404 *Clauses to be used when applicable.*

§ 1007.404–3 *Filing of patent applications.* According to the requirements of § 9.106 of this title, insert the clause set forth therein, but see § 9.106–1 of this title.

§ 1007.404–4 *Reporting of royalties.* According to the requirements of § 9.110 of this title, insert the clause set forth therein, but see § 9.110–2 of this title.

§ 1007.404–5 *Copyright.* According to the requirements of Subpart L, Part 9, of this title and Subpart B, Part 1009, of this chapter, insert the clause set forth in § 9.202 or § 9.204 of this title.

§ 1007.404–7 *Military security requirements.* According to the requirements of § 7.204–12 of this title, insert the clause set forth in § 7.104–12 of this title as amended by § 7.204–12 of this title, unless the contract is with a nonprofit institution or organization receiving no fee, in which case insert the following clause according to the requirements of § 7.204–12 of this title.

MILITARY SECURITY REQUIREMENT

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

(b) The Government shall notify the contractor of the security classification of this contract and the elements thereof, and of any subsequent revisions in such security classification, by the use of a Security Requirement Checklist (DD Form 254) and Appendage thereto (DD Form 254–1).

(c) To the extent the Government has indicated as of the date of this contract, or thereafter indicates, security classification under this contract as provided in paragraph (b) above, the Contractor, except as otherwise provided in this clause, shall safeguard all classified elements of this contract and shall provide and maintain a system of security controls within its own organization in accordance with the requirements of (i) the Department of Defense Industrial Security Manual for Safeguarding Classified Security Information as in effect on the date of this contract, which manual is hereby incorporated by reference and made a part of this contract; and (ii) any amendments to said manual required by the demands of national security as determined by the Government and made after the date of this contract, notice of which has been furnished to the Contractor by the Contracting Officer.

(d) Designated representatives of the Government responsible for inspection pertaining to industrial security shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the Contractor in complying with the requirements of the terms and conditions of this clause. Should the Government, through its authorized representative, determine that the Contractor has not complied with such requirements, the Government shall inform the Contractor in writing of the proper actions to be taken in order to effect compliance with such requirements.

(e) In the event a change in security requirements, as provided in paragraphs (b) and (c), results (i) in a change in the security classification of this contract or any element thereof from a nonclassified status to a classified status or from a lower classification to a higher classification, or (ii) in more restrictive area controls than previously required, the Contractor shall exert every reasonable effort compatible with its established policies to continue the performance of work under the contract in compliance with such change in security classification or requirements. If, despite such reasonable efforts, the Contractor determines that the continuation of work under this contract is not practicable because of such change in security classification or requirements, it shall so notify the Contracting Officer in writing.

(f) After receiving such written notification, the Contracting Officer shall explore the circumstances surrounding the proposed change in security classification or requirements and shall endeavor to work out a mutually satisfactory method whereby the Contractor can continue performance of the work under this contract.

(g) If, upon the expiration of fifteen (15) days after receipt by the Contracting Officer of such written notification, (i) the application to this contract of such change in security classification or requirements has not been withdrawn, or (ii) a mutually satisfactory method for continuing performance of work under this contract has not been agreed upon, the Contractor may request the Contracting Officer to terminate the contract in whole or in part. Thereupon, the Contracting Officer shall terminate the contract in whole or in part, as may be appropriate, and such termination shall be deemed a termination under the provisions of the clause of this contract entitled "Termination for the Convenience of the Government."

(h) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (h), but excluding paragraphs (e), (f), and (g) of this clause.

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

§ 1007.404–8 *Walsh-Healey Public Contracts Acts.* According to the requirements of Subpart F, Part 12, of this title and Subpart F, Part 1012, of this chapter, insert the clause set forth in § 12.604 of this title.

§ 1007.404–9 *Gratuities.* According to the requirements of § 7.104–16 of this title, insert the clause set forth in that section.

§ 1007.404–10 *Alterations in contract.* According to the instructions for use in § 1007.105–1, insert the clause set forth in § 7.105–1 of this title.

§ 1007.404–11 *Approval of contracts.* Whenever the contract requires manual approval, other than by the contracting officer, prior to becoming effective, insert the clause set forth in § 7.105–2 of this title.

§ 1007.404–12 *Negotiated overhead rates.* According to the requirements of § 7.704–1 of this title, insert the clause set forth in § 7.704–1 of this title with commercial concerns and according to the requirements of § 3.704–2 of this title, insert the clause set forth in § 3.704–2 of this title with nonprofit and educational institutions.

§ 1007.404–13 *Delay in delivery of data.* Unless the contract is with a nonprofit institution or organization receiving no fee, insert the clause set forth in § 1007.4036 according to the requirements of that section.

§ 1007.404–14 *Superseding specifications.* Unless the contract is with a nonprofit institution or organization receiving no fee, insert the clause set forth in § 1007.4024, according to the requirements of that section.

§ 1007.404–15 *Limitation of cost.* Insert the clause set forth in § 7.203–3 of this title except that when allotment, at the time the contract is entered into, of less than the total amount of the estimated cost plus any fixed fee, is considered to be in the best interest of the Air Force, the clause set forth below may be inserted in lieu of the clause set forth in § 7.203–3 of this title if the following conditions are present:

(i) The contract is for a specific project which can be defined in terms of scope, area of investigation, problems to be solved, or prototype to be delivered.

(ii) The contract relates to work which necessarily requires continuance over an extended period of time if valuable results are to be obtained.

(iii) Continued availability of the contractor over the extended period is desirable.

(iv) The overall cost can be estimated with reasonable accuracy.

LIMITATION OF COST

(a) It is estimated that the total cost to the Government, exclusive of any fixed fee, for the performance of this contract will not exceed the estimated cost 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 estimated cost. The fixed fee for complete performance of this contract is specified in the Schedule.

(b) The sum presently available for payment, and allotted to this contract, is specified in the Schedule. It is anticipated that from time to time additional funds will be allotted to this contract up to the full estimated cost including any fixed fee. The Government shall not be obligated to reimburse the Contractor for costs incurred, including any fixed fee to which the Contractor may be entitled, in excess of the total amount from time to time allotted to this contract, and the Contractor shall not be obligated to continue performance under the contract or to incur costs, including any fixed fee to which the Contractor may be entitled, in excess of the total amount from time to time allotted to this contract. When and to the extent that the total amount allotted to this contract has been increased, any costs, including any fixed fee to which the Contractor may be entitled, incurred by the Contractor prior to the increase and in excess of the amount previously allotted, shall be allowable to the same extent as if such costs had been incurred after such increase in amount allotted.

(c) If at any time the Contractor has reason to believe that the costs which it expects to incur in the performance of this contract in the next succeeding thirty (30) days, when added to all costs previously incurred, including any fixed fee to which the Contractor may be entitled, will exceed eighty-five percent (85%) of the amount then allotted to this contract, or if at any time the Contractor has reason to believe that the total cost to the Government, exclusive of any fixed fee, for the performance of this contract will be substantially greater or less than the estimated cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving its revised estimate of such total cost for the performance of this contract, and its estimate of the costs which will be incurred in the next six (6) months.

(d) If the Contracting Officer determines that the amount allotted to this contract has been expended and that no additional amount will be allotted to this contract, he shall terminate this contract for the convenience of the Government pursuant to the clause hereof entitled "Termination."

(e) In the event that sufficient amounts are not allotted to this contract to allow completion of the work contemplated by this contract, the Contractor shall be entitled, subject to the limitations of paragraph (b) of this clause, to a percentage of the fixed fee set forth in the Schedule equivalent to the percentage of completion of the work contemplated by this contract.

§ 1007.404–16 *Priorities, allocations and allotments.* According to the requirements of § 1.308–2 of this title, insert the clause set forth in § 7.104–18 of this title.

§ 1007.405 *Additional clauses.* The following clauses may be used when desirable or necessary to cover the subject matter contained in such clauses.

§ 1007.405–1 *Notice to the Government of labor disputes.* According to instructions for use in § 7.105–3 of this title, the clause set forth in that section may be inserted.

§ 1007.405–2 *Shipments.* If supplies are to be delivered to the Government, the clause set forth in § 1007.4004 may be inserted.

§ 1007.405–3 *General.* Any other clause authorized by Chapter I of this title, or this chapter, according to instructions for use may be used when necessary to cover the subject matter contained in such clause.

SUBPART E—CLAUSES FOR PERSONAL SERVICES CONTRACTS

§ 1007.500 *Scope of subpart.* This subpart sets forth clauses for use in personal service contracts.

§ 1007.502 *Applicability.* See § 7.502 of this title.

§ 1007.503 *Required clauses.* The following clauses will be inserted in all personal service contracts, except as indicated in the applicable section of Chapter I of this title.

§ 1007.503–1 *Definitions.* See § 7.503–1 of this title.

§ 1007.503–2 *Payments.* See § 7.503–2 of this title.

§ 1007.503–3 *Assignment of claims.* See §7.503–3 of this title.

§ 1007.503–4 *Disputes.* See § 7.503–4 of this title.

§ 1007.503–5 *Officials not to benefit.* See § 7.503–5 of this title.

§ 1007.503–6 *Covenant against contingent fees.* See § 7.503–6 of this title.

§ 1007.503–7 *Termination.* Insert the clause set forth in § 1008.751 of this chapter, which includes § 7.503–7 of this title.

§ 1007.503–8 *Approval of contract.* See § 7.503–8 of this title.

§ 1007.503–9 *Patents.* See § 7.503–9 of this title.

§ 1007.503–10 *Copyright.* See § 7.503–10 of this title.

§ 1007.503–50 *Subcontracts.*

SUBCONTRACTS

No subcontract shall be made with any other party for furnishing any of the work or services provided for in this contract.

§ 1007.504 *Clauses to be used when applicable.*

§ 1007.504–1 *Military security requirements.* See § 7.504–1 of this title.

§ 1007.504–50 *Reproduction and use of technical data.* If the contractor is required to furnish technical data under the contract, such as reports, drawings, blueprints, or data, insert the clause set forth in § 9.112 of this title.

§ 1007.504–51 *Filing of patent applications.* According to the requirements of § 9.106 of this title, insert the clause set forth therein, but see § 9.106–1 of this title.

§ 1007.505 *Additional clauses.* The following clauses may be used when desirable or necessary to cover the subject matter contained in such clauses.

§ 1007.505–1 *Alterations in contract.* According to instructions for use in § 1007.105–1, the clause set forth in § 7.105–1 of this title may be inserted.

SUBPART T—CLAUSES AND ARRANGEMENTS FOR PERSONAL SERVICE CONTRACTS WITH FOREIGN NATIONALS

§ 1007.2000 *Scope of subpart.* This subpart sets forth the clauses and arrangements for use in personal service contracts with foreign nationals, generally known as "Project Paperclip Contracts."

§ 1007.2002 *Definition.* As used throughout this part, the term "personal service contracts with foreign nationals" means any contract entered into with an alien scientist or artisan for personal services to be performed by that individual under Government supervision and paid for on a time basis.

§ 1007.2003 *Required clauses and arrangements.* Clauses will be consecutively numbered.

§ 1007.2003–1 *Cover page.* The following will be the arrangement of the cover page:

Contract No. ----------

DEPARTMENT OF THE AIR FORCE

CONTRACT FOR PERSONAL SERVICES (PROJECT PAPERCLIP)

Contractor's name:
Contractor's address in the United States:
Contractor's original place of residence:
Estimated total amount:
Payment: To be made by ----------

(Name of Finance Office)

APPROPRIATION AND OTHER ADMINISTRATIVE DATA

This contract is entered into pursuant to the authority of Section 2 (c) ( ), Armed Services Procurement Act of 1947 (Public Law 413, 80th Cong.); Section 15, Act of August 2, 1946 (Public Law 600, 79th Cong.); and, Section [1] ----------, 19--.

§ 1007.2003–2 *Introduction.* Insert the following introductory paragraph of the contract, which will be unnumbered:

This contract is entered into as of ----------, 19--, by and between the United States of America, hereinafter called the Government, represented by the Contracting Officer executing this contract, and ----------, a national of ----------, hereinafter referred to as the Contractor.

§ 1007.2003–3 *Scope of employment.*

SCOPE OF EMPLOYMENT

The Contractor, during the entire term of this contract, undertakes to prosecute and, to the best of his ability and skill, perform such scientific and technical tasks as may be assigned to him by the Contracting Officer at such place or places as may be designated, and agrees, at all times, to do his utmost to enhance, develop, and further the interests of the Government, in connection with the tasks assigned to him. The nature of the personal services to be performed by the Contractor is as follows:

§ 1007.2003–4 *Administration.*

ADMINISTRATION

The Contractor agrees that he shall be and remain under the supervision of such military or civilian personnel of the Government as the Government may designate.

§ 1007.2003–5 *Security regulations.*

SECURITY REGULATIONS

In view of the confidence and trust reposed in the Contractor under the special circumstances of this contract, and in view of the vital connection of the project contemplated hereunder to the defense, security, and welfare of the United States, and as a condition to formal admittance to this country, the Contractor agrees to observe such security measures as the President of the United States or the Secretary of the Contracting Officer may direct.

§ 1007.2003–6 *Report of espionage.*

REPORT OF ESPIONAGE

The Contractor agrees that he will immediately report to the Contracting Officer whenever for any cause he has reason to believe that an active danger of espionage or sabotage exists in any place at which he is assigned, including complete information relating to the reasons which cause the Contractor to be apprehensive of such danger.

§ 1007.2003–7 *Period of performance and compensation.*

PERIOD OF PERFORMANCE AND COMPENSATION

(a) The term of the contract and rate of compensation shall be as follows:

(1) Term: ----------, 19--, to ----------, 19--, inclusive.

(2) Rate: $---------- per ----------: *Provided, however,* That in the event a general increase or decrease in salary is granted to civil service employees, effective during the term of this contract as set forth in subparagraph (a) (1), above, an increase or decrease corresponding to that of a GS–--, in the ------ Step Increase, shall be paid to the Contractor.

(b) The compensation herein provided shall not accrue:

(1) For time spent on emergency leave computed from the day of departure from place of employment to day of return to such place of employment unless accrued leave is authorized to be utilized.

(2) For absences from place of duty without authority.

(3) For agreed absences without compensation.

(c) In addition to the above salary provisions and in connection with travel directed by the Government, the Contractor shall be paid a per diem in lieu of subsistence at the rate and in the manner prescribed by law and regulations for civilian employees of the Government. It is specifically understood and agreed that per diem shall not accrue:

(1) After date of termination hereof as hereinafter provided.

(2) While in a travel status on emergency leave.

(3) When quarters and subsistence are furnished by the Government at no charge.

(d) The Contractor shall be entitled, in the same manner as full-time civil-service employees, to (i) overtime compensation, (ii) holiday premium compensation, and (iii) compensation for holidays on which no work is performed.

§ 1007.2003–8 *Hours of work.*

HOURS OF WORK

The hours of employment are based upon a 5-day, 40-hour week which shall be standard for pay and leave purposes.

§ 1007.2003–9 *Leave.*

LEAVE

The Contractor shall earn, accrue, accumulate, and be granted sick and annual leave in accordance with laws and regulations applicable to full-time permanent civil-service employees of the United States Government.

§ 1007.2003–10 *Patents and copyrights.*

PATENTS AND COPYRIGHTS

The Contractor, without further compensation, agrees—

(a) To disclose to the Contracting Officer all inventions conceived or first reduced to practice, or both conceived and reduced to practice by him during the term of this contract and for a period of 6 months after the termination thereof;

(b) To assign and transfer to the Government, as represented by the Secretary or his designees, the entire right, title, and interest in and to any and all inventions which Contractor conceives or first reduces to practice, or both conceives and reduces to practice, during the term of this contract or which are disclosed in an application for patent filed within 6 months thereafter, which inventions were made (1) during working hours, or (2) with a contribution by Government of facilities, equipment, materials, funds, or information, or of time or services of Government employees on official duty, or (3) bear a direct relation to or are made in consequence of the official duties of the Contractor; and to sign and execute all papers necessary to the filing and prosecution of applications for patents on such inventions and for conveying to the Government title to such inventions and applications for patent thereon;

(c) To grant to the Government, as represented by the Secretary, a nonexclusive royalty-free license in and to any and all inventions which Contractor conceives, or first reduces to practice, or both conceives and reduces to practice, during the term of this contract and for a period of 6 months thereafter and which Contractor is not required to assign to the Government of the United States in accordance with the provisions of subparagraph (b) above; and to sign and execute all papers necessary to convey to the Government the rights to which it is entitled in accordance with this provision;

(d) All applications for United States patents in which the Contractor is named as an inventor during the period beginning 6 months after the termination of this contract and continuing to 24 months next following the termination or expiration of this contract will be submitted to the Secretary, at the time of or prior to filing, together with a sworn statement as to the circumstances under which the invention was made, including dates of conception and reduction to practice. The Secretary will determine whether the said circumstances are so related to Contractor's employment under this contract that the Government is entitled to rights under such invention or inventions in accordance with subparagraph (b) or (c) above; and, upon a finding that the Government is so entitled to rights, the determination of the Secretary as to the nature and extent of such rights shall be final, and Contractor agrees to execute all papers necessary to convey to the Government the rights to which it is entitled as determined by the Secretary; and

(e) For himself, his heirs and assigns, to assert no copyright at common law and to make no claim to copyright by statute in any material first produced by him in the performance of this contract.

§ 1007.2003–11 *Transportation.*

TRANSPORTATION

(a) The Government will provide for transportation of the Contractor—

(1) In furtherance of a permanent change of duty station relating to his employment under the terms of this contract, in accordance with Executive Order 9805, as heretofore or hereafter amended; and

(2) In furtherance of the contract, as determined by the Government, in accordance with Standardized Government Travel Regulations, as heretofore or hereafter amended.

(b) In addition to the allowances provided for in subparagraph (a) (1) hereof, and at the expense of the Government, the Contractor will be authorized shipment of scientific books and equipment used in the performance of his work in conection with a permanent change of duty station.

§ 1007.2003–12 *Housing.*

HOUSING

The Government will endeavor to assist the Contractor in procuring suitable housing at or near the place of employment. The cost of housing will be borne by the Contractor. Where public quarters are made available, the Contractor is authorized to use such facilities at the rate and on the basis prescribed for civilian employees of

[1] (The above blank space will contain the statutory citation of funds provided by the current Appropriation Act.)

the Government. The Contractor agrees to pay all incidental expenses normally charged therefor, such as orderly fees.

§ 1007.2003–13 *Subsistence.*

SUBSISTENCE

Where suitable messing facilities are operated by the Government at the place of employment, the Contractor may be authorized to use such facilities at the rate and on the basis prescribed for civilian employees of the Government.

§ 1007.2003–14 *Medical services.*

MEDICAL SERVICES

Medical service will be provided by the Government to the Contractor on the same basis and at the same cost as provided for civilian employees of the Government at the location of employment. Reasonable access to civilian medical care will be permitted at the expense of the Contractor.

§ 1007.2003–15 *Burial and effects.*

BURIAL AND EFFECTS

During the term hereof, in event of the death of the Contractor, the Government will provide for local burial and return of the personal effects to dependents. If requested by dependents, and when time and conditions, as determined by the Government, permit, the body will be returned to _____ at the expense of the Government. In the event that, after the death of the Contractor, the Contractor's dependents elect to return to _____, the Government, at its option, will provide for transportation of such dependents to _____, together with their personal and household effects not in excess of three thousand (3,000) pounds net weight.

§ 1007.2003–16 *Injuries.*

INJURIES

The Contractor is covered by the provisions of United States Employees' Compensation Act, as amended (5 U. S. C. 751 et seq.).

§ 1007.2003–17 *Dependents.*

DEPENDENTS

(a) The Government shall have the full right and privilege, after appropriate investigation, to determine which person or persons nominated by the Contractor as his dependents are to be considerded for the purposes of this contract as the Contractor's dependents (normally a lawful wife, dependent parent, unmarried minor children, unmarried minor dependents, stepchildren and unmarried minor adopted children will be recognized by the Government as bona fide dependents, provided each resides in Contractor's household).

(b) The Government will assume the cost of moving Contractor's dependents from present residence to Contractor's place of duty in the United States.

(c) When Contractor's dependents are moved to the United States, such dependents will be authorized collectively an allowance totaling three thousand (3,000) pounds net weight (United States measure) of personal and household effects. Shipment of additional personal and household effects may be made with the approval of the Contracting Officer when time and conditions permit and will be at the expense of the Contractor.

NOTE. Paragraphs (b) and (c) may be deleted when inapplicable.

§ 1007.2003–18 *Visa.*

VISA

Upon signature of this contract and provided the personal conduct and political background of the Contractor, as determined by the Government, merit such action, the Government will, upon request, favorably recommend the Contractor for an immigration visa. In the event of such recommendation, the Government, upon request, will also favorably recommend for an immigration visa such of Contractor's dependents whose personal conduct and political background, as determined by the Government, merit such action.

§ 1007.2003–19 *Officials not to benefit.* Insert the clause set forth in § 7.103–19 of this title.

§ 1007.2003–20 *Covenant against contingent fees.* Insert the clause set forth in § 7.103–20 of this title.

§ 1007.2003–21 *Disputes.* Insert the clause set forth in § 7.103–12 of this title.

§ 1007.2003–22 *Termination.*

TERMINATION

This contract may be terminated by the Government at its option—

(a) When the Government administratively determines the Contractor to be unsatisfactory for the purposes of this contract or his conduct to be below required standards or when for any other reason it is determined that his services are no longer required.

(b) When and if the Contractor's visa, where issued, is revoked or invalidated or if the Contractor is denied entry into the United States.

(c) By mutual agreement.

(d) When the health of the Contractor, as determined by the Government, is such that he cannot properly perform his assigned duties.

§ 1007.2003–23 *Definitions.* Insert the clause set forth in § 7.103–1 of this title omitting subparagraph (c) therefrom.

§ 1007.2003–24 *Disclosure of information.*

DISCLOSURE OF INFORMATION

The Contractor agrees that he will not disclose to any person not entitled to receive it any information relative to top secret, secret or confidential matter as defined in current military regulations that may come to the knowledge of the Contractor.

§ 1007.2003–25 *Certification.*

CERTIFICATION

(a) Contractor certifies that, to the best of his knowledge and belief, his physical condition, character, and qualifications are such as to permit him to fulfill this contract.

(b) Contractor certifies that he has read the within contract governing his employment as contemplated herein, and agrees that he will recognize its terms as the conditions under which such employment is accepted and held.

(c) Contractor certifies and affirms that this contract contains all of the agreements, promises, understandings, and representations, verbal or otherwise, made on the part of the Government or any of its representatives, authorized or unauthorized.

§ 1007.2003–26 *Approval of contract.* Insert the clause set forth in § 7.503–8 of this title.

§ 1007.2003–27 *Alterations in contract.* In accordance with instructions for use in § 1007.105–1, the clause set forth in § 7.105–1 of this title may be used.

§ 1007.2003–28 *Conclusion and signatures.* Insert the following concluding statement and blanks for signatures:

In witness whereof, the parties hereto have executed this contract as of the date and year first above written.

THE UNITED STATES OF AMERICA,

By _____

_____

(Official title)

_____

(Contractor)

Witnesses:

_____

_____

(Address)

_____

(Address)

SUBPART U—CLAUSES FOR FIXED-PRICE NONPERSONAL SERVICE CONTRACTS

§ 1007.2103 *Required clauses.* The following clauses will be inserted in all fixed price nonpersonal service contracts:

§ 1007.2103–1 *Definitions.* Insert the clause set forth in § 7.103–1 of this title.

§ 1007.2103–2 *Changes.* Insert the clause set forth in § 1007.4025.

§1007.2103–3 *Inspection.* Insert the clause set forth in § 1007.4037.

§ 1007.2103–4 *Payments.* Insert the clause set forth in § 7.103–7 of this title.

§ 1007.2103–5 *Assignment of claims.* Insert the clause set forth in § 7.103–8 of this title, but see § 1007.103–8.

§ 1007.2103–6 *Federal, state, and local taxes.* Insert the clause set forth in § 11.401 of this title.

§ 1007.2103–7 *Default.* Insert the clause set forth in § 7.103–11 of this title.

§ 1007.2103–8 *Disputes.* Insert the clause set forth in § 7.103–12 of this title.

§ 1007.2103–9 *Notice and assistance regarding patent infringement.* Insert the clause set forth in § 9.104 of this title.

§ 1007.2103–10 *Buy American act.* Insert the clause set forth in §7.103–14 of this title.

§ 1007.2103–11 *Convict labor.* Insert the clause set forth in § 12.203 of this title.

§ 1007.2103–12 *Eight-hour law of 1912.* Insert the clause set forth in § 12.303–1 of this title.

§ 1007.2103–13 *Nondiscrimination in employment.* Insert the clause set forth in § 12.804 of this title.

§ 1007.2103–14 *Officials not to benefit.* Insert the clause set forth in § 7.103–19 of this title.

§ 1007.2103–15 *Covenant against contingent fees.* Insert the clause set forth in § 7.103–20 of this title.

§ 1007.2103–16 *Termination for convenience of the Government.* Insert the following clause:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause, in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interests of the Government. Any such termination shall be effected by delivery to the Contractor of a

Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall (1) stop work under the contract on the date and to the extent specified in the Notice of Termination; (2) place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination; (4) assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts; (5) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause; (6) transfer title and deliver to the Government, in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the Government; (7) use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in provision (6) of this paragraph: *Provided, however,* That the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct; (8) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and (9) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest. At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same: *Provided,* That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim, in the form and with the certification prescribed by the Contracting Officer. Such claims shall be submitted promptly but in no event later than two (2) years from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such two-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such two-year period or any extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph (d).

(e) In the event of the failure of the Contractor and the Contracting Officer to agree as provided in paragraph (d) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amounts determined.

(f) Any determination of costs under paragraph (c) or (e) hereof shall be governed by the Statement of Principles for Consideration of Costs set forth in Part 4 of Section VIII of the Armed Services Procurement Regulation, as in effect on the date of this contract.

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

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

(i) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.

(j) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6% per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however,* That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten (10) days after the date of such retention or disposition.

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of six (6) years after final settlement under this contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor, but without direct charge to the Government, all its books, records, documents, and other evidence bearing on the costs and expenses, of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

§ 1007.2103–17 *Subcontracts.* Insert the clause set forth in § 1007.4030 (b).

§ 1007.2103–18 *Utilization of small business concerns.* Insert the clause set forth in § 7.104–14 of this title.

§ 1007.2103–20 *Examination of records.* When the contract results from negotiation, insert the clause set forth in § 7.104–15 of this title, and add thereto the paragraph (c) set forth in § 1007.104–15; contracts resulting from advertising will not contain this clause.

§ 1007.2103–21 *Gratuities.* Insert the clause set forth in § 7.104–16 of this title.

§ 1007.2103–22 *Renegotiation.* Insert the clause set forth in § 7.103–13 of this title.

§ 1007.2104 *Clauses to be used when applicable.*

§ 1007.2104–1 *Walsh-Healey Public Contracts Act.* According to the requirement of § 12.602 of this title and

§ 1012.602 of this chapter, insert the clause set forth in § 12.604 of this title.

§ 1007.2104–3 *Military security requirements.* According to the requirements of § 7.104–12 of this title, insert the clause set forth in that section.

§ 1007.2104–4 *Government-furnished property.* According to the requirements of § 13.502 of this title, insert the clause set forth in § 13.502 of this title.

§ 1007.2104–5 *Reporting of royalties.* According to the requirements of § 9.110 of this title, insert the clause set forth therein, but see § 9.110–2 of this title.

§ 1007.2104–6 *Filing of patent applications.* According to the requirements of § 9.106 of this title, insert the clause set forth therein, but see § 9.106–1 of this title.

§ 1007.2104–7 *Patent indemnity.* According to the requirements of § 9.103 of this title, insert the appropriate clause or clauses set forth in that section with additional provisions as prescribed.

§ 1007.2104–8 *Copyright.* According to the requirements of Subpart B, part 9, of this title and subpart B, part 1009, of this chapter, insert the clause set forth in § 9.202 or 9.204 of this title, as the case may be.

§ 1007.2104–9 *Patent rights.* According to the requirements of § 9.107 of this title, insert the appropriate clause or clauses set forth in that section, with additional provisions as prescribed.

§ 1007.2104–10 *Reproduction and use of technical data.* If the contractor is required to furnish technical data under the contract, such as reports, drawings, blueprints, or data, insert the clause set forth in § 9.112 of this title.

§ 1007.2104–11 *Authorization and consent.* If the contractor is required to furnish supplies under the contract, insert the clause set forth in § 9.102–1 of this title.

§ 1007.2104–12 *Inspection and audit.* According to the requirements of § 1007.-4023 insert the clause set forth that section.

§ 1007.2104–13 *Priorities, allocations and allotments.* According to the requirements of § 1.308–2 of this title, insert the clause set forth in § 7.104–18 of this title.

§ 1007.2104–14 *Approval of contract.* Whenever the contract requires manual approval, other than by the contracting officer, prior to becoming effective, insert the clause set forth in § 7.105–2 of this title.

§ 1007.2104–15 *Alterations in contract.* According to instructions for use in § 1007.105–1, insert the clause set forth in § 7.105–1 of this title.

§ 1007.2105 *Additional clauses.* The following clauses may be used when desirable or necessary to cover the subject matter contained in such clauses.

§ 1007.2105–1 *Furnishing of materials and supplies by the Government at its option.* According to the provisions of § 1007.4009, the clause in that paragraph may be inserted in contracts for repair, maintenance, or overhaul of Government property.

§ 1007.2105–2 *Notice to the Government of labor disputes.* The clause set forth in § 7.105–3 of this title may be inserted.

§ 1007.2105–3 *General.* Any other clause authorized by Chapter I of this title or this chapter, according to instructions for use, may be used when necessary to cover the subject matter contained in such clause.

SUBPART V—CLAUSES FOR TECHNICAL SERVICES CONTRACTS

§ 1007.2203 *Required clauses.* The following clauses will be inserted in all fixed-price contracts for technical services.

§ 1007.2203–1 *Definitions.* Insert the clause set forth in § 7.103–1 of this title, adding the following sentence to paragraph (b) thereof: "The Commander of the Air Force activity to which any contractor personnel may be assigned hereunder is hereby designated an authorized representative of the Contracting Officer with regard to contractor personnel so assigned." and add the following paragraphs:

(d) The terms "contractor employee" and "contractor personnel" as used throughout this contract shall be deemed to refer to all contract technical services personnel, including all of the specific types of technicians referred to in the Schedule, and shall be defined as persons, such as advisers, instructors, or technical specialists, obtained through the contractor to perform services pertaining to the operation and maintenance engineering of Air Force equipment. The terms include both:

(i) "Technical representatives" who are employees of a manufacturer furnishing end items of equipment to the Air Force, and furnishing services only in connection with such end items; and

(ii) "Contract technicians" who are employees of a commercial concern furnishing services to the Air Force at least a part of which are in connection with end items not manufactured by the contractor.

(e) The term "man month" as used herein shall be deemed to be the time devoted to the performance of services hereunder by one contractor employee during a period of one calendar month.

(f) The term "continental limits of the United States" as used herein means any place within the territorial limits of the 48 States and the District of Columbia.

(g) The term "domestic services" as used herein means services within the continental limits of the United States.

(h) The term "overseas" as used herein means any place outside the continental limits of the United States.

§ 1007.2203–2 *Changes.* Insert the clause set forth in § 1007.4025.

§ 1007.2203–3 *Inspection.* Insert the clause set forth in § 1007.4037.

§ 1007.2203–4 *Payments.*

PAYMENTS

(a) The Contractor shall be paid in monthly installments upon submission of properly certified invoices therefor for services rendered and accepted less deductions, if any, as herein provided.

(b) Any payments in reimbursement of the cost of any transportation furnished by the Contractor for which it is entitled to be reimbursed under paragraph (a) of the Clause hereof entitled "Services Furnished by the Government" shall be made upon the submission of properly certified invoices and other evidence satisfactory to the Contracting Officer covering the expenditures for which reimbursement is so sought.

(c) If this contract provides for overseas services, the domestic rates, if any, specified in the Schedule are applicable to that portion of the time necessary for travel between the Contractor's plant and the overseas site which is spent within the continental limits of the United States.

§ 1007.2203–5 *Assignment of claims.* Insert the clause set forth in § 7.103–8 of this title, but see § 1007.103–8.

§ 1007.2203–6 *Federal, State, and local taxes.* Insert the clause set forth in § 11.401 of this title.

§ 1007.2203–7 *Default.* Insert the clause set forth in § 7.103–11 of this title.

§ 1007.2203–8 *Disputes.* Insert the clause set forth in § 7.103–12 of this title.

§ 1007.2203–9 *Convict labor.* Insert the clause set forth in § 12.203 of this title.

§ 1007.2203–10 *Eight-hour law of 1912.* Insert the clause set forth in § 12.303–1 of this title.

§ 1007.2203–11 *Nondiscrimination in employment.* Insert the clause set forth in § 12.804 of this title.

§ 1007.2203–12 *Officials not to benefit.* Insert the clause set forth in § 7.103–19 of this title.

§ 1007.2203–13 *Covenant against contingent fees.* Insert the clause set forth in § 7.103–20 of this title.

§ 1007.2203–14 *Termination for convenience of the Government.* Insert the clause set forth in § 1008.752 of this chapter.

§ 1007.2203–15 *Subcontracts for work or services.* Insert the clause set forth in § 1007.4030 (b).

§ 1007.2203–16 *Inspection and audit.* Insert the clause set forth in § 7.4023 of this title.

§ 1007.2203–17 *Examination of records.* Insert the clause set forth in § 7.104–15 of this title, and add thereto paragraph (c) set forth in § 1007.104–15.

§ 1007.2203–18 *Gratuities.* Insert the clause set forth in § 7.104–16 of this title.

§ 1007.2203–19 *Renegotiation.* Insert the clause set forth in § 1007.104–10.

§ 1007.2203–20 *Contractor personnel.*

CONTRACTOR PERSONNEL

(a) Subject to the provisions of Part II of the Schedule, the number of Contractor personnel and the number of man-months specified in the Schedule may be exceeded with the prior written approval of the Contracting Officer, but only to the extent necessary to provide continuous service in the event that a transfer, reassignment, or other cause would result in an interruption of service.

(b) Contractor personnel will normally be assigned to major air command headquarters. Such personnel shall perform services at such places within the command as the Contracting Officer may direct.

(c) The Contractor shall be responsible for selecting personnel who are well qualified to perform the required services for supervising

techniques used in their work, and for keeping them informed of all improvements, changes and methods of operations.

(d) Contractor personnel, upon assignment, either within the continental limits of the United States or overseas, are subject to call 24 hours a day. Normally they will perform their assigned duties on the same daily and hourly basis as the personnel of the organization to which they are assigned. Holidays will be observed in accordance with the direction of the Commander of the air activity to which Contractor personnel are assigned. In the event that a Contractor employee is required to perform services hereunder on an observed holiday, reimbursement shall be made as provided in the Schedule.

(e) The Contractor shall be required to furnish a replacement for any Contractor personnel who may be returned to the Contractor's plant or become incapacitated or die or otherwise be unable to complete performance hereunder prior to the expiration of the period of performance, unless otherwise agreed upon by the parties hereto.

(f) The Contractor shall furnish all necessary equipment, salaries and wages of its personnel, all costs of subsistence and lodging, costs of passports, insurance, and any and all other costs in connection with the services to be rendered hereunder except as otherwise provided in the Clause hereof entitled "Services Furnished by the Government."

(g) The Contractor, promptly after receipt of official notice from the Contracting Officer that the services of Contractor personnel are required hereunder, shall furnish in writing to the Contracting Officer the name of each person assigned by the Contractor under this contract, his qualifications, his security clearance, and such other pertinent information as the Contracting Officer may request. The Contractor shall have the right to replace or transfer its personnel and to substitute other qualified personnel in lieu thereof; provided, however, that such transfers or reassignments will not be due cause for a break in services rendered and that such replacements or transfers have been coordinated with the Contracting Officer. Any transfers or reassignments for the convenience of the Contractor, including travel and training cost of replacement personnel, shall be at the Contractor's expense. Transfers and reassignments of personnel shall be construed as being for the convenience of the Contractor unless directed or approved by the Contracting Officer or his authorized representative. The selection of personnel by the Contractor shall be subject to approval of the Contracting Officer.

(h) The Contracting Officer may, if he finds it to be in the best interest of the Government, direct the Contractor to remove, and the Contractor shall remove, any employee from an assignment to perform services under this contract.

(i) The Contractor shall furnish to and file with the Contracting Officer such copies of the Employment Contracts, if any, entered into with Contractor personnel engaged in performing the services to be rendered under this contract, as may be required by the Contracting Officer.

(j) Personnel employed by the Contractor hereunder and sent overseas shall be accredited to the United States Air Force with a recognized status under the Hague Regulations and the Geneva Covenants, shall be given proper credentials and identification cards, shall wear a uniform when prescribed by the theater commander, shall be subject to appropriate recognition under the rules of war, and shall be subject to such regulations as have been or may hereafter be issued by the United States Air Force governing Contractor personnel serving with the United States Air Force in foreign theaters of operation.

(k) In accordance with the Uniform Code of Military Justice, Article 2, Contractor personnel serving with, employed by, or accompanying an armed force outside the continental limits of the United States and territories specified in Article 2 (11) and 2 (12) are subject to the Uniform Code of Military Justice.

§ 1007.2203–21 *Period of performance.*

PERIOD OF PERFORMANCE

(a) The services shall be performed during the period set forth in PART III of the Schedule, but the time of starting and ending performance and the number of Contractor personnel furnished at any time shall be as directed by the Contracting Officer.

(b) It is understood that time necessary for Contractor personnel to proceed from the plant or plants of the Contractor to the site or sites for the performance of services hereunder shall be considered as time spent in the performance of services hereunder. It is also understood that time necessary for the transfer of Contractor personnel between different sites for the performance of services hereunder and time necessary for the return of such personnel to the plant of the Contractor shall be considered as time spent in the performance of services hereunder.

§ 1007.2203–22 *Services furnished by the Government.*

SERVICES FURNISHED BY THE GOVERNMENT

In connection with services to be rendered hereunder, the Government shall furnish and supply to the Contractor the following facilities and services:

(a) Suitable transportation for Contractor personnel and their baggage and for any equipment to be furnished by the Contractor hereunder from the Contractor's plant to the site or sites of work, at any site of work while on official business, between sites of work, and return to the plant of the Contractor. In the event of failure by the Government to furnish suitable transportation, the Contractor shall furnish such transportation, and the Government will reimburse the Contractor for the actual and reasonable cost of such transportation, provided the same has been approved as provided in this paragraph. All travel of Contractor personnel will require prior approval from the Commander, Air Materiel Command, or the Commander of the major Air Command having operating responsibility in connection with this contract, except that prior approval of nonexpense travel in connection with the unit mission is not required.

(b) Use of Government communication facilities for the exchange of messages between Contractor personnel and the Contractor, where and when available if the Contractor is unable to procure commercial communication services; but the use thereof shall be subject to the regulations of the Representatives of the Government in charge thereof.

(c) Use of Government services and agencies in the transmittal of funds to Contractor personnel and as a medium of commercial exchange for said personnel when adequate commercial services and facilities are not available.

(d) Contractor personnel assigned to Air Force activities will be accorded the same privileges as commissioned officers with regard to bachelor officer quarters, local transportation and messing, when available. Emergency medical facilities may be furnished as prescribed by applicable regulations.

§ 1007.2204 *Clauses to be used when applicable.*

§ 1007.2204–1 *Military security requirements.* According to the requirements of § 7.104–12 of this title, insert the clause set forth in that section.

§ 1007.2204–2 *Government-furnished property.* According to the requirements of § 13.502 of this title, insert the clause set forth in § 13.502 of this title. Use the second alternative paragraph (f) thereof, deleting the following words found in lines 6 and 7: "The clause or clauses of"; "designated in the Schedule." Add the following paragraph (j):

(j) Such equipment, services, and facilities as are to be furnished and paid for by the Contractor under the provisions of the clause hereof entitled "Contractor Personnel," if not commercially available to the Contractor after the Contractor has made every effort to procure the same, may be furnished by the Government. Such equipment, services, and facilities, when supplied by the Government for the Contractor personnel shall be approximately of the same standard as supplied to commissioned officers of the United States Air Force. In the event that such equipment, services, and facilities are supplied by the Government, an equitable adjustment of the fixed price to be paid to the Contractor hereunder shall be made by the Contracting Officer and the contract amended accordingly. Such equipment and facilities shall be considered Government-furnished property and subject to the provisions of this clause.

§ 1007.2204–3 *Capture and detention.* Insert the following clause if the contract calls for oversea services where capture and detention of contractor personnel is possible and if there will be additional cost to the Government without this clause:

CAPTURE AND DETENTION

In the event any Contractor personnel assigned to duty under this contract is found to be missing from his place of employment, whether or not such personnel then actually was engaged in the course of his employment, under circumstances supporting an inference that his absence was due to the action of a hostile force or the force of any power not allied with the United States in a common military effort, or is known to have been taken prisoner, hostage, or otherwise detained by a hostile force or the force of any power not allied with the United States in a common military effort, the time spent by such personnel during such detention (which shall be construed to include the period until such personnel is returned to his place of employment, or to the United States, or death in fact is established by a finding by the Federal Security Administrator (hereinafter referred to as "Administrator") or other Federal body having jurisdiction or by other evidence satisfactory to the Contracting Officer, or death can legally be presumed to have occurred) shall not be considered as time spent in the performance of services hereunder and the Government shall not be obligated to make any payment on account of such personnel except as provided in this paragraph. The Contractor is authorized to and shall enter into agreements with personnel hereunder to pay benefits to the extent not otherwise paid to such personnel in the event of, and during the time spent by such personnel during such detention, as construed above, which will equal the total wage due for such detention, as construed above, computed on the basis of wage rate being paid such personnel at the time of such detention. Claims for benefits shall be made under applicable law with the Administrator. In the event that the Contractor is obligated by agreements, authorized above, to pay and shall have paid benefits in an amount not paid

or payable by the Administrator on account of such detention of such personnel, the Government shall pay to the Contractor, in respect of such personnel during the period of such detention, as construed above, such amount which when added to the amount paid or to be paid in respect of such personnel by the Administrator, whether to the Contractor or otherwise, will equal the total wage due for such period of detention, as construed above, computed on the basis of wage rate being paid such personnel at the time of such detention. Subject to the availability of funds therefor, the obligation of the Government to make payments provided for by this paragraph shall continue in effect during the period of such detention, as construed above, and shall survive the earlier expiration or termination of this contract.

§ 1007.2204–4 *Copyright.* According to the requirements of Subpart B, Part 9, of this title and Subpart B, Part 1009, of this chapter, insert the clause set forth in § 9.202 of this title.

§ 1007.2204–5 *Filing of patent applications.* According to the requirements of § 9.106 of this title, insert the clause set forth therein, but see § 9.106–1 of this title.

§ 1007.2204–6 *Notice and assistance regarding patent infringements.* According to the requirements of § 9.104 of this title, insert the clause set forth therein.

§ 1007.2204–7 *Reproduction and use of technical data.* If the contractor is required to furnish technical data under the contract, such as reports, drawings, blueprints, or data, insert the clause set forth in § 9.112 of this title.

§ 1007.2204–8 *Approval of contract.* Whenever the contract requires manual approval, other than by the contracting officer, prior to becoming effective, insert the clause set forth in § 7.105–2 of this title.

§ 1007.2204–9 *Alterations in contract.* According to the requirements of § 1007.105–1 insert the clause set forth in § 7.105–1 of this title.

§ 1007.2205 *Additional clauses.* The following clauses may be used when desirable or necessary to cover the subject matter contained in such clauses.

§ 1007.2205–1 *Reports.*

REPORTS

(a) Each Contractor employee assigned for the performance of services hereunder shall originate and submit to the Government monthly technical reports. The reports shall be in letter form and shall cover briefly his services and his recommendations on maintenance-engineering and operational difficulties encountered on Air Force equipment, and other pertinent information. Contractor personnel are also authorized to submit "Unsatisfactory Reports" upon observation of any unsatisfactory condition.

(b) Reports shall be forwarded by each Contractor employee to the Air Force office or offices designated in the schedule.

§ 1007.2205–2 *General.* Any other clause authorized by Chapter I of this title or this chapter, according to instructions for use, may be used when necessary to cover the subject matter contained in such clause.

§ 1007.2206 *Required schedule provisions.* The contract schedule will contain, among other statements, the following provisions, to be completed with appropriate information.

§ 1007.2206–1 *Part I—Services to be furnished.*

PART I—SERVICES TO BE FURNISHED

§ 1007.2206–2 *Part II—Consideration and payment.*

PART II—CONSIDERATION AND PAYMENT

(a) The Government shall pay the Contractor upon satisfactory performance of this contract, and upon the submission of properly certified invoices or vouchers therefor, as full payment for the services to be supplied by the Contractor hereunder, as follows:

(b) As of the date of execution of this contract, there has been allotted for it the total amount set forth below. This amount may be increased from time to time by the Government solely at its discretion. If at any time the Contractor has reason to believe that by reason of the performance by it of this contract the amount due to it will exceed the sum allotted to this contract, it shall notify the Contracting Officer to that effect. Notwithstanding any other provision of this contract, the Contractor shall not be obligated to furnish any services pursuant to this contract if, in the best judgment of the Contractor, the cost of such services will exceed the amount then allotted to this contract. The Government shall not be obligated to pay the Contractor under this contract any amount in excess of the sum allotted.

§ 1007.2206–3 *Part III—Period of performance.*

PART III—PERIOD OF PERFORMANCE

The Services of the Contractor personnel called for under Part I hereof shall be furnished when and as required during the following periods:

§ 1007.2207 *Schedule provisions to be used when applicable.*

§ 1007.2207–1 *Period of performance beyond the end of the fiscal year.* Where the period of performance of a contract extends beyond the end of a fiscal year, the following clause will be inserted as a lettered paragraph to part II of the schedule:

PERIOD OF PERFORMANCE BEYOND THE END OF FISCAL YEAR

Notwithstanding the period of performance set forth herein, payment under this contract for performance after 30 June 195__ is subject to the appropriation and availability of funds. Upon funds becoming available the Government will allot to this contract by Change Order the funds available or necessary to pay for complete performance.

§ 1007.2207–2 *Option to extend services at same rates.* Where an option is desired to extend the contract beyond the end of a fiscal year at the same rate fixed in the contract, the following clause will be inserted as a lettered paragraph to part III of the schedule:

OPTION TO EXTEND SERVICES AT SAME RATES

The Government is granted the option of extending any and all items of services under this contract to cover a total of _____ ( ) additional man-months of services by _____ Contractor personnel to be rendered during the period commencing 1 July 19__ and ending _____, 19__. This option may be exercised by the Government either for the entire _____ ( ) months or, from time to time, for any part thereof. The exercise of the option will be evidenced by a Change Order to this contract. The rates set forth in Part II of the Schedule hereof for the initial period ending 30 June 195__ shall be applicable to any extension made pursuant to this option provision.

§ 1007.2207–3 *Option to extend services at provisional rates.* Where an option is desired to extend the contract beyond the end of a fiscal year at provisional rates which are later to be fixed after negotiation, the following clause will be inserted as a lettered paragraph to part III of the schedule:

OPTION TO EXTEND SERVICES AT PROVISIONAL RATES

The Government is granted the right and option of renewing or extending this contract as to any or all items of services under this contract for any additional periods of time but not to exceed a total additional period of _____ ( ) man-months. This option to extend the contract will be exercised by a Change Order to this contract. It is understood and agreed that the rates specified in Part II of this Schedule shall be considered as interim provisional rates for payment purposes applicable to the period of extension pending the completion of the negotiation of rates which are to be mutually agreed upon for such extended period. Upon completion of negotiations, the rates mutually agreed upon for the additional period will be evidenced by an appropriate Supplemental Agreement or another contract. Failure to agree upon rates shall be deemed to be a dispute concerning a question of fact and shall be disposed of in accordance with the clause hereof entitled "Disputes." Nothing herein contained shall be construed as indicating that the provisional rates to be paid during the extension period are or are not fair and reasonable compensation to the Contractor for services rendered.

SUBPART W—CLAUSES FOR TIME AND MATERIALS CONTRACTS

§ 1007.2303 *Required clauses.* The following clauses will be inserted in all time and materials contracts.

§ 1007.2303–1 *Definitions.* Insert the clause set forth in § 7.103–1 of this title. The term "direct labor," as used in the Payment clause, will be defined in the schedule.

§ 1007.2303–2 *Changes.*

CHANGES

The Contracting Officer may at any time, by a written order, within the general scope of this contract, and without notice to any sureties, make changes in (i) drawings, designs, or specifications, (ii) direct the addition of work or services, (iii) make changes in method of shipping or packing, and (iv) make changes in place of delivery. If such changes require a change in the time of performance of the work called for hereunder, the contract shall be modified in writing accordingly. The hourly rate set forth in the schedule shall not be adjusted by reason of any change ordered under this clause.

§ 1007.2303–3 *Inspection.*

INSPECTION

(a) All material and workmanship shall be subject to inspection and test by representatives of the Government. For this purpose, the Contractor shall allow, at all reasonable times, inspectors and other Government personnel free access to the plant and operations and shall furnish such facilities as may be required for the work. The Contractor shall inform the inspector when the work is ready for inspection. The Government representa-

tive shall have the right to (i) require the replacement of parts which are not in accordance with applicable specifications, and (ii) require the correction of defects.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the inspection of the supplies and services furnished under this contract. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of the contract.

(c) The Contractor agrees that it will employ only qualified and competent employees in the performance of this contract and that the services performed will conform to the highest professional standards for the work involved.

(d) Prior to final acceptance by the Government, any correction of defects in supplies or services, or replacement of materials to make the item conform to contract requirements, which correction or replacement is made necessary by inferior workmanship or materials, shall be at no cost to the Government.

(e) Final acceptance by the Government shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud. The Contractor shall, before or after final acceptance, remedy defects or failures due to such causes at no cost to the Government.

§ 1007.2303–4 *Payments.*

PAYMENTS

The Contractor shall be paid as follows upon the submission of properly certified invoices or vouchers approved by the Contracting Officer:

(a) Time Rate.

(i) The amounts computed by applying the appropriate time rate or rates set forth in the schedule to the number of direct labor hours performed, which rates shall include wages, overhead, general and administrative expense and profit. Fractional parts of an hour shall be payable on a prorated basis. The Contractor will substantiate vouchers by evidence of actual payment and by individual daily job timecards, preferably signed by the workers performing the services. Payments will normally be made at Contractor's payroll intervals, but may be varied by the Contracting Officer if conditions so warrant.

(ii) Notwithstanding the provisions of subparagraph (i) hereof, the Contracting Officer, as provided in the schedule, shall withhold payment of certain amounts due under this contract. Such amounts shall become payable upon completion of this contract.

(iii) Unless provisions of the schedule hereof otherwise specify, the hourly rate or rates set forth in the schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If the schedule provides rates for overtime, the premium portion of those rates will not be reimbursable unless the overtime is approved in writing by the Contracting Officer.

(b) Materials (Including Subcontracts).

(i) Allowable costs of direct materials shall be determined by the Contracting Officer in accordance with Part 2, Section XV, of the Armed Services Procurement Regulation. The contractor shall support all material costs claimed by submitting paid invoices or storeroom requisitions. Direct materials as referenced by this clause are defined as those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of such product.

(ii) The cost of subcontracts which are authorized pursuant to the clause hereof entitled "Subcontracts" shall be reimbursable costs hereunder.

(iii) The Contractor shall, to the extent of its ability, procure materials at the most advantageous prices available, with due regard to securing prompt delivery, of satisfactory materials, take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and bonifications, and when unable to take advantage of such benefits it shall promptly notify the Contracting Officer to that effect and the reason therefor. Credit shall be given to the Government for cash and trade discounts, rebates, allowances, credits, salvage, the value of resulting scrap, when the amount of such scrap is appreciable, commissions and bonifications which have accrued to the benefit of the Contractor or would have so accrued except for the fault or neglect of the Contractor. Such benefits lost through no fault or neglect on the part of the Contractor or lost through fault of the Government, shall not be deducted from gross costs.

(c) As of the date of execution of this contract, there has been allotted for it the total sum set forth in the schedule. This sum may be increased from time to time by the Government solely at its discretion, and the contract shall be amended accordingly. Notwithstanding any other provisions of this contract, the Contractor shall not be obligated to perform any services, pursuant hereto, the aggregate price of which when added to the aggregate price of all services theretofore furnished pursuant hereto would exceed said sum. If at any time the Contractor considers it likely that the aggregate amount set forth in the schedule may be exceeded within 45 days, the Contractor will so notify the Contracting Officer and the parties may thereupon enter into negotiations for an amendment to or modification of this contract, as may be appropriate. Anything in this contract to the contrary notwithstanding, the Government shall not be obligated to pay to the Contractor any amount in excess of the sum allotted for this contract.

§ 1007.2303–5 *Assignment of claims.* Insert the clause set forth in § 7.103–8 of this title, but see § 1007.103–8.

§ 1007.2303–6 *Excusable delays.* Insert the clause set forth in § 7.203–11.

§ 1007.2303–7 *Disputes.* Insert the clause set forth in § 7.103–12 of this title.

§ 1007.2303–8 *Notice and assistance regarding patent infringement.* Insert clause set forth in § 9.104 of this title.

§ 1007.2303–9 *Buy American Act.* Insert clause set forth in § 7.103–14 of this title.

§ 1007.2303–10 *Convict labor.* Insert the clause set forth in § 12.203 of this title.

§ 1007.2303–11 *Eight-hour law of 1912.* Insert the clause set forth in § 12.303 of this title.

§ 1007.2303–12 *Walsh-Healey Public Contracts Act.* Insert the clause set forth in § 12.604 of this title.

§ 1007.2303–13 *Nondiscrimination in employment.* Insert the clause set forth in § 12.802 of this title.

§ 1007.2303–14 *Officials not to benefit.* Insert the clause set forth in § 7.103–19 of this title.

§ 1007.2303–15 *Covenant against contingent fees.* Insert the clause set forth in § 7.103–20 of this title.

§ 1007.2303–16 *Termination.* Insert the clause set forth in § 1008.753 of this chapter.

§ 1007.2303–17 *Renegotiation.* Insert the clause set forth in § 7.103–13 of this title.

§ 1007.2303–18 *Subcontracts.*

SUBCONTRACTS

(a) No contracts shall be made by the Contractor for the furnishing of any of the work herein contracted for without the written approval of the Contracting Officer. For the purposes of this clause, purchase of raw material or commercial stock items shall not be considered work.

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

§ 1007.2303–19 *Records.* Insert the clause set forth in § 7.203–7 of this title.

§ 1007.2303–20 *Gratuities.* Insert the clause set forth in § 7.104–16 of this title.

§ 1007.2303–21 *Government-furnished property.* According to the requirements of § 13.502 of this title and § 1013.502 of this chapter, insert the clause set forth in § 13.502 of this title.

§ 1007.2303–22 *Reporting of royalties.* Insert the clause set forth in § 9.110 of this title, but see § 9.110–2 of this title.

§ 1007.2304 *Clauses to be used when applicable.*

§ 1007.2304–2 *Shipments.* According to the requirements of § 1007.4004, insert the clause set forth in that section.

§ 1007.2304–3 *Military security requirements.* According to the requirements of § 7.104–12 of this title, insert the clause set forth in that section.

§ 1007.2304–4 *Copyright.* According to the requirements of Subpart B, Part 9, of this title and Subpart B, Part 1009, of this chapter, insert the clause set forth in § 9.202 or § 9.204 of this title as appropriate.

§ 1007.2304–5 *Reproduction and use of technical data.* If the contractor is required to furnish technical data under the contract, such as reports, drawings, blueprints, or data, insert the clause set forth in § 9.112 of this title.

§ 1007.2304–6 *Authorization and consent.* If the contractor is required to furnish supplies under the contract, insert the clause set forth in § 9.102–1 of this title.

§ 1007.2304–7 *Filing of patent applications.* According to the requirements of § 9.106 of this title, insert the clause set forth therein, but see § 9.106–1 of this title.

§ 1007.2304–8 *Patent indemnity.* According to the requirements of § 9.103–3 of this title, insert the clause set forth in § 9.103–1 (a) of this title.

§ 1007.2304–9 *Priorities, allocations and allotments.* According to the requirements of § 1.308–2 of this title, insert the clause set forth in § 7.104–18 of this title.

§ 1007.2304–10 *Approval of contract.* Whenever the contract requires manual approval, other than by the contracting officer, prior to becoming effective, insert the clause set forth in § 7.105–2.

§ 1007.2304–11 *Alterations in contract.* According to the requirements of § 1007.105–1, insert the clause set forth in § 7.105–1 of this title.

§ 1007.2305 *Additional clauses.* The following clauses may be used when desirable or necessary to cover the subject matter contained in such clauses.

§ 1007.2305–1 *Notice to the Government of labor disputes.* The clause set forth in § 7.105–3 of this title may be inserted.

§ 1007.2305–2 *General.* Any other clause authorized by Chapter I of this title and this chapter, according to instruction for use, may be used when necessary to cover the subject matter contained in such clause.

SUBPART X—CLAUSES, SCHEDULE PROVISIONS, AND EXHIBITS FOR INSTRUCTION OF MILITARY PERSONNEL AT CIVILIAN SCHOOLS, COLLEGES, AND UNIVERSITIES

§ 1007.2403 *Required clauses.* The following clauses will be inserted in all contracts for instruction of military personnel at civilian colleges and universities.

§ 1007.2403–1 *Definitions.* Insert the clause set forth in § 7.103–1 of this title and add the following paragraph designated "(d)":

(d) In addition, the following terms and definitions shall govern for the purposes of this contract:

"Course"—A series of lectures and/or instructions and/or laboratory periods relating to one particular field of science or learning.

"Curriculum"—The course as selected by one student for his course of instruction.

§ 1007.2403–2 *Inspection.*

INSPECTION

The Contractor agrees to permit the Contracting Officer, or his duly authorized representative, to make inspections of the school facilities and courses offered.

§ 1007.2403–3 *Disputes.* Insert the clause set forth in § 7.103–12 of this title.

§ 1007.2403–4 *Convict labor.* Insert the clause set forth in § 12.203 of this title.

§ 1007.2403–5 *Eight-hour law of 1912.* Insert the clause set forth in § 12.303–1 of this title. If the contract is with a State or a political subdivision thereof, preface the clause as directed in § 12.303–2 of this title.

§ 1007.2403–6 *Nondiscrimination in employment.* Insert the clause set forth in § 12.802 of this title.

§ 1007.2403–7 *Officials not to benefit.* Insert the clause set forth in § 7.103–19 of this title.

§ 1007.2403–8 *Covenant against contingent fees.* Insert the clause set forth in § 7.103–20 of this title.

§ 1007.2403–9 *Termination.*

TERMINATION

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever, (i) the Contracting Officer shall determine that any such termination is for the best interest of the Government, or (ii) the student voluntarily, or at the request of the Contractor, withdraws from any course or courses. Whenever termination is effected pursuant to (i) above, Contracting Officer shall deliver to the Contractor a written notice of termination specifying the extent to which performance of work under this contract shall be terminated and the effective date of such termination. Whenever termination is effected under (ii) above, the student, after receiving approval of the Commandant, USAF Institute of Technology, shall notify the Contractor and the Contracting Officer of the effective date of his withdrawal and upon receipt by the Contractor of any such notice, it shall, unless the Contracting Officer directs otherwise, discontinue all the work and activity specified by such notice at the time set forth therein.

(b) In the event of termination in whole or in part, the Contractor shall be paid (i) all fees then due and owing and theretofore unpaid, and (ii) all accrued fees, in accordance with the established policies of the Contractor if termination is effected during any period of instruction.

§ 1007.2403–10 *Revised fees.*

REVISED FEES

The consideration, as set forth in each exhibit issued hereunder, is based on the Contractor's standard fees on the date of such exhibit. The Contractor shall have the right to change any or all fees for any succeeding semester after the first semester or period of instruciton upon written notice to the Government thirty (30) days prior to the commencement of such semester, but in no event to a greater amount than that charged for other students pursuing the same or similar course of instruction. In the event of such notice, the Government shall have the option to accept or refuse the revised fee basis. If the Government elects to refuse the revised fee basis, it may proceed to terminate the contract under the terms of the clause hereof entitled "Termination."

§ 1007.2403–11 *Change in curriculum.*

CHANGE IN CURRICULUM

The Contracting Officer may vary the curriculum as selected by the student, but shall not require nor make any change in any course as offered by the Contractor without the Contractor's consent.

§ 1007.2403–12 *Reports and withdrawal of students.*

REPORTS AND WITHDRAWAL OF STUDENTS

(a) The Contractor shall submit to the Contracting Officer at the end of each term or semester, and at such other times as the Contracting Officer may direct, a written report containing the progress and grades of each student and such other information as the Contracting Officer may require: *Provided*, That any report required by the Contracting Officer not regularly furnished other students pursuing the same or similar curriculum will be paid for by the Government at a rate agreed upon in advance either in an original exhibit or an amended exhibit.

(b) Any student who, in the opinion of the Contracting Officer, fails to maintain a satisfactory standing in the course in which he has been enrolled or whom the Contracting Officer, for any reason whatsoever, desires to remove from such course, may, at the option of the Contracting Officer, be withdrawn at any time. In such event, or in the event that the Contractor dismisses any student for breach of its regulations, the matter shall be treated as a partial termination and the tuition for such student shall be computed in accordance with the clause hereof entitled "Termination."

§ 1007.2403–13 *Gratuities.* Insert the clause set forth in § 7.104–16 of this title.

§ 1007.2403–14 *Examination of records.* Insert the clause set forth in § 7.104–15 of this title.

§ 1007.2404 *Clauses to be used when applicable.*

§ 1007.2404–1 *Alterations in contract.* According to the requirements for use in § 1007.105–1, insert the clause set forth in § 7.105–1 of this title.

§ 1007.2406 *Schedule provisions.* The following provisions will be set forth in the schedule, and will be completed with appropriate information:

§ 1007.2406–1 *Part I—Services to be furnished.*

PART I—SERVICES TO BE FURNISHED

(a) The Contractor shall enroll and provise instruction during the period _____ to _____ for _____ not to exceed _____ students, who shall be military personnel of the United States Air Force selected by the Government and acceptable to and approved by the Contractor, in the courses and for the respective periods of time determined as hereinafter provided.

(b) Requests by the Government for instruction shall be by delivery to the Contractor of an exhibit to this contract as hereinafter provided.

(c) The total number of students specified in paragraph (a) above will be divided into groups or classes. Classes will be consecutive unless otherwise mutually agreed upon. Each exhibit will be presented in sextuplicate by the Government to and completed by the Contractor to show the approved curriculum to be pursued by each student, the cost thereof and the total cost of all students in the particular class involved. The exhibit shall be then forwarded in quintuplicate to the Contracting Officer for approval. Upon approval by the Contracting Officer each exhibit will be given an appropriate number, and a copy thereof, executed by the Contracting Officer, shall be returned to the Contractor.

(d) All students accepted by the Contractor shall be registered in the same manner as civilian students and shall be subject to the same academic regulations, and shall have the same privileges, including use of all facilities and equipment normally furnished by the Contractor to all students.

(e) In the event it is desired to amend an exhibit issued hereunder for any reason, an amended exhibit will be initiated by the Government and forwarded to the Contractor for completion and signature, who shall then process the same in the same manner as an original. Such amended exhibit shall bear the same number as the original exhibit in addition to the appropriate amendment number.

(f) Unless otherwise provided herein, all necessary textbooks, laboratory manuals, and other equipment required for use by individual students will be procured by said students at their own expense.

§ 1007.2406–2 *Part II—Consideration, payment and voucher.*

PART II—CONSIDERATION, PAYMENT AND VOUCHER

(a) The Government will pay to the Contractor, as compensation, the cost of the course of instruction of each student as set forth in the exhibit covering his enrollment, which cost will in no event be a greater amount than charged for other students pursuing the same or similar curriculum: *Provided*, That, if the Contractor regularly charges higher rates of tuition for students who are not residents of the state in which the Contractor is located, the Contractor may charge the Government not in excess of the lowest rates applicable to such nonresident students.

(b) The Government will pay the compensation stated in paragraph (a) above in advance as follows:

(1) For each class in which the students are enrolled, upon the receipt from the Contracting Officer of an approved copy of the exhibit as provided in paragraph (c) of Part I hereof, the Contractor will submit to the Contracting Officer a voucher in quintuplicate, covering each exhibit separately, for preaudit and forwarding through channels to the Disbursing Officer, USAF, indicated on the cover page of this contract. Said voucher shall include:

a. Contract number and period of instruction to which voucher pertains.

b. Names of all students covered by voucher.

c. Itemized statement of charge for each student.

d. Designation of voucher as "first," "second," "final," etc., as the case may be.

e. A certificate reading as follows:

"I certify that the above bill is correct and just, and payment therefor has not been received."

(c) Final settlement of said exhibit will be made by presentation and payment of a voucher designated by the Contractor as "Final Voucher." Upon payment of such final voucher, the obligations of the parties with respect to said exhibit shall automatically cease and terminate, and final settlement shall be deemed accomplished.

(d) Advance payments to be made under the terms hereof are authorized by 31 U. S. C. 529l.

(e) Checks for refunds to the Government arising out of termination, or for other causes, shall be drawn in favor of Treasurer of the United States, and shall be sent by the Contractor to the Administrative Contracting Officer who will record the same and forward such checks to the proper Disbursing Officer, USAF.

§ 1007.2407 *Exhibits.*

§ 1007.2407–1 *Exhibit for enrollment.* The following exhibit will be used for the enrollment of personnel:

HEADQUARTERS

USAF INSTITUTE OF TECHNOLOGY

WRIGHT-PATTERSON AIR FORCE BASE, OHIO

_____
(Date)

Exhibit No. _____ to Contract No. _____

To:

1. A group consisting of ___ Air Force students is scheduled to enroll in a class at your institute in accordance with the terms of the contract cited in the upper right-hand corner of this exhibit for a course of instruction in _____ beginning _____ and ending _____ in accordance with your letter dated _____, accepting these students.

2. It is requested that, after these students are enrolled, you execute the portion of this exhibit immediately following, in quintuplicate, and send it as soon as practicable to the Contracting Officer, USAF Institute of Technology.

_____
_____
(Contracting Officer)

_____
(Date of enrollment)

To: Contracting Officer
USAF Institute of Technology
Wright-Patterson Air Force Base, Ohio

1. The group of Air Force students enumerated in the attached continuation sheet has been enrolled at this institution for a course of instruction in _____ beginning _____ and ending _____

2. The curriculum to be pursued by the students and the cost thereof are set forth in such continuation sheet.

3. It is certified that these charges are not greater than that charged for other students pursuing the same or similar curriculum.

4. The itemized charges due or to become due on account of such enrollment for each class or other period of instruction are as follows:

_____
(Contractor)
By _____
_____
_____
(Title)
_____
(Address)

§ 1007.2407–2 *Exhibit for approving courses and allotment of funds.* The following exhibit will be used for approving courses of instruction and allotment of funds:

_____
(Date)

Exhibit No. _____ to Contract No. _____

To:

The enrollment of _____ in the
(Name)
course of instruction enumerated above is approved.

The supplies and services to be obtained by this exhibit are for the purposes set forth in, and are chargeable to, allotments below enumerated, the available balances of which are sufficient to cover the cost thereof.

_____
(Contracting Officer)

§ 1007.2408 *Changes to be made for contracts issued under Air Force Regulation 34–8.* The following changes will be made in clauses set forth in §§ 1007.2403 through 1007.2406–2 in contracts which are issued pursuant to Air Force Regulation 34–8.

(a) All references to USAF Institute of Technology will be deleted and the title and address, where applicable, of the installation issuing the contract will be substituted therefor.

(b) In § 1007.2403–9, Termination, delete the words "after receiving approval of the Commandant, USAF Institute of Technology," paragraph (a), lines 11 and 12. Insert the words "by the Government its proportionate share of "between the words "shall be paid" and "(i) all fees" in paragraph (b), line 2.

(c) In § 1007.2406–2, Part II—Consideration, Payment and Voucher, delete the first three lines of paragraph (a) and substitute therefor:

(a) The Government will pay to the Contractor, as compensation, _____ percent of the tuition cost of the course of instruction of each student as set forth in the exhibit covering his enrollment, the balance of all other costs being collected by the contractor from each student, which costs will in no event be great-_____

(d) In § 1007.2407–1, Exhibit for Enrollment, delete paragraph 4 of the exhibit addressed to the contracting officer and to be signed by the contractor and substitute:

4. The tuition charges due or to become due on account of such enrollment for each class or other period of instruction, of which the Government is to pay __ percent, are as follows:

SUBPART Y—CLAUSES AND ARRANGEMENTS FOR LETTER CONTRACTS

§ 1007.2503 *Arrangements for letter contracts.* The following arrangements will be used for all letter contracts.

§ 1007.2503–1 *Cover page.* The following will be used as the cover page for all letter contracts.

Contract No. _____

LETTER CONTRACT

between

DEPARTMENT OF THE AIR FORCE

and

_____
(Contractor)

Contract for: _____
Administrative Information:
_____
(Insert designation and address of disbursing finance officer)

is designated as the officer to make payments, if any, in accordance with this contract.

The sums to be expended by the Government hereunder are chargeable to the following allotments, the available balances of which are sufficient to cover the same:

The office having overall administrative responsibility for this contract is:

Contractor's invoices or vendor's shipping documents used as invoices shall be made out to the Finance Officer designated to make payment hereunder, if any, and shall be sent by the Contractor to the Administrative Office for recording and forwarding to the Finance Officer for payment. Point of Inspection and Acceptance and F. O. B. Point:
Type Contract Contemplated:
Purchase Request No.:
Buyer:
Equipment Class:
Program:

This instrument has been negotiated pursuant to section 2 (c) of Public Law 413, 80th Congress.

§ 1007.2503–2 *Introduction.* The following will be used as an introduction to all letter contracts:

Contract No. _____

Name:
Address:
DEAR SIRS:

§ 1007.2503–3 *Signatures and acceptance.* The following will be used at the end of all letter contracts for acceptance and execution thereof:

THE UNITED STATES OF AMERICA,
By _____
_____
(Contracting officer)
Accepted _____, 19__
_____ Affix Corporate Seal
(Contractor)
By _____
(Name, official title)

NOTE. Type or print names under all signatures.

§ 1007.2504 *Required clauses for fixed-price letter contracts.* The following clauses will be inserted in all letter contracts contemplating a fixed-price definitive contract. Clauses will be consecutively numbered. Any clause listed under § 1007.2504–3 which is inapplicable to a specific contract may be deleted from that contract. Additional clauses, applicable to a specific contract (such as added patent clauses), may be incorporated by reference in Exhibit "A" to the contract.

§ 1007.2504–1 *Introductory paragraph.*

An order is hereby placed with the contractor for the furnishing to the Government of the supplies or services set forth in Exhibit "A" attached hereto and hereby made a part hereof.

§ 1007.2504–2 *Direction to proceed.*

Except as otherwise expressly provided to the contrary herein, the Contractor is directed, upon its acceptance of this order, to proceed immediately to procure the necessary materials, and to commence the manufacture of the supplies or performance of the services called for herein, and to pursue such work with all diligence to the end that the supplies may be delivered or services performed at the earliest practicable date.

§ 1007.2504–3 *Contract clauses for incorporation by reference.* (a) The provisions of the contract clauses set forth in the following sections of the Armed Services Procurement Regulation (Subchapter A, Chapter I, of this title), in effect on the date hereof and the additional clauses which are made a part of this Letter Contract in Exhibit "A" are hereby incorporated into this letter contract by reference with the same force and effect as though herein set forth in full:

§§ 7.103–1 (Definitions); 7.103–2 (Changes); 7.103–3 (Extras); 7.103–4 (Variation in Quantity); 7.103–5 (Inspection); 7.103–6 (Responsibility for Supplies); 7.103–8 (Assignment of Claims); 7.103–9 (Additional Bond Security); 11.401 (Federal, State and Local Taxes); 7.103–12 (Disputes); 7.103–13 (Renegotiation); 7.103–14 (Buy American Act); 12.303–1 (Eight-Hour Law of 1912); 12.604 (Walsh-Healey Public Contracts Act); 12.802 (Nondiscrimination in Employment); 7.103–19 (Officials Not To Benefit); 7.103–20 (Covenant Against Contingent Fees); 7.104–10 (Aircraft in the Open); 7.104–12 (Military Security Requirements); 7.104–14 (Utilization of Small Business Concerns); 7.104–15 (Examination of Records); 7.104–16 (Gratuities); 7.104–18 (Priorities, Allocations and Allotments); 12.203 (Convict Labor); 9.104 (Notice and Assistance Regarding Patent Infringement); 9.110 (Reporting of Royalties); 9.106 (Filing of Patent Applications); 9.102–1 (Authorization and Consent); 9.107–1 (Patent Rights); 9.202 (Copyright); 9.112 (Reproduction and Use of Technical Data); and 13.502 (Government-Furnished Property) of this title.

(b) Reference in any of the clauses enumerated in paragraph (a) of this section to contract prices or adjustments in contract prices and delivery schedules to the extent such are not specifically included in this Letter Contract, shall be inapplicable, except that any adjustments in amounts finally payable to the Contractor, or in time of performance required by such clauses, shall be made either at the time of settlement of Contractor's termination claims or shall be taken into account at the time of execution of the definitive contract contemplated herein.

§ 1007.2504–4 *Provision for definitizing contract.*

By the Contractor's acceptance hereof, it undertakes, without delay, to enter into negotiations with the Department of the Air Force looking to the execution of a definitive contract which will include the clauses enumerated above and all other applicable clauses then required by Federal Law, Executive order, and applicable procurement regulations to be included in contracts for supplies or services of the kind herein described. The definitive contract will also contain a detailed delivery schedule and prices, terms and conditions as agreed to by the parties which may or may not be at variance with the provisions of this order. It is expected that such definitive contract will be executed prior to ---------- and will be a fixed-price-type contract.

§ 1007.2504–5 *Authority to obligate funds.*

The maximum amount for which the Government shall be liable if this contract is terminated is $------, and any expenditure or obligation by the Contractor in excess of that amount, in furtherance of performance hereunder, shall be at the Contractor's own risk.

§ 1007.2504–6 *Termination.*

TERMINATION

(a) In case a definitive contract is not executed by the date specified in the clause hereof entitled "Provision for Definitizing Contract," because of the inability of the parties to agree upon a definitive contract, this order may be terminated in its entirety by either party by delivering to the other party a notice in writing specifying the effective date of termination, which date shall not be earlier than thirty (30) days after receipt of such notice.

(b) The performance of work under this order may be terminated by the Government, in accordance with this clause, in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interests of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under this order is terminated, and the date upon which such termination becomes effective.

(c) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall (1) stop work under this order on the date and to the extent specified in the Notice of Termination; (2) place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under this order as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination; (4) assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated; (5) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts with the approval or ratification of the Contracting Officer to the extent he may require, which approval or ratification shall be final for all purposes of this clause; (6) transfer title to and deliver to the Government, in the manner, at the times and to the extent, if any, directed by the Contracting Officer, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (ii) the completed or partially completed plans, drawings, information, and other property which, if this order had been completed, would be required to be furnished to the Government; (7) use its best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in provisions (6) of this paragraph: *Provided, however,* That the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer: *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this order or shall otherwise be credited to the price or cost of work covered by this order or paid in such other manner as the Contracting Officer may direct; (8) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and (9) take such action as may be necessary or as the Contracting Officer may direct, for the protection and preservation of the property related to this order which is in the possession of the Contractor and in which the Government has or may acquire an interest. At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, or as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same: *Provided,* That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustments to correct the list as submitted shall be made prior to final settlement.

(d) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly, but in no event later than 2 years from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such 2-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such 2-year period or any extension thereof. Upon failure of the Contractor to submit a termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due the Contractor by reason of the termination, and shall thereupon pay to the Contractor the amount so determined.

(e) Subject to the provision of paragraph (d) hereof, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause. In the event of any termination pursuant to paragraph (a) hereof, such amount or amounts shall not include any allowance for profit or fee. In the event of any termination pursuant to paragraph (b) hereof, such amount or amounts may include a reasonable allowance for profit or fee, but only on work actually done in connection with the terminated portion of this order. Any such amount shall not exceed the amount set forth in the clause hereof entitled "Authority to Obligate Funds." Any such agreement shall be embodied in an amendment to this order and the Contractor shall be paid the agreed amount.

(f) If the Contractor and the Contracting Officer are not able to agree in whole or in part, as provided in paragraph (e) hereof,

as to the amount or amounts to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Government, without duplication of any amounts agreed upon in accordance with the above-cited paragraph (e), shall pay to the Contractor an amount determined in accordance with the applicable cost principles of the Armed Services Procurement Regulation. In the event of the termination of this order pursuant to paragraph (a) hereof, no allowance for fee or profit shall be included in the amount to be paid the Contractor.

(g) The Contractor shall have the right of appeal, under the clause entitled "Disputes" incorporated in this order by reference, from any determination made by the Contracting Officer under paragraph (d) or (f) above (including any dispute as to whether termination has in fact taken place pursuant to par. (a) hereof), except that if the Contractor has failed to submit a claim within the time provided in paragraph (d) hereof and has failed to request extension of such time, the Contractor shall have no such right of appeal. If any case where the Contracting Officer has made a determination of the amount due under paragraph (d) or (f) above, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

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

(i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however*, That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until 10 days after the date of such retention or disposition.

(j) Unless otherwise provided in this contract or by applicable statute, the Contractor, from the effective date of termination and for a period of 6 years after final settlement under this order, shall preserve and make available to the Government, at all reasonable times at the office of the Contractor without direct charge to the Government, all books, records, documents, and other evidence bearing on the cost and expenses under this order and relating to the work terminated, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

§ 1007.2504–7 *Quality control specification.* Insert the clause set forth in § 1007.4003.

§ 1007.2504–8 *Subcontracts.* Insert the clause set forth in § 1007.4042.

§ 1007.2504–9 *Provisions for execution.*

The Contractor's acceptance of this order will be indicated by affixing its signature to three copies thereof and returning the executed copies of the Contracting Officer not later than _____. Such acceptance will constitute this order a contract on the terms set forth herein.

§ 1007.2505 *Required clauses for cost-reimbursement letter contracts.* The following clauses will be inserted in all letter contracts contemplating a cost-reimbursement definitive contract. Clauses will be consecutively numbered. Any clause listed under § 1007.2505–3 which is inapplicable to a specific contract may be deleted from that contract. Additional clauses, applicable to a specific contract (such as added patent clauses), may be incorporated by reference in Exhibit "A" to the contract.

§ 1007.2505–1 *Introductory paragraph.* Insert the clause set forth in § 1007.2504–1.

§ 1007.2505–2 *Direction to proceed.* Insert the clause set forth in § 1007.2504–2.

§ 1007.2505–3 *Contract clauses incorporated by reference.* (a) The provisions of the contract clauses set forth in the following sections of the Armed Services Procurement Regulation (Subchapter A, Chapter I, of this title) in effect on the date hereof, and the additional clauses which are made a part of this letter contract in Exhibit "A" are hereby incorporated into this letter contract by reference, with the same force and effect as though herein set forth in full:

§§ 7.103–1 (Definitions); 7.203–2 (Changes); 7.203–5 (Inspection of Supplies and Correction of Defects); 7.103–8 (Assignment of Claims); 7.103–13 (Renegotiation); 7.203–7 (Records); 7.203–8 (Subcontracts); 7.104–14 (Utilization of Small Business Concerns); 7.103–12 (Disputes); 7.103–14 (Buy American Act); 12.203 (Convict Labor); 12.303–1 (Eight-Hour Law of 1912); 12.604 (Walsh-Healey Public Contracts Act); 12.802 (Nondiscrimination in Employment); 7.103–19 (Officials Not To Benefit); 7.103–20 (Covenant Against Contingent Fees); 13.503 (Government Property); 7.203–22 (Insurance Liability to Third Persons); 7.104–12 as modified by 7.204–12 (Military Security Requirements); 7.104–16 (Gratuities); 7.104–18 (Priorities, Allocations and Allotments); 9.104 (Notice and Assistance Regarding Patent Infringement); 9.106 (Filing of Patent Applications); 9.110 (Reporting of Royalties); 9.102–1 (Authorization and Consent); 9.107–1 (Patent Rights); 9.202 (Copyright); and 9.112 (Reproduction and Use of Technical Data) of this title.

(b) Reference in any of the clauses enumerated in paragraph (a) of this section to contract costs or adjustments in fixed fee, if any, and delivery schedules to the extent such are not specifically included in this Letter Contract, shall be inapplicable, except that any adjustments in amounts finally payable to the Contractor, or in time of performance required by such clauses, shall be made either at the time of settlement of Contractor's termination claims or shall be taken into account at the time of execution of the definitive contract contemplated herein.

§ 1007.2505–4 *Provision for definitizing contract.*

By the Contractor's acceptance hereof, it undertakes, without delay, to enter negotiations with the Department of the Air Force looking to the execution of a definitive contract which will include the clauses enumerated above and all other applicable clauses then required by Federal law, Executive order, and applicable procurement regulations to be included in contracts for supplies or services of the kind herein described. The definitive contract will also contain a detailed delivery schedule, estimated cost, fixed fee, if any, terms and conditions as agreed to by the parties which may or may not be at variance with the provisions of this order. It is expected that such definitive contract will be executed prior to _____, and will be a cost-reimbursement-type contract.

§ 1007.2505–5 *Authority to obligate funds.* Insert the clause set forth in § 1007.2504–7.

§ 1007.2505–6 *Termination.* Insert the clause set forth in § 1007.2504–6.

§ 1007.2505–7 *Quality control.* Insert the clause set forth in § 1007.4013.

§ 1007.2505–8 *Provision for execution.*

The Contractor's acceptance of this order will be indicated by affixing its signature to three copies thereof and returning the executed copies to the contracting officer not later than _____. Such acceptance will constitute this order a contract on the terms set forth herein.

§ 1007.2506 *Required clauses for facilities letter contracts.* The following clauses will be inserted in all letter contracts contemplating a definitive facilities contract. Clauses will be consecutively numbered. Any clause listed under § 1007.2506–3 which is inapplicable to a specific contract may be deleted from that contract. Additional clauses, applicable to a specific contract (such as added patent clauses), may be incorporated by reference in Exhibit "A" to the contract.

§ 1007.2506–1 *Introductory paragraph.*

It is expected that the Government will enter into a contract with the Contractor whereunder it will be furnished certain Government-owned machinery and equipment for use in the production of _____ in its plant at _____ in accordance with scheduled Air Force requirements and will be authorized to perform items of work as set forth in Exhibit "A," attached.

§ 1007.2506–2 *Direction to proceed.*

In anticipation of such contract the contractor is hereby authorized and directed, except as otherwise expressly provided herein to the contrary, (i) to accept such Government-owned machinery and equipment, and (ii) to perform the items of work specified in Exhibit "A," attached, subject to any prior written approvals required thereby. Normally, no item shall be authorized for manufacture or acquisition hereunder until it has been determined that a suitable like item cannot be furnished by the Government (Department of the Air Force) out of its Industrial Reserve; however, such requirement can be waived solely at the discretion of the Contracting Officer.

§ 1007.2506–3 *Contract clauses incorporated by reference.* The provisions of the contract clauses set forth in the following sections of the Armed Services Procurement Regulation (Subchapter A, Chapter I, of this title) and the Air Force Procurement Instruction (this subchapter) in effect on the date hereof, and the additional clauses which are made a part of this letter contract in Exhibit "A" are hereby incorporated into this letter contract by reference with the same force and effect as though herein set forth in full:

(a) ASPR sections: 7.103–1 (Definitions); 7.103–8 (Assignment of Claims); 7.203–7 (Records); 7.103–13 (Renegotiation); 7.104–14 (Utilization of Small Business Concerns); 7.103–12 (Disputes); 7.103–14 (Buy American Act); 7.104–18 (Priorities, Allocations and Allotments); 12.203 (Convict Labor); 12.303–1 (Eight-Hour Law of 1912); 12.604 (Walsh-Healey Public Contracts Act); 12.802 (Nondiscrimination in Employment); 7.103–19 (Officials Not To Benefit); 7.103–20 (Covenant Against Contingent Fees); 7.104–16 (Gratuities); 9.104 (Notice and Assistance Regarding Patent Infringement); 9.110 (Reporting of Royalties); 9.102–1 (Authorization and Consent); and 7.105–3 (Notice to the Government of Labor Disputes) of this title.

(b) AFPI sections: 1007.2703–3 (Factual Appendices); 1007.2703–4 (Reports To Be Furnished by the Contractor); 1007.2703–7 (Taxes and Utilities); (Inspection and Access); (Cancellation of Subcontracts); 1007.2703–25 (Title); 1007.2703–26 (Possession); 1007.2703–27 (Liability for Government-Owned Property); 1007.2703–28 (Maintenance); 1007.2703–29 (Right of Diversion); 1007.2703–30 (Responsibility for Damages); 1007.2703–31 (Reservation of Rights); 1007.2704–1 (Labor Standards in Construction Contracts); and 1007.2704–6 (Government Bills of Lading).

§ 1007.2506–4 *Provision for definitizing contract.*

By acceptance hereof the Contractor undertakes, without delay, to enter into negotiations with the United States Air Force looking to the execution of a definitive contract which will include the clauses enumerated above and all other applicable clauses then required by Federal law, Executive order, and applicable procurement regulations. The definitive contract will also contain terms and conditions as agreed to by the parties which may or may not be at variance with the provisions of this letter contract. It is expected that such definitive contract will be executed prior to _____.

§ 1007.2506–5 *Authority to obligate funds.*

The Contractor is not authorized to expend or to obligate the Government in furtherance of its performance hereunder more than $_____ in the aggregate.

§ 1007.2506–6 *Use charge.*

It is anticipated that the definitive contract contemplated hereby will provide that the Contractor will pay a use charge for any use of the facilities provided hereunder for which legal consideration is not obtained by the Government through applicable Government prime contracts.

§ 1007.2506–7 *Date for completion of work.*

It is agreed that the Contractor will use its best efforts to have the work or facilities provided hereunder completed, installed or otherwise prepared for use on or before _____.

§ 1007.2506–8 *Termination.*

TERMINATION

(a) In case the definitive contract is not executed by the date specified in the paragraph hereof entitled "Provisions for Definitizing Contract" because of the inability of the parties to agree upon a definitive contract, this letter contract, may be terminated in its entirety by either party by delivering to the other party a notice in writing specifying the effective date of termination, which date shall not be earlier than 30 days after receipt of such notice. Termination at the option of the Contractor shall not relieve the Contractor of any of its obligations or liabilities under any other Government contract.

(b) The Government may at any time terminate this letter contract in whole or in part for its convenience by giving the Contractor a written notice of such termination.

(c) The Contractor will promptly terminate work hereunder and any orders placed hereunder for facilities as may be directed or required by any termination hereunder.

(d) Upon termination, the Government will reimburse the Contractor in an amount or amounts to be agreed upon between the parties by negotiation, for the unreimbursed costs incurred or obligated in the performance of this letter contract or that portion hereof so terminated. The total reimbursements to be made under this paragraph (d) including any payments previously made hereunder shall not exceed the amount or amounts specified in the clause entitled "Authority To Obligate Funds" hereof. In the event of the failure of the parties to agree as to such amount or amounts, the Contracting Officer shall determine the amount or amounts of such cost under the "Disputes Clause" of this contract.

(e) It is agreed that upon any termination (either in whole or in part) becoming effective, the Contractor will dispose of the facilities subject to such termination as the Contracting Officer may direct, and the Contractor will be reimbursed for costs incurred with the approval of the Contracting Officer in connection with such disposal.

§ 1007.2506–9 *Provision for execution.*

The Contractor's acceptance of this contract will be indicated by affixing its signature to four copies of this letter and returning three of the executed copies forthwith to Headquarters, Air Material Command, Attention: Industrial Resources Division. Such acceptance will constitute this letter a contract on the terms set forth herein.

SUBPART Z—CLAUSES FOR OPEN CONTRACTS FOR EQUIPMENT

§ 1007.2603 *Required clauses.* The following clauses will be inserted in all open contracts for equipment.

§ 1007.2603–1 *Definitions.* Insert the clause set forth in § 7.103–1 of this title.

§ 1007.2603–2 *Changes.* Insert the clause set forth in § 7.103–2 of this title.

§ 1007.2603–3 *Extras.* Insert the clause set forth in § 7.103–3 of this title.

§ 1007.2603–4 *Inspection.* Insert the clause set forth in § 7.103–5 of this title.

§ 1007.2603–5 *Responsibility for supplies.* Insert the clause set forth in § 7.103–6 of this title.

§ 1007.2603–6 *Assignment of claims.* Insert the clause set forth in § 7.103–8 of this title, but see § 1007.103–8.

§ 1007.2603–7 *Additional bond security.* Insert the clause set forth in § 7.103–9 of this title.

§ 1007.2603–8 *Federal, State, and local taxes.* Insert the clause set forth in § 11.401 of this title.

§ 1007.2603–9 *Default.* Insert the clause set forth in § 7.103–11 of this title.

§ 1007.2603–10 *Disputes.* Insert the clause set forth in § 7.103–12 of this title.

§ 1007.2603–11 *Notice and assistance regarding patent infringement.* Insert the clause set forth in § 9.104 of this title.

§ 1007.2603–12 *Buy American Act.* Insert the clause set forth in § 7.103–14 of this title.

§ 1007.2603–13 *Convict labor.* Insert the clause set forth in § 12.203 of this title.

§ 1007.2603–14 *Eight-hour law of 1912.* Insert the clause set forth in § 12.303–1 of this title.

§ 1007.2603–15 *Walsh-Healey Public Contracts Act.* Insert the clause set forth in § 12.604 of this title.

§ 1007.2603–16 *Nondiscrimination in employment.* Insert the clause set forth in § 12.804 of this title.

§ 1007.2603–17 *Officials not to benefit.* Insert the clause set forth in § 7.103–19 of this title.

§ 1007.2603–18 *Covenant against contingent fees.* Insert the clause set forth in § 7.103–20 of this title.

§ 1007.2603–19 *Termination for convenience of the Government.* Insert the clause set forth in § 8.701 of this title.

§ 1007.2603–20 *Renegotiation.* Insert the clause set forth in § 7.103–13 of this title.

§ 1007.2603–21 *Examination of records.* Insert the clause set forth in § 7.104–15 of this title, and add thereto the paragraph (c) set forth in § 1007.104–15 of this title.

§ 1007.2603–22 *Gratuities.* Insert the clause set forth in § 7.104–16 of this title.

§ 1007.2603–23 *Authorization and consent.* Insert the clause set forth in § 9.102–1 of this title.

§ 1007.2603–24 *Subcontracts.* Insert the clause set forth in § 1007.4030 (a).

§ 1007.2603–25 *Inspection and audit.* Insert the clause set forth in § 1007.4023.

§ 1007.2603–27 *Delay in delivery of data.* Insert the clause set forth in § 1007.4036.

§ 1007.2603–28 *Superseding specifications.* Insert the clause set forth in § 1007.4024.

§ 1007.2603–29 *Quality control specifications.* Insert the clause set forth in § 1007.4013.

§ 1007.2603–35 *Additional tax provision.*

ADDITIONAL TAX PROVISION

The term "contract date" under the clause hereof entitled "Federal, State and Local Taxes" shall also be deemed to refer to the date of approval of the respective Exhibits or Spare Parts Change Requests submitted pursuant to this contract.

§ 1007.2603–36 *Shipments.* Insert the clause set forth in § 1007.4004, except paragraph (d), and substitute the following paragraph:

(d) Consignment Instructions. Requests for consignment instructions shall be made by the Contractor to the initiating activity of the respective Production List.

§ 1007.2603–37 *Time for issuance of production lists.*

TIME FOR ISSUANCE OF PRODUCTION LISTS

No new Production List shall be issued under this contract after the date set forth in the Schedule unless such time is extended by written agreement of the parties hereto.

§ 1007.2603–38 *Forms.*

FORMS

Attached hereto are samples of the format for Production Lists, Exhibits, Analysis of Spare Parts Changes and Spare Parts Change Requests to which the parties hereto shall conform in the preparation of such instruments.

§ 1007.2603–39 *Sample production list.* There shall be attached to the contract a sample Production List in substantially the following format:

Production List No. ..... to Contract .....
Property Class: .....

From: .....
(Initiating agency)
To: .....
(Contractor agency)
Through: .....
(Administrative Contracting Officer)

Item No.	Class code	Part No.	Nomenclature	Quantity
Preservation, Packaging, Packing, and Markings.				
Delivery: Shipment of above parts is desired in March 1955.				

Approved ....., 19.....
Allotment chargeable ....
Signed .....
(Initiating Contracting Officer)

§ 1007.2603–40 *Sample exhibit.* There shall be attached to the contract a sample exhibit in substantially the following format:

(Proposed priced) Exhibit No. ..... to Contract .....
Property Class: .....
Date: .....

From: .....
(Contractor)
To: .....
(Initiating Agency)
Through: .....
(Administrative Contracting Officer)

Item No.	Class code	Part No.	Nomenclature	Quantity	Unit price	Total price
1	6334	S-6724130	Afterburner	25	$5,420	$135,725
			Delivery: Shipment of above parts to be made in March 1962.			

Prices are fair and reasonable and this exhibit is hereby approved.
Allotment chargeable ..... $.....
Signed .....
(Administrative Contracting Officer)

Contractor warrants prices conform to the price formula in effect on date of this exhibit.
Signed .....
(Contractor)

§ 1007.2603–41 *Sample spare parts change request.* There shall be attached to the contract a sample Spare Parts Change Request in substantially the following format:

Spare Parts Change Request No. .....
To Exhibit ..... of
Contract .....
Property Class .....
Date .....

From: .....
(Contractor)
To: .....
Through: .....
(Administrative Contracting Officer)

REMOVE					REPLACED BY						
Item No. and change reference	Part No.	Quantity	Unit price	Total price	Part No.	Nomenclature	Quantity	Unit price	Total price	Increase	Decrease
ASPC No. 118:											
987	6715779	25	$5,421	$135,525							$135,525
998					S-6724130	Afterburner	25	$5,420	$135,725	$135,725	
						Net increase, $200.					
						Shipment for above parts to be made in March 1958.					

Prices are fair and reasonable and this SPCR is hereby approved.
Allotment chargeable ..... $.....
Signed .....
(Administrative Contracting Officer)

Contractor warrants prices do not include changeover, obsolescence, or termination charges and conform to pricing formula in effect on date of this SPCR.
Signed .....

§ 1007.2603–42 *Sample analysis of spare parts change.* There will be attached to the contract a sample analysis of Spare Parts Change in substantially the following format:

ANALYSIS OF SPARE PARTS CHANGE

ASPC No. ..... to Exhibit ..... of
Contract .....
Property Class: .....
Reference Change in Design Serial No. .....

From: .....
(Contractor)
To: .....
Through .....
(Administrative Contracting Officer)

1	2	3	4	5	6	7		8	9	10	11	12
Item No.	Superseded Part No.	Superseding Part No.	Quantity on order	Quantity shpd sched. to eff. date	Balance on contract	Nomenclature	Code	Quantity per model	Equipment models	Quantity to remove	Quantity to add	Remark

Code A—Interchangeable.
B—See explanation.
C—Not interchangeable.
D—Obsolete.

Date .....
Signed .....
(Contractor)

Explanation: Allotment chargeable ..... $.....
Approved for production and delivery only.
.....
(Initiating Contracting Officer)

§ 1007.2603–44 *Government-furnished property.* Insert the clause set forth in § 13.502 of this title.

§ 1007.2604 *Clauses to be used when applicable.*

§ 1007.2604–1 *Utilization of small business concerns.* According to the requirements of § 7.104–14 of this title, insert the clause set forth in that section.

§ 1007.2604–3 *Military security requirements.* According to the requirements of § 7.104–12 of this title, insert the clause set forth in that section.

§ 1007.2604–4 *Determination of prices.* If the contract contains a price redetermination clause, insert the following as an appropriate lettered paragraph thereof: "The prices set forth in Exhibits and SPCR's hereunder shall be subject to this clause."

§ 1007.2604–5 *Discounts.* According to the requirements of § 1007.4034, insert the clause set forth in that paragraph.

§ 1007.2604–6 *Reporting of royalties.* According to the requirements of § 9.110 of this title, insert the clauses set forth therein, but see § 9.110–2 of this title.

§ 1007.2604–7 *Filing of patent applications.* According to the requirements of § 9.106 of this title, insert the clause set forth therein, but see § 9.106–1 of this title.

§ 1007.2604–8 *Copyrights.* According to the requirements of Subpart B, Part 9, of this title and Subpart B, Part 1009, of this chapter, insert the clause set forth in § 9.202 of this title.

§ 1007.2604–9 *Reproduction and use of technical data.* If the contractor is required to furnish technical data under the contract such as reports, drawings, blueprints, or data, insert the clause set forth in § 9.112 of this title.

§ 1007.2604–10 *Priorities, allocations, and allotments.* According to the requirements of § 1.308–2 of this title, insert the clause set forth in § 7.104–18 of this title.

§ 1007.2605 *Additional clauses.*

§ 1007.2605–1 *Furnishing of materials and supplies by the Government at its option.* According to the provisions of § 1007.4009, the clause set forth in that section may be inserted.

§ 1007.2605–2 *Additional inspection requirements.* According to the provisions of § 1007.4015, the clause set forth in that section may be inserted.

§ 1007.2605–3 *Certificate of acceptance.* According to the provisions of § 1007.4014, the clause set forth in that section may be inserted.

§ 1007.2605–4 *Notice to the Government of labor disputes.* According to the provisions of § 7.105–3 of this title, the clause set forth in that section may be inserted.

§ 1007.2605–5 *Patent indemnity.* According to the provisions of § 9.103–3 of this title, the clause set forth in § 9.103–1 of this title may be inserted.

§ 1007.2605–6 *General.* Any other clauses authorized by Chapter I, of this title or this chapter not inconsistent with the clauses required in this subpart, according to instructions for use, may be inserted when necessary or desirable to cover the subject matter contained in such clauses.

§ 1007.2606 *Schedule.* Open contracts, to be completed, must also contain a description of the articles and supplies to be furnished, the manner of establishing firm requirements procedures for effecting changes in requirements, and methods of pricing. Since these elements will vary from contract to contract, the establishment of standard clauses is not practicable. It is the responsibility of the Contracting Officer to negotiate with the Contractor special contract provisions which will accurately describe the procedures to be followed and which will adequately protect the interests of the Government. Set forth in §§ 1007.2606–1 to 1007.2606–3 are provisions which may be used. Any variation from, or addition to, these provisions will be the responsibility of the Contracting Officer, and, in addition, will have the concurrence of the office which will administer the contract.

§ 1007.2606–1 *Articles and supplies to be furnished.* Set forth in this section is a sample clause establishing the scope of the contract and the procedures for fixing firm requirements. A similar provision covering, to the extent applicable, the subject matter below should be included in each contract.

ARTICLES AND SUPPLIES TO BE FURNISHED

(a) The Contractor shall furnish to the Government such spare parts, modification kits, components, and data for equipment of types which are being or may hereafter be manufactured by the Contractor as the Government may call for hereunder. Quantities of the supplies to be furnished shall be determined as hereinafter provided.

(b) From time to time the Government will furnish to the Contractor, through the Administrative Contracting Officer assigned to this contract (hereinafter referred to as the "ACO"), Production Lists numbered serially, suffixed by depot designation, setting forth the items which the Government desires to procure, together with the desired delivery schedule and preservation, packaging, packing, and marking requirements therefor. Each such Production List shall set forth therein the estimated dollar amount thereof and the allotments to be charged. Supplies of a critical nature in Production Lists shall be earmarked with an asterisk preceding the part number and the Contractor agrees to achieve earliest possible delivery of such items. The Contractor will promptly delete from said list any items rendered obsolete by design changes and insert in lieu thereof superseding and interchangeable items, if any, in the same or lesser quantities, as appropriate. After these deletions and insertion, the list will be an Approved Production List. The Contractor will immediately transmit six copies of the Approved Production List, together with any pertinent information concerning the superseded items and any superseding noninterchangeable items, through the ACO, to the initiating Contracting Officer, so that superseding part numbers can be procured on subsequent Production Lists. The Contractor will be obligated, subject to the fund limitation set forth in such list, to furnish the items in the quantities listed therein, and subject to its rights elsewhere specified in this contract, the Government will be obligated to take delivery of the items so furnished on an Approved Production List. Where Approved Production Lists do not contain a quantitative delivery schedule, the Contractor shall forward direct to the initiating Contracting Officer, an interim schedule indicating the estimated date of delivery of critical supplies. The Contractor is hereby authorized to make delivery in advance of the schedule appearing on any Approved Production List under this contract.

(c) The Contractor shall, if it cannot meet the desired delivery schedule, set forth its best delivery schedule for the items involved on two copies of the Approved Production List and submit them directly to the ACO. The delivery schedule set forth in an Approved Production List shall be subject to revision by negotiation between the ACO and the Contractor.

(d) If it appears to the Contractor at any time that the total price of the total quantity of items covered by an Approved Producion List is likely to exceed the funds then allotted therefor, the Contractor shall notify the initiating Contracting Officer through the ACO of the amount of such excess. Within thirty (30) days after receipt of such notice, the Government will either notify the Contractor it has taken action to increase the funds allotted, or will notify the Contractor of the items or quantities to be deleted from such Approved Production List in order to bring it within the dollar amount thereof. If the Government fails to act within said thirty-day period, the Contractor shall submit to the initiating Contracting Officer through the ACO a recommendation of the parts to be deleted to bring the Approved Production List within said dollar amount and the initiating Contracting Officer shall approve or disapprove such recommendation within ten (10) days after receipt thereof. If the initiating Contracting Officer fails to act within said ten (10) day period the recommendation of the Contractor shall be deemed to have been approved and the Production Lists shall be modified accordingly. If the Government deletes items or quantities from an Approved Production List, such action shall be considered a partial termination under the clause hereof entitled Termination for Convenience of the Government.

§ 1007.2606–2 *Design changes.* Set forth in this section is a sample clause describing the effect on this type of contract of changes made under related contracts. A similar provision covering, to the extent applicable, the subject matter in this section should be included in each contract.

DESIGN CHANGES

(a) As used in this clause:

(i) "Government-approved production design change" or "changes in design" shall be deemed to include without limitation all engineering changes, improvements or substitutions as may be approved or coordinated by the Department of the Army, the Navy or the Air Force, as appropriate, or the authorized representative thereof;

(ii) "Interchangeable" shall be deemed to relate to (A) installational, functional or physical interchangeability of complete articles or subassemblies, or (B) physical or functional interchangeability of the detail parts within complete articles or subassemblies;

(iii) "Publication" shall mean the issuance by the Engineering Department of the Contractor to all parties concerned (including the Government) of specified directions to be used in making a change in design (called "Engineering Change Order No.");

(iv) "Analysis of Spare Parts Change" (hereinafter referred to as "ASPC") shall be

deemed to relate to all parts, subassemblies or complete articles on order hereunder affected by a Government-approved production design change, and not merely to "parts."

(b) All Government-approved production design changes in parts, subassemblies or completed articles furnished or to be furnished by the Contractor directly or indirectly to the Department of the Air Force shall be deemed to affect the corresponding items ordered under this contract wherever the Contractor determines:

(i) performance or durability is affected to such an extent that superseded parts, subassemblies or complete articles must be discarded in service for reasons of safety or unsatisfactory functioning;

(ii) dimensions of parts, subassemblies or complete articles are affected to such an extent that the superseded or superseding parts, subassemblies or complete articles are not directly and completely interchangeable with respect to installation or performance; or

(iii) superseded parts are limited to use in specified articles or models of articles and the superseding parts are not so limited.

(c) When any Government-approved production design change affects items ordered hereunder, the Contractor shall submit one copy of each new or changed drawing not previously furnished and ten copies of an ASPC to the ACO within thirty working days from the date of publication by the Contractor of such change. The ACO shall transmit these drawings and ASPC's to the initiating Contracting Officer. ASPC's shall be numbered serially and suffixed by depot designation, and shall conform to the ASPC format attached hereto.

(d) An ASPC bearing the written approval of the initiating Contracting Officer and having set forth therein the estimated dollar amount and the allotments to be charged shall be forwarded to the Contractor through the ACO. Thereupon the obligations of the parties hereto shall be the same as set forth in the clause hereof entitled "Articles and Supplies to be Furnished" with respect to Approved Production Lists.

§ 1007.2603–3 *Procedure for pricing.* Set forth in this section is a sample clause describing pricing procedures and method of payment. A similar provision covering, to the extent applicable, the subject matter in this section should be included in each contract.

PROCEDURE FOR PRICING

(a) As soon as possible after receipt by the Contractor from the ACO of a Production List or an Approved ASPC, but in no event more than sixty (60) days after such receipt, the Contractor shall prepare and submit to the ACO, as the case may be, (i) a Proposed Priced Exhibit, numbered the same as the Approved Production Lists with the unit and total prices and the delivery schedule covering the items shown thereon, or (ii) a Proposed Priced Spare Parts Change Request (hereinafter referred to as "SPCR") numbered the same as the Approved ASPC to which it pertains and consisting of the complete ASPC with the unit and total prices and the delivery schedule covering the items shown thereon. A reproducible original and at least fifteen (15) copies of the Proposed Priced Exhibit or the Proposed Priced SPCR, as the case may be, will be prepared and shall be delivered promptly by the Contractor to the ACO. The reproducible and three copies shall carry at the end thereof a certificate manually signed by an officer or other person authorized to bind the Contractor, stating that the prices therein represent a firm quotation. Each such Exhibit or SPCR shall require the written approval of the ACO, stating that the prices therein are fair and reasonable. Each such Exhibit or SPCR shall set forth therein the total dollar amount and the allotments to be charged.

(b) If the proposed Priced Exhibit or Proposed Priced SPCR is approved by the ACO, it shall be a numbered exhibit to the contract. If the ACO and the Contractor fails to agree on Prices in the Proposed Priced Exhibit or Proposed SPCR, the failure to agree shall be deemed a disagreement as to a question of fact which shall be disposed of in accordance with the clause hereof entitled "Disputes." The ACO shall reduce to writing by a Proposed Priced Exhibit or Proposed Priced SPCR his decision, containing prices he believes fair and reasonable. The prices decided by the ACO shall be paid upon all deliveries, pending final decision of the dispute.

(c) Upon approval of any Priced Exhibit or Priced SPCR, the ACO shall deliver a copy thereof to the Contractor and forward one copy thereof bearing his written approval to the Finance Officer designated to make payments under this contract. Upon the Government's acceptance of delivery of any of the items listed on any Approved Priced Exhibit or Approved Priced SPCR, the Contractor shall be entitled to be paid therefor at the prices shown on the Approved Priced Exhibit or Approved Priced SPCR.

(d) The Contractor shall be paid, upon the submission of properly certified invoices or vouchers, monthly for partial deliveries accepted by the Government, or, when requested by the Contractor, payment for accepted partial deliveries shall be made whenever such payment would equal or exceed either $1,000 or 50% of the total amount of this contract.

SUBPART AA—CLAUSES FOR FACILITIES CONTRACTS

§ 1007.2703 *Required clauses.* The following clauses shall be inserted in all facilities contracts:

§ 1007.2703–1 *Definitions.* Insert the clause set forth in § 7.103–1 of this title.

§ 1007.2703–2 *Facilities to be provided.* Insert the following clause:

FACILITIES TO BE PROVIDED

(a) By the Contractor:

(i) The Contractor shall with due expedition perform the items of work set forth in the Schedule, subject to the approval requirements set forth therein.

(ii) The approvals required for the foregoing shall be requested by the Contractor prior to performance; but the Contracting Officer may at his discretion grant such approvals subsequent to performance with like effect as if granted prior to performance. Normally, no item shall be approved for manufacture or acquisition hereunder until it has been determined that a suitable like item cannot be furnished by the Government (Department of the Air Force) out of its Industrial Reserve; however, such requirement can be waived solely at the discretion of the Contracting Officer.

(iii) The Government reserves the right to furnish to the Contractor f. o. b. cars or carrier's equipment at Contractor's plant or at the point nearest thereto that rail carrier service is available any or all of the facilities to be provided by the Contractor hereunder in lieu of the providing thereof by the Contractor.

(b) By the Government:

(i) The Government shall furnish to the Contractor the existing Government-owned facilities set forth in the Schedule. Such property shall become subject to all the terms and conditions hereof upon receipt thereof by the Contractor unless otherwise provided in the Schedule.

(ii) Such facilities shall be provided without warranty express or implied on the part of the Government as to serviceability or fitness for use, subject to the right of the Contractor seasonably to inspect and reject the same for good and sufficient reason. All personal property included in the facilities provided pursuant to this paragraph (b) not presently located at the location specified in the Schedule, will be delivered to the Contractor at such location or at the point nearest thereto that rail carrier service is available, as soon as practicable after the date of approval of this contract, transportation charges prepaid.

§ 1007.2703–3 *Factual appendices.* Insert the following clause:

FACTUAL APPENDICES

Within three months after the date of approval of this contract, and at three-month intervals thereafter during the life of this contract, the Contractor shall submit a list of the facilities provided hereunder and not previously listed, together with a list of any necessary changes or deletions of items on previous lists: *Provided, however,* That no such lists shall be required for any period in which there have been no additions to or changes or deletions of previous listings. Such lists will be identified as "Factual Appendix A" to this contract or supplements to such appendix. They will contain (1) a summary, by categories, of expenditures to date under this contract, (2) a list of all recoverable items of property provided hereunder for which reimbursement is made hereunder and (3) a list of Government-furnished property provided hereunder and shall be in a form to be agreed upon between the Contractor and the Contracting Officer. Such lists shall be certified as correct by a responsible representative of the Contractor. Upon approval and distribution thereof, such lists shall be considered incorporated herein by reference, it being understood, however, that such lists will be binding upon the parties hereto only to the extent that they do not conflict with the supporting documentation.

§ 1007.2703–4 *Reports to be furnished by the contractor.* Insert the following clause:

REPORTS TO BE FURNISHED BY THE CONTRACTOR

The Contractor, insofar as it is able, shall furnish the Government, upon written request therefor, such reports, estimates and other information regarding the subject matter of this contract as the Contracting Officer finds necessary and reasonable, including such records and data with respect to such facilities as may be required by the Contracting Officer for industrial planning or other purposes. Requests for such reports, estimates and other information shall set forth the nature of the information sought and the form in which such information is to be furnished.

§ 1007.2703–5 *Use and charges therefor.* The more appropriate of the following clauses shall be inserted.

(a) When the facilities are for use in connection with supply, service, or research and development contracts, or subcontracts which specifically provide that no charge is made for use of the facilities provided, insert the following clause.

USE AND CHARGES THEREFOR

(a) Subject to the termination provisions hereof, the Contractor may use all or part of the facilities provided hereunder without charge in the performance of (i) any Air Force prime contract which expressly authorizes such no-charge use or states that the price or fee thereunder is contingent upon such no-charge use, (ii) subject to the approval of the Contracting Officer, any subcontract under any Air Force prime contract when both the prime contract and

the subcontract either expressly authorize such no-charge use in the performance of the subcontract or state that the prices or fees thereunder are contingent upon such no-charge use, and (iii) to the extent such use will not interfere with the foregoing and subject to the approval of the Contracting Officer, (A) any other Government prime contract which expressly authorizes such no-charge use or states that the price or fee thereunder is contingent upon such no-charge use, and (B) any subcontract under any other Government prime contract where both the prime contract and the subcontract either expressly authorize such no-charge use in the performance of the subcontract or state that the prices or fees thereunder are contingent upon such no-charge use; provided, that this paragraph (a) shall not apply to any subcontract below the first tier unless that subcontract, the prime contract, and all intermediate subcontracts either expressly authorize such no-charge use in the performance of that lower tier subcontract or state that the prices or fees thereunder are contingent upon such no-charge use. Evidence relative to the terms of the supply contracts and subcontracts thereunder pursuant to which any use of facilities is made or proposed under this paragraph (a) shall be submitted to the Contracting Officer by the Contractor herein upon request.

(b) The Contractor may also, with the prior approval of the Contracting Officer, use the facilities provided hereunder in the performance of work other than that hereinabove authorized to the extent that such additional work will not interfere with the performance of the work hereinabove authorized, provided that the Contracting Officer determines that such other use is in the interest of the Government, and that the Contractor is not thereby placed in a favored competitive position. At six months intervals during the life of the contract and at the termination hereof the Contractor shall submit a detailed report to the Contracting Officer of all such other use performed during the preceding period, or if there has been no such other use during the preceding period, shall submit a certificate to that effect. Such reports shall be supported by such records as are necessary to insure equitable action hereunder. Upon submission of such report the Contractor and the Contracting Officer will promptly negotiate to determine the extent of use during the period covered by such report and the consideration therefor. Such amount shall be computed upon the basis of the extent of the use at rates based upon actual or estimated original acquisition cost of the facilities used. Such rates shall be 5 percent per annum for land and land improvements, 8 percent per annum for buildings and building installations, 12 percent per annum for machinery and equipment and 25 percent per annum for portable tools and automotive equipment. In the event of a failure to agree in such negotiations the resulting dispute shall be settled in accordance with the procedures provided in the Clause hereof entitled "Disputes." The Contractor shall upon demand of the Contracting Officer, except in the event an appeal is pending or to be filed, forward his check to the Contracting Officer payable to the Treasurer of the United States for the amount due.

(c) The Contractor represents that it has eliminated or will eliminate from the prices and, for the purpose of computing fees, from the estimated cost, charges for all contracts to be performed by the Contractor using facilities provided hereunder on a no-charge basis, any charges or allowances (including amortization and depreciation) included therein for the facilities provided hereunder exclusive of charges for costs incurred in the performance of obligations imposed hereunder, and in making application for permission to use facilities provided hereunder, the Contractor shall so state. It is agreed that nothing in this contract shall be interpreted as prejudicing any rights that the Contractor may have to be reimbursed under other contracts between the parties hereto for the cost of performing obligations imposed hereunder and not made reimbursable hereunder.

(b) When charges for the use of the facilities provided are fixed, insert the following clause:

USE AND CHARGES THEREFOR

(a) The Contractor may, subject to the termination provisions hereof, use the facilities provided hereunder for all legal purposes, provided however, subject to the provisions of any other applicable priority system established by the Government, that the Contractor shall not use such facilities, or any part thereof, for work which would interfere materially with the performance of Government contracts or subcontracts and provided further that first priority will be given, with due regard to existing commitments, to Air Force contracts and subcontracts.

(b) In consideration for such use, Contractor shall pay a use charge computed at the following rates:

	Percent per annum
Land and land improvements	5
Buildings and building installations	8
Machinery and equipment	12
Portable tools and automotive equipment	25

Such use charge shall be computed upon the cost to the Government of the items of facilities for which reimburrement is made hereunder exclusive of the cost of installation and of transportation where transportation costs are invoiced separately, and upon the actual or, when actual is not available, the estimated original acquisition cost of the items of facilities furnished by the Government hereunder (exclusive of the cost of transportation, installation, and repair), as such costs are agreed upon with the Contracting Officer. Such charge shall be computed on the basis of calendar months of use, provided that, (i) in the event that any item of facilities is not used for a period of fifteen consecutive calendar days in any calendar month, the charge payable for such item of facilities shall be one twenty-first (1/21) of the monthly charge for each day or part thereof in said calendar month that such item is used and provided that (ii) a prorated charge shall be made for fractional calendar months at the commencement of use of each item and at the effective date of the total or partial termination of this contract. Payment of such monthly rental charge shall be due on the fifteenth of each calendar month for the preceding calendar month's use and shall be effected by mailing or delivering to the Contracting Officer a check payable to the Treasurer of the United States accompanied by a statement in triplicate explaining the computation of the amount thereof.

(c) It is agreed that nothing in this contract shall be interpreted as prejudicing any rights that the Contractor may have to be reimbursed under other contracts between the parties hereto for the cost of performing obligations imposed hereunder and not made reimbursable hereunder.

§ 1007.2703–6 *Reimbursement.* Insert the following clause:

REIMBURSEMENT

(a) The Government will pay to the Contractor, upon inspection and acceptance by the Contracting Officer of the items or the work specified in the Schedule, subject to the provisions of paragraph (c) of this clause, the direct costs, hereinafter referred to as "Allowable Cost," and the overhead designated in the Schedule, determined in accordance with Parts 2 and 6, Section XV of the Armed Services Procurement Regulation for items other than construction, and in accordance with Parts 4 and 6 of said Section XV for items of construction, if any.

(b) It has been determined by the Contracting Officer in advance and agreed to by the Contracting parties for the purpose of simplifying auditing procedures applicable thereto, that the overhead rate or rates set forth in the Schedule represent an amount equal to a reasonable and proper proportionate share of all of the Contractor's overhead expense applicable and allocable to the performance of this contract and as excluding any expenditures for items of cost for which direct reimbursement is provided elsewhere in this contract. Unless the prior approval of the Contracting Officer is obtained, the Contractor shall not change its method of accounting under this contract in such manner as to account for any item of cost on a direct cost basis if such item of cost was considered as an indirect charge for the purpose of establishing the overhead rate or rates set forth in the Schedule. All amounts reimbursed hereunder shall be withdrawn from the appropriate overhead pool or pools prior to the allocation of overhead to other contracts with the Government or suppliers of the Government and nothing in this contract shall be interpreted as prejudicing any rights that the Contractor may have to be reimbursed under other contracts between the parties hereto for overhead expense allocable to this contract in excess of the amount made reimbursable hereunder for such costs.

(c) Once each month (or at more frequent intervals, if approved by the Contracting Officer) the Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute Allowable Cost. Each statement of cost shall be certified by an officer or other responsible official of the Contractor authorized by it to certify such statements. As promptly as may be practical after receipt of each invoice or voucher and statement of cost, the Government shall, except as hereinafter provided, make payment thereon as approved by the Contracting Officer. Such payment may include progress payments made to subcontractors or suppliers for machine tools and construction projects ordered hereunder in those cases where the subcontractor or supplier requires progress payment therefor and the subcontract or purchase agreement therefor contains a progress payments clause approved in writing by the Contracting Officer. At any time or times prior to final payment under this contract the Contracting Officer may cause to be made such audit of invoices or vouchers and statements of cost as shall be deemed necessary. Each payment theretofore made shall be subject to reduction to the extent of amounts included in the related invoice or voucher and statement of cost which are found by the Contracting Officer on the basis of such audit not to constitute Allowable Cost, and shall also be subject to reduction for overpayments or to increase for underpayments on preceding invoices or vouchers. The Contractor shall repay to the Government, at any time requested, any overpayment theretofore made.

(d) There has been allotted for the performance of this contract the total sum set forth in the Schedule. This sum may be increased from time to time by the Government solely at its discretion. Upon the

making of any such increase the Contracting Officer shall amend this contract accordingly. If at any time the Contractor has reason to believe that the amount to be expended or committed by it in the next succeeding 30 days, when added to all previous expenditures and commitments, will exceed 75% of the sum allotted for this contract, it shall notify the Contracting Officer to that effect, giving an estimate as to the percentage of completion of the items of work set forth in the Schedule, so that a determination may be made as to whether or not additional funds will be allotted for this contract. Anything in this contract to the contrary notwithstanding, the Government shall not be obligated to pay to the Contractor either for reimbursement of expenditures or otherwise any amount in excess of the sum allotted for this contract and the obligation of the Contractor to proceed with the performance of this contract shall be limited accordingly; provided, however, that if the Contractor makes any expenditures for which funds are not allotted, the Contracting Officer may ratify such expenditures when funds are allotted.

(e) In securing all facilities, parts, materials and services required for the performance of this contract from other sources, the Contractor shall obtain competition to the maximum practical extent and shall take advantage of the most advantageous prices with due regard to securing adequately prompt delivery of satisfactory facilities, parts, materials and services.

(f) The Contractor represents that the costs to be incurred and for which it will be reimbursed under this contract are not and will not be included as an element of cost in any other contracts with the Government or suppliers of the Government and that the overhead rate or rates set forth in the Schedule do not include any allowance for profit.

(g) (Insert paragraph (b) of § 1007.4031.)

§ 1007.2703–7 *Taxes and utilities.* Insert the following clause:

TAXES AND UTILITIES

(a) The Contractor agrees to pay, when and as the same become due and payable, all taxes, assessments and similar charges which at any time prior to the final settlement of this contract are properly and legally taxed, assessed or imposed upon the Contractor's interest made or created pursuant to the provisions of this contract, with respect to part or all of the facilities provided hereunder or the use thereof.

(b) The Contractor agrees to pay all claims or charges for or on account of water, light, heat, power, and any other services or utilities furnished to or with respect to the site, buildings, or the machinery and equipment or any part thereof.

§ 1007.2703–8 *Inspection and access.* Insert the following clause:

INSPECTION AND ACCESS

(a) All work required under this contract shall be executed in the most economical and workmanlike manner in strict conformity with the best standard practices and all material, workmanship and facilities shall be subject to inspection and test by representatives of the Government.

(b) The Government shall at all reasonable times have access to the premises wherein any of the facilities provided hereunder are located for the purpose of inspecting and inventorying the same, of removing them as authorized hereunder, or for determining compliance with the terms of this contract.

§ 1007.2703–9 *Assignment of claims.* Insert the clause set forth in § 7.103–8 of this title, but see § 1007.103–8.

§ 1007.2703–10 *Records.* Insert the clause set forth in § 7.203–7 of this title and add the following paragraph (c).

(c) The Contractor also agrees to maintain adequate property control records and a system of identification of the facilities provided hereunder in accordance with the provisions of the "Manual for Control of Government Property in Possession of Contractors" in effect on the date of this contract. As part of such control system Contractor shall take a physical inventory of the facilities provided hereunder at least once a year. A certificate of such inventory listing and properly identifying all losses and damages which have occurred since the taking of the last previous inventory shall be delivered to the Contracting Officer upon the completion of each such inventory.

§ 1007.2703–11 *Subcontracts.* Insert the following clause:

SUBCONTRACTS

(a) The Contractor shall give advance notification to the Contracting Officer of any proposed subcontract or purchase order hereunder which is either (i) on other than a straight fixed-price single payment basis, or (ii) on a fixed-price basis exceeding in dollar amount either $25,000 or 5 per centum of the total estimated cost of this contract, whichever is less; and each such subcontract or purchase order shall require the written approval of the Contracting Officer.

(b) The cost-plus-a-percentage-of-cost system of contracting shall not be used by the Contractor in procuring articles, materials, supplies or services required for the performance of this contract.

§ 1007.2703–12 *Utilization of small business concerns.* Insert the clause set forth in § 7.104–14 of this title.

§ 1007.2703–13 *Termination.* Insert the following clause:

TERMINATION

(a) This contract may be terminated by the Government as to all or any of the facilities provided hereunder (i) whenever the Contracting Officer shall determine that the facilities to be so terminated are not necessary for the performance of Government contracts, (ii) whenever the Commander, Air Materiel Command, or his duly authorized agent, has requested priority with respect to the manufacture or furnishing of any products with facilities to be provided hereunder and the Contractor has failed or refused to give such priority, (iii) whenever a receiver or trustee has been appointed for the Contractor or its property, or the Contractor has made assignment for the benefit of creditors, or the Contractor has become insolvent, or a petition has been filed by or against the Contractor pursuant to any of the provisions of the United States Bankruptcy Act, as amended, for the purpose of adjudicating the Contractor a bankrupt or for a reorganization of the Contractor or for the purpose of effecting a composition or a rearrangement with the Contractor's creditors and such petition filed against the Contractor was not dismissed within sixty (60) days, (iv) whenever there has been a violation of the terms, conditions or covenants of this contract or extension thereof by the Contractor and the Contractor failed to cure such violations within thirty (30) days from the date of notice thereof by the Government to the Contractor or (v) upon not less than sixty days' notice to the Contractor for any other reason. Such termination shall be effected by delivery to the Contractor of a written notice of termination specifying the extent to which the contract is to be terminated and the reason therefor if under (i), (ii), (iii), or (iv) hereof, and shall be effective upon the date or dates specified therein.

(b) This contract may be terminated by the Contractor at any time, upon not less than 60 days' notice to the Government, as to all of the facilities provided hereunder. Such termination shall be effected by delivery by the Contractor to the Contracting Officer of a written notice of termination specifying the date on which termination shall become effective. Contractor may also by agreement with the Contracting Officer effect a partial termination of this contract with respect to any portion of such facilities. Termination at the option of the Contractor shall not relieve the Contractor of any of its obligations or liabilities under any other Government contract.

(c) Immediately upon total or partial termination of this contract the Contractor shall inspect and prepare the facilities with respect to which the contract is terminated for shipment in accordance with the applicable provisions of Military Specification MIL–P–4574A (USAF) as currently revised as directed by the Contracting Officer. Within thirty (30) days after such termination the Contractor shall account for such facilities. Within ninety (90) days after such accounting the Government shall furnish the Contractor instructions as to the place to which such facilities shall be shipped and the means of transportation thereto. Within ten (10) days thereafter, or such longer time as the Contracting Officer may allow, the Contractor shall ship the items in accordance with the applicable provisions of the above stated specification. Contractor shall be equitably reimbursed for expenses so incurred by an appropriate contractual instrument. If the Contracting Officer fails to notify the Contractor as to disposition of the facilities within the ninety (90) day period, herein provided, the Contractor may, upon reasonable notice to the Government, remove and store elsewhere at Government risk and expense any of the terminated facilities which may be located within the plant of the Contractor. The Government shall have a corresponding right, upon reasonable notice to remove and place in storage for the account of the Contractor any property, title to which is not in the Government which has not been removed from any Government-owned plant or building provided hereunder at the time of the surrendering of possession thereof.

(d) In the event any facilities are to be purchased or constructed hereunder by the Contractor in behalf of the Government, upon termination hereunder by the Government of any such purchased or constructed facilities prior to the completion thereof, the Contracting Officer shall subject to the provision of paragraph (c) above by written order, exercise one of the following options with respect to any such terminated item or items of facilities.

(i) If the Contractor has made no binding commitment and incurred no expense therefor of a kind reimbursable hereunder as an actual cost, the Contracting Officer may eliminate the item from this contract and the Government shall be relieved of any liability therefor.

(ii) If the Contractor has made a binding commitment and incurred expense therefor of a kind reimbursable hereunder as an actual cost, the Contracting Officer may direct the Contractor to stop all further work and the making of all further commitments thereon and eliminate the item from this contract. In that event the Contractor and the Contracting Officer will attempt to agree on an amount that will reasonably compensate the Contractor for the actual cost incurred by him with regard to such eliminated item. If no such agreement is reached within thirty (30) days after the date of elimination (or within such longer period as may at any time be mutually agreed

upon), the Contractor will be paid an amount, if any, as determined by the Contracting Officer, which together with all sums previously paid by the Government on account of the item, shall be sufficient to reimburse the Contractor for expenses paid and the settlement of any obligation incurred by the Contractor thereon. In lieu of reimbursing the Contractor for the settlement of such obligations the Government, in the discretion of the Contracting Officer, may assume such obligations or any of them. In no event shall the aggregate of reimbursement on account of the item (and of all payments previously made) together with the amount of any obligations assumed, exceed the actual costs, as herein defined, expended or incurred thereon up to the time of such elimination. The Contracting Officer may permit the Contractor to sell or retain at prices or on terms agreed to by the Government any materials, supplies, or work in process and the proceeds of such sale, or such agreed prices, shall be paid or credited to the Government in such manner as the Contracting Officer may direct. Upon payment to the Contractor pursuant to this subparagraph (ii) title to all materials, supplies, work in process and other things for which payment is made (except such property as may be sold or retained as above provided) will vest in the Government (if title thereto has not already vested in the Government). The Government will also become entitled to any rights under any commitment which it may assume, or for the settlement of which it shall have reimbursed the Contractor. The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the Contracting Officer under this paragraph.

§ 1007.2703–14 *Cancellation of subcontracts.* Insert the following clause:

CANCELLATION OF SUBCONTRACTS

(a) Without terminating this contract under the provisions of the clause entitled "Termination," the Contracting Officer may at any time, in writing, authorize or direct the Contractor to cancel in whole or in part any subcontract theretofore placed pursuant to this contract. Settlement and reimbursement of any claims resulting from such subcontract cancellations shall be effected in accordance with the applicable cost principles of Section VIII of the Armed Services Procurement Regulation.

(b) The Contractor shall notify the Contracting Officer whenever it determines that facilities on order under this contract are excess to the requirements of the Contractor's Government contracts and subcontracts.

(c) Any dispute arising hereunder shall be decided in accordance with the procedure prescribed in the clause of this contract entitled "Disputes."

§ 1007.2703–15 *Continuing plant clearance.* Insert the following clause:

CONTINUING PLANT CLEARANCE

(a) The Contractor shall notify the Contracting Officer whenever it is determined that any property provided hereunder is excess to the requirements of the using Government contracts or is worn out, obsolete, damaged or otherwise unserviceable (whether or not under circumstances rendering the Contractor liable therefor). Subsequent to receipt of such notice the parties hereto may by mutual agreement effect the disposition of such property with reimbursement hereunder by the Government only for transportation costs, if any, from the plant wherein said items are located or the point nearest thereto that rail carrier service is available. In the event the parties are unable to agree upon such disposition the Contracting Officer may, at his option, effect the disposition thereof at Government expense as provided in the Schedule.

(b) The Government may, but is not obligated to, replace any items disposed of pursuant to the provisions of paragraph (a) hereof.

(c) With the approval of the Contracting Officer, the Contractor may purchase any unserviceable property, including scrap, to be disposed of pursuant to the terms of this clause upon such terms and conditions as the Contracting Officer may approve. Payments due for any such purchases shall be applied in reduction of any amounts due and not yet paid by the Government to the Contractor under the contract or shall be paid in such other manner as the Contracting Officer may direct.

§ 1007.2703–16 *Disputes.* Insert the clause set forth in § 7.103–12 of this title.

§ 1007.2703–17 *Notice and assistance regarding patent infringement.* Insert the clause set forth in § 9.102 of this title.

§ 1007.2703–18 *Buy American Act.* Insert the clause set forth in § 7.103–14 of this title.

§ 1007.2703–19 *Convict labor.* Insert the clause set forth in § 12.203 of this title.

§ 1007.2703–20 *Eight-hour law of 1912.* Insert the clause set forth in § 12.303–1 of this title.

§ 1007.2703–21 *Walsh-Healey Public Contracts Act.* Insert the clause set forth in § 12.604 of this title.

§ 1007.2703–22 *Nondiscrimination in employment.* Insert the clause set forth in § 12.804 of this title.

§ 1007.2703–23 *Officials not to benefit.* Insert the clause set forth in § 7.103–19 of this title.

§ 1007.2703–24 *Covenant against contingent fees.* Insert the clause set forth in § 7.103–20 of this title.

§ 1007.2703–25 *Title.* Insert the following clause:

TITLE

(a) Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government, whichever first occurs.

(b) All personal property for the cost of which the Contractor is entitled to be reimbursed hereunder and all other Government-owned personal property provided hereunder shall remain personalty although affixed to realty not belonging to the Government.

§ 1007.2703–26 *Possession.* Insert the following clause:

POSSESSION

Except as otherwise in this contract specifically provided, the Contractor shall not remove or otherwise part with the possession of any of the facilities provided hereunder, pledge or assign, transfer or purport to transfer title to any of such facilities in any manner to any third person either directly or indirectly, permit the use by others of any of such facilities, nor do or suffer anything to be done whereby any of such facilities may be seized, taken in execution, attached, destroyed or injured.

§ 1007.2703–27 *Liability for Government-owned property.* Insert the following clause:

LIABILITY FOR GOVERNMENT-OWNED PROPERTY

(a) The Contractor shall be responsible for any loss or damage, including expenses incidental thereto, to the facilities provided hereunder—

(i) which results from a risk expressly required to be insured against hereunder, but only to the extent of the insurance so required to be procured and maintained or to the extent of insurance actually procured and maintained, whichever is greater;

(ii) which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(iii) which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who has supervision or direction of (A) all or substantially all of the Contractor's business, or (B) all or substantially all of the Contractor's operations at the industrial facility if such facility is a complete plant or unit, or (C) all or substantially all of the Contractor's operations at any one plant or separate location in which such industrial facilities are installed or located, or (D) any separate or complete major industrial operation in connection with which the facilities are used; or

(iv) which results from a failure on the part of any of the Contractor's directors, officers, or other representatives mentioned in (iii) above, (A) to maintain and administer, in accordance with sound industrial practices, a program for the maintenance, repair, protection and preservation of the industrial facilities, in accordance with the clause hereof entitled "Maintenance," so as to assure their full availability and usefulness at all times, or (B) to take all reasonable steps to comply with any appropriate written directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of the industrial facilities, provided, that, with a respect to any such loss or damage caused by an excepted peril, the Contractor shall be liable under this subparagraph (iv) only where such a failure of the Contractor's representative, as set forth herein, results from his willful misconduct or lack of good faith. For the purposes of this clause the term "excepted peril" is defined as any of the following perils while the property is on the Contractor's or subcontractor's premises, or on any other premises where such property may properly be located, or by removal therefrom because of any of the following perils:

(i) Fire; lightning; windstorm; cyclone; tornado; hail; explosion; riot; riot attending a strike; civil commotion; vandalism and malicious mischief; sabotage; aircraft or objects falling therefrom; vehicles running on land or tracks, excluding vehicles owned or operated by the Contractor or any agent or employee of the Contractor; smoke; sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby rising of a body of water; hostile or warlike action, including action in hindering, combating, or defending against an actual, impending or expected attack by any Government or sovereign power (de jure or de facto), or by any authority using military, naval, or air forces, or by an agent of any such government, power, authority, or forces; or

(ii) Other peril, of a type not listed above, if such other peril is customarily covered by insurance (or by a reserve for self-insurance) in accordance with the normal practice of the Contractor, or the prevailing practice in the industry in which the Contractor is engaged with respect to similar property in the same general locale.

(b) The Contractor represents that it is not including and agrees that it will not hereafter include in any price to the Government any charge or reserve for insurance (including self insurance funds or reserves) covering loss or destruction of or damage to the facilities provided hereunder caused by any excepted peril.

(c) Upon the happening of loss or destruction of or damage to any Government property the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has directed that no such organization be employed), shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the Contracting Officer a statement of: (A) the lost, destroyed and damaged Government property, (B) the time and origin of the loss, destruction or damage, (C) all known interests in commingled property of which the Government property is a part, and (D) the insurance, if any covering any part of or interest in such commingled property. The Contractor shall be reimbursed for the expenditures made by it in performing its obligations under this paragraph (c) (including charges made to the Contractor by the Loss and Salvage Organization, except any of such charges the payment of which the Government has, at its option, assumed directly), to the extent approved by the Contracting Officer and set forth in a Supplemental Agreement.

(d) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the facilities provided herein caused by an excepted peril, it shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

§ 1007.2703–28 *Maintenance.* Insert the following clause:

MAINTENANCE

Except to the extent of any loss or destruction of or damage to the facilities provided hereunder for which the Contractor is relieved of liability under the provisions of the clause hereof entitled "Liability for Government-Owned Property," and except for reasonable wear and tear or depreciation, the facilities shall be returned by the Contractor to the Government, or delivered by the Contractor to any designee of the Government (at the time elsewhere in this contract provided) in as good condition as when received or restored by the Contractor in connection with this contract. The Contractor shall also maintain a program approved by the Contracting Officer for the proper maintenance, repair, protection, and preservation thereof in accordance with sound industrial practice, including normal parts replacements and, with respect to machinery and equipment, necessary rebuilding and rehabilitation. The maintenance of any motor vehicles provided under this contract shall be in accordance with standards prescribed by the Air Force as directed by the Contracting Officer. As soon as practicable after the execution of this contract the Contractor shall submit to the Contracting Officer for approval a detailed statement of the maintenance program proposed to be maintained under the requirements of this clause. Upon approval thereof by the Contracting Officer such program shall not be relaxed or deviated from without the prior approval of the Contracting Officer.

§ 1007.2703–29 *Right of diversion.* Insert the following clause:

RIGHT OF DIVERSION

The Government reserves the right when it is determined by the Air Force to be in the best interest of the Government to direct the delivery of any or all of the facilities acquired by or furnished to the Contractor hereunder to locations other than those specified in this contract. It is also agreed that the Contractor shall at the request of the Contracting Officer, when it is determined by the Air Force to be in the best interest of the Government, assign to the Government or to any designated third party or parties, purchase orders or subcontracts of the Contractor for any or all of the facilities to be acquired under this contract.

§ 1007.2703–30 *Responsibility for damages.* Insert the following clause:

RESPONSIBILITY FOR DAMAGES

(a) The Contractor shall hold the Government harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the facilities provided hereunder, except when there is in effect one or more contracts with Contractor for supplies or services which require the use of such facilities. The provisions of such contracts shall govern the assumption of liability for such claims arising out of or related to the performance of each such contract and involving the possession and use of the facilities provided hereunder.

(b) If this contract calls for labor to be performed, the costs of which are reimbursable hereunder, Contractor shall carry workmen's compensation and public liability insurance and, to the extent applicable, automobile liability insurance together with such other insurance (exclusive of insurance which is otherwise prohibited hereunder) as the Contracting Officer may direct.

(c) The Government shall not be liable to the Contractor for damages or loss of profits by reason of nondelivery or of any delay in the delivery of any or all of the facilities to be provided by the Government hereunder; *Provided, however,* That notwithstanding the foregoing a specific provision for an appropriate equitable adjustment to include without limitation time of delivery and price may be included in any supply or service contract which may be affected by any such nondelivery or delay.

§ 1007.2703–31 *Reservation of rights.* Insert the following clause:

RESERVATION OF RIGHTS

The failure of the Government to insist in any one or more instances upon the performance of any of the terms, covenants or conditions of this agreement shall not be construed as a waiver or a relinquishment of the future performance of any term, covenant or condition, but Contractor's obligation with respect to such performance shall continue in full force and effect.

§ 1007.2703–32 *Renegotiation.* Insert the clause set forth in § 7.103–13 of this title.

§ 1007.2704 *Clauses to be used when applicable.*

§ 1007.2704–1 *Labor standards in construction contracts.* If performance of the contract will involve any construction, the cost of which may be reimbursable by the Government, the following clause will be inserted:

LABOR STANDARDS IN CONSTRUCTION CONTRACTS

(a) In the event that construction, alteration or repair (including painting and decorating) of public buildings or public works is to be performed hereunder Contractor shall include in each request for the approval of said items required by the Schedule a request for a determination by the Contracting Officer as to the applicability of the Davis-Bacon and/or Copeland Acts and will not perform any of said items hereunder without receipt of such determination.

(b) Upon determination that the Davis-Bacon Act is applicable to any item of work to be performed hereunder Contractor shall submit a request for a predetermination of the prevailing wage rates to be made applicable to such work containing a brief description of the work involved including the location thereof and a list of the types of laborers and mechanics required for such work. Upon receipt of such request the Contracting Officer shall as soon as possible obtain a predetermination of the applicable prevailing wage rates and publish such rates and incidental instructions in numbered exhibits to this contract. Upon publication thereof such exhibits shall be considered the wage determination decision of the Secretary of Labor referred to in paragraph (c) (1) (A) of this clause. Each such exhibit shall indicate to what work the rates set forth therein shall apply including the period of time within which subcontracts subject to such rates may be issued.

(c) Contractor shall in the performance of items of work so determined to be subject to the Davis-Bacon Act comply with the following statutory provisions and Department of Labor regulations:

(1) *Davis-Bacon Act* (40 U. S. C. 276a–276a–7). (A) All mechanics and laborers employed or working directly upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Copeland Act ("Anti-Kickback") Regulations (29 CFR, Part 3) the full amounts due at time of payment, computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and such laborers and mechanics; and a copy of the wage determination decision shall be kept posted by the Contractor at the site of the work in a prominent place where it can be easily seen by the workers.

(B) In the event it is found by the Contracting Officer that any laborer or mechanic employed by the Contractor or any subcontractor directly on the site of the work covered by this contract has been or is being paid at a rate of wages less than the rate of wages required by subparagraph (1) (A) of this paragraph, the Contracting Officer may (1) by written notice to the Government Prime Contractor terminate his right to proceed with the work, or such part of the work as to which there has been a failure to pay said required wages, and (2) prosecute the work to completion by contract or otherwise,

whereupon such Contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

(C) Subparagraphs (1) (A) and (1) (B) of this paragraph shall apply to this contract to the extent that it is (1) a prime contract with the Government subject to the Davis-Bacon Act, or (2) a subcontract under such prime contract.

(ii) *Eight-hour laws—Overtime compensation.* No laborer or mechanic doing any part of the work contemplated by this contract in the employ of the Contractor or any subcontractor contracting for any part of said work contemplated, shall be required or permitted to work more than 8 hours in any 1 calendar day upon such work, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this subparagraph. The wages of every laborer and mechanic employed by the Contractor or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of 8 hours per day and work in excess of 8 hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of 8 hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this subparagraph a penalty of $5 shall be imposed for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than 8 hours upon said work without receiving compensation computed in accordance with this subparagraph and all penalties thus imposed shall be withheld for the use and benefit of the Government: *Provided*, That this stipulation shall be subject in all respects to the exceptions and provisions of the Eight-Hour Laws as set forth in 40 U. S. C. 321, 324, 325, 325a, and 326, which relate to hours of labor and compensation for overtime.

(iii) *Apprentices.* Apprentices will be permitted to work only under a bona fide apprenticeship program registered with the State Apprenticeship Council which is recognized by the Federal Committee on Apprenticeship, U. S. Department of Labor.

(iv) *Payroll records and payrolls.* (A) Payroll records will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records will contain the name and address of each such employee, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. The Contractor will make his employment records available for inspection by authorized representatives of the Contracting Officer and the U. S. Department of Labor, and will permit such representatives to interview employees during working hours on the job.

(B) A certified copy of all payrolls will be submitted weekly to the Contracting Officer. The Government Prime Contractor will be responsible for the submission of certified copies of the payrolls of all subcontractors. The certification will affirm that the payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rates contained in the wage determination decision of the Secretary of Labor attached to this contract, and that the classifications set forth for each laborer or mechanic conform with the work he performed.

(v) *Copeland (Anti-Kickback) Act—Nonrebate of wages.* The regulations of the Secretary of Labor applicable to contractors and subcontractors (29 CFR, Part 3), made pursuant to the Copeland Act, as amended (40 U. S. C. 276c), and to aid in the enforcement of the Anti-Kickback Act (18 U. S. C. 874) are made a part of this contract by reference. The Contractor will comply with these regulations and any amendments or modifications thereof and the Government Prime Contractor will be responsible for the submission of affidavits required of subcontractors thereunder. The foregoing shall apply except as the Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exceptions.

(vi) *Withholding of funds to insure wage payment.* There may be withheld from the Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this contract. In the event of failure to pay any laborer or mechanic all or part of the wages required by this contract, the Contracting Officer may take such action as may be necessary to cause the suspension, until such violations have ceased, of any further payment, advance, or guarantee of funds to or for the Government Prime Contractor.

(vii) *Subcontracts — Termination.* The Contractor agrees to insert the provisions of this paragraph (c) of this clause in all subcontracts and the Contractor further agrees that a breach of any of the requirements of this clause may be grounds for termination of this contract. The term "Contractor" as used in such clauses in any subcontract shall be deemed to refer to the subcontractor except in the phrase "Government Prime Contractor."

(d) Upon determination that the Copeland Act is applicable to items of work costing $2,000 or less, the Contractor shall comply with the provisions of subparagraphs (c) (ii), (v) and (vii) hereof, except that the first sentence of subparagraph (vii) shall be deemed for this purpose to refer only to the subparagraphs entitled "Eight-Hour Law—Overtime Compensation," "Copeland (Anti-Kickback) Act—Nonrebate of Wages," and "Subcontract Termination."

§ 1007.2704–2 *Patent indemnity.* According to the requirements of § 9.103 of this title and § 1009.103 of this chapter, insert the clause set forth in § 9.103 of this title, designated as paragraph (a), and add:

(b) The Indemnity provided herein shall not apply to any item or parts thereof furnished under this contract which are not normally manufactured or supplied by the Contractor or with respect to which the Contractor would customarily not indemnify the purchaser.

(c) Contractor shall exert reasonable efforts to negotiate for the inclusion in any subcontract hereunder, for items or parts thereof which are normally manufactured or supplied by any subcontractor hereunder or with respect to which such subcontractor would customarily indemnify the purchaser, of this patent indemnity clause or one not less favorable to the Government than this clause. In the event of refusal by a subcontractor to accept such a patent indemnity clause, Contractor shall procure the approval in writing, of the Contracting Officer or his designee before proceeding with the subcontract, and shall cooperate with the Government in the negotiation with such subcontractor of a mutually acceptable patent indemnity clause.

§ 1007.2704–3 *Reporting of royalties.* Insert the clause set forth in § 9.110 of this title, but see § 9.110–2 of this title.

§ 1007.2704–4 *Gratuities.* According to the requirements of § 7.104–16 of this title, insert the clause set forth in that section.

§ 1007.2704–5 *Government bills of lading.* If shipment by the contractor of any of the facilities covered by the contract is likely, the following clause will be inserted.

GOVERNMENT BILLS OF LADING

All shipments of the facilities provided hereunder, title to which is vested in the Government, shall, subject to the approval of the Contracting Officer, be made on Government bills of lading and the Contractor shall make application therefor on AFPI Form 44A to the transportation officer in charge, Commercial Traffic Office, serving the geographical area of the Air Force Procurement District in which the shipment is to originate. Such applications shall be made as much in advance of the date of shipment as possible and shall be accompanied by a photostatic or certified copy of the subcontract or purchase order or other documentary evidence showing the Contracting Officer's approval of the use of Government bills of lading, the desired destination for the shipment, the prime (facilities) contract number, and the f. o. b. terms of the shipment.

§ 1007.2704–6 *Loading, blocking, and bracing requirements.* If shipment by rail by the contractor of any of the facilities covered by the contract is likely, the following clause will be inserted.

LOADING, BLOCKING, AND BRACING REQUIREMENTS

If this contract provides for shipment by rail of supplies being delivered to the Air Force or to an Air Force contractor for use in the performance of an Air Force contract, the Contractor shall, unless otherwise authorized by this contract, load, block and brace said supplies in accordance with the methods and standards set forth in Loading Rules Pamphlets of the Association of American Railroads in effect at the time of shipment. Such methods and standards shall apply to shipments in closed cars, even though said loading rules do not so state. The Contractor will secure Loading Rules Pamphlets from the Secretary, Loading Rules Committee, Association of American Railroads, 50 East Van Buren Street, Chicago 5, Ill. Contractor agrees to include similar requirements in subcontracts and purchase orders hereunder to which the same apply.

§ 1007.2704–7 *Patent rights.* According to the requirements of § 9.107 of this title and § 1009.107 of this subchapter, insert the applicable clause in § 9.107 of this title.

§ 1007.2704–8 *Priorities, allocations and allotments.* According to the requirements of § 1.308–2 of this title, insert the clause set forth in § 7.104–18 of this title.

§ 1007.2704–9 *Approval.* Insert the clause set forth in § 7.105–2 of this title whenever the contract requires manual approval, other than by the contracting officer, before becoming effective.

§ 1007.2704–10 *Alterations in contract.* According to requirements for use of § 1007.105–1, insert the clause set forth in § 7.105–1 of this title.

§ 1007.2705 *Additional clauses.* The following clauses may be used when desirable or necessary to cover the subject matter contained in such clauses:

§ 1007.2705–1 *Notice to the Government of labor disputes.* The clause set forth in § 7.105–3 of this title may be inserted.

§ 1007.2705–2 *Authorization and consent.* The clause set forth in § 9.106 of this title may be inserted.

§ 1007.2705–3 *General.* Any other clause authorized by Chapter I of this title and this chapter, in accordance with instructions for use, may be used when necessary or desirable to cover the subject matter contained in such clause.

SUBPART BB—CLAUSES FOR SHORT-FORM FACILITIES CONTRACTS

§ 1007.2802 *Definition.* As used throughout this subpart, the term "Short-form facilities contract" shall mean any contract, separate from any supply, service, or research and development contract, and involving no cost reimbursable by the Government, whereby industrial facilities, as defined in § 13.101–6 of this title, are furnished by the Air Force to contractors, subcontractors, or suppliers contingent upon there being a special agreement in the procurement contract for the furnishing of such facilities.

§ 1007.2803 *Required clauses.* The following clauses shall be inserted in all short form facilities contracts:

§ 1007.2803–1 *Definitions.* Insert paragraphs (a) and (b) of the clause set forth in § 7.103–1 of this title.

§ 1007.2803–2 *Facilities to be furnished.* Insert the following clause:

FACILITIES TO BE FURNISHED

(a) Government-owned facilities to be furnished are set forth in the schedule. Such property shall become subject to all the terms and conditions hereof upon receipt thereof by the Contractor unless otherwise provided in the schedule.

(b) Such facilities shall be provided without warranty express or implied on the part of the Government as to serviceability or fitness for use, subject to the right of the Contractor seasonably to inspect and reject the same for good and sufficient reason. All personal property included in the facilities provided pursuant to this contract not presently located at the location specified in the schedule will be delivered to the Contractor at such location or at the point nearest thereto that rail carrier service is available as soon as practicable after the date this contract becomes effective, transportation charges prepaid.

§ 1007.2803–3 *Factual appendices.* Insert the following clause:

FACTUAL APPENDICES

Within 3 months after the date this contract becomes effective, and at 3-month intervals thereafter during the life of this contract, Contractor shall submit a list of the facilities provided hereunder and not previously listed, together with a list of any necessary changes or deletions of items on previous lists: *Provided, however,* That no such lists shall be required for any period in which there have been no additions to or changes or deletions of previous listings. Such lists will be identified as "Factual Appendix A" to this contract or supplements to such appendix. They will contain a list of Government-furnished property provided hereunder and shall be in the form to be agreed upon between the Contractor and the Contracting Officer. Such lists shall be certified as correct by a responsible representative of the Contractor. Upon approval and distribution thereof such lists shall be considered incorporated herein by reference, it being understood, however, that such lists will be binding upon the parties hereto only to the extent that they do not conflict with the supporting documentation.

§ 1007.2803–4 *Reports to be furnished by the contractor.* Insert the clause set forth in § 1007.2703–4.

§ 1007.2803–5 *Use and charges therefor.* Insert the clause set forth in § 1007.2703–5 (a).

§ 1007.2803–6 *Taxes and utilities.* Insert the clause set forth in §1007.2703–7.

§ 1007.2803–7 *Inspection and access.* Insert the following clause:

INSPECTION AND ACCESS

The Government shall at all reasonable times have access to the premises wherein any of the facilities provided hereunder are located for the purpose of inspecting and inventorying the same, of removing them as authorized hereunder, or for determining compliance with the terms of this contract.

§ 1007.2803–8 *Records.* Insert the following clause:

RECORDS

The Contractor agrees to maintain adequate property control records and a system of identification of the facilities provided hereunder in accordance with the provisions of the "Manual for Control of Government Property in Possession of Contractors" in effect on the date of this contract. As part of such control system, Contractor shall take a physical inventory of the facilities provided hereunder at least once a year. A certificate of such inventory listing and properly identifying all losses and damages which have occurred since the taking of the last previous inventory shall be delivered to the Contracting Officer upon the completion of each such inveintory.

§ 1007.2803–9 *Termination.* Insert paragraphs (a) and (b) of the clause set forth in § 1007.2703–13, and add the following paragraphs (c) and (d):

(c) Within 30 days after the effective date of a total or partial termination of this contract, the Contractor shall account for all facilities with respect to which the contract is terminated. Within 90 days after the Contractor accounts for such facilities, the Contracting Officer shall notify the Contractor as to the disposition of such facilities. The Contractor thereupon shall, as directed by the Contracting Officer, prepare, protect, remove, or ship such facilities and in connection therewith shall clean, drain all coolants from, cover with light preservatives, perform necessary crating and skidding, and load on cars or trucks in accordance with the requirements of the carrier such item or items of property so that such property will reach the destination specified in good condition, and such work shall be performed at no cost to the Government, except to the extent that such costs may be reimbursed under other contracts between the parties hereto. Transportation from the location where the property is located or point nearest thereto that rail carrier service is available shall be by Government bill of lading.

If the Contracting Officer fails to notify the Contractor as to dispoeition of the facilities within the ninety (90) day period, herein provided, the Contractor may, upon reasonable notice to the Government, remove and store elsewhere at Government risk and expense any of the terminated facilities which may be located within the premises of the Contractor. The Government shall have a corresponding right, upon reasonable notice, to remove and place in storage for the account of the Contractor any property, title to which is not in the Government which has not been removed from any Government-owned plant or building provided hereunder at the time of the surrendering of possession thereof.

(d) Any termination under the provisions of this clause shall be without cost to the Government.

§ 1007.2803–10 *Continuing plant clearance.* Insert the following clause:

CONTINUING PLANT CLEARANCE

(a) The Contractor shall notify the Contracting Officer whenever it is determined that any property provided hereunder is excess to the requirements of the using Government contracts or is worn out, obsolete, damaged, or otherwise unserviceable (whether or not under circumstances rendering the Contractor liable therefor). The Contracting Officer may permit any portion, or all, of such property under the contract to remain in the possession of the Contractor pending total or partial termination thereof or may from time to time require the Contractor to dispose of such facilities as provided in paragraph (c) of the clause entitled "Termination" of this contract.

(b) The Government may but is not obligated to replace any items disposed of pursuant to the provisions of paragraph (a) hereof.

(c) With the approval of the Contracting Officer, the Contractor may purchase any unserviceable property including scrap to be disposed of pursuant to the terms of this clause upon such terms and conditions as the Contracting Officer may approve. Payments due for any such purchases shall be paid in such manner as the Contracting Officer may direct.

§ 1007.2803–11 *Disputes.* Insert the clause set forth in § 7.103–12 of this title.

§ 1007.2803–12 *Convict labor.* Insert the clause set forth in § 12.203 of this title.

§ 1007.2803–13 *Eight-hour law of 1912.* Insert the clause set forth in § 12.303–1 of this title.

§ 1007.2803–14 *Nondiscrimination.* Insert the clause set forth in § 12.804 of this title.

§1007.2803–15 *Officials not to benefit.* Insert the clause set forth in § 7.103–19 of this title.

§ 1007.2803–16 *Covenant against contingent fees.* Insert the clause set forth in § 7.103–20 of this title.

§ 1007.2803–17 *Title.* Insert the following clause:

TITLE

Title to all property furnished by the Government hereunder shall remain in the Government and such property shall remain personalty although affixed to realty not belonging to the Government.

§ 1007.2803–18 *Possession.* Insert the clause set forth in § 1007.2703–26.

§ 1007.2803–19 *Liability for Government-owned property.* Insert the clause set forth in § 1007.2703–27.

§ 1007.2803–20 *Maintenance.* Insert the clause set forth in § 1007.2703–28.

§ 1007.2803–21 *Right of diversion.* Insert the following clause:

RIGHT OF DIVERSION

The Government reserves the right when it is determined by the Air Force to be in the best interests of the Government, to divert any or all of the facilities furnished to the Contractor hereunder to locations other than

those specified in this contract. When any such diversion is effected, the Contracting Officer may require the Contractor forthwith to dispose of the diverted facilities in its possession as provided in paragraph (c) of the clause hereof entitled "Termination."

§ 1007.2803–22 *Responsibility for damages.* Insert the clause set forth in § 1007.2703–30 omitting paragraph (b), and redesignating paragraph (c), "(b)".

§ 1007.2803–23 *Reservation of rights.* Insert the clause set forth in § 1007.2703–31.

§ 1007.2804 *Clauses to be used when applicable.*

§ 1007.2804–1 *Gratuities.* Insert the clause set forth in § 7.104–16 of this title.

§ 1007.2804–2 *Government bills of lading.* Insert the clause set forth in § 1007.2704–6.

§ 1007.2804–3 *Loading, blocking, and bracing requirements.* Insert the clause set forth in § 1007.2704–7.

§ 1007.2804–4 *Approval.* Insert the clause set forth in § 7.105–2 of this title, whenever the contract requires manual approval other than by the contracting officer before becoming effective.

§ 1007.2804–5 *Alterations in contract.* According to the requirements for use of § 1007.105–1, insert the clause set forth in § 7.105–1 of this title.

SUBPART CC—LEASES OF MACHINE TOOLS AND OTHER PRODUCTION EQUIPMENT

§ 1007.2904 *Cover page, introductory recitals, and signature page.*

§ 1007.2904–1 *Cover page.* The following will be the arrangement and provisions of the cover page for leases of machine tools and other production equipment.

Contract No. ----------

FACILITIES LEASE AGREEMENT

Between

THE UNITED STATES OF AMERICA

(DEPARTMENT OF THE AIR FORCE)

(Lessor)

and

(Lessee)

(Address)

Issuing Office:
Address:
Contract for: Lease of Machinery and Equipment.
Administrative Data:
Office of USAF Administration: The ------ will have overall administrative responsibility for this lease.
This lease has been authorized under Public Law 364, 80th Congress.

§ 1007.2904–2 *Introductory recitals.* The following will be the introductory recitals for leases of machine tools and other production equipment.

GOVERNMENT-OWNED EQUIPMENT RENTAL AGREEMENT

This Agreement, entered into this ---- day of -------- 19 --, by the United States of America, hereinafter called the Government, represented by the Contracting Officer executing this lease, and ----------, a corporation organized and existing under the laws of the state of ---------, and having its principal office at ----------, hereinafter called the Lessee,

Witnesseth That: Whereas the Government is the owner of certain machine tools and other items of production equipment under the control of the Department of the Air Force which are listed on Appendix "A" annexed hereto, herein sometimes designated as the "leased property";

Whereas it has been determined that such machine tools and other items of production equipment are not surplus to the needs of the Department of the Air Force within the meaning of the Act of October 3, 1944 (58 Stat. 765), but are not for the time being required for public use;

Whereas in the judgment of the Secretary of the Air Force the execution of this lease will promote the national defense and will be advantageous to the Government;

Whereas this lease is made under the authority of the Act of August 5, 1947, (61 Stat. 774; 5 U. S. C. 6265–3);

Now, therefore, the parties do mutually agree as follows:

§ 1007.2904–3 *Signature page.* The following will be the arrangement and provisions of the signature page for leases of machine tools and other production equipment.

In witness whereof, the parties hereto have executed this lease as of the day and year first above written.
Two witnesses:

THE UNITED STATES OF AMERICA,

By ----------
(Contracting Officer)

(Lessee)

By ----------

(Business address)

NOTE. Type or print names under all signatures.

CERTIFICATE

I, ----------, certify that I am the ---------- of the corporation named as Lessee herein; that ----------, who signed this contract on behalf of the Lessee, was then ---------- of said corporation; that said lease was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

---------- (Corporate Seal)
(Signature)

§ 1007.2905 *Required clauses.* The following clauses, consecutively numbered with Roman numerals preceded by the word "Clause", will be inserted in all leases of machine tools and other production equipment.

§ 1007.2905–1 *Leased property.*

LEASED PROPERTY

The Government hereby leases and agrees to deliver to the lessee, and the lessee agrees to accept upon all the terms and conditions and for the purpose hereinafter set forth, the machine tools and other items of production equipment listed in Appendix "A", attached hereto and made a part hereof. The parties may, from time to time, by mutual agreement, include under this lease additional items of machine tools and other production equipment by amendment of Appendix "A".

§ 1007.2905–2 *Term.*

TERM

The term of this lease shall commence on the ---------- day of ----------, 19--, and shall end on the ---------- day of ----------, 19--, unless sooner terminated as herein provided.

§ 1007.2905–3 *Delivery.*

DELIVERY

As soon as practicable after the date of this lease, the leased property, to the extent not heretofore delivered to, or placed in custody of the lessee, shall, at the option of the Government, be delivered to the lessee FOB cars, lessee's plant at ----------, or on cars at a railroad siding nearest said plant, or FOB truck at lessee's plant.

§ 1007.2905–4 *Disclaimer of warranty.*

DISCLAIMER OF WARRANTY

The leased property is furnished without warranty, express or implied, on the part of the Government as to serviceability or fitness for use, provided however, that the lessee shall at any time not later than thirty days after delivery have the right to inspect and reject the same or any part thereof for good and sufficient reason relative to the condition of the leased property.

§ 1007.2905–5 *Use of leased property.*

USE OF LEASED PROPERTY

The lessee may use the leased property for all legal purposes, provided however, subject to the provisions of any other applicable priority system established by the Government, that the lessee shall not use the leased property, or any part thereof, for work which would interfere materially with the performance of Government contracts or subcontracts and provided further that first priority will be given, with due regard to existing commitments, to Air Force contracts and subcontracts.

§ 1007.2905–6 *Rental.*

RENTAL

(a) The lessee shall pay rent for the leased property at the monthly rental rate of acquisition cost specified in Appendix "A". Such rent shall begin with respect to said item at the beginning of the term of this lease as set forth in Clause II hereof or upon date of delivery of such item to the lessee whichever is later and shall continue to the date on which this lease expires or is terminated with respect to said item or items of leased property; provided, however, that such rental shall commence upon the date when the item is placed in a usable condition in those cases wherein an item is unusable as a result of need for repairs and/or parts replacements at the time when rental would otherwise begin. Rent accruing during the month of delivery of any item or items of leased property and the month in which such item or items of leased property are returned to the Government shall be prorated on the basis of a thirty-day month. Rental payments shall be made for rental due and owing for each calendar quarterly period during the term of this lease not later than the 10th day of the month following such calendar quarter. Said rental payment shall be made by check payable to the Treasurer of the United States and shall be mailed or delivered to the Contracting Officer or such other person as may be designated by the Contracting Officer for transmittal to the appropriate accounting officer, accompanied by a statement in triplicate explaining the amount of each payment.

(b) The lessee shall as soon as practicable notify the Contracting Officer of the date or dates upon which the items to be leased were or are received by it and will advise the Contracting Officer of any items that were or are not in a usable condition as a result of the need for repairs and/or parts replacement at the time of receipt and, subject to the provisions of Clause IV hereof, that such

rehabilitation will be made. In this event the lessee agrees to undertake the rehabilitation thereof forthwith, and to notify the Contracting Officer of the date when the rehabilitation of each such item is completed. Such dates shall be subject to verification and approval by the Contracting Officer.

§ 1007.2905–7 *Liability and risk of loss.*

LIABILITY AND RISK OF LOSS

(a) The leased property shall be returned by the lessee to the Government in good operating condition, fair wear and tear excepted, provided however, that the lessee shall not be responsible for any loss, destruction, or damage to the leased property resulting from hostile or warlike action, including action in hindering, combating or defending against an actual, impending, or expected attack by any government or sovereign power (de jure or de facto), or by any authority using military, naval, or air forces, or by any agent of any such government, power, authority, or forces.

(b) The lessee agrees to maintain such insurance, in such amounts and in such form, as the Contracting Officer may direct with respect to any risks or perils for which the lessee is responsible hereunder, and which is customarily covered by insurance (or by a reserve for self-insurance) in accordance with the normal practice of the lessee or the prevailing practice of the industry in which the lessee is engaged with respect to similar property in the same general locale.

§ 1007.2905–8 *Maintenance.*

MAINTENANCE

The lessee shall preserve and maintain the leased property in good operating condition, including the making of repairs and replacement of parts, in accordance with sound industrial practice, except when loss, damage, or destruction is caused by or results from risks or perils for which the lessee is not liable under Clause VII of this lease. If the leased property is delivered in other than good operating condition, and not rejected as provided in Clause IV, the lessee shall place the leased property in good operating condition. The costs of such rehabilitation will be borne by the lessee except to the extent that such costs are otherwise reimbursable under a contract with the Government or a subcontract thereunder.

§ 1007.2905–9 *Termination.*

TERMINATION

(a) The lease may be terminated by the Government at any time, without advance notice to lessee, as to any or all of the leased property. The Government shall endeavor to furnish to the lessee thirty (30) days written notice of such termination. The lessee may terminate this lease in whole or part, at any time upon thirty (30) days notice, or without such notice, in whole, but not in part, in the event of partial termination by the Government as herein provided.

(b) The Government may terminate this lease for default of the lessee upon the failure of the lessee to perform any of the terms and conditions hereof, provided the Contracting Officer has given the lessee notice in writing specifying such failure and the lessee has not cured such failure within 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of such notice. Termination for default shall take effect immediately upon notice thereof to the lessee.

§ 1007.2905–10 *Disposition.*

DISPOSITION

(a) Immediately upon total or partial termination or expiration of this lease or upon notice to the Government of the rejection of any item or items of the leased property in accordance with Clause IV, lessee shall, at its own expense, inspect and prepare such item or items for shipment in accordance with specifications and instructions set forth in the attached schedule, as directed by the Contracting Officer. Within ninety (90) days after total or partial termination, expiration, or notice to the Government of rejection, the Government shall furnish the lessee instructions as to the place to which the item or items affected thereby shall be shipped, and the means of transportation thereto. Within ten (10) days thereafter or such longer time as the Contracting Officer may allow, the lessee shall, also at its own expense, ship the items in accordance with applicable provisions of the specifications and instructions set forth in the attached schedule. Transportation costs shall be borne by the Government, except as otherwise provided herein. In lieu of, or in addition to, the foregoing, the lessee shall perform such other work with respect to the aforesaid item or items of leased property as the Contracting Officer may direct: *Provided, however,* That the lessee shall be reimbursed by the Government for the cost of performance of such other work. If the lessee has received no instructions from the Government with respect to the disposition of the leased property within ninety (90) days after termination, expiration or rejection, as provided herein, the lessee shall maintain said property in good condition in storage at the lessee's plant or premises or at the nearest storage facility at the expense, or for the account, of the Government.

(b) In the event of termination for default, the lessee shall bear all the costs of transportation of the leased property from the plant or premises of the lessee to the Government at such place within the continental United States as shall be designated by the Contracting Officer.

§ 1007.2905–11 *Location of leased property.*

LOCATION OF LEASED PROPERTY

The leased property shall be located at ---------- Except as otherwise provided in Clause X of this lease and except for the purpose of protecting or repairing the leased property, the lessee shall not remove the leased property from the above-mentioned location.

§ 1007.2905–12 *Title.*

TITLE

Title to the leased property is and shall remain in the Government and title thereto shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such leased property or any part thereof be or become a fixture or lose its identity as personalty by reason of affixation to any realty. The lessee shall not pledge, assign, transfer, lease, sublet or subcontract nor part with the possession of the property leased hereunder, in any manner whatsoever, either directly or indirectly; nor shall the lessee wilfully do or suffer anything whereby the leased property shall or may be seized, taken in execution, impounded, attached, damaged, or destroyed.

§ 1007.2905–13 *Reports to be furnished by the lessee.*

REPORTS TO BE FURNISHED BY THE LESSEE

The lessee, insofar as it is able, shall furnish the Government, upon written request therefor, such reports, estimates and other information regarding the property leased hereunder as the Contracting Officer finds necessary and reasonable, including such records and data with respect to such leased property as may be required by the Contracting Officer for industrial planning or other purposes. Requests for such reports, estimates and other information shall set forth the nature of the information sought and the form in which such information is to be furnished.

§ 1007.2905–14 *Taxes.*

TAXES

The lessee agrees to pay to proper authority, when and as same become due and payable, all taxes, assessments and similar charges which are properly and legally taxed, assessed and imposed on the lessee's interest made or created pursuant to the provisions of this lease, with respect to part or all of the leased property provided hereunder, or the use thereof.

§ 1007.2905–15 *Marking and identification.*

MARKING AND IDENTIFICATION

The lessee shall maintain adequate property control records and a marking and identification system in accordance with the provisions set forth in the "Manual for Control of Government Property in Possession of Contractors" and shall comply with the provisions of said Manual. The Government shall have the right to enter the lessee's premises at reasonable times to inspect the records and identifications required under this clause.

§ 1007.2905–16 *Access to leased property.*

ACCESS TO LEASED PROPERTY

The Government shall at all times have access to the place or places wherein the leased property is located for the purpose of inspection and inventory of the leased property, or for the purpose of removing such property in the event of the lessee's failure to return such property to the Government as may be required under the terms of this lease.

§ 1007.2905–17 *Responsibility for damages.*

RESPONSIBILITY FOR DAMAGES

The Government shall not be responsible for damages to property of the lessee or of other persons or for personal injury to or death of the lessee's officers, agents, servants, or employees, or any other person, arising from or incident to the possession and use of any of the property leased herein, from any cause whatever, and the lessee shall save the Government harmless from such claims; *provided,* that nothing in this clause shall be deemed to affect any liability of the Government to its own employees.

§ 1007.2905–18 *Nondiscrimination in employment.* Insert the clause set forth in § 12.802 of this title.

§ 1007.2905–19 *Officials not to benefit.* Insert the clause set forth in § 7.103–19 of this title.

§ 1007.2905–20 *Covenant against contingent fees.* Insert the clause set forth in § 7.103–20 of this title.

§ 1007.2905–21 *Eight-hour law of 1912.* Insert the clause set forth in § 12.303–1 of this title.

§ 1007.2905–22 *Convict labor.* Insert the clause set forth in § 12.203 of this title.

§ 1007.2905–23 *Disputes.* Insert the clause set forth in § 7.103–1 of this title.

§ 1007.2905–24 *Definitions.* Insert the clause set forth in § 7.103–1 of this title.

§ 1007.2905–25 *Approval.* Insert the clause set forth in § 7.105–2 of this title.

SUBPART EE—CLAUSES FOR CONSTRUCTION CONTRACTS

§ 1007.3103 *Required clauses.* Construction contracts will consist of standard clauses, and, in addition, the following additional general provisions.

§ 1007.3103–1 *Alterations in contract.* Insert the clause set forth in § 7.105–1 of this title, and specify therein that, "Clause 6 (Disputes), 13 (Patent Indemnity), and 19 (Nondiscrimination in Employment) of the contract are deleted and replaced by: _____".

(a) Insert numbered 6, the complete text of the Disputes clause set forth in § 7.103–12 of this title, changing the word "Secretary," which appears twice therein to read, "head of the department."

(b) Insert, numbered 13, the complete text of the Patent Indemnity clause set forth in § 9.103–2 of this title, or one of the other clauses set forth in § 9.103 of this title if more appropriate.

(c) Insert, numbered 19, the complete text of the Nondiscrimination in Employment clause set forth in § 12.802 of this title.

The text of any other alterations made in any printed or typewritten contract will be set forth in this clause. This clause will be used only for the purpose of describing additions, deletions, or changes, and will not be used to set forth additional clauses.

§ 1007.3103–2 *Assignment of claims.* Insert the clause set forth in § 7.103–8 of this title.

§ 1007.3103–3 *Federal, State, and local taxes.* Insert the clause set forth in § 11.401 of this title.

§ 1007.3103–4 *Termination for convenience of the Government.* Insert the clause set forth in § 8.703 of this title.

§ 1007.3103–5 *Notice to the Government of labor disputes.* Insert the clause set forth in § 7.105–3 of this title.

§ 1007.3103–6 *Government-furnished property.* Insert the clause set forth in § 13.502 of this title with modifications appropriate to the following:

(a) Construction contracts entered into and administered by the base purchasing and contracting officer will be modified as follows:

(1) Delete the second and third sentence of paragraph (c) appearing in § 13.502 of this title and insert in lieu thereof, "Accountable records applicable to this contract will be established and maintained by the Installations Engineer in accordance with AFR 85–5 dated January 6, 1955."

(2) Delete the following language appearing in § 13.502 of this title:

The following provision (f) is for use in advertised fixed-price contracts:

(f) Unless otherwise provided in this contract, the Contractor, upon delivery to it of any Government-furnished Property, assumes the risk of, and shall be responsible for, any loss thereof or damage thereto except for reasonable wear and tear, and to the extent that such property is consumed in the performance of this contract.

The following provision (f) is for use in negotiated fixed-price contracts.

(3) Delete the words "industry in which the contractor is engaged" appearing in paragraph (f) (i) (II) in § 13.502 of this title and substitute therefor the words "construction industry."

(4) Delete paragraph (f) (vii) appearing in § 13.502 of this title.

(b) Construction contracts entered into and administered in behalf of the Government, by other than the base purchasing and contracting officer will be modified as follows:

(1) Delete the second sentence only of paragraph (c) appearing in § 13.502 of this title.

(2) Delete as indicated in paragraph (a) (3) of this section.

(3) Delete as indicated in paragraph (a) (4) of this section.

§ 1007.3103–7 *Reporting of royalties.* Insert the clause set forth in § 9.110 of this title, but see § 9.110–2 of this title.

§ 1007.3103–8 *Accident prevention.*

ACCIDENT PREVENTION

In order to protect the life and health of employees in the performance of this contract, the Contractor will comply with all pertinent provisions of the "Safety Requirements" approved by the Chief of Engineers, 16 December 1941, as revised 1951 and Air Force Manual 32–3, "Accident Prevention Handbook for Air Force Personnel," June 1949, Change 32–3A, December 1950, Change 32–3B, 1 October 1952, (copies of which are on file in the office of the Contracting Officer) and amendments to the above-mentioned publications, and will take or cause to be taken such additional measures as the Contracting Officer may determine to be reasonably necessary for this purpose. The Contractor will maintain an accurate record of and will report to the Contracting Officer in the manner and on the forms prescribed by the Contracting Officer, all cases of death, occupational disease, and traumatic injury arising out of or in the course of employment on the work under this contract. The Contracting Officer will notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately correct the conditions to which attention has been directed. Such notice, when served on the Contractor or his representatives at the site of the work, shall be deemed sufficient for the purpose aforesaid. If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or any part of the work. When satisfactory corrective action is taken, a start order will be issued. No part of the time lost due to any such stop order shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

§ 1007.3103–9 *Bonds.*

BONDS

(a) *Payment bond.* If this contract exceeds $2,000, the Contractor agrees to furnish a payment bond with good and sufficient surety or sureties acceptable to the Government for the protection of persons furnishing material or labor in connection with the performance of the work under this contract on Standard Form 25A or Standard Form 27A. The penal sum of such payment bond shall be as follows: (i) if the contract price is not more than $1,000,000, 50 percent of the contract price; (ii) if the contract price is more than $1,000,000, but not more than $5,000,000, 40 percent of the contract price; (iii) if the contract price is more than $5,000,000, $2,500,000.

(b) *Performance bond.* If the contract price exceeds $2,000, the Contractor further agrees to furnish a performance bond with good and sufficient surety or sureties acceptable to the Government in connection with the performance of work under this contract on Standard Form 25 or Standard Form 27. The penal sum of such performance bond shall be equal to the penal sum of the payment bond unless otherwise specified herein.

(c) Any bonds required hereunder will be dated as of the same date as the contract and will be furnished by the Contractor to the Government at the same time the contract is executed.

§ 1007.3103–10 *Gratuities.* Insert the clause set forth in § 7.104–16 of this title, but change the word "Secretary" which appears twice in paragraph (a) and once in paragraph (b) therein to read, "head of the department."

§ 1007.3103–11 *Delivery.*

DELIVERY

Unless otherwise provided in this contract, all materials to be furnished by the Contractor shall be delivered to the Government f. o. b. site of the work.

§ 1007.3103–12 *Notice and assistance regarding patent infringement.* Insert the clause set forth in § 9.104 of this title.

§ 1007.3103–13 *Authorization and consent.* Insert the clause set forth in § 9.102–1 of this title.

§ 1007.3103–14 *Renegotiation.* Insert the clause set forth in § 7.103–13 of this title.

§ 1007.3104 *Clauses to be used when applicable.*

§ 1007.3104–1 *Examination of records.* If the contract results from negotiation, insert the clause set forth in § 7.104–15 of this title.

§ 1007.3104–2 *Approval of subcontracts.* If the contract price is in excess of $2,000, insert the following clause.

APPROVAL OF CONTRACTS

No contract shall be made by the Contractor with any other party for furnishing any of the completed or substantially completed articles or work herein contracted for without the written approval of the Contracting Officer as to sources.

§ 1007.3104–4 *Military security requirements.* According to the requirements of § 7.104–12 of this title, insert the clause set forth in that section.

§ 1007.3104–5 *Utilization of small business concerns.* If the contract price is in excess of $5,000, insert the clause set forth in § 7.104–14 of this title.

§ 1007.3104–6 *Approval of contract.* Whenever the contract requires manual approval, other than by the contracting officer, prior to becoming effective, insert the clause set forth in § 7.105–2 of this title.

§ 1007.3104–7 *Patent indemnity.* According to the requirements of § 9.103 of this title, insert the appropriate clause or clauses set forth in that section with additional provisions as prescribed.

§ 1007.3104–8 *Reproduction and use of technical data.* If the contractor is required to furnish technical data under the contract, such as reports, drawings,

blueprints, data, insert the clause set forth in § 9.112 of this title.

§ 1007.3104–9 *Copyright.* According to the requirements of subpart B, part 9 of this title and subpart B, part 1019 of this chapter, insert the clause set forth in § 9.202 of this title.

§ 1007.3104–10 *Filing of patent applications.* According to the requirements of § 9.106 of this title, insert the clause set forth therein, but see § 9.106–1 of this title.

§ 1007.3104–11 *Priorities, allocations and allotments.* According to the requirements of § 1.308–2 of this title, insert the clause set forth in § 7.104–18 of this title.

§ 1007.3105 *Additional clauses.* The following clauses may be inserted when necessary or desirable to cover the subject matter contained in such clauses.

§ 1007.3105–1 *Patent rights.* The clause set forth in § 9.107–1 of this title may be inserted.

§ 107.3105–2 *Superseding specifications.* The clause set forth in § 1007.4024 may be inserted.

§ 1007.3106 *Required special provisions.* The following special provisions will be inserted in all construction contracts and will be numbered as set forth below.

§ 1007.3106–1 *Description of work.*

SP 1–01 Description of Work

(a) *Work to be done.* The work to be done is described in U. S. Standard Form 23 attached hereto. The Government will furnish to the Contractor the materials and equipment required by the statement of work to be so furnished, if any.

(b) *Quantity.* (This paragraph is applicable to all lump-sum contracts but is inapplicable to all unit price contracts.) The lump-sum price for the entire work will be the basis of payment. The Contractor will be required to complete the work as specified, subject to the provisions of Clause 3, Changes, hereof.

(c) *Quality.* (This paragraph is applicable to all unit price contracts but is inapplicable to all lump-sum contracts.) The Contractor may reasonaby expect a variation in the estimated quantity set forth in the Schedule such that the total payment for the completed work may range from 75 percent to 125 percent of the total amount stated on the Standard Form 23 attached hereto. The Contractor will be required to complete the entire work as set forth herein subject to the allotment of sufficient funds to the contract: Provided, (1) the Contractor is not authorized to perform work the cost of which will exceed the amount stated on Standard Form 23 attached hereto without the prior written authorization of the contracting officer, and (2) if the completed work ranges from 75 percent to 125 percent of the estimated quantities set forth in the Schedule, the contractor will be allowed no claims for anticipated profits or loss of profits or for damage of any sort because of differences between the estimate of any item and the amount of any item actually required, and (3) if work less than 75 percent or more than 125 percent of the estimated quantities set forth on the Schedule causes an increase or decrease in the unit price or prices there may be an adjustment of such prices in accordance with the procedures of the Changes clause.

§ 1007.3106–2 *Scope of work.*

SP 1–02 Scope of Work

Omissions from the drawings or specifications, or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings or specifications, or which are customarily performed, shall not relieve the contractor from performing such omitted or misdescribed details of work, but they shall be performed as if fully and clearly set forth and described in the drawings and specifications. Such obvious omissions supplied by the Contractor shall be without cost to the Government, but any change in drawings or specifications directed by the Government shall be made in accordance with the clause hereof entitled "Changes."

§ 1007.3106–3 *Site investigation and representations.*

SP1–03 Site Investigation and Representations

The Contractor acknowledges that he has satisfied himself as to the nature and location of the work, the general and local conditions, particularly those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads, uncertainties of weather, the conformation and condition of the ground, the character, quality and quantity of surface and subsurface materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the work and all other matters which can in any way affect the work or the cost thereof under this contract. Any failure by the Contractor to acquaint himself with all the available information concerning these conditions will not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the work. The Government assumes no responsibility for any understanding or representations made by any of its officers or agents during or prior to the execution of this contract, unless such understanding or representations by the Government are expressly stated in the contract. Representations made but not so expressly stated and for which liability is not expressly assumed by the Government in the Contract shall be deemed only for the information of the Contractor and the Government will not be liable or responsible thereof.

§ 1007.3106–4 *Order of work.*

SP 1–04 Order of Work

The Contractor shall start and complete the work in such order of procedure as may be prescribed by the Contracting Officer.

§ 1007.3106–5 *Operations and storage areas.*

SP 1–05 Operation and Storage Areas

All operations of the Contractor (including storage of materials) upon Government premises shall be confined to areas authorized or approved by the Contracting Officer. No unauthorized or unwarranted entry upon, passage through, or storage or disposal of materials shall be made upon Government premises. Government premises adjacent to the construction will be made available for use by the Contractor without cost whenever such use will not interfere with other Government uses or purposes. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature or kind arising from any use, trespass or damage occasioned by his operations on premises of third persons.

Temporary buildings (storage sheds, shops, office, etc.) shall be erected by the Contractor upon Government premises only with the approval of the Contracting Officer, and shall be built with labor and materials furnished by the Contractor without expense to the Government, and will be removed by him at his expense upon the completion of the work. With the written consent of the Contracting Officer, such buildings and/or utilities may be abandoned and need not be removed.

The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways or construct and use such temporary roadways as may be authorized by the Contracting Officer. Where materials are transported in the prosecution of the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbings or sidewalks, protection against damage shall be provided by the Contractor, and any damaged roads, curbing, or sidewalks shall be repaired by, and at the expense of, the Contractor.

§ 1007.3106–6 *Base lines and grades.*

SP 1–06 Base Lines and Grades

The Contractor shall lay out his work from base lines and grades established by the Government and shall be responsible for all measurements in connection therewith. The Contractor shall, at his own expense, furnish all stakes, templates, platforms, equipment, and ranges and labor that may be required in setting and cutting, or laying out any part of the work. The Contractor will be held responsible for the proper execution of the work to such lines and grades as may be established or indicated by the Contracting Officer, and all stakes or other marks thus established shall be preserved by him until their removal is authorized by the Contracting Officer. The Contracting Officer will furnish, on request from the Contractor, all location and limit marks reasonably necessary for the conduct of the work.

§ 1007.3106–7 *Progress charts, Sundays, holidays, and nights.*

SP 1–07 Progress Charts, Sundays, Holidays and Nights

(a) The Contractor shall within five (5) days or within such time as determined by the Contracting Officer, after date of commencement of work, prepare and submit to the Contracting Officer for approval a practicable and feasible schedule, showing the order in which the Contractor proposes to carry on the work, the date on which he will start the several salient features (including procurement of materials, plant, and equipment) and the contemplated dates for completing them. The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion at any time. The Contractor shall enter on the chart the actual progress at the end of each week or at such intervals as directed by the Contracting Officer, and shall immediately deliver to the Contracting Officer three copies thereof.

(b) The Contractor shall furnish sufficient forces, construction plant, and equipment, and shall work such hours, including night shifts, overtime operations, and Sunday and holiday work, as may be necessary to insure the prosecution of the work in accordance with the approved progress schedule. If, in the opinion of the Contracting Officer, the Contractor falls behind the progress schedule, the Contractor shall take such steps as may be necessary to improve his progress, and the Contracting Officer may require him to increase the number of shifts, and/or overtime operations, days of work, and/or the amount of construction plant, all without additional cost to the Government.

(c) Failure of the Contractor to comply with the requirements of the Contracting

Officer under this provision shall be grounds for determination by the Contracting Officer that the Contractor is not prosecuting the work with such diligence as will insure completion within the time specified. Upon such determination, the Contracting Officer may terminate the Contractor's rights to proceed with the work, or any separable part, thereof, in accordance with the clause entitled "Termination for Default-Damages for Delay-Time Extensions".

§ 1007.3106–8 *Standard test, quality and guarantees.*

SP 1–06 STANDARD TEST, QUALITY, AND GUARANTEES

(a) Unless waived in writing by the Contracting Officer, all tests or trials shall be made in the presence of a duly authorized representative of the Contracting Officer. When the presence of the inspector is so waived, sworn statements, in triplicate, of the test made and results thereof shall be furnished to the Contracting Officer by the Contractor as soon as possible after the tests are made.

(b) All costs of all tests and trials, except the expense of the Government inspector, concrete aggregate and cylinder tests, and soil analysis, shall be borne by the Contractor.

(c) All articles and supplies, and equipment, parts and assemblies thereof, of standard manufacture, or for which detail design or requirements are not prescribed in these specifications, shall be guaranteed by the Contractor against any failure in the proper use or operation caused by defective material, workmanship, or design for a period of one (1) year from the date of final acceptance of the complete work under this contract. Failure in any part due to such causes within that time shall be promptly and satisfactorily remedied by the Contractor without cost to the Government.

(d) All materials, supplies, and articles furnished shall, wherever practicable, be the standard products of recognized, reputable manufacturers. Reference in these specifications to a particular product is given for descriptive purposes only unless otherwise specifically stated. The standard products of manufacturers other than specified will be accepted when it is proved to the satisfaction of the Contracting Officer that they are equal in strength, durability, and usefulness, and equally serviceable for the purpose for which they are intended and do not require a major revision in design in order to permit their use. Any changes required in the details and dimensions indicated on the drawings, for the substitution of standard products, other than those provided for, shall be properly made as approved by the Contracting Officer, and at the expense of the Contractor.

§ 1007.3106–9 *Preservation of existing vegetation.*

SP 1–09 PRESERVATION OF EXISTING VEGETATION

The Contractor will preserve and protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the site which do not unreasonably interfere with the construction as may be determined by the Contracting Officer. The Contractor will be responsible for unauthorized cutting or damaging of trees and shrubs, including damage due to careless operation of equipment, stockpiling of materials, or tracking of grass areas by equipment.

Care will be taken by the Contractor in felling trees authorized for removal to avoid any unnecessary damage to vegetation that is to remain in place. Any limbs or branches of trees broken during such operations shall be trimmed with a clean cut and painted with an approved tree-pruning compound if required by the Contracting Officer. The Contractor will be liable for or may be required to replace or restore at his own expense all vegetation not protected and preserved as required herein that may be destroyed or damaged.

§ 1007.3106–10 *Protection of material and work.*

SP 1–10 PROTECTION OF MATERIAL AND WORK

Notwithstanding the provisions of the clause of this contract entitled "Government-Furnished Property," the Contractor shall at all times take care to protect and preserve all materials, supplies, and equipment of every description (including property which may be Government furnished or owned) and all work performed. All reasonable requests of the Contracting Officer to inclose or specially protect such property will be complied with. If, as determined by the Contracting Officer, material, equipment, supplies, and work performed are not adequately protected by the Contractor, such property may be protected by the Government and the cost thereof may be charged to the Contractor or deducted from any payments due to him.

§ 1007.3106–11 *Possession prior to completion.*

SP 1–11 POSSESSIONS PRIOR TO COMPLETION

The Government shall have the right to take possession of or use any completed or partially completed part of the work. Such possession or use shall not be deemed an acceptance of any work not completed in accordance with contract. If such prior possession or use by the Government delays the progress of the work or causes additional expense to the contractor, an equitable adjustment in the contract price and/or the time of completion will be made and the contract shall be modified in writing accordingly.

§ 1007.3106–12 *Suspension of work.*

SP 1–12 SUSPENSION OF WORK

The Contracting Officer may order the Contractor to suspend all or any part of the work for such period of time as may be determined by him to be necessary or desirable for the convenience of the Government. Unless such suspension unreasonably delays the progress of the work and causes additional expense or loss to the Contractor, no increase in contract price will be allowed. In the case of suspension of all or any part of the work for an unreasonable length of time, causing additional expense or loss, not due to the fault or negligence of the Contractor, the Contracting Officer shall make an equitable adjustment in the contract price and modify the contract accordingly.

An equitable extension of time for the completion of the work in the event of any such suspension will be allowed the Contractor: *Provided, however,* That the suspension was not due to the fault or negligence of the Contractor.

§ 1007.3106–13 *Identification of employees.*

SP 1–13 IDENTIFICATION OF EMPLOYEES

The Contractor shall be responsible for furnishing to each employee and for requiring each employee engaged on the work to display, such identification as may be approved and directed by the Contracting Officer. All prescribed identification shall immediately be delivered to the Contracting Officer, for cancellation upon the release of any employee. When required by the Contracting Officer, the Contractor shall obtain and submit fingerprints of all persons employed or to be employed on the project.

§ 1007.3106–14 *Cleaning up.*

SP 1–14 CLEANING UP

The Contractor shall at all times keep the construction area, including storage areas used by him, free from accumulations of waste material or rubbish and prior to completion of the work, remove any rubbish from and about the premises, and all tools, scaffolding, equipment, and materials not the property of the Government. Upon completion of the construction, the Contractor shall leave the work and premises in a condition satisfactory to the Contracting Officer.

§ 1007.3106–15 *Water.* Insert the more appropriate of the following clauses. Generally the first alternate clause will be used when the amount of water required by the contractor will be negligible and existing water systems are adequate without disruption or alteration. If the amount of water estimated to be required is substantial, would disrupt the existing water system, or would require additional connections, meters, or other facilities, the second alternate should be used.

(a)

SP 1–1–15 WATER

All reasonable required amounts of water will be made available to the Contractor by the Government from Government-owned and operated water system without cost to the Contractor. The Contractor will carefully conserve all water.

(b)

SP 1–15 WATER

The responsibility shall be upon the Contractor to provide and maintain at his own expense an adequate supply of water of a quality suitable for his use for construction and domestic consumption. At his own expense, he shall install and maintain any necessary water supply connections and piping but only at such locations and in such workmanlike manner as may be authorized by the Contracting Officer. In the event water is made available by the Government, the Contractor shall at his own expense, install a meter to determine the amount of water used by him and such water will be paid for at prevailing rates to the Government or in the event the water is furnished from Government-owned and operated sources, at reasonable rates as determined by the Contracting Officer. All water shall be carefully conserved. Before final acceptance, temporary connections and piping installed by the contractor shall be removed in a workmanlike manner to the satisfaction of the Contracting Officer.

§ 1007.3106–6 *Electricity.* Insert the most appropriate of the following three alternate clauses. Generally the first alternate will be used only where it is clearly practicable to meter service to the contractor and where the estimated cost of energy consumed will exceed $50.

(a)

SP 1–16 ELECTRICITY

All electric current required by the Contractor shall be furnished at his own expense. All temporary connections for electricity shall be subject to the approval of the Contracting Officer. In the event electricity is made available by the Government, the Contractor shall, at his own expense, install a meter to determine the amount of current used by him and such electricity will be paid for by or charged to the Contractor at prevailing rates charged to the Government or, in the event the electricity is generated by the Government, at reason-

able rates, as determined by the Contracting Officer. All temporary lines will be furnished, installed, connected, and maintained by the Contractor in a workmanlike manner satisfactory to the Contracting Officer and shall be removed by the Contractor in like manner at his expense prior to final acceptance of the construction.

(b)

SP 1-16 ELECTRICITY

All electric current required by the Contractor shall be furnished at his own expense. All temporary connections for electricity shall be subject to approval of the Contracting Officer. In the event electricity is made available by the Government, the Contractor shall, at his own expense, install a meter to determine the amount of current used by him and such electricity will be paid for by the Contractor at prevailing rates charged to the Government or, in the event electricity is generated by the Government at reasonable rates as determined by the Contracting Officer, except that under the following conditions where electric power is furnished, such power will be furnished at no cost to the Contractor.

(1) Where fractional horsepower tools are used other than at a central location where metering is not feasible.

(2) Where the total value of the estimated quantity of electricity to be used in addition to that supplied without cost in (1) above is less than $50.

The Contractor will be furnished a statement of such charges and the amount so charged will be deducted from the final payment. All temporary lines will be furnished, installed, connected, and maintained by the Contractor in a workmanlike manner satisfactory to the Contracting Officer and shall be removed by the Contractor in like manner at his expense prior to final acceptance of the construction.

(c)

SP 1-16 ELECTRICITY

All reasonable required amounts of electric power will be made available to the Contractor by the Government from Government-owned or -operated electrical systems and supplied without cost to the Contractor. The Contractor shall install and maintain at his own expense any necessary supply connections and facilities but only at such locations and in such workmanlike manner as may be authorized by the Contracting Officer. All electricity shall be carefully conserved. Before final acceptance, temporary connections and facilities installed by the Contractor shall be removed in a workmanlike manner to the satisfaction of the Contracting Officer. If, for any reason, the Government is unable to furnish all reasonable amounts of electric power required by the Contractor in the performance of this contract, it shall be the responsibility of the Contractor to provide an adequate supply of electric power at his own expense, subject to reimbursement by the Government on an actual cost basis.

§ 1007.3106-17 *Airfield safety precautions.*

SP 1-17 AIRFIELD SAFETY PRECAUTIONS

In addition to other normal safety requirements, the operation of all ground equipment (mobile or stationary), the placement of construction materials, and the performance of evacuation operations required for construction, repairs, or any other purpose within the landing and other safety precaution areas of all airdromes will be governed by the following:

(a) Definitions:

(1) Landing Areas. The term "landing areas" includes all runways and corresponding safety zones; an area 750 feet either side of the runway centerline; the clear zone extending 1,000 feet beyond ends of runways for a width of 1,500 feet; all taxiways and an area 250 feet from the taxiway edge farthest from the object (minimum of 350 feet at heavy bombardment airfields); and all aircraft parking aprons, and an area of 125-foot width adjoining the outside edges of such aprons.

(2) Safety Precaution Areas. This term includes portions of transitional and approach zones where placement of objects may result in vertical projections at or above the transitional or approach surface.

(i) Transitional Zone. The transitional zone is an area, adjoining the landing area and approach zone, covered by the transitional surface.

(ii) Transitional Surface. The transitional surface is the 1 on 7 side slope projecting upward and outward from the boundary of landing areas and approach surfaces to intersection with a horizontal surface, and imaginary plane 150 feet above established airfield elevation.

(iii) Approach Zone. The approach zone is an area beyond each clear zone extending on the ground for a distance of 25,000 feet along and symmetrical about the centerline of the runway. The width of the approach zone is 1,500 feet at the end of the clear zone, flaring to 4,000 feet wide at a distance of 10,000 feet from the clear zone, and continuing at the 4,000-foot width for the additional 15,000 feet.

(iv) Approach Surface. The approach surface is an imaginary plane covering the approach zone, beginning at the end of the clear zone at the elevation of the end of the runway and rising over the approach zone on a slope of 1 on 50 (known as the glide angle) for a horizontal distance of 10,000 feet (200 feet above the elevation of the end of runway). From this point the controlling elevation of the approach surface will remain at the 200-foot level for the remainder of the approach zone.

(b) Unless otherwise directed by the Contracting Officer, landing areas hazardous to aircraft will be outlined by yellow flags by day and electric, battery operated, low intensity, red flasher, lights by night.

(c) All vehicles (as defined in ANC-R-5 attached to AFR 62-11), while operating in the landing area, will be identified by means of a flag on a staff attached to and flying above the vehicle. This flag will be not less than 3 feet square and will consist of a checkered pattern of international orange and white squares of not less than 1 foot on each side. Flags varying in any dimension by not more than 10 percent of the specified dimensions are considered to comply with the stated requirements. All other equipment and materials in the landing areas and applicable portions of the safety precaution area, will, unless otherwise directed by the Contracting Officer, be marked with yellow flags by day and electric, battery operated, low intensity, red flasher, lights by night.

(d) Nothing will be placed upon the landing area or applicable portions of safety precaution areas without authority of the Contracting Officer.

(e) Neither equipment nor personnel will use any runway for purposes other than aircraft operation without permission of the Contracting Officer unless the runway is closed by order of the Contracting Officer and marked as indicated herein.

(f) The Contractor shall report to the Contracting Officer before initiating any work and shall notify the Contracting Officer of proposed changes of locations and operations. At all airdromes where flying is controlled, additional permission must, in each and every instance, be obtained from the control tower operator before entering a landing area unless such area is marked as hazardous to aircraft as indicated herein.

(g) Work will be carried on in such a manner as to leave the portion of the landing area which is available to aircraft free from hazards, holes, material piles, or projecting shoulders which might damage an airplane tire. Paved surfaces such as runways, taxiways, and hardstands shall be kept clean at all times and specifically must be kept free from small stones which damage propellers.

(h) During periods of active performance of work on the airfield by the Contractor, the operation of mobile equipment will be governed by the safety provisions herein. At all other times, all mobile equipment will be removed to locations approved by the Contracting Officer at a distance no less than 750 feet from the centerline of the runway plus any additional distance necessary to insure compliance with safety provisions herein.

(i) Only those trenches for which material is on hand and ready for placing therein will be opened. As soon as practicable after material has been placed and work approved, trenches will be backfilled and compacted as required. In the meantime, all resulting hazardous conditions will be marked and lighted in accordance with safety provisions herein.

(j) Any object placed in the areas adjoining or adjacent to the landing areas, defined as safety precaution areas, which project above the transitional or approach surfaces, must be provided with a red light or lantern during the hours of darkness.

(k) No separate payments will be made for lighting and protection necessitated by safety provisions herein; all costs in connection therewith will be included in the cost of the work.

§ 1007.3106-18 *Shop drawings.*

SP 1-18 SHOP DRAWINGS

The Contractor shall submit to the Contracting Officer for approval four (4) copies of all shop drawings as called for under the various headings of these specifications. These drawings shall be complete and shall contain all required detailed information. If approved by the Contracting Officer, each copy of the drawings will be identified as having received such approval by being so stamped and dated. The Contractor shall make any corrections required by the Contracting Officer. Three (3) sets of all shop drawings will be retained by the Contracting Officer and one set will be returned to the Contractor. The approval of the drawings by the Contracting Officer shall not be construed as a complete check but will indicate only that the general method of construction and detailing is satisfactory. Approval of such drawings will not relieve the Contractor of the responsibility for any error which may exist, as the Contractor shall be responsible for the dimensions and design of adequate connections, details, and satisfactory construction of all work.

§ 1007.3106-19 *Final examination and acceptance relating to payment.*

SP 1-19 FINAL EXAMINATION AND ACCEPTANCE RELATING TO PAYMENT

(a) Within thirty (30) days after completion of all work under this contract, if possible, the work will be given a final examination. When all of the work is found to be satisfactorily completed in accordance with the specifications, the entire work will be finally accepted by the Contracting Officer for and in behalf of the Government and final payment will be made to the Contractor.

(b) Final acceptance of the work and deductions or corrections of deductions made thereon will not be reopened after having once been made, except on evidence of collusion, fraud, or obvious error in connection with such final acceptance or payment.

(c) For purposes of this clause, final acceptance refers only to final acceptance which will allow the Contractor to be paid and does not refer to the final acceptance

in relation to inspection of material, in connection with which the Government reserves certain rights as set forth in clause 9 (d) of this contract.

§ 1007.3106–20 *Domestic articles.*

SP 1–20 DOMESTIC ARTICLES

Pursuant to clause 17 (Buy American Act) hereof, certain items of foreign origin have been exempted by the head of the department from the Buy American Act. A list of such items may be inspected at the office of the Contracting Officer.

§ 1007.3106–21 *Rates of wages.*

SP 1–21 RATES OF WAGES

(a) In accordance with the requirements of clause 20 of this contract, the minimum wages to be paid laborers and mechanics on this project, as most recently determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the pertinent locality, are as set forth in Schedule "A," attached. The complete determination is incorporated in the contract specifications regardless of whether the Contractor will employ all of the classes of laborers and mechanics listed.

(b) Any class of laborers and mechanics not listed in Schedule "A," attached, which will be employed on this contract shall be classified or reclassified conformably to Schedule "A," attached, by mutual agreement between the Contractor and the class of labor concerned, subject to the prior approval of the Contracting Officer. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question, accompanied by the recommendation of the Contracting Officer, shall be referred to the Secretary of Labor for final determination.

§ 1007.3106–22 *Protection of existing structures, utilities, and work.*

SP 1–22 PROTECTION OF EXISTING STRUCTURES, UTILITIES, AND WORK

The Contractor shall protect all existing structures, utilities, and work of any kind against damage or interruption of service. Damage or interruption of service resulting from failure to do so shall be repaired or restored promptly by, and at the expense of, the Contractor.

§ 1007.3107 *Additional special provisions.* Additional special provisions may be inserted according to the necessities of the construction work called for by the contract, provided that no contract clauses contained in Chapter I of this title or this chapter will be included in such special provisions.

SUBPART FF—CLAUSES FOR BAKERY PRODUCTS CONTRACTS

§ 1007.3203 *Required clauses.* The following clauses will be inserted in all contracts for the procurement of bakery products.

§ 1007.3203–1 *Definitions.* Insert the clause set forth in § 7.103–1 of this title.

§ 1007.3203–2 *Inspection.* Insert the clause set forth in § 1007.4037.

§ 1007.3203–3 *Responsibility for supplies.* Insert the clause set forth in § 7.103–6 of this title.

§ 1007.3203–4 *Payments.* Insert the clause set forth in § 7.103–7 of this title.

§ 1007.3203–5 *Assignment of claims.* Insert paragraph (a) of the clause set forth in § 7.103–8 of this title, but see § 1007.103–8.

§ 1007.3203–6 *Default.* Insert the clause set forth in § 7.103–11 of this title.

§ 1007.3203–7 *Disputes.* Insert the clause set forth in § 7.103–12 of this title.

§ 1007.3203–8 *Notice and assistance regarding patent infringement.* Insert the clause set forth in § 9.104 of this title.

§ 1007.3203–9 *Buy American Act.* Insert the clause set forth in § 7.103–8 of this title.

§ 1007.3203–10 *Convict labor.* Insert the clause set forth in § 12.203 of this title.

§ 1007.3203–11 *Eight-hour law of 1912.* Insert the clause set forth in § 12.303–1 of this title.

§ 1007.3203–12 *Walsh-Healey Public Contracts Act.* Insert the clause set forth in § 12.604 of this title.

§ 1007.3203–13 *Nondiscrimination in employment.* Insert the clause set forth in § 12.804 of this title.

§ 1007.3203–14 *Officials not to benefit.* Insert the clause set forth in § 7.103–19 of this title.

§ 1007.3203–15 *Covenant against contingent fees.* Insert the clause set forth in § 7.103–20 of this title.

§ 1007.3203–16 *Termination for convenience of the Government.* Insert the clause set forth in § 8.701 or § 8.705–1 of this title, as appropriate.

§ 1007.3203–18 *Utilization of small business concerns.* Insert the clause set forth in § 7.104–14.

§ 1007.3203–19 *Gratuities.* Insert the clause set forth in § 7.104–16 of this title.

§ 1007.3203–20 *Vehicles or conveyances.* Insert the clause set forth in § 1007.4018.

§ 1007.3203–21 *Federal Food, Drug, and Cosmetic Act.* Insert the clause set forth in § 1007.4019.

§ 1007.3203–22 *Sanitary inspection.* Insert the clause set forth in § 1007.4017 when the contract results from advertising; when the contract results from negotiations, insert only subparagraphs (b) and (d) thereof, which will be redesignated "(a)" and "(b)," respectively.

§ 1007.3203–23 *Containers.* Insert the following clause:

CONTAINERS

Delivery shall be made in suitable containers which shall not be included in the contract price. The Contractor shall be required to pick up his containers. The Government will not be responsible for any loss or damage to the containers.

§ 1007.3203–24 *Domestic food, clothing, cotton, spun silk yarn for cartridge cloth, or wool.* Insert the clause set forth in § 7.104–13 of this title.

§ 1007.3203–25 *Renegotiation.* Insert the clause set forth in § 7.103–13 of this title.

§ 1007.3204 *Clauses to be used when applicable.*

§ 1007.3204–1 *Increase or decrease.* According to the requirements of § 1007.4027, insert the clause set forth in that section.

§ 1007.3204–2 *Estimated requirements.* According to the requirements of § 1007.4028, insert the clause set forth in that section.

§ 1007.3204–3 *Approval of contract.* Whenever the contract requires manual approval, other than by the contracting officer, prior to becoming effective, insert the clause set forth in § 7.105–2 of this title.

§ 1007.3204–4 *Examination of records.* Insert the clause set forth in § 7.104–15 when the contract results from negotiation; contracts resulting from advertising will not contain this clause.

§ 1007.3204–6 *Alteration in contract.* According to the requirements for use in § 1007.105–1, insert the clause set forth in § 7.105–1 of this title.

§ 1007.3205 *Additional clauses.* The following clause may be used when necessary to cover the subject matter contained in such clause:

§ 1007.3205–1 *Federal, State, and local taxes.* The clause set forth in § 11.401 of this title may be inserted at the option of the contracting officer. If the clause is omitted, every effort will be made to insure that any taxes are excluded from the contract price.

SUBPART GG—CLAUSES FOR LAUNDRY OR DRY CLEANING CONTRACTS

§ 1007.3303 *Required clauses.* The following clauses will be inserted in all contracts for laundry or dry cleaning services:

§ 1007.3303–1 *Definitions.* Insert the clause set forth in § 7.103–1 of this title, and add the following paragraphs thereto:

(d) The term "Government-furnished property" means any supplies or facilities furnished to the Contractor by the Government for use in connection with the performance of this contract, but does not include the articles delivered to the Contractor to be laundered or dry cleaned.

(e) The term "Government-owned property" means all of the articles delivered to the Contractor to be laundered or dry cleaned, expressly including any articles which may actually be owned by individual Government personnel.

§ 1007.3303–2 *Inspection.* Insert the following clause:

INSPECTION

(a) The Government reserves the right to inspect the services rendered and to return articles determined to have been unsatisfactorily serviced for further servicing at no additional cost to the Government. If public necessity requires the use of services or supplies not conforming to specifications, they may be accepted and payment therefor shall be made at a proper reduction in price.

(b) The Government reserves the right to inspect the establishment of the Contractor and to make preliminary inspection of the services rendered at that point. However, final inspection and acceptance of the services rendered will be made when the serviced articles are returned.

§ 1007.3303–3 *Assignment of claims.* Insert paragraph (a) of the clause set

forth in § 7.103–8 of this title, but see § 1007.103–11.

§ 1007.3303–4 *Default.* Insert the clause set forth in § 7.103–11 of this title.

§ 1007.3303–5 *Disputes.* Insert the clause set forth in § 7.103–12 of this title.

§ 1007.3303–6 *Convict labor.* Insert the clause set forth in § 12.203 of this title.

§ 1007.3303–7 *Eight-hour law of 1912.* Insert the clause set forth in § 12.303–1 of this title.

§ 1007.3303–8 *Nondiscrimination in employment.* Insert the clause set forth in § 12.804 of this title.

§ 1007.3303–9 *Officials not to benefit.* Insert the clause set forth in § 7.108–19 of this title.

§ 1007.3303–10 *Covenant against contingent fees.* Insert the clause set forth in § 7.103–20 of this title.

§ 1007.3303–11 *Termination for the convenience of the Government.* Insert the clause set forth in § 8.705–2 of this title.

§ 1007.3303–12 *Notice to the Government of labor disputes.* Insert the clause set forth in § 7.105–3 of this title.

§ 1007.3303–14 *Gratuities.* Insert the clause set forth in § 7.104–16 of this title.

§ 1007.3303–15 *Utilization of small business concerns.* Insert the clause set forth in § 7.104–14 of this title.

§ 1007.3303–16 *Government-furnished property.* Insert the following clause:

GOVERNMENT-FURNISHED PROPERTY

All water-repellent compounds required to be used for laundered or dry cleaned articles or garments shall be furnished by the Government, unless the Contractor uses processes requiring water-repellent compounds not stocked by the Government.

§ 1007.3303–17 *Count of articles.* Insert the following clause:

COUNT OF ARTICLES

The Contractor shall be liable for the return of the number of articles furnished for service under this contract in accordance with the count of the Contracting Officer, unless a joint count shall be made by the Contractor and the Contracting Officer at the time of delivery to the Contractor, in which event the number agreed upon at such joint count shall control.

§ 1007.3303–18 *Loss or damage.* Insert the following clause:

LOSS OR DAMAGE

(a) The Contractor agrees to indemnify the Government for any Government-owned property delivered to the Contractor for servicing under the terms of this contract which (i) cannot be located for return to its individual owner or (ii) is damaged and cannot, in the opinion of the Contracting Officer or the Contractor, be satisfactorily repaired. In either of the above events, the Contractor agrees to pay to the Government, or to the individual owner of any specific item, who shall be the assignee of the Government's claim with regard to that specific item, the value determined therefore in accordance with Air Force Manual 67–1; or, for items not covered by that Manual, the original cost of such items as determined by the Contracting Officer: *Provided*, That, when in the judgment of the Contracting Officer, credit should be allowed for depreciation in the value of the property at the time of such loss or damage, the parties hereto shall determine the amount of the allowable credit. If the parties fail to agree upon the amounts of allowable credit, the dispute shall be determined as provided in the clause hereof entitled "Disputes."

(b) In case of damage to any article of such property which in the opinion of the Contracting Officer and the Contractor can be satisfactorily repaired, the Contractor agrees to repair the same at Contractor's expense in a manner satisfactory to the Contracting Officer.

§ 1007.3303–19 *Estimated Requirements.* Insert the clause set forth in § 1007.4028. If desired, a paragraph may be added limiting, in terms of percentage, the quantity which may be called for in any day, week, or other period, and/or limiting the frequency of calls.

§ 1007.3303–20 *Warranty.* Insert the following clause:

WARRANTY

The Contractor warrants that he has available sufficient equipment, facilities and plant capacity to perform the services for the estimated quantities of items set forth in the schedule during the contract period specified.

§ 1007.3303–21 *Subcontracts for work or services.* Insert the clause set forth in § 1007.4030 (b).

§ 1007.3303–22 *Invoicing and payment.* Insert the following clause:

INVOICING AND PAYMENT

The Contractor shall be paid at the end of each calendar month (or more frequently if the Contracting Officer finds that conditions so warrant) upon the submission of properly certified invoices or vouchers in quadruplicate, at the unit prices set forth in the Schedule. Invoices shall be typewritten or made out in indelible pencil or ink and submitted to the Contracting Officer. Only the originals of the invoices must be signed. Each invoice and copy thereof shall contain the following certificate:

"I hereby certify that the above bill is correct and just and that payment therefor has not been received.

_____
(Firm)

_____
(Signature)

_____"
(Title)

§ 1007.3303–23 *Records of Government-owned property.* Insert the following clause:

RECORDS OF GOVERNMENT-OWNED PROPERTY

The Base Laundry Officer, for general laundry and dry cleaning services, and the Base Medical Supply Officer, for hospital services, shall maintain the necessary property records in connection with their respective participation in this contract.

§ 1007.3303–24 *Storage and handling.* Insert the following clause:

STORAGE AND HANDLING

During the time Government-owned property is in the place of business of the Contractor it shall be stored so as to be raised at least four (4) inches from the floor. The Contractor warrants that all articles to be laundered or dry cleaned under this contract will be segregated in the Contractor's place of business and handled separately from any other work in process, and that hospital laundry and dry cleaning articles will be handled separately from other articles.

§ 1007.3304 *Clauses to be used when applicable.*

§ 1007.3304–1 *Examination of records.* Insert the clause set forth in § 7.104–15 of this title when the contract results from negotiation; contracts resulting from advertising will not contain this clause.

§ 1007.3304–2 *Approval of contract.* Whenever the contract requires manual approval, other than by the Contracting Officer, prior to becoming effective, insert the clause set forth in § 7.105–2 of this title.

§ 1007.3304–3 *Alterations in contract.* According to the requirements for use in § 1007.105–1, insert the clause set forth in § 7.105–1 of this title.

§ 1007.3304–4 *Superseding specifications.* According to the requirements for use in § 1007.4024, insert the clause set forth in that section.

SUBPART HH—CLAUSES FOR DAIRY PRODUCTS CONTRACTS

§ 1007.3403 *Required clauses.* The following clauses will be inserted in all contracts for the procurement of dairy products.

§ 1007.3403–1 *Definitions.* Insert the clause set forth in § 7.103–1 of this title.

§ 1007.3403–2 *Inspection.* Insert the clause set forth in § 1007.4037.

§ 1007.3403–3 *Responsibility for supplies.* Insert the clause set forth in § 7.103–6 of this title.

§ 1007.3403–4 *Payments.* Insert the clause set forth in § 7.103–7 of this title.

§ 1007.3403–5 *Assignment of claims.* Insert paragraph (a) of the clause set forth in § 7.103–8 of this title, but see § 1007.103–8.

§ 1007.3403–6 *Default.* Insert the clause set forth in § 7.103–11 of this title.

§ 1007.3403–7 *Disputes.* Insert the clause set forth in § 7.103–12 of this title.

§ 1007.3403–8 *Notice and assistance regarding patent infringement.* Insert the clause set forth in § 9.104 of this title.

§ 1007.3403–9 *Buy American Act.* Insert the clause set forth in § 7.103–14 of this title.

§ 1007.3403–10 *Convict labor.* Insert the clause set forth in § 12,203 of this title.

§ 1007.3403–11 *Eight-hour law of 1912.* Insert the clause set forth in § 12.303–1 of this title.

§ 1007.3403–12 *Walsh-Healey Public Contracts Act.* Insert the clause set forth in § 12.604 of this title.

§ 1007.3403–13 *Nondiscrimination in employment.* Insert the clause set forth in § 12.804 of this title.

§ 1007.3403–14 *Officials not to benefit.* Insert the clause set forth in § 7.103–19 of this title.

§ 1007.3403–15 *Covenant against contingent fees.* Insert the clause set forth in § 7.103–20 of this title.

§ 1007.3403–16 *Termination for convenience of the Government.* Insert the clause set forth in § 8.701 or § 8.705–1 of this title, as appropriate.

§ 1007.3403–18 *Utilization of small business concerns.* Insert the clause set forth in § 7.104–14 of this title.

§ 1007.3403–19 *Gratuities.* Insert the clause set forth in § 7.104–16 of this title.

§ 1007.3403–20 *Vehicles or conveyances.* Insert the clause set forth in § 1007.4018.

§ 1007.3403–21 *Federal Food, Drug, and Cosmetic Act.* Insert the clause set forth in § 1007.4019.

§ 1007.3403–22 *Sanitary inspection.* Insert the clause set forth in § 1007.4017.

§ 1007.3403–24 *Domestic food, clothing, cotton, spun silk yarn for cartridge cloth, or wool.* Insert the clause set forth in § 7.104–13 of this title.

§ 1007.3403–25 *Renegotiation.* Insert the clause set forth in § 7.103–13 of this title.

§ 1007.3404 *Clauses to be used when applicable.*

§ 1007.3404–1 *Increase or decrease.* According to the requirements of § 1007.4027, insert the clause set forth in that section.

§ 1007.3404–2 *Estimated requirements.* According to the requirements of § 1007.4028, insert the clause set forth in that section.

§ 1007.3404–3 *Milk bottles.* If the contract is for the delivery of milk in bottles, insert the following clause:

MILK BOTTLES

When milk is delivered in glass bottles, the cost of the bottle shall not be included in the price of the milk, and the bottles shall remain the property of the Contractor. The Government will endeavor to prevent undue breakage or loss of bottles while in its possession; however, the Government shall not be held responsible or liable in any way for any bottles which may become broken or lost.

§ 1007.3404–4 *Approval of contract.* Whenever the contract requires manual approval, other than by the contracting officer, prior to becoming effective, insert the clause set forth in § 7.105–2 of this title.

§ 1007.3404–5 *Alterations in contract.* According to requirements for use in § 1007.105–1, insert the clause set forth in § 7.105–1 of this title.

§ 1007.3404–7 *Examination of records.* Insert the clause set forth in § 7.104–15 of this title when the contract results from negotiation; contracts resulting from advertising will not contain this clause.

§ 1007.3405 *Additional clauses.* The following clauses may be used when desirable or necessary to cover the subject matter contained in such clauses.

§ 1007.3405–1 *Laboratory analysis.*

LABORATORY ANALYSIS

(a) During the life of this contract a Government inspector will draw samples from not less than three shipments during each monthly period for laboratory analysis. If such analysis reveals a percentage of butterfat below that specified elsewhere in this contract, the weighted average butterfat percentage of the lots from which the samples were drawn shall be ascertained on the basis of the percentage in the samples, and all products delivered during the month shall be deemed to have contained the average percentage of butterfat so ascertained.

(b) If the average butterfat content so determined is below contract requirements, the price per unit paid to the Contractor for that month shall be in the same ratio to the contract price per unit as the average butterfat content so determined is to the average butterfat content required to be delivered. No payment over the contract unit price will be made for any delivery of products containing more than the required percentage of butterfat, as stated in the contract.

(c) The foregoing is an agreed formula for adjustment of prices for accepted products which might have been rejected, and is without prejudice to the Government's right to terminate for default or to pursue any other remedy under this contract or provided by law.

§ 1007.3405–2 *Federal, State, and local taxes.* The clause set forth in § 11.401 of this title may be inserted at the option of the contracting officer. If the clause is omitted, every effort will be made to insure that all taxes are excluded from the contract price.

SUBPART 11—CLAUSES FOR PACKING AND CRATING CONTRACTS

§ 1007.3503 *Required clauses.* The following clauses will be inserted in all contracts for the procurement of packing and crating of household goods.

§ 1007.3503–1 *Definitions.* Insert the clause set forth in § 7.103–1 of this title.

§ 1007.3503–2 *Inspection.* Insert the clause set forth in § 1007.4037.

§ 1007.3503–3 *Responsibility for supplies.* Insert the clause set forth in § 7.103–6 of this title.

§ 1007.3503–4 *Payments.* Insert the clause set forth in § 7.103–11 of this title.

§ 1007.3503–5 *Assignments of claims.* Insert subparagraph (a) of the clause set forth in § 7.103–8 of this title, but see § 1007.103–8 of this part.

§ 1007.3503–6 *Default.* Insert the clause set forth in § 7.103–11 of this title.

§ 1007.3503–7 *Disputes.* Insert the clause set forth in § 7.103–12 of this title.

§ 1007.3503–8 *Notice and assistance regarding patent infringement.* Insert the clause set forth in § 9.104 of this title.

§ 1007.3503–9 *Buy American Act.* Insert the clause set forth in § 7.103–14 of this title.

§ 1007.3503–10 *Convict labor.* Insert the clause set forth in § 12.203 of this title.

§ 1007.3503–11 *Eight-hour Law of 1912.* Insert the clause set forth in § 12.303–1 of this title.

§ 1007.3503–12 *Walsh-Healey Public Contracts Act.* Insert the clause set forth in § 12.604 of this title.

§ 1007.3503–13 *Nondiscrimination in Employment.* Insert the clause set forth in § 12.804 of this title.

§ 1007.3503–14 *Officials not to benefit.* Insert the clause set forth in § 7.103–19 of this title.

§ 1007.3503–15 *Covenant against contingent fees.* Insert the clause set forth in § 7.103–20 of this title.

§ 1007.3503–16 *Termination for convenience of the Government.* Insert the clause set forth in § 8.701, or § 8.705–1 of this title, as appropriate.

§ 1007.3503–18 *Utilization of small business concerns.* Insert the clause set forth in § 7.104–14 of this title.

§ 1007.3503–19 *Gratuities.* Insert the clause set forth in § 7.104–16 of this title.

§ 1007.3503–20 *Equipment.* Insert the following clause:

EQUIPMENT

The Contractor warrants that he has sufficient equipment, facilities and plant capacity to perform the services for the estimated quantities of items set forth in the Schedule during the contract period specified.

§ 1007.3503–21 *Weighing and marking.* Insert the following clause:

WEIGHING AND MARKING

Each container (box, crate, barrel, etc.) shall be weighed and marked by the Contractor at the time packing and crating services are performed, except as otherwise provided in this contract. The costs of weighing and marking are included in the contract price for items calling for packing and crating services. The Contractor guarantees that the scales used for weighing are accurate and that their accuracy will be checked and certified by an inspector acceptable to the Contracting Officer not less than once every 6 months. The costs of such inspections shall be borne by the Contractor. The Contractor also guarantees that all weighing and marking will be accurately performed. Failure to meet these requirements satisfactorily, as determined by the Contracting Officer, shall be sufficient reason for termination of the contract by the Government under the clause hereof entitled "Default." Each container shall be suitably and legibly marked as designated by the Contracting Officer. Necessary information and instruction relative to markings required will be provided by the Contracting Officer for each order against this contract; such marking shall be governed by regulations applicable to the ordering agency.

§ 1007.3503–22 *Contractor's liabilities.* Insert the following clause:

LIABILITY FOR LOSS OR DAMAGE TO HOUSEHOLD GOODS

(a) Subject to the limitation set out in paragraph (b) of this clause, the Contractor shall be liable under this contract to the owner of the household goods for any and all loss or damage to such goods while in the Contractor's control or custody, except that the Contractor shall not be liable hereunder for any loss or damage which the Contractor affirmatively shows to have resulted from an Act of God, or the public enemy, or strike, riot or civil commotion.

(b) The Contractor's liability hereunder for loss or damage to the household goods is limited to thirty dollars ($30) per 100 pounds, and the rates of compensation stipulated herein have been negotiated to reflect such limitation of liability.

(c) For any loss or damage for which the Contractor is liable hereunder, the Contractor shall make prompt payment to the owner of the goods lost or damaged.

§ 1007.3503–23 *Renegotiation.* Insert the clause set forth in § 7.103–13 of this title.

§ 1007.3503–24 *Government property.* The following clause will be inserted and in addition the contract schedule will specify the individual who will maintain the Government property records in connection with the contract:

GOVERNMENT PROPERTY

(a) When household goods boxes of the types described in paragraph 5–26 of T. O. 00–85–11 are furnished by the Government, title shall remain in the Government. Title to all Contractor-acquired boxes of these types shall pass to the Government upon use in performing acceptable services ordered under this contract. All such boxes are hereinafter referred to as Government property. Government property shall be used only for the performance of this contract.

(b) The Contractor shall store Government property as specified in the Schedule, and shall utilize Government property in its possession as directed by the Contracting Officer. The Contractor shall be accountable and responsible for all Government property in its possession, and shall maintain and administer in accordance with sound industrial practice, a program for the preservation and protection of Government property, taking all responsible steps to comply with the directions of the Contracting Officer in connection therewith.

(c) In cases of loss or damage to Government property as a result of negligence of the Contractor or its employees, the Contractor agrees to indemnify the Government therefor, or to repair the Government property at the Contractor's expense, in a manner satisfactory to the Contracting Officer.

(d) Upon completion or termination of this contract, the Contractor will make disposition of residual Government property in accordance with instructions issued by the Contracting Officer.

§ 1007.3504 *Clauses to be used when applicable.*

§ 1007.3504–1 *Increase or decrease.* According to the requirements of § 1007.4027, insert the clause set forth in that section.

§ 1007.3504–2 *Estimated requirements.* According to the requirements of § 1007.4028, insert the clause set forth in that section.

§ 1007.3504–3 *Priorities, allocations and allotments.* According to the requirements of § 1.308–2 of this title, insert the clause set forth in § 7.104–18 of this title.

§ 1007.3504–4 *Approval of contract.* Whenever the contract requires manual approval, other than by the contracting officer, prior to becoming effective, insert the clause set forth in § 7.105–2 of this title.

§ 1007.3504–5 *Alterations in contract.* According to the requirements of this title, insert the clause set forth in § 7.105–1 of this title.

§ 1007.3504–6 *Examination of records.* Insert the clause set forth in § 7.104–15 of this title when the contract results from negotiation; contracts resulting from advertising will not contain this clause.

SUBPART JJ—CLAUSES, SPECIAL PROVISIONS, AND SPECIFICATIONS FOR CONTRACTS FOR CARE OF REMAINS

§ 1007.3603 *Schedule.* The following will be used as the schedule for contracts for care of remains and will be completed with appropriate information.

SCHEDULE

(CONTRACT FOR CARE OF REMAINS)

Part I

Supplies, Services and Transportation To Be Furnished. The Contractor shall furnish to the Government such supplies, services and transportation described in this Schedule as may be called for by the Contracting Officer during the contract period.

a. Contract Period. The contract period shall extend from _____ through _____

b. Area of Performance. This contract is established to provide for care of remains in the area within a radius of 30 miles of the contractor's establishment. The contractor will from time to time be required to go beyond the 30 mile radius in performance of this contract. When required to go beyond the 30 mile radius the contractor will be paid on a per loaded mile basis for the distance traveled outside of the 30 mile radius.

c. Personnel Exceptions. Except as provided below, the supplies, services and transportation described below are for deceased Government personnel as may be directed by the Contracting Officer: Exceptions:

_____

(State exceptions, or if none, so state)

_____

d. Using Activities. Using activities, in addition to the installation making this contract, are as follows:

_____

_____

e. Invoices for payment shall be submitted to:

_____

_____

f. Supplies, services and transportation.

Item No.	Supplies, services, and transportation	Estimated quantity	Unit	Unit price	Amount
1	For a Type I Casket, supplies, services and all transportation within a 30 mile radius of the contractor's establishment, in accordance with Specifications A, B, C and D of Part III.	----------	------	EA	
2	For a Type II Casket, supplies, services and all transportation within a 30 mile radius of the contractor's establishment, in accordance with Specifications A, B, C and D of Part III.	----------	------	EA	
3	For transportation in a suitable funeral coach, ambulance, service car and/or passenger car when required to go beyond the 30 mile radius of the contractor's establishment, in accordance with Specification E of Part III.	----------	------	EA (loaded mile).	

If an AF Aerial Port of Entry is to be a using activity, the following will be added as an addendum to the Schedule:

Item No.	Supplies, services, and transportation	Estimated quantity	Unit	Unit price	Amount
4	For a Type I Casket, Shipping Case, touch-up services and removal of remains to the place where services will be performed in accordance with Specifications B, C, and F of Part III.	----------	------	EA	
5	For a Type II Casket, shipping case, touch-up services and removal of remains to the place where services will be performed, in accordance with Specifications B, C, and F of Part III.	----------	------	EA	
6	For transportation of remains in a suitable funeral coach or service car from the place where services were performed to the selected carrier terminal, in accordance with Specification G of Part III.	----------	------	EA (per loaded mile).	
7	Touch-up services only (Government will furnish casket and shipping case) and removal of remains to the place where services will be performed in accordance with Specification F of Part III.	----------	------	EA	

Calls for Items 4, 5, or 7 of the Addendum to the Schedule will be as directed by the contracting officer.

§ 1007.3604 *General provisions.* The following general provisions will be included in contracts for care of remains and will be entitled "Part II."

§ 1007.3604–1 *Definitions.* Insert the clause set forth in § 7.103–1 of this title.

§ 1007.3604–2 *Changes.* Insert the clause set forth in § 1007.4025.

§ 1007.3604–3 *Inspection.* Insert the clause set forth in § 1007.4037.

§ 1007.3604–4 *Payments.* Insert the clause set forth in § 7.103–7 of this title.

§ 1007.3604–5 *Assignment of claims.* Insert paragraph (a) of the clause set forth in § 7.103–8 of this title, but see § 1007.103–8.

§ 1007.3604–6 *Federal, State, and local taxes.* Insert the clause set forth in § 11.401 of this title.

§ 1007.3604–7 *Termination for convenience of the Government.* Insert the clause set forth in § 8.705–2 of this title.

§ 1007.3604–8 *Default.* Insert the clause set forth in § 7.103–11 of this title.

§ 1007.3604–9 *Disputes.* Insert the clause set forth in § 7.103–12 of this title.

§ 1007.3604–10 *Estimated requirements.* Insert the clause set forth in § 1007.4028.

§ 1007.3604–11 *Buy American Act.* Insert the clause set forth in § 7.103–14 of this title.

§ 1007.3604–12 *Convict labor.* Insert the clause set forth in § 12.203 of this title.

§ 1007.3604–13 *Eight-hour law of 1912.* Insert the clause set forth in § 12.303–1 of this title.

§ 1007.3604–14 *Walsh-Healey public contracts Act.* Insert the clause set forth in § 12.604 of this title.

§ 1007.3604–15 *Nondiscrimination in employment.* Insert the clause set forth in § 12.802 of this title.

§ 1007.3604–16 *Officials not to benefit.* Insert the clause set forth in § 7.103–19 of this title.

§ 1007.3604–17 *Covenant against contingent fees.* Insert the clause set forth in § 7.103–20 of this title.

§ 1007.3604–18 *Subcontracts.* Insert the clause set forth in § 1007.4030 (b).

§ 1007.3604–19 *Renegotiation.* Insert the clause set forth in § 7.103–13 of this title.

§ 1007.3604–20 *Gratuities.* Insert the clause set forth in § 7.104–16 of this title.

§ 1007.3604–21 *Transportation.* Insert the following clause:

The Contractor shall transport remains to the place where the preparation of remains is to be performed, to a common carrier, and to any other place specified by the Contracting Officer.

§ 1007.3604–22 *Inconsistent provisions.* Insert the following clause:

In the event of any inconsistency in the provisions of any of the parts of this contract, the following order shall control: Schedule (Part I); General Provisions (Part II); and Specifications (Part III).

§ 1007.3604–23 *Advertising prohibited.* Insert the following clause:

The Contractor shall not advertise in any way that he has a contractual relationship with the Government as a result of the award of this contract.

§ 1007.3604–24 *Professional requirements.* Insert the following clause:

(a) Preparation and transportation of remains shall be performed in accordance with all applicable federal, state and local health laws, statutes and regulations. The Contractor is responsible for insuring that all necessary health department permits are in order for disposition of remains.

(b) The funeral home shall be licensed by the state health department where required, and shall have a qualified manager and a competent staff to furnish the highest quality of professional services.

§ 1007.3604–25 *Facility requirements.* Insert the following clause:

(a) The funeral home shall have complete facilities for maintaining the highest standard of solemnity, reverence, assistance to the family, and arrangements for prescribed ceremonial services.

(b) Preparation room shall be clean and sanitary with adequate equipment.

(c) Chapel and reposing room shall present an appearance of careful upkeep. The funeral home shall have, or be able to obtain catafalques, church trucks and equipment for Protestant, Catholic and Jewish services.

(d) The general appearance of the funeral home, furnishings, grounds and surrounding area shall give the impression of a clean and well kept establishment.

§ 1007.3604–26 *Coordination.* Insert the following clause:

Necessary coordination shall be effected with the Contractor's funeral director on all funeral arrangements, which shall include the time remains will be ready for inspection, viewing and shipment, time and place of religious services, time and place of interment and shipping schedules or final disposition of remains.

§ 1007.3604–27 *Time of delivery.* Insert the following clause:

The Contractor shall furnish the Supplies and Services called for as soon as practicable after receipt of a call issued hereunder. In no case will shipment be made until the Contractor certifies that the remains will be in an acceptable state of preservation upon final delivery. The Contractor shall not be responsible for notifying the consignee of time of arrival of shipped remains.

§ 1007.3604–28 *Preparation of remains at other than contractor's establishment.* Insert the following clause:

Preparation of remains at a place other than the Contractor's establishment shall require the concurrence of the Contracting Officer.

§ 1007.3604–29 *Oversized casket.* Insert the following clause:

When an oversized casket is required for any remains prepared under this contract, the additional cost shall be allowed as approved by the Contracting Officer. Caskets exceeding either an inside length of 78 inches or an inside width of 23 inches shall be considered oversized.

§ 1007.3604–30 *Group interment.* Insert the following clause:

Payments to the Contractor for supplies and services provided for remains to be interred as a group shall be made on the basis of the number of caskets furnished rather than on the basis of the number of persons in the group.

§ 1007.3604–31 *Preparation history.* Insert the following clause:

For each remains prepared, or each casket handled pursuant to the clause hereof entitled "Group Interment," the Contractor shall state briefly, on a certificate furnished by the Contracting Officer, the results of the embalming process.

§ 1007.3604–32 *Major restorative art.* Insert the following clause:

The Contractor shall advise the Contracting Officer promptly of any need for Major Restorative Art technique (restoration of facial contours, such as nose, ears, mouth, chin, etc.) required for any remains prepared under this contract to permit the viewing of remains at final destination, and upon direction of the Contracting Officer, shall perform such restoration. The cost of such restoration shall be determined in accordance with the clause of this contract entitled "Changes."

§ 1007.3605 *Clauses to be used when applicable.*

§ 1007.3605–1 *Approval of contract.* Whenever the contract requires manual approval, other than by the contracting officer, prior to becoming effective, insert the clause set forth in § 7.105–2 of this title.

§ 1007.3605–2 *Government-furnished property.* If an Air Force Aerial Port of Entry is to be a using activity, insert the clause set forth in § 13.502 of this title.

§ 1007.3605–3 *Priorities, allocations and allotments.* According to the requirements of § 1.308–2 of this title, insert the clause set forth in § 7.104–18 of this title.

§ 1007.3606 *Specifications.* The following specifications will be used in contracts for the care of remains and will be entitled "Part III."

SPECIFICATIONS (CONTRACT FOR CARE OF REMAINS)

PART III

SPECIFICATION A—PREPARATION OF REMAINS

a. *Analysis.* The preparing embalmer shall critically analyze his completed treatment keeping the following basic requirements in mind as a guide:

(1) The remains shall be bathed, and the face shaved and the hair trimmed. Hair dressing shall be accomplished on female personnel. Fingernails shall be trimmed and cleaned and cosmetics applied to render a satisfactory appearance. The mouth shall be securely closed and the eyes treated to prevent excessive wrinkling, sunken appearance or transparent lids.

(2) Lacerations, abrasions and incisions shall be adequately sutured and sealed to prevent leakage. There shall be no distention or presence of gases in the trunk cavities. Postmortem discolorations resulting from improper circulation of embalming chemicals shall not be in evidence. Postmortem stains shall be chemically bleached and rendered invisible by cosmetic treatment. Swollen or distorted features shall be reduced to the normal likeness of the deceased.

(3) Maggots and other parasites shall be destroyed, removed and their breeding media immunized. Ample time must be allotted to allow the fumes from chemicals used in treating parasites and larvae to dissipate to prevent objectionable odors.

b. *Chemicals.* Only standard commercial chemicals accepted by the profession shall be used.

c. *Types.* It shall be recognized that deceased personnel are classified into three types of remains. Necessarily each type requires variation in the embalming treatment to accomplish the maximum of results. The condition of the remains shall dictate the manner in which thorough preservation of all cellular tissue is to be accomplished. The time element involved during the interval between embalming and arrival of the remains at final destination is a factor requiring consideration during preparation. Adequate time shall be allowed for each embalming operation and for postmortem inspections to insure arrival of each remains at its final destination in an acceptable state of preservation.

(1) *Type A—Normal remains.* (a) These are remains where death is due to natural causes, and will consist of nonautopsied, nonmutilated remains in which only minor tissue destruction has occurred.

(b) Treatment. A thorough preembalming analysis shall be made to determine the most effective embalming procedure to be employed. Initial injection should consist of a proper strength chemical with subsequent injections being increased in concentration to penetrate thoroughly all capillaries. In addition, hypodermic injection, packs and other specialized treatment shall be employed to insure adequate preservation. Drainage shall be accomplished utilizing the necessary technique to produce maximum results. The abdominal and thoracic cavities should be thoroughly aspirated and injected with sufficient quantities of acceptable chemicals to insure preservation.

(2) *Type B—Autopsied remains.* (a) These are remains on which either a partial or complete autopsy has been performed.

(b) Treatment. The six-point injection technique shall be on a sectional basis with additional hypodermic injections in the upper and lower extremities. Chemicals must be of sufficient quantity and concentration to insure penetration and preservation. On thoracic or abdominal autopsies the viscera shall be removed, placed in a receptacle and covered with chemicals and intestinal and abdominal gases shall be relieved. When a cranial autopsy has been accomplished, the contents of the cranial cavity shall be treated in the same manner as the viscera. Following completion of the embalming operation, these organs shall be treated liberally with hardening compound and replaced within the cavities in the normal anatomical location.

(3) *Type C—Non-viewable remains.* (a) These are remains wherein there exists extreme mutilation, advanced stages of putrefaction or severe burning or charring and restoration to a normal lifelike appearance by major restorative art measures are precluded.

(b) Treatment.

1. Professional treatment utilized for Type A and Type B remains shall be employed depending upon the condition of the remains.

2. Mutilated remains shall be treated utilizing the arterial injection technique wherever possible, supplemented by hypodermic injections, immersion in chemicals and use of hardening compound.

3. Preservative techniques, in addition to Type A and Type B methods, shall be employed as required by the situation encountered. These supplemental techniques will include:

(a) Thorough aspiration of foreign material, and injection of proper embalming chemicals.

(b) Hypodermic injection of all unembalmed areas using proper strength chemicals.

(c) Liberal application of hardening compound to charred and/or mutilated portions.

(d) Application of chemical packs to localized area.

(e) Other approved techniques when appropriate.

(c) In cases where identification of remains is pending, the following procedures will be used:

1. All remains will be thoroughly treated with a 1:3 solution of a commercially accepted cavity fluid. In addition to this treatment, the remains will also be thoroughly sprayed with a concentrated solution of a good commercial grade chemical-type deodorant (nonmasking) as required.

2. When the identification processing has been completed, preparation will be continued as prescribed in paragraph c (3) (b) above.

(d) *Inspection.* Remains shall be inspected by a licensed embalmer after a suitable time has elapsed to make certain that preservation is uniform and complete. When reinjection is necessary, it must be done before delivery of the remains. Whenever necessary, remains shall be held for repeated attention until their condition is satisfactory.

(e) *Cosmetizing.* Tissue repairs and cosmetic treatment are considered to be part of Preparation of Remains, which shall also include minor restorative art work (lacerations, contusions, abrasions, ecchymosis, etc.) to present a viewable remains upon arrival at final destination.

(f) *Dressing remains.* Remains shall be dressed in the clothing furnished, except that where remains are so mutilated as to preclude dressing, they shall be neatly wrapped in the rubber sheet and blanket furnished. Satisfactory appearance shall be insured whether the remains are dressed or wrapped.

(g) *Placement in casket.* Remains shall be placed in the casket in a manner that will create an appearance of rest and composure, and to insure maintenance of position during transit. When remains are to be shipped, pads may be placed around them to prevent shifting. The pillow shall be turned over and a clean piece of cloth placed over the face. The casket shall be of sufficient size to prevent the appearance of crowding and cramping of remains.

SPECIFICATION B—CASKET, METAL

(a) *General.* This specification provides for a standard commercial type metal casket including an innerseal when called for by the Contracting Officer. For identification purposes the caskets are classified as follows:

(1) Type I—Casket, metal (hinged cap) with innerseal.

(2) Type II—Casket, metal (hinged cap) without innerseal.

(b) *Standards.* The caskets furnished under the contract shall conform to the standards herein.

(1) *Design.* The casket shall have top and bottom moldings, rigid handrails, round or square ends and be of conventional square or round design in accordance with best commercial practice.

(2) *Size.* The casket shall be furnished in standard stock sizes common to the industry. In the Type I casket the minimum dimension between the innerseal and bottom shall be 16 inches.

(3) *Construction.* The casket shall consist of a lid with oval panel and top frame, body, lining assembly, (side panels, pillow, mattress or bed, lid panel), handrail assembly and in the Type I casket an innerseal. The casket shall be of welded or soldered construction or a combination of both. The casket shall be constructed so as to afford only half exposure of the remains.

(a) Hardware. The lid, head cap and panel shall be hinged with two or more hinges and each shall be provided with supports for retaining the member in an open position and with locks to prevent movement when closed. Locks shall be as inconspicuous as possible. All hinges shall be bolted, spot-welded, or welded, or a combination of these, to the lid and the casket body.

(b) Lid. The lid shall be the standard hinged head panel construction and shall be formed from terneplate or stretcher leveled cold rolled steel not less than 0.0359 inch in thickness (20 gage U. S. Standard Revised).

(c) Body. The body shall be welded or soldered, or both, and formed from terneplate or cold rolled steel not less than 0.0359 inch in thickness (20 gage U. S. Standard Revised). The bottom panel may be fabricated from hot rolled mild steel of the same thickness. The Type I casket body shall have a top flange of sufficient bearing surface to support the rubber gasket of the innerseal. Flanges shall be fabricated from terneplate or cold rolled steel of the same thickness as the body. The casket shall be electric spot-welded and soldered for the full length of all miters. Bottom shall be spot- or tack-welded to the sides and the ends of casket body at intervals of not more than six (6) inches between welds, or lock-seamed to sides of the body. Continuous welding shall be permitted. After lock-seaming, spot- or tack-welding, the entire length and width of bottom seams shall be soldered. The bottom panel shall be constructed from one piece of metal and shall be formed either by (1) reinforcing ridges not less than $\frac{3}{8}$ inch deep, spaced not more than 8 inches apart, extending lengthwise or crosswise to the bottom; lengthwise ridges shall run to within approximately four inches of end-hand grooves, or full length, and crosswise ridges shall run to within approximately one inch of side hand grooves; the bottom panel shall be reinforced with not less than 4 inch channel braces, welded to the inside of bottom either on or between ridges, across the width; all braces shall be welded to the hand hold grooves on both sides of the bottom; or by (2) innerbottom of steel not less than 0.0239 inch thick with ridges not more than 8 inches apart, spot-welded to a smooth side bottom.

(d) Handrails, handrails plates and corner ornaments. The handrails shall be rigid type, oval design, and fabricated from terneplate or cold rolled steel a minimum of 0.017 inch thick (26 gage, U. S. Standard Revised). The handrail plates and corner ornaments shall be fabricated from terneplate or cold rolled steel, not less than 0.0359 inch thick (20 gage, U. S. Standard Revised). When supplied, each handrail plate or corner ornament shall be secured to the casket with a minimum of two bolts or studs not less than $\frac{3}{16}$ inch in diameter. Spacing of handrail plates shall be either three or more to a side and one plate to an end unless a corner ornament is used as a support for a continuous bar. The handrails shall be so constructed and attached to the handrail assembly to support the weight of the casket plus an additional equally distributed weight of 300 pounds, without buckling, pulling away from the casket or showing other signs of weakness.

(e) Innerseal (applicable to Type I). The innerseal shall be an interchangeable all metal innerseal, crystal glass and metal innerseal or acrylic sheet and metal innerseal. The all metal innerseal shall be formed from terneplate or cold rolled steel not less than 0.0359 inch thick (20 gage U. S. Standard Revised). The crystal glass and metal innerseal or the acrylic sheet and metal innerseal shall be formed from terneplate or cold rolled steel not less than 0.0359 inch thick (20 gage U. S. Standard Revised) and shall contain a window formed of $\frac{3}{16}$ inch acrylic sheet which shall be set in either white lead or linseed oil putty or in a synthetic or a natural rubber gasket to achieve an airtight seal. Only half exposure shall be required on the innerseal with a viewing window. The innerseal shall be fitted with a suitable gasket made of synthetic or natural rubber to fit accurately with the flange of the casket body. A suitable talc shall be placed on the rubber gasket in sufficient quantity to act as a parting agent. At least 24 cadmium plated or bronze finished clamps or screws shall be furnished to secure the innerseal to the casket and insure an airtight seal.

(f) Welding. All component parts to be welded shall be properly aligned into position prior to welding. Welding shall be first class. Resistance, arc, or gas welds shall be sound, free from pits, holes or fissures. Welding shall be accomplished without burning through the welded metals and calculated properly to make a sound weld. After any flash welding outside exposed flash shall be stripped entirely and no trace of the joint shall be visible after finishing. All arc or gas welds shall have full penetration and adequate fusion, forming a joint of strength equal to that of the material welded. Exposed welds shall be ground and sanded flush to the original surface and shall be undetectable after finishing.

(g) Finish. The color of the final finish shall be statuary bronze. This finish may be achieved through one of two methods.

1. Synthetic Enamel, Baked. All surfaces of metal components shall be thoroughly cleaned and given phosphate coating. A primer shall be applied to all surfaces which will be exposed after the casket is assembled, except the bottom shall be dry-sanded to a smooth finish. All exposed metal surfaces of the lid and head panel when viewed open or closed, and all exterior exposed metal surfaces of the casket, except the bottom, shall be coated with synthetic gloss enamel.

2. Nitrocellulose Lacquer (Air Dry or Flash Dry). All surfaces of the metal components shall be thoroughly cleaned and given a phosphate coating. A primer shall be applied to all surfaces and edges. Forced drying may be used, if desired. All exposed metal surfaces of the lid and head panel when viewed open or closed, and all exposed metal surfaces of the casket, except the bottom shall be given either a double coat or two coats of lacquer. This lacquer shall dry hard, sufficient for recoating in 30 minutes. All surfaces shall then be double coated with a clear lacquer. The exposed heads of screws or bolts used for assembling the casket shall be finished to correspond to the finish of the casket. The finish coat shall level out to produce a smooth and uniform flow without orange-peel, runs, wrinkles, drops, streaks or areas of thin film or no film. Buffing of the top shall be accomplished. The casket shall be well finished, smooth, clear and free from defects which may affect the appearance or serviceability.

(h) Upholstering.

1. Lining assembly. The lining assembly for the interior of the lid or head panel, sides of the casket, bed spread, pillow case and, where applicable, the sides of the innerseal frame, shall be lined in white or eggshell rayon twill, or equal, and backed with cotton

sheeting. When head and foot panel type is used, only the head panel shall be lined. The assemblies for the head panel, bed spread and top of the pillow case shall be wave crushed, tufted or shirred either by hand or by machine. Where applicable, the side panels of the casket body shall have padded skirting or aprons.

2. Pillow. The pillow case shall be made of domet or cotton sheeting as used in the industry, filled with 2½ pounds, plus or minus ¼ pound, of cotton or Tufflex. The pillow shall then be inserted in the pillow cover. The pillow will be not less than 22 inches long, 18 inches wide and 6 inches thick.

3. Bed. The bad case shall be made of domet, ticking or cotton sheeting and filled with 16 pounds, plus or minus 1 pound, of clean wood wool, Tufflex, or excelsior. The bed shall have a bed spread secured to the top prior to insertion into the casket. The bed shall be not less than 78 inches long, 23 inches wide, and 7 inches thick.

(i) Workmanship. The casket shall be produced by the best means employed by those skilled in the art of metal fabrication and upholstery. All parts shall be accurately formed and properly assembled into the finished article and the casket shall be smooth, clean, well finished and free from all defects which may affect the appearance or serviceability. The Type I casket shall be capable of withstanding the water or air test as commonly practiced in the industry. A suitable talc shall be placed on the rubber gasket in sufficient quantity to act as parting agent.

SPECIFICATION C—OUTER OR SHIPPING CASE

(a) *General.* This specification provides for a standard commercial type wood box to be used as an outer or shipping case.

(b) *Standards.* Unless otherwise ordered each casket shall be furnished with an outer case which when used as a shipping case shall be furnished with six drop handles, two on each side and one on each end. The handles shall support the weight of the case and casket, plus an additional equally distributed weight of 300 pounds, without buckling, pulling away from the case or showing other signs of weakness. The case shall be made of 1-inch stock of thoroughly seasoned white pine, or other wood of equal quality, standard to the industry in the locality in which it is manufactured, of not less than ⅝-inch finished thickness, properly kiln-dried, free from unsound knots, checks, shakes or other defects which would impair the strength or usefulness of the case. The case shall be constructed of tongue or dovetail joints or other accepted method of fabrication common to the industry, surfaced two sides and finished thickness to be not less than ⅝ inch. The ends shall be set in with sides securely nailed thereto. Bottom shall be of cross bottom construction, and securely nailed to the ends and sides. Top shall be of cross top construction and have two top battens not less than ⅝-inch thickness and not less than 3 inches in width, running full length of box top with shaped or chamfered edges, securely nailed or screwed to the box top from underside. Top battens shall be placed 4 inches from outside edge of top. Two ⅝-inch by 2-inch cleats shall extend from the top to the full inside depth of the case at each end. Top and bottom shall be made flush with outside of sides and ends. Cement-coated nails are to be used throughout construction. All outer surfaces of the box shall be finished with two coats of steel-gray paint. Box top shall be secured to body of box with not less than eight 1¾-inch No. 10 flat head, wood screws, evenly spaced. Size of box shall be such as to allow at least 1-inch clearance between outside of casket and inside of box. A kraft paper protective shroud and pads shall be furnished to protect the casket during transit.

SPECIFICATION D—FUNERAL COACH AND RELATED SERVICES

(a) *Removal of remains.* Transporting remains in a suitable funeral coach, ambulance, or service car to place where the preparation is performed. This service shall include calling at the installation hospital, or other place where death occurs or where remains are located when such other place is within a radius of 30 miles of contractor's establishment, receiving the remains, and removing them to the contractor's mortuary or other place of preparation.

(b) *Professional funeral service.* This service, when ordered, shall be held, as specified in order, at either the contractor's establishment or a military installation listed under paragraph D, Part I, Schedule Sheet. Such services shall include:

(1) Delivery of the remains to the place of services and, as necessary, return to the contractor's establishment; use of the contractor's equipment and facilities (including chapel); professional services and all other services incident to the conduct of a funeral in accordance with traditional standards of solemnity, reverence, and respect for the deceased and his family;

(2) Passenger car, when required, to transport members of the immediate family to the funeral service and, as necessary, to the selected carrier terminal, and return.

(c) *Funeral coach to cemetery or to selected carrier terminal.* Delivering remains in contractor's funeral coach to a cemetery or to a selected carrier terminal within a 30 mile radius of the contractor's establishment.

SPECIFICATION E—ADDITIONAL TRANSPORTATION

(a) *General.* This transportation, when ordered by the contracting officer, shall consist of providing a suitable funeral coach, ambulance, service car and passenger car, by the contractor, when required to go beyond the 30 mile radius of his establishment in performance of contract.

(b) *Terms.* The contractor will be paid on a per loaded mile basis for the distance traveled outside of the 30 mile radius.

§ 1007.3606–1 *Reprocessing remains at zone of interior.* If an Air Force Aerial Port of Entry is to be a using activity, the following will be added to the specifications.

SPECIFICATION F—CARE OF REMAINS

(a) *General.* This specification provides for examining viewable and non-viewable remains and rendering any touch-up services, as required; dressing and casketing remains. These services should be performed in accordance with accepted professional standards to insure that viewable and non-viewable remains arrive at their final destination in a satisfactory condition.

(1) Viewable remains shall be examined for uniformity of preservation and rendered touch-up services, as required. Cosmetics treatment shall be performed to insure remains will be viewable at final destination.

(2) Non-viewable remains shall be examined for uniformity of preservation and rendered touch-up services as required.

(3) Removal of remains to place where services will be performed. See paragraph 28, Part II, General Provisions.

(4) Cleansing of reusable metal transfer case shall be accomplished when contractor removes the remains therefrom.

SPECIFICATION G—TRANSPORTATION TO THE SELECTED CARRIER TERMINAL

(a) *General.* This transportation, when ordered, shall consist of providing a suitable funeral coach or service car for transporting the remains from the place where services were performed to the selected carrier terminal.

(b) *Terms.* The contractor will be paid on a per loaded mile basis for transportation furnished to transport the remains from the place where services were performed to the selected carrier terminal.

SUBPART KK—CLAUSES AND ARRANGEMENTS FOR NEGOTIATED UTILITY SERVICE CONTRACTS

§ 1007.3703 *Required clauses and arrangement; contracts for $2,400 or less.* When a negotiated utility service contract is utilized in accordance with § 16.007 of this title, the following clauses and provisions will be inserted in all negotiated utility service contracts where no connection charge is involved, and where the estimated annual cost is $2,400 or less.

§ 1007.3703–1 *Cover page.* The following provisions will be set forth on the cover page and will be completed with appropriate information:

DEPARTMENT OF DEFENSE—CONTRACT NUMBER _____ NEGOTIATED _____ SERVICE CONTRACT _____

This negotiated contract, entered into as of _____, by and between the United States of America, hereinafter called the Government, and _____ a corporation organized and existing under the laws of the State of _____ hereinafter called the Contractor, WITNESSETH, that the Contractor agrees to furnish, and the Government agrees to purchase and receive, service, beginning on _____ 19__, and thereafter until further notice, subject to the availability of appropriations, for use of the Government at the service location designated as _____, to be delivered in accordance with Contractor's Rate Schedule _____, attached hereto and made a part of this contract, and General Provisions hereof at the point of connection of Contractor's and Government's facilities described as _____ and to be of the following characteristics _____

In witness whereof, the parties hereto have executed this contract as of the day and year first above written.

UNITED STATES OF AMERICA

By _____
(Contracting Officer)

_____
(Contractor)

By _____

_____
(Title)

This negotiated contract is made pursuant to the provisions of Section 2 (c) of the Armed Services Procurement Act of 1947 as amended, 41 U. S. Code 151–161.

Appropriation chargeable:
Estimated Annual Cost:

§ 1007.3703–2 *Payments.* Insert the following clause:

PAYMENTS

Payments for the service furnished to the service location shall be made by _____ upon submission of properly certified monthly invoices rendered by the Contractor to the _____. All bills for service shall be paid without penalty or interest.

§ 1007.3703–3 *Contractor's facilities.* Insert the following clause:

CONTRACTOR'S FACILITIES

The Contractor, at its expense, shall furnish, install, operate, maintain, retain title to and be responsible for all loss of or damage to all facilities required to furnish the service provided for herein. The Contractor will be

allowed access to its facilities on Government premises at suitable times and it shall, at its expense, remove them and restore the premises to original condition within a reasonable time after termination of this contract.

§ 1007.3703–4 *Changes of rate schedules and rates.* Insert the following clause:

CHANGES OF RATE SCHEDULES AND RATES

(a) The Government may upon request, in accordance with the Contractor's applicable rules and regulations, take service under any available rate schedule of the Contractor.

(b) Service furnished under this contract shall be subject to regulation in the manner and to the extent prescribed by law by any Federal, State, or local regulatory commission having jurisdiction. If during the term of this contract the public regulatory commission having jurisdiction received for file in authorized manner rates that are different from those stipulated herein for like conditions of service, the Contractor agrees to continue the prescribed service and the Government agrees to pay for such service at the different rates from and after the effective date of such rates.

§ 1007.3703–5 *Officials not to benefit.* Insert the clause set forth in § 7.103–19 of this title.

§ 1007.3703–6 *Covenant against contingent fees.* Insert the clause set forth in § 7.103–20 of this title.

§ 1007.3703–7 *Assignment of claims.* Insert the following clause:

ASSIGNMENT OF CLAIMS

No claim under this contract shall be assigned.

§ 1007.3703–8 *Convict labor.* Insert the clause set forth in § 12.203 of this title.

§ 1007.3703–9 *Nondiscrimination in employment.* Insert the clause set forth in § 12.804 of this title.

§ 1007.3703–10 *Disputes.* Insert the clause set forth in § 7.103–12 of this title.

§ 1007.3703–11 *Definitions.* Insert the clause set forth in § 7.103–1 of this title.

§ 1007.3703–12 *Gratuities.* Insert the clause set forth in § 7.104–16 of this title.

§ 1007.3704 *Clauses to be used when applicable.* Contracts for $2,400 or less.

§ 1007.3704–1 *Alterations in contract.* In accordance with the requirements of § 1007.105–1, insert the clause set forth in § 7.105–1 of this title.

§ 1007.3705 *Additional clauses.* Contracts for $2,400 or less.

§ 1007.3705–1 *General.* Any other clauses authorized by chapter I of this title and this chapter in accordance with instructions for use may be inserted when necessary or desirable to cover the subject matter contained in such clauses.

§ 1007.3706 *Required clauses and arrangements; contracts for more than $2,400.* The following clauses and provisions will be inserted in all negotiated utility service contracts which involve a connection charge, or are for an estimated annual cost of more than $2,400, or both. In addition to the requirements for approval in § 1001.457 of this chapter, utility service contracts for a period of more than 1 year will be submitted for approval as specified in § 1001.461 of this chapter, and any desired deviations from the clauses set forth below should be submitted in advance or concurrently according to § 1001.109 of this chapter. Any utility service contract involving a connection charge of $5,000 or more, including the agreed salvage value (see § 1007.3709–2) will be submitted for review and approval to the Commander, AMC, attn: MCPC.

§ 1007.3706–1 *Cover page.* The following provisions will be set forth on the cover page, and will be completed with appropriate information:

UTILITY SERVICE CONTRACT

Contract No. _____

NEGOTIATED _____ SERVICE CONTRACT

_____

(Premises to be served)

_____ _____ _____

(City) (County) (State)

_____ _____

(Contractor) (Contractor's address)

Premises are: ( ) Government Owned
( ) Government Leased
Symbol No. of Lease _____
Name of Lessor _____

Estimated annual cost hereunder $_____.

Connection charge $_____.

Bills will be rendered to _____ at _____.

Payments will be made by _____ at _____.

Appropriation chargeable _____.

This negotiated contract is made pursuant to the provisions of Section 2 (c) of the Armed Services Procurement Act of 1947 (Pub. Law 413, 80th Cong.).

This Contract, entered into as of _____, by and between the United States of America, hereinafter called the Government, represented by the Contracting Officer executing this contract, and _____ whose address is _____ hereinafter called the Contractor.

Witnesseth That the parties hereto do mutually agree as follows:

§ 1007.3706–2 *Definitions.* Insert the clause set forth in § 7.103–1 of this title.

§ 1007.3706–3 *Public regulation.* Insert the following clause:

PUBLIC REGULATION

Service furnished under this contract shall be subject to regulation in the manner and to the extent prescribed by law or by any federal, state or local regulatory commission having jurisdiction. If during the term of this contract the public regulatory commission having jurisdiction receives for file in authorized manner rates that are higher or rates that are lower than those stipulated herein, for like conditions of service, the Contractor agrees to continue to furnish service as stipulated in this contract and the Government agrees to pay for such service at the higher or lower rates from and after the date when such rates are made effective.

§ 1007.3706–4 *Access.* Insert the following clause:

ACCESS

The Government hereby grants to the Contractor, free of any rental or similar charge, but subject to the limitations specified in this contract, a revocable permit to enter the service location for any proper purpose under this contract, including use of the site or sites agreed upon by the parties hereto for the installation, operation and maintenance of the facilities of the Contractor. Authorized representatives of the Contractor will be allowed access to the facilities of the Contractor at suitable times to perform the obligations of the Contractor with respect to such facilities. It is expressly understood, however, that proper military or Governmental authority may limit or restrict the right of access herein granted in any manner considered by such authority to be necessary for the national security.

§ 1007.3706–5 *Payment.* Insert the following clause:

(a) For and in consideration of the faithful performance of the stipulations of this contract, the Contractor shall be paid by the designated disbursing office or officer for service herein contracted for, at the rates and under the terms and conditions herein set forth; provided, that the Government shall be liable for the minimum monthly charge, if any, specified in the contract commencing with the billing period in which service is initially furnished and continuing until this contract is terminated, except that the minimum monthly charge specified in this contract shall be equitably prorated for the billing period in which commencement and termination of this contract shall become effective.

(b) The Contractor hereby declares that said rates are not in excess of the lowest rates now available to any prospective customer under like conditions of service, and agrees that during the life of this contract the Government shall continue to be billed at the lowest available rate for similar conditions of service.

(c) All bills for service shall be paid without penalty or interest and the Government shall be entitled to any discounts customarily applicable to payment of bills by all customers of the Contractor. Payment hereunder shall not be made in advance of service rendered.

§ 1007.3706–6 *Liability of contractor.* Insert the following clause:

LIABILITY OF CONTRACTOR

All taxes and other charges in connection with facilities provided hereunder by the Contractor, together with all liability arising out of the negligence of the Contractor in the construction, operation or maintenance of such facilities shall be assumed by the Contractor.

§ 1007.3706–7 *Assignment of claims.* Insert the following clause:

ASSIGNMENT OF CLAIMS

No claim under this contract shall be assigned.

§ 1007.3706–8 *Disputes.* Insert the clause set forth in § 7.103–12 of this title.

§ 1007.3706–9 *Termination.* Insert the following clause. The figure of 30 days may be changed to any other figure not in excess of 90 days:

TERMINATION

This contract may be terminated at the option of the Government by the giving of not less than thirty (30) days advance written notice of the effective date of termination.

§ 1007.3706–10 *Convict labor.* Insert the clause set forth in § 12.203 of this title.

§ 1007.3706–11 *Nondiscrimination in employment.* Insert the clause set forth in § 12.802 of this title.

§ 1007.3706–12 *Officials not to benefit.* Insert the clause set forth in § 7.103–19 of this title.

§ 1007.3706–13 *Covenant against contingent fees.* Insert the clause set forth in § 7.103–20 of this title.

§ 1007.3706–14 *Gratuities.* Insert the clause set forth in § 7.104–16 of this title.

§ 1007.3706–15 *Conflicts.* Insert the following clause:

CONFLICTS

To the extent of any inconsistency between the provisions of this contract, and any schedule, rider or exhibit incorporated in this contract by reference or otherwise, or any of the Contractor's rules and regulations, the provisions of this contract shall control.

§ 1007.3706–16 *Signature page.* The following provisions will be set forth on the signature page, and will be completed with appropriate information:

In witness whereof, the parties hereunto have executed this contract as of the day and the year first above written.

THE UNITED STATES OF AMERICA

By ----------

(Contractor)

By ----------

(Title)

CERTIFICATE

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

(Corporate Seal)

§ 1007.3707 *Clauses to be used when applicable, contracts for more than $2,400.*

§ 1007.3707–1 *Examination of records.* Insert the clause set forth in § 7.104–15 of this title except where the public utility services are to be furnished at rates not in excess of those established for uniform applicability to the general public or at such rates plus reasonable service or connection charges incident to such utility services.

§ 1007.3707–2 *Multiple service locations.* If it is desired to provide for possible alternative service locations, insert the following clause:

MULTIPLE SERVICE LOCATIONS

(a) The Contracting Officer may at any time, by written order, designate any service location within the service area of the Contractor at which service shall be furnished or discontinued thereunder, and the contract shall be modified in writing accordingly by adding to or deleting from the Service Specifications the name and location of the appropriate service location, by specifying a different rate if applicable, the appropriate point of delivery, different service specification if applicable, and any other appropriate terms and conditions.

(b) The minimum monthly charge specified in this contract shall be equitably prorated for the billing period in which commencement or discontinuance of service at any service location designated under the Service Specifications shall become effective.

§ 1007.3707–3 *Approval of contract.* Whenever the contract requires manual approval, other than by the contracting officer, prior to becoming effective, insert the clause set forth in § 7.105–2 of this title.

§ 1007.3707–4 *Priorities, allocations and allotments.* According to the requirements of § 1.308–2 of this chapter, insert the clause set forth in § 7.104–18 of this title.

§ 1007.3707–5 *Alterations in contract.* According to the requirements of § 1007.105–1, insert the clause set forth in § 7.105–1 of this title.

§ 1007.3708 *Additional clauses.*

§ 1007.3708–1 *General.* Any other clauses authorized by Chapter I of this title and this chapter, according to instructions for use, may be inserted when necessary or desirable to cover the subject matter contained in such clauses.

§ 1007.3709 *Description of services.* Utility service contracts to be complete must also contain a detailed description of the services to be rendered. Since these services will vary from contract to contract, the establishment of standard provisions is not practicable, and it is the responsibility of the contracting officer to negotiate with the contractor special contract provisions which will accurately describe the services desired and which will adequately protect the interests of the Government. Set forth in § 1007.3709–1 are some sample provisions which may be useful as a guide. Other clauses, not inconsistent with the clauses set forth in this subpart, will be developed as required to suit individual conditions and will be incorporated into the contract subject to the provisions of the Conflicts clause.

§ 1007.3709–1 *Technical provisions.* Set forth in this section are sample technical provisions. Similar provisions covering, to the extent applicable, the subject matter below should be included in each contract.

TECHNICAL PROVISIONS

(a) *Scope of work.* Subject to the terms and conditions hereinafter set forth, the Contractor shall sell and deliver to the Government and the Government shall purchase and receive from the Contractor ---------- service (hereinafter called service) requested by the Government from the Contractor at the premises to be served hereunder (hereinafter called the service location), all in accordance with ---------- Service Specifications attached hereto and made a part hereof.

(b) *Measurement of service.*

(i) All service furnished by the Contractor shall be measured by suitable metering equipment of standard manufacture, to be furnished, installed, maintained, calibrated and read by the Contractor at its expense. When more than a single meter is installed at the service location, the readings thereof shall be billed conjunctively. In the event any meter fails to register or registers incorrectly the service furnished therethrough, the parties shall agree upon the length of period during which such meter failed to register or registered incorrectly and the quantity of service delivered therethrough during such period and, upon agreement, an appropriate adjustment based thereon shall be made in the Government's bills. For the purpose of the preceding sentence, any meter which registers not more than two (2) percent slow or fast shall be deemed correct.

(ii) The Contractor, so far as possible, shall read all meters at periodic intervals of approximately thirty (30) days. All billings based on meter readings of less than twenty-seven (27) days or more than thirty-two (32) days shall be prorated accordingly. Invoices for service rendered hereunder shall contain statements of the meter readings at the beginning of the billing period, meter constants, consumption during the billing period and such other pertinent data as shall be required by the Government.

(c) *Meter test.* The Contractor, at its expense, shall periodically inspect and test the meters installed by it at intervals not exceeding one (1) year. At the written request of the Contracting Officer the Contractor shall make additional tests of any or all of such meters in the presence of Government representatives. The cost of such additional tests shall be borne by the Government if the percentage of error is found to be not more than two (2) percent slow or fast. No meter shall be placed in service or allowed to remain in service which has an error in registration in excess of two (2) percent under normal operating conditions.

(d) *Change in volume or character.* Reasonable notice shall, so far as possible, be given by the Contracting Officer to the Contractor respecting any material changes proposed in the volume or characteristics of the utility service required at each location.

(e) *Continuity of service and consumption.*

(i) The Contractor shall use reasonable diligence to provide a regular and uninterrupted supply of service at the service location, but shall not be liable for damages, breach of contract or otherwise to the Government for failure, suspension, diminution or other variations of service occasioned by or in consequence of any cause beyond the control of the Contractor, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes or other catastrophes, strikes or failure or breakdown of transmission or other facilities; provided, that when any such failure, suspension, diminution, or variation of service shall aggregate more than ten (10) hours during any billing period hereunder, an equitable adjustment shall be made in the monthly rates specified in this contract (including the minimum monthly charge).

(ii) In the event the Government is unable to operate the service location in whole or in part for any cause beyond its control, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes or other catastrophes, or strikes, an equitable adjustment shall be made in the monthly rates specified in this contract (including the minimum monthly charge) if the period during which the Government is unable to operate such service location in whole or in part shall exceed fifteen (15) days during any billing period hereunder.

(f) *Rates and charges.*

(i) For all service furnished under this contract to the service location the Government shall pay the Contractor at the rate schedule ---------- attached hereto and made a part of this contract.

(ii) For purposes of charges under subparagraph (i) above, any demands due to faulty operation of, or excessive or fluctuating pressure on, the Contractor's system shall not be included as part of the Government's demand.

(iii) Recognition is given to the fact that the Government fiscal year ends on June 30. Payments hereunder shall be contingent upon the availability of appropriations therefor.

(g) *Change of rates.*

(i) Subject to the clause hereof entitled "Public Regulation," in the event the Contractor, during the term of this contract, shall make effective any new rate schedule or amended rate schedule applicable to the class

of service furnished the Government at the service location which may contain a lower rate or conditions more favorable to the Government for such class of service, the Contractor shall forward to the Contracting Officer a copy of such rate schedule or amended rate schedule within fifteen (15) days after the effective date thereof, and, upon receipt of written request from the Government, shall substitute such rate schedule or amended rate schedule for the rate schedule then in effect hereunder for such service location, commencing with the billing period in which such written request is received.

(ii) Subject to the clause hereof entitled "Public Regulation," in the event of a permanent change in the class of service furnished the Government at the service location, service shall, effective sixty (60) days after written request is made by either party or at such other time as may be agreed upon, thereafter be furnished to such service location at the lowest available rate schedule of the Contractor which is applicable to the class of service furnished following such permanent change.

(h) *Contractor's facilities.* The Contractor, at its expense, shall furnish, install, operate and maintain all facilities required to furnish service hereunder to and measure such service as of the point of delivery specified in the Service Specifications. Title to all such facilities shall be and remain in the Contractor and the Contractor shall be responsible for all loss of or damage to such facilities.

§ 1007.3709–2 *Connection charge.* When a connection charge is to be paid by the Government, an appropriate clause, setting forth the terms and conditions applicable thereto, will be inserted. The following sample clause is furnished as a guide. See § 1007.3706 for requirements concerning the review and approval of contracts providing for a connection charge.

CONNECTION CHARGE

(a) *Charge.* The Government, in consideration of the furnishing and installation by the Contractor at its expense of the New Facilities described in Exhibit "A," attached hereto and made a part hereof, shall pay the Contractor, as a connection charge, after receipt of satisfactory evidence of completion of the facilities, the sum of $_____, representing the sum of $_____, less the agreed salvage value in the amount of $_____, as shown on Exhibit "A"; provided that, as a condition precedent to final payment, the Contractor shall, if required by the Contracting Officer, execute a release in terms acceptable to the Contracting Officer, of claims against the Government arising under or by virtue of such installation.

(b) *Ownership, operation, and maintenance of new facilities to be provided hereunder.* The facilities to be supplied by the Contractor under this clause, notwithstanding the payment by the Government of a connection charge, shall be and remain the property of the Contractor and shall, at all times during the life of this contract or any renewals thereof, be operated and maintained by the Contractor at its expense, and all taxes and other charges in connection therewith, together with all liability arising out of the construction, operation or maintenance of such facilities shall be the obligation of the Contractor.

(c) *Credits.*

(1) The Contractor agrees to allow the Government on each monthly bill for service furnished under this contract to the Service Location, a credit of _____ percent of the amount of each such bill as rendered until the accumulated credits shall equal the amount of such connection charge, provided that the Contractor may at any time so allow a credit up to 100 percent of the amount of each such bill.

(2) In the event the Contractor, prior to any termination of this contract but subsequent to completion of the facilities provided for in this clause, serves any customer other than the Government (regardless of whether the Government is being served simultaneously, intermittently or at all) by means of such facilities, the Contractor shall, unless otherwise agreed to by the parties in writing at that time, promptly accelerate the credits provided for under subparagraph (1) above, to 100 percent of each monthly bill until the connection charge is fully credited.

(3) *Termination by the Contractor.* In the event the Contractor without cause terminates service under, or otherwise defaults in performance of, this contract prior to the crediting in full, in accordance with the terms of this contract, of any connection charge paid by the Government, the Contractor shall pay to the Government an amount equal to the uncredited balance of the connection charge as of the date of such termination.

(d) *Termination prior to completion of facilities.* The Government reserves the right to terminate this contract at any time prior to completion of the facilities provided for herein with respect to which the Government is to pay a connection charge. In the event the Government exercises this right, the Contractor shall be paid fair compensation, exclusive of profit, with respect to such facilities.

(e) *Termination subsequent to completion of facilities.* In the event the Government terminates this contract subsequent to completion of the facilities provided for herein with respect to which the Government is to pay a connection charge, but prior to the crediting in full by the Contractor of any connection charge in accordance with the terms of this contract, the possible continued usefulness of such facilities is hereby recognized. It is, therefore, agreed that upon such termination the Contractor shall have the following options:

(1) To remove such facilities at its own expense within six months after the effective date of the termination by the Government; provided, that if the Contractor elects to so remove such facilities, the Government shall then have the option of purchasing such facilities at the agreed salvage value set forth herein; and provided further, that the Contractor will, at the request of the Government, leave in place any such facilities located on Government property which the Contractor elects to so remove and which the Government elects to purchase at the agreed salvage value.

(2) To retain such facilities in place for six months or more after effective date of the termination by the Government on condition that immediately after such six-month period the Contractor shall promptly pay in full to the Government the uncredited balance of the connection charge.

§ 1007.3709–3 *Specifications.* Set forth in this section are sample specifications for various types of utility services. An appropriate specification should be incorporated by reference and attached to each contract.

(a) *Electric service specifications.*

ELECTRIC SERVICE SPECIFICATIONS

1. Premises to be served _____
2. Estimated service requirements:
Estimated maximum demand _____ KW.
Estimated annual consumption ____ KWH.
(The Government is in no way obligated to use nor is it restricted to the above estimated requirements.)
3. Point of delivery. The point of delivery service shall be _____
4. Description of electric service. Contractor will supply _____ phase _____ wire, _____ cycle, alternating current at _____ volts. The voltage of Contractor's high tension line is _____. Substation transformers: normal capacity _____ KVA; overload capacity for _____ hours _____ KVA; delta or wye connected, high side _____, low side. Lightning arresters: type _____ Switching apparatus: high side, fused disconnects or OCB _____, Interrupting capacity _____ KVA; low side, OCB _____, interrupting capacity _____ KVA.
5. Metering and billing. Service will be measured at _____ volts by _____ watt hour meter(s) _____ demand meter(s).
6. Alterations and additions.

(b) *Gas service specifications.*

GAS SERVICE SPECIFICATIONS

1. Premises to be served _____
2. Estimated service requirements:
Estimated maximum demand:
_____ MCF per hour.
_____ MCF per day.
Estimated annual consumption _____ MCF
(The Government is in no way obligated to use nor is it restricted to above estimated requirements.)
3. Point of delivery. The point of delivery of gas shall be _____
4. Quality.
(a) The gas delivered hereunder shall be _____ gas. The gas so delivered shall contain not less than _____ Btu per cubic foot. The unit of volume for the purpose of determining total heating value shall be one (1) cubic foot of gas saturated with water vapor at a temperature of sixty degrees (60°) Fahrenheit and an absolute pressure equivalent to thirty (30) inches of mercury at thirty-two (32°) Fahrenheit:
(b) The gas delivered:
(1) shall be commercially free from dust or other solid or liquid matter which might interfere with its merchantability or cause injury to or interference with proper operation of the lines, regulators, meters and other equipment of Government;
(2) shall not contain more than a trace of hydrogen sulphide per one hundred (100) cubic feet of gas, as determined by methods prescribed in Standards for Gas Service, Circular of the National Bureau of Standards, No. 405, page 134 (1934 Edition), and shall be considered free from hydrogen sulphide if a strip of white filter paper, moistened with a solution containing five percent (5%) by weight of lead acetate, is not distinctly darker than a second paper freshly moistened with the same solution, after the first paper has been exposed to the gas for one (1) minute in an apparatus of approved form, through which the gas is flowing at the rate of approximately five (5) cubic feet per hour, the gas not impinging directly from a jet upon the test paper;
(3) shall not contain more than twenty (20) grains of total sulphur per one hundred (100) cubic feet.
(4) In the event the gas contains more than a trace of hydrogen sulphide per one hundred (100) cubic feet or more than twenty (20) grains of total sulphur per one hundred (100) cubic feet, by test prescribed by the Bureau of Standards or other recognized method, then upon the request of Government, Contractor shall reduce the hydrogen sulphide content to not more than a trace per one hundred (100) cubic feet and the total sulphur content to twenty (20) grains or less per one hundred (100) cubic feet.
5. Measurement.
(a) *Unit of measurement and metering base.* The volumetric measurement base shall be one (1) cubic foot of gas at a pressure base of thirty (30) inches of mercury (14.73 pounds per square inch absolute), and

without adjustment for water vapor content. To determine the volume of gas delivered, factors for pressure, temperature, specific gravity, and deviation from Boyle's Law shall be applied.

(b) *Atmospheric pressure.* The average absolute atmospheric (Barometric) pressure shall be assumed to be fourteen and four-tenths (14.4) pounds to the square inch, irrespective of actual elevation or location of the delivery point above sea level or variations in actual barometric presure from time to time.

(c) *Temperature.* The temperature of the natural gas flowing through the meter or meters shall be the arithmetic average of the hourly temperature record; or read from established tables of monthly averages for the service location.

(d) *Specific gravity.* The specific gravity of the natural gas shall be determined by joint test using an Edwards type Balance, or other approved instrument, at the commencement of deliveries hereunder and as often thereafter as deemed necessary; or if mutually agreed upon, by the use of a recorder, periodically checked with an Edwards type Balance or by other accepted methods.

(e) *The deviation from Boyle's Law* shall be determined by tests or computed by approved methods based on the composition of the gas and conditions at point of measurement, with such reasonable frequency as found necessary.

(f) *Measuring equipment.* Contractor will maintain and operate, at the delivery points, measuring stations properly equipped with displacement or orifice meters and other necessary measuring equipment by which the volumes of gas delivered hereunder shall be measured. Orifice meters shall be installed and operated, and gas volumes computed, in accordance with specifications recommended in Gas Measurement Committee Report No. 2, dated May 6, 1935, of the Natural Gas Department of the American Gas Association, as the same may be amended from time to time, applied in a practical manner; displacement meter dial readings to be adjusted for varying pressure and temperature conditions. Government may install such check measuring equipment as it shall desire, provided that such equipment shall be so installed as not to interfere with the operations of Contractor. Contractor shall have access to such check measuring equipment at all reasonable hours, but the reading, calibrating and adjusting thereof and the changing of charts shall be done by Government unless otherwise agreed upon.

Both Contractor and Government shall have the right to be present at the time of any installing, reading, cleaning, changing, repairing, inspecting, testing, calibrating, or adjusting done in connection with the other's measuring equipment used in measuring deliveries. The records from such measuring equipment shall remain the property of their own, but upon request, each will submit to the other its records and charts, or true copies thereof, together with calculations therefrom, for inspection and verification, subject to return within thirty (30) days after receipt thereof, after which return the contractor's charts and records shall be kept on file by the Contractor for the mutual use of both parties for such period and to such extent as may be required by law.

Reasonable care shall be exercised in the installation, maintenance and operation of any pressure regulating equipment so as to avoid any inaccuracy in the determination of the volume of gas delivered.

6. Metering and billing. Gas will be measured by _____
(Number installed and type)
meter(s).

7. Pressure. *Contractor will maintain at the point of delivery a regulated pressure within ten percent of the pressure requested by the Contracting Officer but shall not be required to maintain more than _____ pounds or less than _____ pounds per square inch gauge.

*Contractor will supply gas from its low pressure distribution system at a pressure between _____ and _____ ounces per square inch gauge.

*Delete inapplicable language.

8. Size of pipeline to point of delivery _____ inches diameter: Operating pressure _____ psig.

9. Alterations and additions.

(c) *Water service specifications.*

WATER SERVICE SPECIFICATIONS

1. Premises to be served _____
2. Estimated service requirements:
Estimated daily maximum demand: _____
_____
Estimated annual consumption _____
(Government is in no way obligated to use nor is it restricted to the above estimated requirement.)

3. Point of delivery. The point of delivery of water shall be _____

4. Description of water service. The Contractor shall have _____ gallons per minute of water continuously available at the point of delivery at a pressure of not less than _____ pounds per square inch gauge.

5. Quality of water. The Contractor will supply clear, potable water safe for human consumption in accordance with standards adopted by the United States Public Health Service for drinking and culinary water supplied by common carriers in interstate commerce and such revisions thereof as any be made from time to time.

6. Metering and billing. Water will be measured by _____ meter(s).

7. Size of contractor's pipe line to point of delivery _____ inches diameter.

8. Alterations and additions.

(d) *Sewage service specifications.*

SEWAGE SERVICE SPECIFICATIONS

1. Premises to be served _____
2. Estimated service requirements _____
Estimated annual volume _____
(The Government is in no way obligated to deliver nor is it restricted to the above estimated requirements.)

3. Service to be rendered. Contractor shall furnish a sanitary sewer connection and sanitary sewerage service as required by the Government and shall receive, carry, treat and dispose of all sanitary sewage originating at the project in such amounts as the Government desires to release into Contractor's sewer system and in a manner and by such means as will constitute no hazard to the public health. Contractor shall operate its sewage disposal and treatment facilities in conformity with applicable laws, rules, and regulations promulgated by State and Federal governmental authorities.

4. Point of delivery. The sewage shall be delivered to Contractor by the Government at _____

5. Size of sewer to point of delivery _____ inches diameter.

6. Alterations and additions.

(e) *Steam service specifications.*

STEAM SERVICE SPECIFICATIONS

1. Premises to be served _____
2. Estimated service requirements:
Estimated hourly maximum demand _____
Estimated annual consumption _____
(The Government is in no way obligated to use nor is it restricted to the above estimated requirements.)

3. Point of delivery. The point of delivery of steam shall be _____

4. Description of steam service. The Contractor shall have _____ pounds per hour of steam continuously available at the point of delivery at a pressure of not less than _____ pounds or in excess of _____ pounds per square inch gauge.

5. Quality of steam. The steam furnished shall contain not more than 1% moisture and shall be free of condensate at point of delivery.

6. Metering and billing. Steam will be measured by _____
(Number installed and type-condensate or flow meter)
meters.

7. Size of pipe line to point of delivery _____ inches diameter.

SUBPART LL—BASIC AGREEMENT PROVISIONS

§ 1007.3803 *Required provisions.* The following provisions will be inserted in all basic agreements; provided, sections C and D, or either of them, may be omitted when it is not desired to cover the subject matter contained in those sections. If either or both of these sections is omitted, the corresponding references in the Covering Agreement (§ 1007.3803–1) will be deleted.

§ 1007.3803–1 *Covering agreement.* The following provisions will be used as the covering agreement and will be completed with appropriate information:

Basic Agreement No. _____

_____ Pages
Page _____

BASIC AGREEMENT BETWEEN THE UNITED STATES AIR FORCE AND

_____
(Name of contractor)

This memorandum agreement made this _____ day of _____ 19__ has for its purpose simplification and increased efficiency in the negotiation and execution of

_____
(Type of contract; fixed price, cost reimbursement)

contracts between the United States Air force and the _____
(Name of contractor)

a corporation incorporated under the laws of the State of _____. The terms and provisions of Sections A, B, C and D hereinafter set forth have been agreed upon by the parties hereto. The clauses set forth in Section A are mandatory clauses. The clauses set forth in Section B, and provisions of Sections C and D are for mutual selection as applicable to each contract. Contracts executed after the date hereof and prior to the termination hereof shall refer to all clauses and provisions of this agreement applicable to the contract and by such reference incorporate the same. Such contracts shall consist of the incorporated clauses and provisions, and any additional clauses and provisions which may be specifically set forth in such contracts.

This agreement may be terminated in its entirety by either party upon thirty (30) days notice in writing to the other party. This agreement may be terminated by the Government at any time if the parties fail to agree upon any deletion, modification or addition to this agreement which is required by statute, executive order, or the Armed Services Procurement Regulation. No deletion, modification or addition to, or termination of, this agreement shall affect any contracts theretofore entered into between the parties in which this agreement has been incorporated by reference.

This agreement shall be reveiwed as a minimum annually on the anniversary of its effective date and revised to conform with all requirements of the Armed Services Procurement Regulation and any additional provisions, including applicable provisions of the Air Force Procurement Instruction, as mu-

tually agreed to by the parties. Such revisions shall be evidenced by Supplemental Agreements hereto.

This agreement shall not be referred to by the Contractor in bids submitted in response to advertised invitations nor become a part of any contract placed through the process of formal advertisement.

In Witness Whereof, the parties hereto have executed this Agreement as of the day and year first above written:

THE UNITED STATES OF AMERICA

By ----------
---------- (Contracting Officer)

---------- (Contractor)

By ----------
---------- ---
---------- (Title)

---------- (Address)

Witnesses:

Note: In the case of a corporation, witnesses are not required but the certificate below must be completed. Type or print the name under all signatures.

Note: The Contractor, if a corporation, should cause the following certificate to be executed under its corporate seal, provided that the same officer shall not execute both the contract and the certificate.

CERTIFICATE

I, ----------, certify that I am the ---------- of the corporation named as Contractor herein; that ----------, who signed this Basic Agreement on behalf of the Contractor, was then ---------- of said corporation; that said Basic Agreement was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

---------- (Corporate Seal)
(Signature)

§ 1007.3803–2 *Index page.* The following information will be inserted as the index page to all basic agreements, to be completed with the lists of appropriate clauses. Clauses, by section, will be consecutively numbered, prefixed by the letter referring to the section to which they appear.

BASIC AGREEMENT NO. ------

------ Pages
Page ------

INDEX

BASIC AGREEMENT

Section A—General Provisions (Hereunder list the titles of all clauses required or applicable to all contracts of the type to be prepared under the basic agreement.)

Section B—Special Provisions (Hereunder list the titles of all clauses requiring selection for each contract of the type to be prepared under the basic agreement.)
(If Section C Is Used)

Section C—Provisions for Letter Contracts
(If Section D Is Used)

Section D—Provisions for Research and Development Contracts. (Here list the titles of all clauses, not included in Section A or B, requiring selection in each instance, which may be used in research and development contracts; and list the titles of any clauses included in Section A or B, for which changes are authorized when used in research and development contracts.)

§ 1007.3803–3 *Section A—general provisions.* Under the heading "Section A—General Provisions" set forth in full text the clauses listed in the Index under section A, using the same identifying clause numbers.

§ 1007.3803–4 *Section B—special provisions.* Under the heading "Section B—Special Provisions" set forth in full text the clauses listed in the Index under section B, using the same identifying clause numbers.

§ 1007.3803–5 *Section C—letter contract provisions.* Where the basic Agreement governs fixed price contracts, set forth the following provisions under the heading "Section C—Letter Contract Provisions."

(1) The following provisions shall form a part of any Letter Contract incorporating the provisions of this Section C by reference.

(2) Except as otherwise expressly provided to the contrary herein, the Contractor is directed, upon its acceptance of this order, to proceed immediately to procure the necessary materials, and to commence the manufacture of the supplies or performance of the services, called for herein, and to pursue such work with all diligence to the end that the supplies may be delivered or services performed at the earliest practicable date.

(3) All clauses of Section A of Basic Agreement ------ excepting any clause entitled "Payment", "Default", "Termination", and "Subcontracts" are hereby incorporated into this Letter Contract by reference with the same force and effect as though herein set forth in full. Reference in any of the clauses of Section A of Basic Agreement ------ to contract prices or adjustments in contract prices and delivery schedules, to the extent such are not included in this Letter Contract, shall be inapplicable, except that any adjustments in amounts finally payable to the Contractor, or in time of performance required by such clauses, shall be made either at the time of settlement of Contractor's termination claims or shall be taken into account at the time of execution of the definitive contract contemplated hereby.

(4) By the Contractor's acceptance hereof, it undertakes without delay to enter into negotiations with the Department of the Air Force looking to the execution of a definitive contract which will include all of Section A, the Section B Clauses referred to elsewhere herein, and all other applicable clauses then required by Federal law or Executive Order to be included in contracts for supplies or services of the kind herein described. The definitive contract will also contain a detailed delivery schedule and prices, clauses, terms and conditions as agreed to by the parties which may or may not be at variance with the provisions of this order.

(5) Pending the execution of a definitive contract, each expenditure, order, subcontract or commitment made by the Contractor in furtherance of its performance hereunder, if for an amount that shall exceed either five per centum of the amount the Contractor is authorized to expend or obligate hereunder, or $25,000, whichever is less, for tools, dies, jigs, fixtures, materials, supplies, parts, equipment, engineering assistance or reproduction or other license rights will be subject to written approval by the Contracting Officer. No contract, regardless of the amount thereof, shall be made by the Contractor with any other party for furnishing any of the completed or substantially completed articles, spare parts or work herein called for, without the written approval of the Contracting Officer as to sources.

(6) Termination. (Insert the clause set forth in § 1007.2504–6.)

§ 1007.3803–6 *Section C—letter contract provisions.* Where the basic agreement governs cost-reimbursement-type contracts, insert, under the heading "Section C—Letter Contract Provisions," the provisions set forth in § 1007.3803–5 with the following changes:

(a) In paragraph (3) thereof change the words "clauses entitled 'Payment,' 'Default,' 'Termination,' and 'Subcontracts' " to "clauses entitled 'Limitation of Cost,' 'Allowable Cost, Fixed Fee and Payment,' 'Termination' and 'Excusable Delays'."

(b) In paragraph (3) thereof, change the words "contract prices or adjustments in contract prices" to "contract costs or adjustments in fixed-fee, if any."

(c) In paragraph (4) thereof, change the word "prices" to "estimated cost and fixed-fee, if any."

(d) Delete paragraph (5) thereof unless Section A—General Provisions does not include a "Subcontracts" clause.

§ 1007.3803–7 *Section D—research and development contract provisions.* Under the heading "Section D—Research and Development Contract Provisions" set forth in full text the clauses listed in the Index under Section D, with the same identifying clause numbers. Where changes are authorized in clauses set forth in Section A or B when used in research and development contracts, either set forth the clause in full as changed, or describe the authorized change clearly. List any Section A clauses which are inapplicable to research and development contracts, and so state.

SUBPART NN—SPECIAL CLAUSES

§ 1007.4003 *Use of special clauses.* Special clauses will be inserted in contracts according to instructions for their use contained in this, or other subparts of this part. To the extent of any inconsistency between instructions for use contained in another subpart and instructions in this subpart, the instructions of the other subpart will control for the type or kind of contract treated therein.

§ 1007.4004 *Shipments.* All contracts issued by Hq AMC or AMC field procurement activities which provide for delivery of supplies will contain the clause set forth in this section. Such contracts issued by other AF activities may contain the clause set forth in this section or may contain a shipments clause adapted to the particular contract.

SHIPMENTS

(a) Unless otherwise provided in this contract or unless the Contracting Officer acting under the "Changes" clause hereof directs in writing otherwise, all supplies to be furnished under this contract shall be delivered f. o. b. carrier's equipment at the plant or plants at which such supplies are to be finally inspected and accepted, or if the facilities for shipment by carrier's equipment are not available at the Contractor's plant, f. o. b. the point or points nearest thereto that carrier service is available. When the carrier's equipment is rail, any shipment occupying sufficient space in a railroad car to constitute a carload shipment subject to carload freight rates shall be properly and adequately loaded in freight cars by the Contractor, and any shipment subject to less-than-carload freight rates shall be delivered by the Contractor into the

carrier's possession at the Contractor's plant, or at the point or points nearest thereto at which delivery can be effected.

(b) Whenever it is provided in this contract that supplies shall be delivered f. o. b. specified destinations, such supplies shall be shipped direct by the Contractor to the specified destinations on commercial bills of lading, at the expense of the Contractor. Provided, however, that nothing contained herein shall preclude reimbursement of the Contractor by the Government of any such transportation expenses if this is a cost-reimbursement type contract.

(c) Notwithstanding other provisions of this contract, shipments made under cost reimbursement contracts which do not exceed (i) 1,000 pounds if shipped by rail, truck, or freight forwarder, or (ii) 100 pounds if shipped by railway express, or (iii) 50 pounds if shipped by commercial air, shall be made by commercial bills of lading, charges to destination(s) paid by the Contractor.

(d) If the Contracting Officer directs in writing that any of the supplies to be furnished hereunder be delivered to a carrier for shipment from a point other than specified in this contract, equitable adjustment shall be made in the contract price in the manner provided in the general provisions of this contract entitled "Changes".

(e) *Shipping instructions.* If not otherwise provided herein, names of consignees of all supplies to be delivered by the Contractor hereunder will be furnished in writing by the Contracting Officer at a later date. Request therefor shall be made to such address as the Contracting Officer may direct, not later than thirty (30) days prior to the date on which any of the articles are ready for shipment.

(f) *Routing instructions.* If not otherwise provided herein and deliveries are other than f. o. b. specified destinations, Government routing instructions will be furnished to the Contractor in writing by the Contracting Officer at a later date. If the Government routing instructions have not been received by the Contractor thirty (30) days prior to date on which any of the articles are anticipated to be ready for shipment, request therefor shall immediately be made to the cognizant transportation activity specified herein.

(g) *Notice of shipments.* (Under this subtitle insert the clause set forth in ASPR 7-105.4 (32 CFR 7.105-4)).

(h) *Computation of delivery time.* For the purpose of determining the fulfillment of this contract so far as delivery dates are concerned, in the event the delivery point or points are not the same as the point or points of destination, the time of delivery of the supplies shall be the date of delivery to the carrier ready for shipment to destination.

(i) *Shipments by the Government.* Unless this is a cost-reimbursement type contract, any articles, supplies or other items to be delivered by the Government to the Contractor shall, unless otherwise provided herein, be delivered to the Contractor f. o. b. carrier's equipment at the plant or plants of the Contractor designated, or if facilities for shipment by carrier's equipment are not available at the Contractor's plant or plants, f. o. b. the point or points nearest thereto that carrier's equipment is available.

(j) Where the contract provides that inspection and acceptance shall be accomplished at a subcontractor's plant (whether in whole or in part) the foregoing provisions, except paragraphs (e) and (f), shall be equally applicable to such subcontractors as provided in said subcontract. Subcontractors' shipping instructions and routing instructions, if not previously furnished, shall be requested from the Prime Contractor.

§ 1007.4005 *Delivery of spare parts schedule.* Any contract which provides for delivery of items of supplies, and also for spare parts for such items, may contain the following clause. This clause may be made a lettered paragraph of the clause entitled "Shipments" set forth in § 1007.4004.

DELIVERY OF SPARE PARTS SCHEDULE

Unless otherwise provided in the Schedule, all spare parts, if any, required to be furnished to the Government under this contract shall be delivered in accordance with this paragraph. The Contractor shall deliver in each month that quantity of each item of spare parts listed on the final spare parts exhibit, or exhibits, to this contract which bears the same ratio to the total quantity of such item to be furnished as the number of articles to which such spare part relates to be delivered in such month bears to the total number of such articles to be furnished. Where this formula would require delivery of a fraction of a spare part, the next higher number of whole spare parts shall be delivered if such fraction exceeds one-half (½) and the next lower numbers of whole spare parts shall be delivered if such fraction is one-half (½) or less.

§ 1007.4006 *Delivery of aircraft.* Any contract providing for the delivery of aircraft to the Government may contain the following clause which may be made a lettered paragraph to the clause entitled "Shipments" as set forth in § 1007.4004.

DELIVERY OF AIRCRAFT

Unless otherwise provided in this contract all aircraft shall be delivered completely set up, serviced, tested, and ready for flight at the flying field where they are to be finally inspected. The Contractor shall furnish all fuel, oil and cooling fluid necessary (i) for engine tests and flight tests required to be made under the provisions of AF Specification No. R-1800-E and (ii) for fly-away, in amounts designated by the ferry pilot, for each aircraft delivery.

§ 1007.4007 *Transportation charges.* Any fixed-price supply contract, under which the contractor has quoted a price including the transportation charges, and for which it is desired to provide for the possibility of shipment on Government bills of lading, may include the following clause:

TRANSPORTATION CHARGES

The Contractor hereby agrees that in the event that shipments hereunder which were, by the terms of this contract, to be made at the Contractor's expense are in fact made on a Government bill of lading, there shall be deducted from the contract price the commercial freight charge for delivery to the destination specified herein, including any Federal, State, or local tax directly applicable thereto. The Contractor further agrees to show any such reductions on the invoices submitted hereunder.

§ 1007.4008 *Accelerated delivery.* When the contractor may deliver items of supply or perform services at a faster rate than set forth in the schedule and such accelerated delivery or performance is desirable without limitation, the following clause will be inserted:

ACCELERATED DELIVERY

The Contractor is authorized to exceed the delivery rate, or to complete performance of this contract prior to the time therefor, set forth in the Schedule.

§ 1007.4009 *Furnishing of materials or supplies by the Government at its option.* The following clause may be inserted in any fixed-price contract for supplies or services where it is contemplated the Government may furnish the Contractor with materials or supplies not provided for in the contract:

FURNISHING OF MATERIALS OR SUPPLIES BY THE GOVERNMENT AT ITS OPTION

The Government may at its option from time to time furnish the Contractor with materials or supplies not obtainable in the open market and which are required by the Contractor for the performance of this contract. In such event, an equitable reduction in the contract price shall be made prior to the delivery of such materials or supplies to the Contractor, or as soon thereafter as possible, but in no event later than thirty (30) days after such delivery.

§ 1007.4010 *Government-furnished property to be returned in kind.* Whenever it is considered desirable in a fixed-price contract that Government-furnished property which is to be incorporated in the end items be returned by the Contractor in kind, if possible, and if not possible that an adjustment be made in the contract price, the following clause may be used:

GOVERNMENT-FURNISHED PROPERTY TO BE RETURNED IN KIND

Certain property furnished to the Contractor by the Government under the provisions of this contract may be expressly designated to be returnable in kind to the Government. Whenever replacement can be accomplished without delaying production the Contractor agrees to use its best efforts so to return like property. It is agreed that the procedures set forth below will be followed in connection with such property:

(a) In the event all the property furnished under this clause is not returned in kind to the Government, the price of supplies delivered to the Government hereunder shall be reduced equitably in accordance with the clause hereof entitled "Changes".

(b) To the extent that the Contractor shall, within 90 days after receipt of property from the Government or such extension thereof as may be agreed upon, return like property to the Government, the Government's right to a price reduction, pursuant to subparagraph (a) above shall be waived.

(c) In the event of termination of this contract, the parties shall take into consideration, as part of the termination settlement the effect of any adjustment in price required by reason of this clause and not theretofore made.

(d) The provisions of the clause of this contract entitled "Government-Furnished Property" shall be applicable to any property furnished the Contractor under this clause.

(e) From time to time, and in any event, prior to final payment under this contract a list of the property furnished, the property returned and any adjustment in price by reason thereof shall be evidenced by Change Order or Supplemental Agreement to this contract.

§ 1007.4011 *Recapture clause for equipment rental contracts.* When equipment for maintenance and repair projects using project 441 funds is rented from a contractor, the following clause will be included in the rental contract, unless the contracting officer determines that the use of the clause will unduly limit competition:

RECAPTURE OF EQUIPMENT

(a) When and if the total rental paid or accrued to the Lessor for any equipment

covered by this agreement shall equal the agreed value thereof plus 1 percent per month of the agreed value for each contract month or fraction thereof such equipment shall have been subject to use pursuant to this agreement, no further rentals shall accrue hereunder and title to such equipment shall vest in the Government. In such event the Lessor shall forthwith remove without cost to the Government any and all liens or encumbrances against such equipment.

(b) At any time during the period of this agreement, the Government may at its option purchase any equipment covered by this agreement, upon the giving of written notice of its intention so to do, by paying the difference between the agreed value plus 1 percent per month of the agreed value for each contract month or fraction thereof such equipment shall have been subject to use pursuant to this agreement, and the total rental for such equipment theretofore paid or accrued. Upon the giving of such notice, the Lessor shall forthwith transfer title to such equipment to the Government.

(c) The Lessor agrees that in the event the Government acquires title to any equipment covered by this agreement pursuant to subparagraph (a) or (b), of this clause, it will hold the Government harmless against all claims asserted against such equipment, whether asserted prior to or after passage of title to the Government, where such claims arise prior to the vesting of title in the Government.

§ 1007.4012 *Rental of gas cylinders.* All contracts which provide for the rental of gas cylinders will contain the more applicable of the following clauses:

(a) When one cylinder at a time is rented:

RENTAL OF GAS CYLINDERS

Cylinders shall remain the property of the Contractor and will be loaned, without charge, to the Government for a period of 30 days after the date of shipment of cylinders from the Contractor's plant. Beginning with the first day after the expiration of the 30-day free loan period to and including the day the cylinders are released to the transportation company for return to the Contractor, there will be charged, and the United States agrees to pay the Contractor, a rental of $_____ per cylinder per day for the use of such cylinders.

(b) When a quantity of cylinders is rented:

Cylinders shall remain the property of the Contractor and will be loaned, without charge, to the Government for a period of 30 days after the date of shipment of cylinders from the Contractor's plant. Beginning with the first day after the expiration of the 30-day free loan period to and including the day the cylinders are released to the transportation company for return to the Contractor, there will be charged, and the United States agrees to pay the Contractor, a rental of $_____ per cylinder per day, computed on a quantity basis, as indicated below, for the use of such cylinders. This rental charge will be computed separately for oxygen and acetylene cylinders and for each point of delivery named in the contract. A credit of 30 cylinder days will accrue for each cylinder shipped. A debit of 1 cylinder day will accrue for each cylinder for each day held beginning with the day after date of shipment from Contractor's plant to and including the day the cylinder is released to the transportation company for return to the Contractor. At the end of the contract period, in the event the total number of debits exceeds the total number of credits, rental will be charged for the difference. If the total number of credits equals or exceeds the total number of debits, no charge will be made for the use of the cylinders.

All cylinders not returned to the Contractor on or before the expiration of a 90-day rental period or lost or damaged beyond repair while in the possession of the United States Government shall be paid for by the United States to the Contractor at a replacement value of $_____ for each oxygen cylinder up to 110 cubic feet capacity, $_____ for each oxygen cylinder over 110 cubic feet capacity, $_____ for each acetylene cylinder up to 150 cubic feet capacity, and $_____ for each acetylene cylinder over 150 cubic feet capacity.

Cylinders retained or lost and so paid for shall be considered the property of the United States. But if and when located they may, at the option of the Government, be returned to the Contractor, and, in such event, credit shall be allowed to the Government at the replacement value paid, less rental of $_____ per day beginning at the expiration of the 30-day period as aforesaid to the date upon which cylinders are turned over to the Carrier for return to Contractors' plant.

§ 1007.4013 *Quality control specification.* All contracts (other than local purchase contracts and those excluded by paragraph 1.2 of Military Specification MIL–Q–5923, as in effect on the date of the contract) shall contain the following clause:

QUALITY CONTROL SPECIFICATION

Except as otherwise provided in this contract, the Contractor's system of quality control during the performance of this contract shall be in accordance with the provisions of Military Specification MIL–Q–5923, as in effect on the date of this contract, incorporated herein by reference unless this contract is one of the types specified in paragraph 1.2 of said specification.

§ 1007.4014 *Certificate acceptance.* The following clause may be used in supply contracts for simple, non-critical items of a standard or commercial nature such as commercial grade hardware, hand tools, office supplies and equipment, housekeeping materials, and equipment, and simple AN Standard items.

CERTIFICATE ACCEPTANCE

(a) At the option of the Contracting Officer any of the supplies to be furnished hereunder may be accepted without prior Government inspection upon receipt of a certificate of the Contractor attached to an invoice for said supplies reading substantially as follows:

"I hereby certify that I did, on the _____ day of _____, 19__, ship via _____, in accordance with shipping instructions issued by the Contracting Officer, the supplies called for by Contract No. (insert contract number) _____; that such supplies were in the quantities and of the quality called for, and were in all respects in accord with the applicable specifications. This statement is furnished to support payment of the attached invoice."

(b) Notwithstanding any provisions of the certificate above referred to and notwithstanding the provisions of paragraph (c) of the clause hereof entitled "Inspection" or "Inspection of Supplies and Correction of Defects" as the case may be, the liability of the Contractor with respect to supplies accepted by the Government under the provisions of paragraph (a) above will, after inspection by the Government or after the expiration of a reasonable time following delivery to the Government within which inspection may be made, whichever occurs first, be limited (except as to supplies rejected upon such inspection) to liability for latent defects, fraud, or such gross mistakes as amount to fraud.

§ 1007.4015 *Additional inspection requirements.* Any fixed-price contract which calls for the delivery of supplies may include the following clause:

ADDITIONAL INSPECTION REQUIREMENTS

(a) The Contractor shall inform the Inspector when supplies are ready for inspection.

(b) The respective points for final inspection and acceptance by the Government of all the supplies (other than aircraft to be flown away, if any) to be furnished under this contract shall be, in addition to the plant or plants of the Contractor specified elsewhere herein, any other plant or plants of the Contractor or any plant or plants of a subcontractor or vendor of the Contractor hereunder, provided that such other plant or plants of the Contractor or such plant or plants of a subcontractor or vendor shall have been approved for such purpose in writing by the Contracting Officer. It is expressly understood by the Contractor that request by it for the approval referred to in the preceding sentence must be made as soon as practicable to permit the Government to make necessary arrangements for inspection and acceptance, and that the Government is not obligated to make such final inspection and acceptance at any point so approved until a reasonable period after the date of such approval.

(c) The Contractor shall, in the manufacture of the articles to be supplied under this contract, be required to use jigs, fixtures, and/or other devices and appliances in all processes where such use is conducive to interchangeability and uniformity of the product, of such character as will reduce the necessity for selective assembly to the least practicable minimum, and whenever the inspector shall determine that any jig, fixture, device, or other appliance is incorrect, worn, damaged, or defective to such an extent as to adversely affect basic interchangeability of the article manufactured, he shall so inform the Contractor in the same manner as applied to the rejection of defective material presented for acceptance by the Government representative, and the Contractor shall not thereafter use the said jig, fixture, or appliance, in its incorrect, worn, damaged, or defective form in the manufacture of articles intended for delivery under this contract.

(d) Unless otherwise provided herein, if any aircraft are required to be furnished to the Government hereunder and the same are to be flown away, such aircraft shall be finally inspected and accepted by the Government at a flying field or fields to be approved by the Government in the vicinity of the Contractor's plant or plants specified elsewhere herein or in the vicinity of any other plant or plants of the Contractor approved for such purpose in writing by the Contracting Officer. Unless otherwise provided herein, such inspection and acceptance shall be accomplished in accordance with the provisions of AF Specification No. R–1800–E, as in effect on the date of this contract.

§ 1007.4016 *Inspection requirements for experimental aircraft.* In fixed-price contracts for the production of experimental aircraft, paragraph (c) of the clause entitled "Additional Inspection Requirements" set forth in § 1007.4015, may be deleted and the following paragraph, designated "(c)," substituted:

INSPECTION REQUIREMENTS FOR EXPERIMENTAL AIRCRAFT

(c) The Contractor shall, in the manufacture of the articles to be supplied under

this contract, be required to use such jigs, fixtures, and/or other devices and appliances which are suitable for the fabrication of experimental-type aircraft and pertinent spares. Such jigs, fixtures and/or other devices and appliances may be of temporary-type construction but shall be adequate to maintain the dimensions called for in the applicable drawings.

§ 1007.4017 *Sanitary inspection.* Insert the following clause in all contracts for the procurement of bakery or dairy products. See Subparts FF and HH of this part, respectively, and the note appearing at the end of this clause.

SANITARY INSPECTION

(a) Award of items listed on this Invitation for Bids shall be made only to a bidder whose facilities at which such items are to be produced have been inspected or otherwise approved by an officer of the Air Force Veterinary Corps or the Army Veterinary Corps within 30 days prior to the opening date of this Invitation for Bids. In the event that the inspection reveals the existence of unsanitary conditions, the bidder shall be informed of such conditions in writing, by the Contracting Officer prior to award, and no award shall be made to that bidder unless the conditions are immediately corrected, reinspection requested, and on such reinspection the facilities are found satisfactory and approved.

(b) The Government reserves the right to inspect the Contractor's facilities at all reasonable times during the performance of this contract. If an inspection reveals the existence of unsanitary conditions, the Contractor shall be requested, in writing, by the Contracting Officer to correct such conditions. Refusal to correct unsanitary condition shall constitute sufficient cause for the Government to terminate this contract immediately in accordance with the clause hereof entitled "Default" and without waiting ten days for the correction of the condition.

(c) Bidders may obtain sanitary inspection of their facilities by applying in writing to the Contracting Officer named herein not less than 10 calendar days prior to the opening date of this Invitation for Bids.

(d) The results of any sanitary inspection by the Department of the Air Force or the Department of the Army shall not be used for private sales promotion or advertising purposes.

NOTE. Paragraphs (a) and (c) above are required only in advertised procurement. In procurement placed by negotiation, this clause will consist of only paragraphs (b) and (d), which will be suitably redesignated, and the content of paragraphs (a) and (c) called to the contractor's attention in the course of negotiation.

§ 1007.4018 *Vehicles or conveyances.* Insert the following clause in all contracts for the procurement of bakery or dairy products (see Subparts FF and HH of this part, respectively):

VEHICLES OR CONVEYANCES

Vehicles or conveyances used in the transportation of items called for in this contract shall consist of clean, closed vehicles conforming to high standards of commercial transportation, equipped to protect against contamination of the product. These vehicles or conveyances shall be subject to examination at all times by the Contracting Officer or his authorized representative.

§ 1007.4019 *Federal Food, Drug, and Cosmetic Act.* Insert the following clause in all contracts for the procurement of bakery or dairy products (see Subparts FF and HH of this part, respectively):

FEDERAL FOOD, DRUG, AND COSMETIC ACT

All deliveries shall comply with the provisions of the Federal Food, Drug, and Cosmetic Act, Public Law 717, 75th Congress, as amended.

§ 1007.4020 *First article approval.* (a) When it is desired that the first article or articles of a fixed-price contract be tested and approved, a clause providing for such testing and approval may be inserted in the contract. The delivery of the remaining articles will be scheduled for specific times after, and contingent upon, receipt of notice of approval of the first article. Provision may be made in the clause limiting the number of resubmissions of first articles after rejection caused by failure to meet specification requirements. Since the exact nature of the testing desired, and the extent to which the Contractor will be authorized to proceed with production pending that testing and approval, will vary from contract to contract, establishment of a standard clause is not practicable. It is the responsibility of the Contracting Officer to negotiate with the Contractor a contract provision which will accurately describe the conditions desired and which will adequately protect the interests of the Government. Set forth in this section is a sample provision which may be useful as a guide. However, paragraph (d) will be included in any such provision.

FIRST ARTICLE APPROVAL

(a) The first [*number to be tested*] articles of Item [*contract item number*] are designated as First Articles and shall be delivered by the Contractor to the Government, all transportation charges prepaid, on or before _____ 19__, for test and approval. The Contractor will be notified, in writing, whether or not the First Articles are approved. After testing, said articles shall be returned to the Contractor, at the Contractor's expense, in their then condition for submission as contract items after repairs and modifications, if necessary, have been made by the Contractor. Pending written approval of the First Articles the remaining items of the contract shall not be fabricated or produced but the Contractor may acquire necessary materials for fabrication.

(b) First Articles shall be delivered to [*set forth consignee and address to which first articles are to be shipped*].

The following marking shall be placed on the container of the First Article, below and to the left of the address:

First Articles:
Contract Number_____
Item _____
Attn: [*set forth by name or symbol, and address, the laboratory or other place where the first articles are to be tested*].

(c) At least thirty (30) days prior to shipping First Articles, the Contractor shall send written notice of the time and method of shipment to the Contracting Officer and to the laboratory or other place designated in (b) above where the First Articles are to be tested.

(d) If the contractor fails to deliver the First Articles within the time set forth herein, or if the tests reveal discrepancies in the First Articles from the specification requirements, the Government may at its option:

(1) Notify the contractor in writing of the discrepancies in which event the contractor shall correct such discrepancies at no cost to the Government. If changes in specification are directed by the Government, they will be processed in accordance with the provisions of the clause hereof entitled "Changes"; or

(2) Consider the contractor delinquent in its deliveries hereunder.

(b) Where it is desired to permit the contractor to fabricate and produce items pending approval of the first articles, the last sentence of paragraph (a) of the clause set forth in this section will be deleted and the following substituted:

Pending approval of the First Articles the Contractor may proceed with fabrication and production of items, but shall make no deliveries.

(c) For administrative procedures relative to the contractor notification of acceptance or rejection of first article, see § 1054.104 (z) of this chapter.

§ 1007.4021 *Production sample test.* (a) When it is desired that samples from a production quantity of articles of a fixed-price contract be tested and approved, the following clause will be used:

PRODUCTION SAMPLE TEST

(a) The contractor shall forthwith deliver to the Government all transportation charges prepaid, such articles, not to exceed a total of _____ articles, called for in Item _____ as may be designated by the Government inspector, as production samples for testing. The Government, after testing, will give the Contractor a notice in writing approving, or disapproving, the samples as submitted within _____ days after receipt thereof. After testing, said articles shall be returned to the Contractor, at the Contractor's expense in their then condition, for submission as contract items after repairs and modifications, if necessary, have been made by the Contractor. Pending the approval by the Government of said samples, the Contractor may fabricate the remaining articles under this contract: Provided, however, That the Contractor shall make no deliveries, and that in the event the production samples reveal discrepancies from specification requirements, the Contractor shall make the necessary changes in all the fabricated articles to correct such discrepancies at no cost to the Government.

(b) Production Samples shall be delivered to [*set forth consignee and address to which Production Samples are to be shipped*].

The following marking shall be placed on the container of the Production Samples, below and to the left of the address:

Production Samples:
Contract Number _____
Item _____
Attn: [*set forth by name or symbol, and address, the laboratory or other place where production samples are to be tested*].

(c) At least thirty (30) days prior to shipping Production Samples, the Contractor shall send written notice of the time and method of shipment to the Contracting Officer and to the laboratory or other place designated in (b) above where the Production Samples are to be tested.

(d) The delivery schedules set forth in the contract shall be deemed automatically extended to the extent of the time used for any Production Sample testing. If such time is more than ninety (90) days, the adjustment in the delivery schedule shall be evidenced by a Change Order to this contract, or the contract shall be terminated pursuant to the clause hereof entitled "Termination for Convenience of the Government." In the event the Contractor fails to deliver the production samples at the time set forth herein, or the production samples do not meet the contract specification requirements, the Contractor may be considered delinquent in its deliveries hereunder.

(d) Where it is desired to permit the contractor to deliver items pending approval of the production samples, paragraph (d) of the clause set forth in paragraph (a) of this section will be deleted, and the last sentence of paragraph (a) of said clause will be deleted and the following substituted:

Pending the approval by the Government of said samples, the Contractor may fabricate and deliver the remaining articles under this contract: Provided, however, That in the event the production samples reveal discrepancies from specification requirements, the Contractor shall make the necessary changes, in all the fabricated articles delivered after receipt of notice of discrepancy, to correct such discrepancies at no cost to the Government.

§ 1007.4022 *Flight risk.* Any contract under which the contractor is required to have aircraft operated, may include the applicable clause set forth in this section whereby the Government assumes the risk of loss of aircraft during operation if the contract price, or the estimated cost, does not include an amount for flight-risk insurance premiums:

(a) For fixed-price contracts:

FLIGHT RISK

(a) As used in this clause the term "operation" includes tests of aircraft, tests of equipment and accessories installed therein, and the operation of any power plant installed therein, whether or not the aircraft is in motion during the making of any such test or the operation of any such powerplant.

(b) Each and every operation of any aircraft (1) to be furnished to the Government under this contract, or (2) furnished to the Contractor by the Government for the performance of this contract, whether conducted by the Contractor, by the Government or by any person authorized by the Government, shall be conducted at the risk of the Government insofar as loss or destruction of or damage to such aircraft (including equipment and accessories installed therein) is concerned, notwithstanding the provisions of the clause hereof entitled "Government-Furnished Property" and any provisions of applicable Air Force specifications relating to Contractor's liability in connection with such operation: *Provided*, That if personnel conducting such operation are not either furnished by the Government or approved in writing by the Air Materiel Area Commander having administrative responsibility for this contract, or his representative to whom such authority has been delegated, such operation shall be conducted at the risk of the Contractor and the Contractor shall be liable for loss and destruction of and damage to Government property occurring in the course of such operation; and further provided that the Contractor shall bear the risk of and, with respect to Government-furnished property, shall be liable for loss and destruction of, and damage to, such aircraft, equipment and accessories occurring in the course of such operation and resulting from willful misconduct or failure to exercise good faith on the part of Contractor's managerial personnel as defined in the clause hereof entitled "Government-Furnished Property."

(c) If prior to final acceptance by the Government any aircraft defined under paragraph (b) (1) above, are lost, destroyed or damaged during such operation thereof and if the risk of such loss, damage or destruction is borne by the Government under paragraph (b) hereof, the Government shall have the right to terminate this contract with respect to such aircraft, or in case such aircraft is damaged, the Government may elect to require that such aircraft be restored by the Contractor to the condition in which it was immediately prior to such damage. If the Government terminates this contract with respect to such aircraft, the Contractor shall deliver to the Government at the place at or from which such operation is conducted all or such parts of such aircraft as the Contracting Officer may designate, and the Contractor shall be paid the contract price for said aircraft less such amount as shall be determined by the Contracting Officer as the reasonable value of any portion of said aircraft not completed at the time of such termination. If the Government requires the aircraft to be restored as aforesaid, an equitable adjustment shall be made in the amount due under this contract and in the time required for its performance and this contract shall be modified in writing accordingly.

(d) Any disputes that may arise under the provisions of this Clause shall be determined as provided in the clause hereof entitled "Disputes."

(b) For cost-reimbursement-type contracts:

FLIGHT RISK

(a) As used in this clause the term "Operation" includes tests of aircraft, tests of equipment and accessories installed therein, and the operation of any power plant installed therein, whether or not the aircraft is in motion during the making of any such test or operation of any such power plant.

(b) Notwithstanding the provisions of paragraph (f) of the clause of this contract captioned "Government Property," the Contractor shall be liable for loss and destruction of and damage to aircraft (including equipment and accessories installed therein), to which the Government has title pursuant to the provisions of this contract or otherwise, occurring in the course of operations of such aircraft conducted by the Contractor in the performance of this contract unless personnel conducting such operations are furnished by the Government or are approved in writing by the Air Materiel Area Commander having administrative responsibility for this contract, or his representative to whom such authority has been delegated. The provisions of this clause shall supersede any provisions of applicable Air Force specifications insofar as such specifications relate to Contractor's liability in connection with such operations.

(c) If prior to final acceptance by the Government, any aircraft, as referred to in paragraph (b), are lost, destroyed, or damaged during such operation, and if the risk of such loss, damage, or destruction is borne by the Government under paragraph (f) of the clause hereof entitled "Government Property," the Government may terminate this contract with respect to such aircraft, or in case such aircraft is damaged, the Government may require the Contractor to restore such aircraft to the condition in which it was immediately prior to such damage. If the Government terminates this contract with respect to such aircraft, the Contractor shall deliver to the Government at the place at or from which such operation is conducted all or such parts of such aircraft as the Contracting Officer may designate. If the Government requires the aircraft to be restored as aforesaid, an equitable adjustment shall be made in the estimated cost and fixed-fee, if any, and in the time required for its performance, and this contract shall be modified in writing accordingly.

(d) Any dispute that may arise under the provisions of this clause shall be determined as provided in the clause hereof entitled "Disputes."

§ 1007.4023 *Inspection and audit.* The following clause will not be inserted in formal advertised contracts but will be inserted in all negotiated fixed-price-type contracts which provide for: Progress or advance payments, reimbursement of specific costs such as materials, or price redetermination or incentive price revision; and in all other negotiated fixed-price-type contracts in which the Air Force desires the right to inspect the books, records, and plants of the contractor or its subcontractors:

INSPECTION AND AUDIT

(a) The Contractor agrees that its books and records and its plants, or such part thereof as may be engaged in the performance of this contract shall at all reasonable times be subject to inspection and audit by any authorized representative of the department.

(b) The Contractor shall cause a like provision to be included in all subcontracts hereunder.

§ 1007.4024 *Superseding specifications.* Any contract which requires the contractor to comply with a Government specification will contain the following clause:

SUPERSEDING SPECIFICATIONS

All references in any Government specification incorporated herein to other Government specifications shall be deemed to include all specifications supplementary to or superseding the specifications so referred to, to the extent that such supplementary or superseding specifications are in effect at the date of Contractor's latest quotation, if the Contractor was furnished or otherwise notified of the existence of such supplementary or superseding specification at the time of said quotation.

§ 1007.4025 *Changes.* Any contract for supplies, services, or research and development for which another changes clause is not mandatory, may contain the following clause:

CHANGES

The Contracting Officer may, at any time, by a written order, and without notice to the sureties, if any, make changes in or additions to drawings and specifications, issue additional instructions, require modified or additional work or services within the general scope of the contract, change the place of delivery or method of shipment, or the amount of Government furnished property. If any such change causes an increase or decrease in the cost of, or in the time required for, performance of this contract, an equitable adjustment shall be made in the contract price, or time of performance, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within sixty (60) days from the date or receipt by the Contractor of the notification of change: *Provided, however,* That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

§ 1007.4026 *Option for increased quantity.* Any fixed-price-type supply or service contract, in which it is desired the Government have an option to in-

crease the quantity called for, may include the following clause:

OPTION FOR INCREASED QUANTITY

The Contractor grants to the Government the right to increase the quantity or quantities of the supplies and services called for herein, not exceeding _____ percent by item, and at not more than the unit price or prices specified herein. Said increase may be applied to any or all items at the option of the Contracting Officer. The Government shall exercise this option not later than _____ days before the last scheduled delivery under this contract and exercise of this option shall be evidenced by a Change Order to the contract or by a Supplemental Agreement if reduced prices are involved. The Contractor further agrees that delivery of the items added by exercise of this option shall continue immediately after delivery of like items called for hereunder at the same rate as that called for under this contract unless otherwise agreed by the parties.

§ 1007.4027 *Increase or decrease.* Unless the Estimated Requirements clause set forth in § 1007.4028 is used, insert the following clause in all contracts for the procurement of bakery or dairy products or packing or crating services (see Subparts FF, HH, and II of this part, respectively).

INCREASE OR DECREASE

Inasmuch as the quantity specified in this contract is based upon present personnel strength of the Government establishment designated herein, the Government reserves the right to increase or decrease such quantity, but not to exceed 50 per centum thereof, at no change in unit price, hereunder at any time prior to or during the contract period herein specified.

§ 1007.4028 *Estimated requirements.* The following clause will be inserted in all contracts for the procurement of laundry or dry cleaning services (see Subpart GG of this part). The clause will also be used in requirement contracts for the procurement of bakery or dairy products or packing and crating services (see Subparts FF, HH, and II of this part), or other frequently procured standard commercial supplies or services where requirements are indefinite in quantity and frequency.

ESTIMATED REQUIREMENTS

The amount of supplies and services which will be required during the period covered by this contract will depend upon the needs of the Government establishment issuing this contract. Quantities of supplies and services specified herein are based on the best information available as to those requirements, but are not definitely purchased hereby. Notwithstanding the foregoing, the Contractor agrees to furnish at the prices herein specified all supplies and services of the kind herein described which the Contracting Officer may call for during the above-mentioned period and the Government will call on the Contractor for all such supplies and services which the Government establishment issuing this contract may require during such period. After the expiration of the contract period, no further supplies or services will be called for or furnished.

NOTE: If desired, a paragraph may be added to the above clause limiting, in terms of percentage, the quantity which may be called for in any day, week, or other period, and/or limiting the frequency of calls.

§ 1007.4029 *Guaranty clause for fixed-price contracts.* The following clause, which limits the contractor's liability under the "latent defects" provision of the Inspection clause to 6 months but increases the contractor's liability to include patent defects for 6 months, is authorized for use in any fixed-price supply contract, provided the contracting officer determines: that the provision is in the best interest of the Government and that the price being paid for the supplies will be no greater than without the clause. The stated period of 6 months may be increased if considered desirable by the contracting officer:

GUARANTY

(a) The Contractor guarantees that at the time of delivery thereof the articles provided for under this contract will be free from any defects in material or workmanship and will conform to the requirements of this contract.

(b) Notwithstanding any other provision of this contract, final acceptance of the supplies (as defined in the clause of this contract entitled "Inspection") shall be conclusive except as regards (i) fraud, (ii) such gross mistakes as amount to fraud, (iii) any defects or failure to conform with contract requirements (whether latent or patent) as to which the Government shall notify the Contractor within six (6) months after the date of final acceptance. The Contractor shall promptly remedy (either at its plant or at such other place as may be agreed upon between the Conractor and the Contracting Officer) any such defects or failures by correction or replacement at no increase in the contract price: *Provided,* That applicable tooling and drawings, if otherwise unavailable to the Contractor are made available by order of the Government: *And provided further,* That the cost of any transportation in connection with the return of supplies for the purpose of such correction or replacement shall be borne by the Government. Provisions of this clause shall be applicable with respect to any supplies which the Contractor corrects or replaces pursuant to it.

(c) If the Government does not require correction or replacement of a defective or nonconforming article, as provided for above, the Contractor, if required by the Contracting Officer within a reasonable time after the notice of defect or nonconformance, shall repay such portion of the contract price of the article as is equitable under the circumstances.

§ 1007.4030 *Subcontracts.* All fixed-price contracts, for which another subcontract clause is not mandatory, will contain the applicable clause set forth in this section. See the Subcontracts clause set forth in § 1007.4042 for use in all fixed-price contracts which provide for price redetermination, including incentive price revision.

(a) For supply contracts which do not contain a price redetermination clause:

SUBCONTRACTS

No contract shall be made by the contractor with any other party for furnishing any of the completed or substantially completed articles, spare parts, or work, herein contracted for, without the written approval of the Contracting Officer as to sources.

(b) For contracts for work or services, which do not contain a price redetermination clause:

SUBCONTRACTS FOR WORK OR SERVICES

No contract shall be made by the contractor with any other party for furnishing any of the work or services herein contracted for without the written approval of the Contracting Officer, but this provision will not be taken as requiring the approval of contracts of employment between the Contractor and personnel assigned for services thereunder.

§ 1007.4031 *Overtime and premium wage compensation.* Except where a contract provides that no premium wage compensation will be recognized as a cost, all cost-reimbursement contracts, and all fixed-price contracts which contain a price redetermination provision, will contain the more applicable of the following clauses (see § 1012.102 of this chapter):

(a) Fixed-price contracts which contain a price redetermination provision.

OVERTIME AND PREMIUM WAGE COMPENSATION

Except as otherwise provided in this contract the cost of premium wage compensation, including overtime work, will be recognized in any price adjustment under the terms of this contract only to the extent approved in writing by the Contracting Officer.

(b) Cost-reimbursement contracts.

OVERTIME AND PREMIUM WAGE COMPENSATION

Except as otherwise provided in this contract the cost of premium wage compensation, including overtime work, will be allowed as an item of cost hereunder only to the extent approved in writing by the Contracting Officer.

§ 1007.4032 *Reproduction rights.* The following may be used in contracts which call for the delivery of supplies except where a Patent Rights clause, according to § 9.107 of this title, is used:

REPRODUCTION RIGHTS

It is understood and agreed that the Contractor does not convey to the Government any reproduction rights in or to the supplies called for herein by virtue of the terms of this contract, except as may be herein otherwise provided.

§ 1007.4033 *Contractual contents.* Any contract may contain the following clause when it is desirable to enumerate the components of the contract, e. g., the clauses, or the various specifications, parts, or general or special provisions:

CONTRACTUAL CONTENTS

This contract consists of [*here enumerate the contents of the contract, e. g., Schedule, General Provisions, Special Provisions, Specifications or the Contract Clauses or the Number of Pages comprising the Contract*].

§ 1007.4034 *Discounts.* Any contract, under which a discount for prompt payment may be available, may contain the following clause:

DISCOUNTS

In connection with any discount offered, as may be set forth in the Schedule, time will be computed from date of the delivery of the supplies to carrier when delivery and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when delivery and acceptance are at those points, or from date correct invoice or voucher (properly certified by the Contractor) is received in the office specified by the Government if the latter date is later than the date of delivery.

§ 1007.4035 *Prior instrument superseded.* Any definitive contract which replaces or supersedes a notice of award or letter contract will contain the following clause:

PRIOR INSTRUMENT SUPERSEDED

This is the definitive contract contemplated by (Letter Contract) (Notice of Award) dated ---------- and designated Contract No. ------, and supersedes said (Letter Contract) (Notice of Award). Any costs incurred or payments made thereunder will be considered to have been made under this definitive contract.

§ 1007.4036 *Delay in delivery of data.* Any contract which calls for the delivery of an end item and also for technical data, such as handbooks, service manuals, or other information necessary for the proper maintenance or servicing of the end item, will include the following clause:

DELAY IN DELIVERY OF DATA

(a) It is understood that the efficient use by the Government of the supplies called for hereunder requires that the data called for hereunder be delivered not later than the time or respective times herein specified. If such data is not delivered at said time or times, the Government may at its election, so long as such data remains undelivered, unless the delay in delivery thereof arises out of causes beyond the control and without the fault or negligence of the Contractor within the meaning of the clause hereof entitled "Default," withhold payment to the Contractor for any of the amounts then due, refuse approval of the Contractor's vouchers and refuse to accept further deliveries hereunder from the Contractor or take any other action authorized by law or regulation now or hereafter in effect including termination of the contract for default to the extent and in the manner authorized by said clause, and may take any or all of the foregoing actions separately or in combination.

(b) The provisions of this clause shall only be applicable to technical data, such as handbooks, service manuals, or other information necessary for the proper maintenance or servicing of the end items called for herein.

§ 1007.4037 *Inspection.* Any contract for supplies or services, for which another inspection clause is not mandatory, may contain the following clause:

INSPECTION

All services, material and workmanship shall be subject to inspection and test by representatives of the Government. For this purpose, the Contractor shall allow at all reasonable times inspectors and other Government personnel free access to the plant and operations and shall furnish such facilities, supplies and services as may be required for this work.

§ 1007.4038 *Price warranty.* Any fixed-price contract may contain the following clause (see § 1003.701–9 of this chapter). This clause is suitable for use in contracts for commercial items, or where a cost breakdown of a contractor's costs is not available. For contracts containing escalation provisions, see § 1003.403–2 of this chapter.

PRICE WARRANTY

The Contractor warrants that the prices of the items set forth herein do not exceed those charged by the Contractor to any other customer purchasing the same items in like or smaller quantities.

§ 1007.4039 *Open call contract clause.* If it is desired to incorporate the call feature (see § 1003.405–5 of this chapter) into a fixed-price supply contract, a non personal services contract, or a time and materials contract, the following clause will be added to those clauses required or authorized by the aforementioned parts of this section:

CALLS

(a) Upon receipt by it of Calls therefor issued hereunder by the Contracting Officer, the Contractor, pursuant to such Calls, shall furnish to the Government supplies or services of the type and at the prices set forth in the Schedule. Calls may be issued at the sole option of the Contracting Officer during the period set forth in the Schedule. It is understood and agreed that the Government undertakes no obligation hereby to issue Calls hereunder. The provisions of this contract, including the Schedule, shall govern all Calls issued hereunder during the aforementioned period.

(b) Calls issued pursuant to this contract shall bear the number of this contract and shall be in writing, serially numbered, dated and signed by the Contracting Officer. They shall set forth the supplies or services and the quantities thereof to be furnished, together with the delivery dates, place of delivery and any packing and shipping instructions therefor, and shall contain a citation of the funds from which payment for the supplies or services called for shall be made. The Contracting Officer shall be entitled to issue amendments to Calls in the same manner as original Calls.

NOTE: If desired, provisions may be made in the schedule for maximum or minimum quantities to be ordered by individual calls, and also for the frequency of calls, in the event any are made. Provision may also be made as to the time within which the contractor shall perform following receipt of any call.

§ 1007.4041 *Descriptive identification data to be furnished by Government suppliers.* Supply contracts issued by Hq AMC or AMC field procurement activities as a result of PR's or MIPR's which contain a requirement for descriptive identification data according to specification MIL–D–26715 (USAF) will contain the clause set forth below. (Where there is no requirement for descriptive indentification data of end item, such as kits, but such data is required for spare parts therefor, paragraph (a) will be omitted and the designation of (b) will be deleted from the second paragraph.)

DESCRIPTIVE IDENTIFICATION DATA TO BE FURNISHED BY GOVERNMENT SUPPLIERS

(a) On item no.(s.) ------, the contractor shall furnish descriptive identification data in accordance with MIL–D–26715 (USAF). This service is included as an item in the contract schedule. Such data shall be delivered to the Government in accordance with the time cycle contained in the specification. No deliveries shall be made on these items until the contract has been amended to include the appropriate stock numbers. Any delay on the part of the Government to adhere to the time cycle set forth in the specification shall be considered an excusable delay within the meaning of the clause of this contract entitled "Default" or "Excusable Delays". Any such excusable delay will automatically extend the delivery schedule by the time of the delay.

(b) If this contract calls for spare parts, the contractor shall furnish descriptive identification data therefor in accordance with MIL–D–26715. The price for furnishing such data shall be included in the price of said spare parts and shall be negotiated at the time and in the manner provided in this contract for the price of spare parts.

§ 1007.4042 *Subcontracts.* The following clause will be inserted in all fixed-price contracts which provide for price redetermination, including incentive price revision. See the Subcontracts clauses set forth in § 1007.4030 for use in all fixed-price supply contracts and contracts for work or services, which do not contain a price redetermination clause.

SUBCONTRACTS

(a) No contract shall be made by the Contractor with any other party for furnishing any of the completed or substantially completed articles, spare parts or work, herein contracted for, without the written approval of the Contracting Officer as to sources.

(b) The Contractor shall give specific advance notification to the Contracting Officer of any proposed subcontract hereunder which (1) is on a cost or cost-plus-a-fixed-fee basis, or (2) is on a fixed-price basis exceeding in dollar amount either $25,000 or five percent (5%) of the total amount of this contract.

(c) The Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which (1) is on a cost or cost-plus-a-fixed-fee basis, or (2) is on a fixed-price basis exceeding in dollar amount either $25,000 or five percent (5%) of the total amount of this contract, or (3) provides for the fabrication, purchase, rental, installation or other acquisition, of any item of industrial facilities, or of special tooling having a value in excess of $1,000, or (4) is on a time-and-material or labor-hour basis. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (c).

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

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

(f) The Contracting Officer may approve all or any part of the Contractor's purchasing system and from time to time rescind or reinstate such approval. Such approval shall be deemed to fulfill the requirements for obtaining the Contracting Officer's consent to subcontracts as prescribed in paragraph (c) above.

§ 1007.4043 *Returnable containers.* (a) In placing contracts calling for shipment in containers which may be used more than once, it is necessary to cover the following matters contractually:

(1) The contract should state whether the price of the containers is included, either in the unit price or as a separate item, whether the Government will be charged for containers, or whether the contractor will invoice for them later. It is highly inadvisable to provide that the contractor will invoice later, since this is likely to lead to considerable complications.

(2) The contract should state whether the containers are to be returned, and if so, within what time limit.

(3) If the contract price includes the price of the containers (either in the unit price or as a separate item) the contract should state whether the con-

tainers are considered "one-time shippers" or whether the Government will have the right to return the containers for credit.

(4) If the Government has the right to return the containers for credit, provision should be made regarding the time limit, price, f. o. b. point, and consignment instructions.

(5) The price of containers should be listed as a separate item on the contract wherever possible, and handled separately on shipping documents and accountable records.

(b) Following are several typical clauses considered to be according to commercial practice in the various situations indicated by the wording of the clauses. Care must be exercised to insure the use of a clause which is known to be acceptable to the contractor. All of these clauses refer to "reels" but may be changed to cover drums, spools, carboys, or other containers. See § 1007.4012 for an appropriate clause for rental of gas cylinders.

REELS

(a) The cost of reels is included in the contract price. All reels referred to herein are subject to return by the Government, if in good condition, reasonable wear and tear excepted, at a credit of $_____ per reel, within _____ days after delivery to the Government. If returned after said period has elapsed, the amount to be paid the Government therefor shall be decreased 5 percent for each month or fraction thereof in excess of said period.

(b) Reels returned as above shall be delivered to the Contractor f. o. b. cars or freight station [*here insert city and State of contractor's plant*], and the Contractor shall allow the commercial freight charges to such place from point of Government destination hereunder. The Government shall not be responsible for the return of lagging, nor shall the cost of lagging be included in the value of reels.

REELS

The cost of nonreturnable reels used in supplying the items called for herein is included in the contract price and such reels will not be returned to the Contractor.

REELS

All reels referred to herein are subject to return by the Government, if in good condition, reasonable wear and tear excepted, within twelve (12) months after the date of delivery, at the price of $_____ per reel.

REELS

The cost of reels is included in the contract price. Such reels may be returned to the Contractor by the Government f. o. b. cars or freight station [*here insert city and State of contractor's plant*], if in good condition, reasonable wear and tear excepted, within _____ months from and after date of delivery at the price of $ _____ per reel.

§ 1007.4044 *Customary commercial warranties.* Any negotiated contract may contain the following clause where a commercial article is being procured on which the contractor customarily grants to purchasers a warranty covering the same:

WARRANTY

In addition to any other rights granted under this contract, the Contractor grants to the Government the same warranty on the items procured hereunder customarily given to its commercial customers.

§ 1007.4045 *Payment of fixed fee.* The following clause, to comply with § 7.203–4 of this title "Allowable Cost, Fixed Fee, and Payment," paragraph (h), may be inserted in the schedule of a cost-reimbursement-type contract to provide for payment of a fixed-fee as determined payable under Subpart N, Part 1054, of this chapter.

PAYMENT OF FIXED FEE

The fixed fee shall be paid in monthly installments based upon the percentage of completion of work, as determined by the Contracting Officer.

§ 1007.4046 *Payments clause for fixed-price-type letter contracts.* The payments clause set forth below may be inserted by amendment into a fixed-price-type letter contract in which considerable deliveries are being made, and in which definitization has been delayed if it is determined by the procuring contracting officer that the delay is not due to the fault of the contractor. The use of this clause will require negotiation of an interim price. The price is for billing purposes only and should not be used in any way as a basis for fixed-price-type negotiations. It should not exceed 75 percent of the estimated unit cost. The clause should not be used in a letter contract for which progress payments provided in Subpart F, Part 1054, of this chapter have been authorized.

PAYMENTS CLAUSE FOR FIXED-PRICE-TYPE LETTER CONTRACTS

(a) Pending execution of a definitive contract, payment will be made for each item delivered and accepted upon the submission of properly certified invoices or vouchers, in accordance with the following:

(Item No.) (Nomenclature) (Quantity) (Unit price) (Total amount)

(b) It is understood that the prices stated herein are tentative only, and are subject to adjustment in accordance with the price to be established in the definitive contract.

(c) In the event of termination, the termination provisions shall govern, and the price stated herein shall not be applied for the purpose of computing a termination settlement.

(d) The aggregate payment made for deliveries under this clause shall not exceed the amount obligated under this contract.

§ 1007.4047 *Safety and accident prevention.* Any contract, except construction contracts written according to Subpart CC of this part and § 1007.4207, which is to be performed in whole or in part on an AF base or other premises owned or under the control of the Government will contain the following clause.

SAFETY AND ACCIDENT PREVENTION

If this contract is performed in whole or in part on premises under the direct control of the Government, the Contractor shall conform to all safety regulations and requirements covering such premises in effect at any time during the performance of the contract. The Contractor agrees to take all reasonable steps and precautions to prevent accidents and preserve the life and health of Contractor and Government employees performing or in any way coming in contact with the performance of this contract on such premises. Information concerning safety regulations will be furnished the Contractor upon request to the Contracting Officer. Any violation of such regulations, unless promptly corrected as directed by the Contracting Officer, shall be grounds for termination of the contract in accordance with the default provisions hereof.

§ 1007.4048 *Ammunition and explosive material safety.* All contracts, including letter contracts, for (a) Manufacture, maintenance, modification, or overhaul of aircraft, missiles, rocket engines, and fire control systems, (b) manufacture of explosives or ammunition, and (c) any other contract that may involve the storage, manufacture, packaging, transportation, handling, or use of explosives or ammunition, will contain the following clause.

AMMUNITION AND EXPLOSIVE MATERIAL SAFETY

The Contractor shall comply with the applicable portions of Air Force Technical Orders 11A–1–20, 11W–1–2, 11W–1–3, 42B1–1–6 and AF Regulation 86–6, in effect on the date of this contract, in addition to local, State and Federal ordinances, laws and codes in the manufacture, handling, storage, packaging, transportation or use which may affect the performance of this contract of Government or Contractor owned ammunition or explosive material. The Contractor shall also comply with any additional safety measures required by the Contracting Officer with regard to such ammunition or explosive material; provided, that if compliance with such additional safety measures results in a material increase in the cost or time of performance of the contract, an equitable adjustment will be made in accordance with the clause hereof entitled "Changes."

§ 1007.4049 *Warning labels for hazardous chemicals.* All contracts for the procurement of hazardous chemicals and all contracts which require the use of such chemicals on an AF base or other premises under the control of the Government will contain the following clause:

WARNING LABELS FOR HAZARDOUS CHEMICALS

Containers of hazardous chemicals furnished to the Government or used by the Contractor in the performance of this contract in whole or in part on premises under the control of the Government shall have affixed to such containers in conspicuous place applicable warning labels in substantially the same wording as is set forth in Manual L–1 published by the Manufacturing Chemists' Association, Inc., entitled "Warning Labels," as in effect on the date of this contract. Information concerning any warning label will be furnished to the Contractor by the Contracting Officer upon request. The use of such labels shall be in addition to any other requirements of Federal, State and local laws or regulations.

§ 1007.4050 *Government bill of lading.* All contracts issued by Hq AMC or AMC field procurement activities which provide for delivery of supplies will contain the clause set forth in this section. Such contracts issued by other AF activities may contain the clause set forth in this section or may contain a GBL clause adapted to the particular contract.

GOVERNMENT BILL OF LADING

(a) When it is provided in this contract that the supplies shall be delivered other than f. o. b. specified destinations, shipment(s) will be made on a Government Bill of Lading. The required number of such GBL's will be furnished to the Contractor by the cognizant transportation activity.

The Contractor shall acknowledge receipt of these GBL's in the manner prescribed. As shipments are made, the contractor shall prepare and distribute the applicable GBL's in accordance with AMC Form 232, "Instructions for Completing Government Bills of Lading." The Contractor also agrees that GBL's in excess of the requirements of this contract will be returned to the cognizant transportation activity within a reasonable time after final shipment.

SUBPART PP—CLAUSES FOR CONTRACTS ISSUED BY FOREIGN PROCUREMENT ACTIVITIES

§ 1007.4203 *Special required clauses.*

§ 1007.4203–1 *Inconsistency between English version and translation of contract.* Contracts issued by foreign procurement activities may be published in mother language as well as in English. In such cases, the contract will contain the following clause:

INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT

In the event of inconsistency between any terms of this contract and any translation thereof into another language, the English language meaning shall control.

§ 1007.4203–2 *Labor relations and standards.* The following clause will be inserted in all contracts issued by a foreign procurement activity:

LABOR RELATIONS AND STANDARDS

The provisions of this contract and the performance hereunder shall be subject to and in accordance with the laws of the Government of _____ and any political subdivision thereof, from time to time in effect, which govern the hours, wages, labor relations (including collective bargaining), workmen's compensation, working conditions, and other matters pertaining to labor.

§ 1007.4205 *Variations and omissions of clauses.* The words "United States" will be inserted before the word "Government" wherever the latter word appears in any clause, except where the word "Government" refers to a different, named government. In the case of any Government-to-government contract, the word "Contractor" wherever it appears in any clause will be replaced by the phrase "_____ Government" with the name of the other contracting government inserted. The following instructions will control the use of the clauses listed below in any contract issued by a foreign procurement activity. Requests by foreign procurement activities for deviations from the content of clauses set forth in Chapter I of this title and this chapter, or from requirements for their use, will be forwarded to the Commander, AMC, attn: MCPC, according to § 1001.109 of this chapter.

§ 1007.4205–1 *Definitions.* The clause contained in §7.103–1 of this title will not be inserted in the contract, but the following clause will be used in lieu thereof:

DEFINITIONS

As used throughout this contract the following terms shall have the meanings set forth below:

(a) The term "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of the United States military department concerned; and the term "his duly authorized representative" means any person or persons (other than the Contracting Officer) authorized to act for the Secretary.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the United States Government, or any other officer or civilian employee who is properly designated a Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of the Contracting Officer acting within the limits of his authority.

(c) The term "United States Government" means the United States of America.

(d) Except as otherwise provided in this contract, the term "subcontracts" means any agreement, contract, subcontract or purchase order made by the Contractor with any other party in fulfillment of any part of this contract, and any agreement, contract, subcontract or purchase order thereunder.

§ 1007.4205–2 *Changes.* Whenever the clause contained in § 7.103–2 of this title is to be used it may be varied by inserting the following after "(iii) place of delivery" in the first sentence thereof: "(iv) place of inspection or acceptance; and (v) quantities of items on any spare parts list." The period of 30 days within which any claim for adjustment must be asserted may be varied up to 60 days at the option of the contracting officer.

§ 1007.4205–3 *Inspection.* Whenever the clause contained in § 7.103–5 of this title is to be used, it may be varied by further defining the contractor's responsibility and liability in connection with "correction in place" where the items procured are destined for transshipment from the country of origin.

§ 1007.4205–4 *Responsibility for supplies.* Whenever the clause contained in § 7.103–6 of this title is to be used, it may be varied by further defining the contractor's responsibility and liability where the items procured are destined for transshipment from the country of origin.

§ 1007.4205–5 *Assignment of claims.* (a) The clause contained in § 7.103–8 of this title, when used, will be used without deviation except that the last sentence of paragraph (a) will be omitted in all cases and the following inserted in lieu thereof:

No assignment or reassignment made hereunder shall be valid or recognized unless made to an eligible trade bank in accordance with the laws of the country wherein such bank is located, as well as the laws of the country where payments are scheduled to be made hereunder. Further, such assignment or reassignment shall be made in accordance with all applicable bilateral or multilateral intergovernmental agreements to which the United States Government is a party.

(b) At the discretion of the contracting officer, an assignment of claims clause may be entirely omitted from the contract. When the clause is omitted, consideration should be given to including a clause prohibiting assignment of claims.

§ 1007.4205–6 *Additional bond security.* The clause contained in § 7.103–9 of this title may be omitted from the contract at the discretion of the contracting officer if initial bond security is not required.

§ 1007.4205–7 *Federal, State, and local taxes.* The clause set forth in § 11.401 of this title will not be inserted in the contract, but the clause set forth in § 1011.2002 of this chapter will be used in lieu thereof.

§ 1007.4205–8 *Disputes.* Contracts issued by AMFPA and foreign procurement activities in the Far East will contain the clause set forth in § 7.103–12 of this title. Contracts issued by all other foreign procurement activities will contain the following clause in lieu of the clause set forth in § 7.103–12 of this title.

DISPUTES

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. Within 30 days from the date of receipt of such copy, the Contractor may appeal by mailing or otherwise furnishing to the Contracting Officer a written appeal addressed to the Commander [*name of major oversea command concerned*], and the decision of the said Commander, or his duly authorized representative (other than the Contracting Officer named in this contract) for the hearing of such appeals shall, unless determined by a court of competent jurisdiction to have been fraudulent, arbitrary, capricious, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence be final and conclusive upon the parties hereto when the total amount claimed by the Contractor is $50,000 or less: *Provided*, That, if no appeal is taken, within the said 30 days, the decision of the Contracting Officer shall be final and conclusive. When the total amount claimed by the Contractor is more than $50,000 the decision of the Commander [*name of major command concerned*], or his duly authorized representative shall be subject to further written appeal within 30 days after receipt thereof by the Contractor to the Secretary of the Air Force and the decision of the Secretary of the Air Force or his duly authorized representative for the hearing of such appeals shall, unless determined by a court of competent jurisdiction to have been fraudulent, arbitrary, capricious, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence be final and conclusive; provided that, if no further appeal is taken, within the said 30 days, the decision of the Commander [*name of major oversea command concerned*] or his duly authorized representative shall be final and conclusive. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

§ 1007.4205–9 *Patent clauses*—(a) *Reporting of royalties.* The clause set forth in § 9.110 of this title will not be used; however, according to the requirements of § 9.110–2 of this title insert the clause set forth in that section.

(b) *Notice and assistance regarding patent infringement.* While it is preferable to insert the clause contained in § 9.104 of this title, it may be omitted if serious objection is interposed by the prospective contractor.

(c) *Patent indemnity.* Although performance and delivery of a particular

contract are to take place outside the United States, its territories or possessions, if the contract indicates that the supplies called for by the contract are ultimately to be shipped into the United States, its Territories or possessions, the instructions of §§ 9.103–1, 9.103–2 or 9.103–3 of this title as to inclusion of a Patent Indemnity clause are applicable. (See § 9.103 (b) of this title.)

(d) *Filing of patent applications.* The clause set forth in § 9.106 of this title will not be used; however, according to the requirements of § 9.106–1 of this title, insert the clause set forth in that section.

§ 1007.4205–10 *Buy American Act.* The clause contained in § 7.103–14 of this title may be omitted from the contract where the supplies procured are to be used outside the United States, its Territories and possessions. Foreign procurement of supplies which are to be shipped to the United States, its Territories and possessions, comes under the provisions of the Buy American Act unless specifically excepted therefrom by the Secretary of the Air Force, his duly authorized representative, or the provisions of the Act.

§ 1007.4205–11 *Convict labor.* The clause contained in § 12.203 of this title will be omitted from the contract.

§ 1007.4205–12 *Eight-hour law of 1912.* The clause contained in § 12.303–1 of this title will be omitted from the contract.

§ 1007.4205–13 *Walsh-Healey Public Contracts Act.* The clause contained in § 12.604 of this title will be omitted from the contract.

§ 1007.4205–14 *Nondiscrimination in employment.* The clause contained in § 12.802 of this title will be omitted from contracts to be performed outside the continental United States where no recruitment of workers within the continental United States is involved.

§ 1007.4205–15 *Davis-Bacon Act.* The clause contained in § 12.403–1 (a) of this title will be omitted from the contract.

§ 1007.4205–16 *Copeland Act.* The clause contained in § 12.403–1 (e) of this title will be omitted from the contract.

§ 1007.4205–19 *Military security requirements.* Paragraph (c) of the clause contained in § 7.104–12 of this title will be omitted from the contract.

§ 1007.4205–21 *Inspection and audit.* (a) The clause contained in § 1007.4023 will be omitted from Government-to-government contracts for purchases outside the continental United States under the Mutual Defense Assistance Act of 1949, as amended, and the Mutual Security Act of 1951, as amended.

(b) The clause contained in § 1007.4023 may be omitted from Government-to-private-producer contracts for purchases outside the continental United States under the Mutual Defense Assistance Act of 1949, amended, and the Mutual Security Act of 1951, as amended, upon a determination that such an omission is required by the circumstances of a particular situation. The authority to make such a determination for contracts to be issued by foreign procurement activities under their jurisdiction is vested in:

(1) Commanders of oversea commands with power of redelegation to, but not lower than, the staff officers responsible for procurement in such commands.

(2) Commander and Deputy Commander, Air Materiel Force, Pacific Area (AMFPA), with power of redelegation to not lower than a staff officer responsible for procurement within AMFPA.

(3) Commander and Deputy Commander, Air Materiel Force, European Area (AMFEA), with power of redelegation to not lower than a staff officer responsible for procurement within AMFEA.

§ 1007.4205–22 *Examination of records.* The clause contained in § 7.104–15 of this title may be omitted from contracts for purchases outside the continental United States and under the Mutual Defense Assistance Act of 1949, as amended, and the Mutual Security Act of 1951, as amended.

§ 1007.4205–23 *Records.* Paragraphs (a) (2) through (6) and (b) of the clause contained in § 7.203–7 of this title may be omitted from contracts for purchases outside the continental United States under the Mutual Defense Assistance Act of 1949, as amended, and the Mutual Security Act of 1951, as amended.

§ 1007.4205–24 *United States officials not to benefit.* The clause contained in § 7.103–19 of this title will not be inserted in the contract, but the following clause will be used in lieu thereof:

UNITED STATES OFFICIALS NOT TO BENEFIT

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

§ 1007.4205–25 *Domestic food, clothing, cotton, spun silk yarn for cartridge cloth, or wool.* The clause set forth in § 7.104–13 of this title may be omitted from contracts made outside the United States in support of combat operations, emergency procurements, or procurements of perishable foods by establishments located outside the continental United States, except the Territories of Hawaii and Alaska, for the personnel attached thereto.

§ 1007.4205–26 *Payments for Mutual Defense Assistance Program contracts.* Where contracts under the Mutual Defense Assistance Program are made, the following clause will be inserted:

FUNDS AND EXCHANGE

Payment under this contract will be made in United States dollars or in _____, or in a combination of both, at the option of the United States Government. When payment is made in _____, the rate of exchange shall be in accordance with the rate of exchange agreement between the Governments of the United States and _____, in effect on the date of this contract.

§ 1007.4205–27 *Price change.* Whenever the foreign government may impose mandatory changes in rates of wages or price of materials used in performing a fixed-price contract, the following clause may be inserted:

PRICE CHANGE

The Contractor represents that the prices set forth in this contract are based on (wage rates) (material prices) [1] established by the Government of _____ and warrants that such prices do not include any contingency allowance to cover possible increase thereof. If such (wage rates) (material prices) [1] are changed by that Government, the prices herein may be revised to the extent that the contractors' actual costs of performing this contract are, as a result of the change, (i) necessarily increased or (ii) actually reduced. Either party may submit a written request for such price revision to the other party within 30 days after the effective date of such change or within such further time as the contracting officer may allow. Such a request by the contractor shall state the amount of such change and show in detail the amount by which contract prices are claimed to be affected. The parties shall then promptly negotiate to establish the amount, if any, by which contract prices shall be revised. The contractor shall make available to the contracting officer at all reasonable times its books and records pertaining to the original prices and performance of the contract. If the parties are unable to agree upon the price revision, the contracting officer shall make, and transmit to the contractor, a written determination of the revision if any, which is to be made. Any price revision negotiated by the parties, or determined by the contracting officer, pursuant to this clause shall be set forth in an amendment to this contract. Nothing in this clause shall excuse the contractor from proceeding with the contract in accordance with its terms.

§ 1007.4206 *Construction contracts; cover sheet.* Construction contracts, as defined in § 16.400 of this title, issued by foreign procurement activities for work to be performed in foreign countries will contain a cover sheet in substantially the following format:

CONSTRUCTION CONTRACT

UNITED STATES AIR FORCE

Contract No. _____
Date of Contract _____

Name and address of contractor _____
Check appropriate box:
☐ Individual.
☐ Partnership.
☐ A corporation organized and existing under the laws of.
Contract for (work to be performed) _____
Place _____
Amount of contract _____
Administrative data _____

(If the contract results from negotiation, a reference to the subsection of the Armed Services Procurement Act of 1947 which authorized such negotiation shall be inserted here, in addition to any other administrative data.)

This contract, entered into this date by the United States of America, hereinafter called the United States Government, represented by the Contracting Officer executing this contract, and the individual, partnership or corporation named above, hereinafter called the Contractor, witnesseth that the parties hereto do mutually agree as follows:

Statement of work. The Contractor shall furnish labor, equipment and materials and perform the work above described for the amount stated above in strict accordance

[1] If only one term is appropriate, delete the other term.

with the General and Special Provisions, specifications, schedules, drawings and conditions all of which are made a part hereof and designated as follows:

(Here describe the entire contents of the contract, e. g., specifications, schedules, drawings and conditions and enumerate the clauses comprising the General and Special Provisions.)

Work shall be started _____
Work shall be completed _____

In witness whereof, the parties hereto have executed this contract as of the date entered herein above.

THE UNITED STATES OF AMERICA,
By _____
_____
(Official title)
CONTRACTOR,
_____
(Name of contractor)
By _____
(Signature)
_____
(Title)

§ 1007.4207 *Construction contracts, general provisions.* Construction contracts, as defined in § 16.400 of this title, issued by foreign procurement activities for work to be performed in foreign countries will contain the following clauses with the words "United States" inserted before the word "Government" wherever the latter word appears in any clause. These clauses collectively will be entitled "General Provisions."

§ 1007.4207–1 *Labor relations and standards.* Insert the clause set forth in § 1007.4203–2.

§ 1007.4207–2 *Definitions.* Insert the clause set forth in § 1007.4205–1.

§ 1007.4207–3 *Changes.*

CHANGES

The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes in the drawing of specifications of this contract and within the general scope thereof. If such changes cause an increase or decrease in the amount due under this contract, or in the time required for its performance, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. Any claim of the Contractor for adjustment under this clause must be asserted in writing within thirty days from the date of receipt by the Contractor of the notice of change: *Provided, however,* That the Contracting Officer, if he decides that the facts justify such action, may receive and consider, and adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made the dispute shall be determined as provided in the clause of this contract entitled "Disputes." But nothing provided in this clause shall excuse the Contractor from proceeding with the prosecution of the work as changed. Except as otherwise herein provided, no charge for any extra work or material will be allowed.

§ 1007.4207–4 *Changed conditions.*

CHANGED CONDITIONS

The Contractor shall promptly, and before such conditions are disturbed, notify the Contracting Officer in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract. The Contracting Officer shall promptly investigate the conditions, and if he finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or the time required for, performance of this contract, an equitable adjustment shall be made and the contract modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless he has given notice as above required: *Provided,* That the Contracting Officer may, if he determines the facts so justify, consider and adjust any such claim asserted before the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in the clause of this contract entitled "Disputes."

§ 1007.4207–5 *Inspection.*

INSPECTION

(a) Except as otherwise provided in paragraph (d) hereof, all material and workmanship, if not otherwise designated by the specifications, shall be subject to inspection, examination and test by the Contracting Officer at any and all reasonable times during manufacture or construction and at any and all places where such manufacture or construction is carried on. The United States Government shall have the right to reject defective material and workmanship or to require its correction. Rejected workmanship shall be satisfactorily corrected and rejected materials shall be satisfactorily replaced with proper material without charge therefor, and the Contractor shall promptly segregate and remove the rejected material from the premises. If the Contractor fails to proceed at once with the replacement of rejected material or the correction of defective workmanship, the United States Government may, by contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or may terminate the right of the Contractor to proceed as provided in the clause of this contract entitled "Termination for Default—Damages for Delay—Time Extensions," the Contractor and surety being liable for any damage to the same extent as provided in said clause for terminations thereunder.

(b) The Contractor shall furnish promptly without additional charge, all reasonable facilities, labor and materials necessary for the safe and convenient inspection and test that may be required by the Contracting Officer. All inspection and tests by the United States Government shall be performed in such manner as not to unduly delay the work. Special, full size, and performance tests shall be as described in the specifications. The Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready at the time inspection is requested by the Contractor.

(c) Should it be considered necessary or advisable by the United States Government at any time before final acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, the Contractor shall upon request promptly furnish all necessary facilities, labor and material. If such work is found to be defective or nonconforming in any material respect, due to fault of the Contractor or its subcontractors, it shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the actual direct cost of labor and material necessarily involved in the examination and replacement, plus 15 percent, shall be allowed the Contractor and he shall, in addition, if completion of the work has been delayed thereby, be granted a suitable extension of time on account of the additional work involved.

(d) Inspection of material and finished articles to be incorporated in the work at the site shall be made at the place of production, manufacture or shipment, whenever the quantity justifies it, unless otherwise stated in the specifications; and such inspection and written or other formal acceptance, unless otherwise stated in the specifications, shall be final, except as regards latent defects, departures from specific requirements of the contract, damage or loss in transit, fraud or such gross mistakes as amount to fraud. Subject to the requirements contained in the preceding sentence, the inspection of material and workmanship for final acceptance as a whole or in part shall be made at the site. Nothing contained in this paragraph (d) shall in any way restrict the United States Government's rights under any warranty or guarantee.

§ 1007.4207–6 *Payments to contractors.*

PAYMENTS TO CONTRACTORS

(a) Unless otherwise provided in the specifications, partial payments will be made as the work progresses at the end of each calendar month, or as soon thereafter as practicable, or at more frequent intervals as determined by the Contracting Officer, on estimates made and approved by the Contracting Officer. In preparing estimates, the material delivered on the site and preparatory work done may be taken into consideration.

(b) In making such partial payments there shall be retained 10 percent on the estimated amount until final completion and acceptance of all work covered by the contract: *Provided, however,* That the Contracting Officer, at any time after 50 percent of the work has been completed, if he finds that satisfactory progress is being made, may make any of the remaining partial payments in full: *And provided further,* That on completion and acceptance of each separate building, public work or other division of the contract, on which the price is stated separately in the contract, payment may be made in full, including retained percentage thereon, less authorized deductions.

(c) All material and work covered by partial payments made shall thereupon become the sole property of the United States Government, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the United States Government to require the fulfillment of all of the terms of the contract.

(d) Upon completion and acceptance of all work required hereunder, the amount due the Contractor under this contract will be paid upon the presentation of a properly executed and duly certified voucher therefor, after the Contractor shall have furnished the United States Government with a release, if required, of all claims against the United States Government arising under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Contractor from the operation of the release in stated amounts to be set forth therein. If the Contractor's claim to amounts payable under the contract has been assigned, a release may also be required of the assignee, at the option of the Contracting Officer. Final payment will be withheld until clearance has been obtained from the Air Provost Marshal of the Air Force Base or other installation concerned with respect to security matters including the delivery of all identification insignia such as passes and auto decals issued to Contractor's personnel for use in the performance of this contract.

§ 1007.4207–7 *Taxes.* Insert the appropriate clause set forth in § 1011.2002 of this chapter.

§ 1007.4207–8 *Notice and assistance regarding patent infringement.* Insert the clause set forth in § 9.104 of this title, unless serious objection is interposed by the prospective contractor.

§ 1007.4207–9 *Termination for default—Damages for delay—Time extensions.*

TERMINATION FOR DEFAULT—DAMAGES FOR DELAY—TIME EXTENSIONS

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, the United States Government may, by written notice to the Contractor, terminate its right to proceed with the work or such part of the work as to which there has been delay. In such event the United States Government may take over the work and prosecute the same to completion, by contract or otherwise, and the Contractor and his sureties shall be liable to the United States Government for any excess cost occasioned the United States Government thereby, and for liquidated damages for delay, as fixed in the specifications or accompanying papers, until such reasonable time as may be required for the final completion of the work, or if liquidated damages are not so fixed, any actual damages occasioned by such delay. If the Contractor's right to proceed is so terminated, the United States Government may take possession of and utilize in completing the work such material, appliances, and plant as may be on the site of the work and necessary therefor.

(b) If the United States Government does not terminate the right of the Contractor to proceed, as provided in paragraph (a) hereof, the Contractor shall continue the work, in which event he and his sureties shall be liable to the United States Government, in the amount set forth in the specifications or accompanying papers, for fixed, agreed, and liquidated damages for each calendar day or delay until the work is completed or accepted, or if liquidated damages are not so fixed, any actual damages occasioned by such delay.

(c) The right of the Contractor to proceed shall not be terminated, as provided in paragraph (a) hereof, nor the contractor charged with liquidated or actual damages, as provided in paragraph (b) hereof because of any delays in the completion of the work due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the United States Government, in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the United States Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, or delays of subcontractors or supplies due to such causes: *Provided*, That the Contractor shall within 10 days from the beginning of any such delay, unless the Contracting Officer shall grant a further period of time prior to the date of final settlement of the contract, notify the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when in his judgment the findings of fact justify such an extention, and his findings of fact thereon shall be final and conclusive on the parties hereto, subject only to appeal as provided in the clause hereof entitled "Disputes."

§ 1007.4207–10 *Disputes.* Insert the clause set forth in § 1007.4205–8 as paragraph (a) and add thereto the following as paragraph (b) in all construction contracts:

(b) Notwithstanding the provisions of this clause, the Contractor shall have such right of appeal to the United States Court of Claims as is provided by any applicable appropriation or other act of the United States of America.

§ 1007.4207–11 *United States officials not to benefit.* Insert the clause set forth in § 1007.4205–24.

§ 1007.4207–12 *Covenant against contingent fees.* Insert the clause set forth in § 7.103–20 of this title.

§ 1007.4207–13 *Termination for convenience of the United States Government.* Insert the clause set forth in § 8.703 of this title.

§ 1007.4207–14 *Notice to the United States Government of labor disputes.* Insert the clause set forth in § 7.105–3 of this title.

§ 1007.4207–15 *Specifications and drawings.*

SPECIFICATIONS AND DRAWINGS

The Contractor shall keep on the work a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In any case of discrepancy either in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination thereof in writing. Any adjustment by the Contractor without this determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detail drawings and other information as he may consider necessary, unless otherwise provided.

§ 1007.4207–16 *Materials and workmanship.*

MATERIALS AND WORKMANSHIP

Unless otherwise specifically provided for in the specifications, all equipment materials and articles incorporated in the work covered by this contract are to be new and of the most suitable grade of their respective kinds for the purpose and all workmanship shall be first class. Where equipment, materials, or articles are referred to in the specifications as "equal to" any particular standard, the Contracting Officer shall decide the question of equality. The Contractor shall furnish to the Contracting Officer for his approval the name of the manufacturer of machinery, mechanical and other equipment which he contemplates incorporating in the work, together with their performance capacities and other pertinent information. When required by the specifications, or when called for by the Contracting Officer, the Contractor shall furnish the Contracting Officer for approval full information concerning the materials or articles which he contemplates incorporating in the work. Samples of materials shall be submitted for approval when so directed. Machinery, equipment, materials and articles installed or used without such approval shall be at the risk of subsequent rejection. The Contracting Officer may in writing require the Contractor to remove from the work such employees as the Contracting Officer deems incompetent, careless, insubordinate or otherwise objectionable, or whose continued employment on the work is deemed by the Contracting Officer to be contrary to the public interest.

§ 1007.4207–17 *Superintendence by the contractor.*

SUPERINTENDENCE BY THE CONTRACTOR

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

§ 1007.4207–18 *Permits and responsibility for work, etc.*

PERMITS AND RESPONSIBILITY FOR WORK, ETC.

The Contractor shall, without additional expense to the United States Government, obtain all licenses and permits required for the prosecution of the work. The Contractor shall be responsible for all damages to persons that occur as a result of his fault or negligence in connection with the prosecution of the work. The Contractor shall also be responsible for all materials delivered and work performed until completion and final acceptance, except for any completed unit thereof which theretofore may have been finally accepted.

§ 1007.4207–19 *Other contracts.*

OTHER CONTRACTS

The United States Government may undertake or award other contracts for additional work, and the Contractor shall fully cooperate with such other contractors and United States Government employees and carefully fit its own work to such additional work as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by United States Government employees.

§ 1007.4207–20 *Loading and unloading cars.* Insert the clause set forth in § 1007.3103–7.

§ 1007.4207–2 *Accident prevention.*

ACCIDENT PREVENTION

In order to protect the life and health of employees in the performance of this contract, the Contractor will take or cause to be taken such safety measures as the Contracting Officer may determine to be reasonably necessary for this purpose. The Contractor will maintain an accurate record of and will report to the Contracting Officer in the manner and on the forms prescribed by the Contracting Officer, all cases of death, occupational disease and traumatic injury arising out of or in the course of employment on work under this contract. The Contracting Officer will notify the Contractor of any non-compliance with these provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately correct the conditions to which attention has been directed. Such notice, when served on the Contractor or his representatives at the site of the work, shall be deemed sufficient for the purpose aforesaid. If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all of part of the work. When satisfactory corrective action is taken, a start order will be issued. No part of the time lost due to any such stop order shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

§ 1007.4207–22 *Delivery.*

DELIVERY

Unless otherwise provided in this contract, all materials to be furnished by the contractor shall be delivered to the United States Government f. o. b. site of the work.

§ 1007.4207–23 *Gratuities.* Insert the clause set forth in § 7.104–16 of this title.

§ 1007.4208 *Construction contracts; general provisions to be used when applicable.*

§ 1007.4208–1 *Inconsistency between English version and translation of contract.* If the contract is published in another language as well as in English, insert the clause set forth in § 1007.4203–1.

§ 1007.4208–2 *Patient indemnity.* According to the requirements of § 9.103 of this title, insert the appropriate clause set forth in that paragraph, modified to cover both United States patents and patents of the country wherein the procurement is to be accomplished; however, if the prospective contractor will not accept coverage of United States patents, it will be permissible to cover only patents of the country wherein the procurement is to be accomplished. If the prospective contractor will not accept a contract containing the Patent Indemnity clause and if the supplies to be furnished by that supplier are necessary and unobtainable from other source, the clause may be omitted.

§ 1007.4208–3 *Reporting of royalties.* According to the requirements of § 9.110–2 of this title, insert the clause set forth in that section.

§ 1007.4208–4 *Examination of records.* According to the requirements of § 7.104–15 of this title, insert the clause set forth in that paragraph. This clause may be omitted from contracts for purchases outside the continental United States under the Mutual Defense Assistance Act of 1949, as amended, and the Mutual Security Act of 1951, as amended.

§ 1007.4208–5 *Government-furnished property.* According to the requirements of § 13.502 of this title, insert the clause required by § 1007.3103–5.

§ 1007.4208–6 *Approval of subcontracts.* If the contract price is in excess of $2,000, insert the clause set forth in § 1007.3104–2.

§ 1007.4209 *Construction contracts; additional general provisions.* The following clauses may be inserted when necessary or desirable to cover the subject matter contained in such clauses.

§ 1007.4209–1 *Assignment of claims.* According to instructions in § 1007.4205–5, the clause referred to therein may be inserted.

§ 1007.4209–2 *Additional bond security.* The clause set forth in § 7.103–9 of this title may be inserted if there is an initial requirement for bond security

§ 1007.4210 *Construction contracts; special provisions.* (a) Insert the special provisions as set forth in § 1007.3106, except that the following special provisions will be omitted: 1–08, Standard Test, Quality and Guarantees; 1–09, Preservation of Existing Vegetation; 1–18, Shop Drawings; 1–20, Domestic Articles; 1–21, Rates of Wages. Contracting officers may omit any of the other special provisions set forth in § 1007.3106, that cannot be complied with because of local conditions. In all of these special provisions the words "United States" will be inserted before the word "Government" whenever the latter word appears.

(b) Additional special provisions may be inserted according to the necessities of the construction work called for by the contract, provided that no clauses contained in Chapter I of this title and this chapter will be included in such special provisions. Additional special provisions will be prepared by the air installations office.

SUBPART QQ—CLAUSES FOR FIXED-PRICE ARCHITECTURAL ENGINEERING SERVICE CONTRACTS

§ 1007.4301 *Statutory authority and restrictions.* Contracts for architectural engineering services will be made pursuant to the authority of Public Law 600 (79th Congress), Public Law 413 (80th Congress), and the applicable section of the current Appropriation Acts. Each of these laws will be cited on the cover page of the contract. The total amount paid the contractor, including its profit (fee) for the production and delivery of designs, plans, drawings, and specifications for specific public works or utilities projects, will not exceed 6 percent of the predetermined estimated cost, exclusive of fees, of the project to which the architect-engineer work is applicable.

§ 1007.4303 *Required clauses.* The following clauses will be inserted in all contracts for architectural engineering services.

§ 1007.4303–1 *Definitions.* Insert the clause set forth in § 7.103–1 of this title.

§ 1007.4303–2 *Changes.* Insert the clause set forth in § 1007.4025.

§ 1007.4303–3 *Default.* Insert the clause set forth in § 7.103–11 of this title.

§ 1007.4303–4 *Disputes.* Insert the clause set forth in § 7.103–12 of this title.

§ 1007.4303–5 *Termination for the convenience of the Government.* Insert the clause set forth in § 1007.2103–16.

§ 1007.4303–6 *Officials not to benefit.* Insert the clause set forth in § 7.103–19 of this title.

§ 1007.4303–7 *Assignment of claims.* Insert the clause set forth in § 7.103–8 of this title, but see § 1007.103–80.

§ 1007.4303–8 *Eight-hour law of 1912.* Insert the clause set forth in § 12.303–1 of this title.

§ 1007.4303–9 *Convict labor.* Insert the clause set forth in § 12.203 of this title.

§ 1007.4303–10 *Nondiscrimination in employment.* Insert the clause set forth in § 12.802 of this title.

§ 1007.4303–11 *Covenant against contingent fees.* Insert the clause set forth in § 7.103–20 of this title.

§ 1007.4303–12 *Renegotiation.* Insert the clause set forth in § 7.103–13 of this title.

§ 1007.4303–13 *Gratuities.* Insert the clause set forth in § 7.104–16 of this title.

§ 1007.4303–14 *Examination of records.* Insert the clause set forth in § 7.104–15 of this title and add thereto the paragraph (c) set forth in § 1007.104–15.

§ 1007.4303–15 *Subcontracts.* Insert the clause set forth in § 1007.4030.

§ 1007.4303–16 *Special reproduction rights.* Insert the clause set forth in § 9.112 of this title.

§ 1007.4303–17 *Copyright.* According to the requirements of Subpart B, Part 9, of this title and Subpart B, Part 1009, of this chapter, insert the clause set forth in § 9.202 of this title.

§ 1007.4303–18 *Buy American act.* Insert the clause set forth in § 7.103–14 of this title.

§ 1007.4303–19 *Release of information.* Insert the following clause:

RELEASE OF INFORMATION

The Contractor agrees not to divulge or release any information developed or obtained in connection with performance of this contract concerning the details of performance of this contract or any possible construction based on the results thereof (including but not limited to plans, specifications, location, time or estimated cost of construction), except to authorized Government personnel or upon the prior written approval of the Contracting Officer.

§ 1007.4303–20 *Approval of contract.* Insert the clause set forth in § 7.105–2 of this title.

§ 1007.4304 *Clauses to be used when applicable.*

§ 1007.4304–1 *Alterations in Contract.* According to instructions for use in § 1007.105–1, insert the clause set forth in § 7.105–1 of this title.

§ 1007.4304–2 *Reports.* Insert the following clause in all contracts of more than 6 months' duration. This clause may be inserted in contracts of less than 6 months' duration when special circumstances make inclusion desirable.

REPORTS

During the life of this contract the Contractor shall submit to the Contracting Officer, by the 10th day of each calendar month, a report of the work accomplished in performance of this contract during the preceding calendar month. These reports shall be in such detail as the Contracting Officer may reasonably require to enable accurate valuation of the Contractor's progress in performance of this contract.

§ 1007.4304–3 *Preparation of specifications.* Insert the following clause in all contracts calling for the furnishing of specifications by the contractor:

PREPARATION OF SPECIFICATIONS

If specifications are called for under the terms of this contract, the Contractor shall make reference to applicable Federal specifications, if available, for items and materials to be used. If Federal specifications are not available, the contractor shall reference specifications prepared by recognized professional manufacturer or construction so-

cieties, or furnish descriptions of the items or materials containing all the fundamental properties and all the essential requirements to be met by the items or materials. When an item or material cannot be described because of its technical construction or composition or because it is a proprietary item, the name of one, and if available, several, suitable commercial products shall be included as part of the required description, followed by the words "or equal." If it is determined that one and only one brand of item or material will meet the requirement, the Contractor shall so state and shall give full justification for that determination.

§ 1007.4304–4 *Military security requirement.* According to the requirements of § 7.104–12 of this title, insert the clause set forth in that section.

§ 1007.4305 *General.* Any other clause authorized by chapter I of this title or this chapter, according to instructions for use, may be used when necessary to cover the subject matter contained in such clause.

§ 1007.4306 *Required schedule provisions.* The schedule will contain, among other statements, the following provisions, to be completed with appropriate information.

§ 1007.4306–1 *Preliminary recitation (without title).*

It has been determined that the work and services called for hereunder will be advantageous to the national defense, and that the existing facilities of the Department of the Air Force are not adequate to perform such services.

§ 1007.4306–2 *Part I—Statement of services.*

PART I—STATEMENT OF SERVICES

(a) The Contractor shall furnish and supply to the Government architectural engineering services necessary for the accomplishment and delivery of plans, specifications, drawings, design analysis, cost estimates, and such other work as is specified in the Statement of Work set forth in Exhibit "A," attached hereto, and made a part hereof.

(b) The services shall be performed by personnel qualified professionally and otherwise for the work called for.

§ 1007.4306–3 *Part II—Consideration and payment.*

PART II—CONSIDERATION AND PAYMENT

The Government will pay the Contractor upon the satisfactory performance of work and services, and upon the submission of properly certified invoices or vouchers, approved by the Contracting Officer, as full payment for all of the work called for hereunder, a total sum of _____ dollars ($_____), payable as follows:

§ 1007.4306–4 *Part III—Period of performance.*

PART III—PERIOD OF PERFORMANCE

The period of performance of the work and services called for hereunder shall be:

§ 1007.4306–5 *Part IV—Inspection, delivery, and acceptance.*

PART IV—INSPECTION, DELIVERY, AND ACCEPTANCE

The work called for hereunder, as well as the Contractor's books, records, and place of business, related to the performance of this contract, shall, at all reasonable times, be subject to inspection by the Contracting Officer. Delivery shall be made to _____ at _____, which is designated as the place for final inspection and acceptance by the Government.

§ 1007.4307 *Schedule provisions to be used when applicable.*

§ 1007.4307–1 *Transportation reimbursement.* If the contract provides for the reimbursement of actual cost of transportation as a separate item, the clause set forth in § 1007.4306–3 will be designated "(a)" and the following paragraph (b) added:

(b) The additional sum of _____ dollars ($_____) has been allotted to this contract to reimburse the Contractor for the cost of transporting personnel necessary to perform the contract. Reimbursement for the actual cost therefor shall be made upon the submission of properly certified invoices and other evidence satisfactory to the Contracting Officer.

§ 1007.4307–2 *Option for inspection services.* Insert the following clause in all contracts in which it is desired to obtain an option for inspection services:

OPTION FOR INSPECTION SERVICES

(a) The Contractor agrees, at the option of the Government, to perform the construction inspection services covering any portion or all of the construction which may result from work based on the Statement of Work set forth in this contract.

(b) The Contractor shall utilize the categories of personnel set forth in paragraph (d) below in the performance of such inspection services. Other types of personnel shall not be utilized by the Contractor except with the prior approval of the Contracting Officer. All personnel shall be qualified professionally and otherwise for their work.

(c) This option will remain in effect during the Government fiscal year in which this contract is made and also the succeeding fiscal year.

(d) The categories of personnel, the maximum monthly rate and the maximum daily rate which shall apply for services for less than a full month are as follows:

Category of personnel	*Monthly rate*	*Daily rate*

(e) The exercise of this option shall be evidenced by a supplemental agreement to this contract which will include the estimated maximum amount and other provisions that may be necessary to carry out such services.

SUBPART RR—CLAUSES FOR TEACHER CONTRACTS

§ 1007.4403 *Required clauses.* The following clauses will be inserted in all contracts for teachers.

§ 1007.4403–1 *Definitions.* Insert the clause set forth in § 7.103–1 of this title, omitting subparagraph (c).

§ 1007.4403–2 *Assignment of claims.* Insert the clause set forth in § 7.503–3 of this title.

§ 1007.4403–3 *Disputes.* Insert the clause set forth in § 7.103–12 of this title.

§ 1007.4403–4 *Officials not to benefit.* Insert the clause set forth in § 7.103–19 of this title, omitting the final clause which begins, "but this provision . . ."

§ 1007.4403–5 *Covenant against contingent fees.* Insert the clause set forth in § 7.103–20 of this title.

§ 1007.4403–6 *Termination for convenience of the Government.* Insert the clause set forth in § 1008.751 of this chapter.

§ 1007.4403–7 *Subcontracts.* Insert the clause set forth in § 1007.503–50.

§ 1007.4403–8 *Change in rate of pay.* Insert the following clause:

CHANGE IN RATE OF PAY

The rate of pay for services herein provided is comparable to the rate of pay for similar services paid by nearby school districts of the State in which this contract is to be performed. In the event such nearby districts increase or decrease the rate of pay for such services during the period of this contract, the rate of pay for this contract may be proportionately adjusted and the contract amended accordingly. No such adjustment shall be made unless and until the cognizant Area Field Representative of the U. S. Office of Education certifies to the justification of such change in the comparable rates of pay. Any adjustment hereunder shall be evidenced by a supplemental agreement to this contract.

§ 1007.4404 *Clauses to be used when applicable.*

§ 1007.4404–1 *Alterations in contract.* According to instructions for use in § 1007.105–1, insert the clause set forth in § 7.105–1 of this title.

§ 1007.4405 *Required schedule clauses for contracts with full-time teachers.* The schedule for contracts with teachers will contain the following provisions to be completed with appropriate information.

§ 1007.4405–1 *Part I—Statement of services.*

PART I—STATEMENT OF SERVICES

The Contractor shall teach elementary school at the _____ Air Force Base on regular school days at such hours as the school principal shall designate. Performance by the Contractor shall be in accordance with the direction of the school principal, and include the teaching of such subjects as may be prescribed, the keeping of required records, and such other curricular and extracurricular duties as are customarily performed by an elementary school teacher.

§ 1007.4405–2 *Part II—Period of performance.*

PART II—PERIOD OF PERFORMANCE

Performance of services shall commence on the _____ day of _____ 19__ and continue until the _____ day of _____ 19__. In the event the school is closed temporarily on account of an epidemic or for any other necessary cause the period of performance may be extended by the principal to make up for such lost time, and no additional payment shall be made for such make-up period.

§ 1007.4405–3 *Part III—Leave of absence.*

PART III—LEAVE OF ABSENCE

The Contractor will be allowed leave, when sick, with pay for not exceeding _____ days. If required by the principal, the Contractor shall furnish a doctor's certificate of illness when sick for three or more consecutive school days. When approved by the principal the Contractor will be granted leave with pay for not exceeding _____ days for reasons of death or critical illness of a member of the Contractor's immediate family.

§ 1007.4405–4 *Part IV—Consideration and payment.* The second sentence of

the following clause will be modified, as indicated, to conform to local practices.

PART IV—CONSIDERATION AND PAYMENT

The Government will pay the Contractor upon satisfactory performance of the above described services the sum of $———. Payments will be made [monthly, biweekly, etc.] during the period of performance in the amount of $———. For each pay period as described above the Contractor shall present to the Contracting Officer a certified invoice for services rendered. Deductions for Federal income tax and social security contributions will be made from payments; where withholding of payments for purposes of state income taxes is authorized by 5 U. S. C. 84b (1952), deductions for state income taxes will also be made.

§ 1007.4405–5 *Part V—Qualifications.*

PART V—QUALIFICATIONS

The Contractor warrants that _____ _____ is qualified and duly licensed to teach elementary school within the State of _____ and affirms _____ loyalty to the United States of America.

§ 1007.4405–6 *Part VI—Renewal.*

PART VI—RENEWAL

In the event the services of the Contractor are desired by the Government for the succeeding school year the Contractor will be so advised on or before the _____ day of _____, 19__. It is agreed that such notice will be subject to the availability of funds for the succeeding Government fiscal year for this purpose.

§ 1007.4406 *Required schedule clauses for contracts with substitute teachers.* The schedule for contracts with substitute teachers will contain the following provisions to be completed with appropriate information.

§ 1007.4406–1 *Part I—Statement of services.*

PART I—STATEMENT OF SERVICES

The Contractor shall teach elementary school at the _____ Air Force Base on regular school days at such hours and on such days as the school principal shall designate during the period of performance of this contract as set forth in Part II hereof. It is understood and agreed that this is a call contract, that the Contractor is a substitute teacher to perform services in the absence of a regularly employed teacher, and that the Government is not hereby obligated to issue any call for the Contractor's service.

§ 1007.4406–2 *Part II—Period of performance.*

PART II—PERIOD OF PERFORMANCE

The period during which calls may be made shall begin on the _____ day of _____ 19__ and end on the _____ day of _____ 19__. In the event the school is closed temporarily on account of an epidemic, or for any other necessary cause, the period of performance may be extended by the principal to make up for such lost time.

§ 1007.4406–3 *Part III—Consideration and payment.* The second sentence of the following clause will be modified, as indicated, to conform to local practices.

PART III—CONSIDERATION AND PAYMENT

The Government will pay the Contractor upon satisfactory performance of the above described services the sum of $_____ for each day worked. Payment will be made [monthly, biweekly, etc.]. For each pay period as described above the Contractor shall present to the Contracting Officer a certified invoice for any service rendered. Deductions for Federal income tax and social security contributions will be made from payments; where withholding of payments for purposes of state income taxes is authorized by 5 U. S. C. 84b (1952), deductions for state income taxes will also be made.

§ 1007.4406–4 *Part IV—Qualifications.* Insert the clause set forth in § 1007.4405 (b).

§ 1007.4407 *Required schedule clauses for contracts with principals.* The schedule for contracts employing school principals will contain the following provisions to be completed with appropriate information.

§ 1007.4407–1 *Part I—Statement of services.*

PART I—STATEMENT OF SERVICES

The Contractor shall act as principal of an elementary school at the _____ Air Force Base. Performance by the Contractor shall be in accordance with the direction of the Base Commander, and includes the supervision of the school, the teaching staff thereof, keeping of required records, and such other curricular and extra curricular duties as are customarily performed by an elementary school principal.

§ 1007.4407–2 *Part II—Period of performance.*

PART II—PERIOD OF PERFORMANCE

Performance of services shall commence on the _____ day of _____ 19__ and continue until the _____ day of _____ 19__. In the event the school is closed temporarily on account of an epidemic or for any other necessary cause the period of performance may be extended by the Base Commander to make up for such lost time, and no additional payment shall be made for such make-up period.

§ 1007.4407–3 *Part III—Leave of absence.*

PART III—LEAVE OF ABSENCE

The Contractor will be allowed leave when sick, with pay for not exceeding _____ days. When approved by the Base Commander the Contractor will be granted leave with pay for not exceeding _____ days for reasons of death or critical illness of a member of the Contractor's immediate family.

§ 1007.4407–4 *Part IV—Consideration and payment.* Insert the clause set forth in § 1007.4405–4.

§ 1007.4407–5 *Part V—Qualifications.*

PART V—QUALIFICATIONS

The Contractor warrants that _____ is qualified and duly licensed to act as principal of an elementary school within the State of _____, and affirms _____ loyalty to the United States of America.

§ 1007.4407–6 *Part VI—Renewal.* Insert the clause set forth in § 1007.4405–6.

PART 1008—TERMINATION OF CONTRACTS

Subpart A—Introduction

Sec.
1008.101 Applicability of this part.

Subpart B—Definition of Terms

1008.250 Administrative contracting officer.
1008.251 Engineering changes.
1008.252 Excess.
1008.253 Government-furnished aircraft equipment (GFAE).
1008.254 Plant clearance officer.
1008.255 Procuring contracting officer.
1008.256 Production method changes.
1008.257 Standby tooling.
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1008.260 Termination authority.
1008.261 Termination contracting officer.
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Subpart C—Termination for Convenience

1008.301 Termination clause.
1008.303 Partial termination.
1008.304 Notice of termination.
1008.306 Duties of contracting officer after notice of termination.
1008.310 Fraud or other criminal conduct.
1008.311 Settlement of two or more claims jointly.
1008.350 Termination of letter facilities contracts, facilities contracts, and facilities leases.
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Subpart E—Settlement of Contracts Terminated for Convenience

1008.501 Methods of settlement.
1008.503 Fixed-price contracts; settlement proposals.
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1008.504 Fixed-price contracts; negotiated settlements.
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1008.505 Fixed-price contracts; settlement by determination.
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1008.508 Settlement of cost-type contracts; general considerations.
1008.509 Cost-type contracts; negotiated settlements; procedure where settlement limited to fixed fee.
1008.509–2 Adjustment of fixed fee.
1008.514 Cost-type contracts; partial termination.
1008.515 Audit of settlement proposals and of subcontract settlements.
1008.516 Contracting officer's negotiation memorandum.
1008.518 Settlement of subcontractor claims.
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1008.518–4 Basis of settlement.
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1008.518–11 Government assistance in settlement of subcontracts.
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1008.522 Partial payments upon termination.
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1008.550 Recoupment of renegotiation debts.
1008.551 Settlement of unadjusted contractual changes (UCC's).
1008.555 Settlement of claims and property disposal resulting from engineering changes.

Subpart F—Termination Inventory

1008.600 Scope of subpart.
1008.601 General policies.
1008.601–2 Responsibility for sales.
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1008.603–1 Submission of inventory schedules.
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1008.608 Sale or other disposition of termination inventory.
1008.602–2 Competitive sales.
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1008.610 Destruction or abandonment.
1008.612 Removal and storage.
1008.612-50 Storage of contractor inventory at no cost to the Government.
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1008.613-1 Property disposal review boards.
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Subpart G—Forms

1008.712-50 Supplemental settlement agreements for CPFF partial terminations.
1008.712-51 Supplemental settlement agreement form for settlement of two or more termination claims.
1008.712-52 Supplemental settlement agreement (amendment) form for settlement of partial termination of letter facilities contract.
1008.712-53 Form of triparty agreement for direct settlement of subcontracts.
1008.712-54 Direct settlement agreement by Government with subcontractors.
1008.712-55 Settlement of reservations.
1008.751 Termination clause for fixed-price contracts for personal services.
1008.752 Termination clause for technical services contracts.
1008.753 Termination clause for time-and-material contracts.
1008.756 Assignment to the Government of prime contractor's rights under terminated subcontracts.
1008.757 Security for partial payments.
1008.758 Storage agreement.
1008.761 Default letters.
1008.762 Cover pages for supplemental agreements.
1008.762-1 Cover page for supplemental agreement to fixed-price contract for supplies/services/research and development.
1008.762-2 Cover page for supplemental agreement to CPFF contract for supplies/services/research and development.
1008.762-3 Cover page for supplemental agreement to CPFF contract for supplies/services/research and development.
1008.762-4 Cover page for supplemental agreement to fixed-price contract for supplies/services/research and development.
1008.762-5 Cover page for supplemental agreement to fixed-price contract for supplies/services/research and development.
1008.762-6 Cover page for supplemental agreement to fixed-price contracts for supplies/services/reasearch and development.
1008.762-7 Cover page for amendment to letter contract.
1008.762-8 Cover page for fixed-price contract for supplies.
1008.763 Letter of consent by prime contractor to negotiation of amount due subcontractor.
1008.764—Form for certificate of amount due a subcontractor.
1008.765 Form for notice to and consent by the subcontractor to direct settlement by the Government of its termination claim.

Subpart T—Cancellation for Default

1008.2002 General.
1008.2004 Responsibility of administrative contracting officer.
1008.2005 Responsibility of production follow-up activities.
1008.2006 Responsibility of procuring contracting officer.

AUTHORITY: §§ 1008.101 to 1008.2006 issued under sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301—2314, 70A Stat. 127-133; 10 U. S. C. 2301-2314.

SUBPART A—INTRODUCTION

§ 1008.101 *Applicability of this part.* (a) The procedures in this part apply to any AF contract entered into under the act which:

(1) Has been terminated for the convenience of the Government.

(2) Has been canceled for default of the contractor.

(b) Contracts which do not contain the termination clauses set forth in Part 8, Chapter I, of this title or those authorized in this chapter may be amended by agreement, prior to or after the termination of the contract, to include or substitute a prescribed clause.

(c) The methods, policies, and procedures contained in this part relating to settlements with subcontractors and disposal of contractor inventory are applicable to settlement of subcontracts terminated and property which becomes obsolete or excess as a result of contractor modification or engineering changes.

SUBPART B—DEFINITION OF TERMS

§ 1008.250 *Administrative contracting officer.* The term "administrative contracting officer" means those contracting officers authorized to administer contracts.

§ 1008.251 *Engineering changes.* The term "engineering changes" includes all changes in the physical characteristics of an item when reflected in the design, plans, or specifications for the item.

§ 1008.252 *Excess.* The term "excess" means contractor inventory no longer required by the contractor by whom the inventory was originally acquired, or to whom it was furnished, and also such inventory when it is not required by any AF activity.

§ 1008.253 *Government - furnished aircraft equipment* (GFAE). The term "Government-furnished aircraft equipment" (GFAE) means that portion of Government-furnished property which under the terms of an AF contract is procured by the Air Force and furnished direct to aircraft equipment or missile manufacturers for inclusion or incorporation into aircraft or missiles.

§ 1008.254 *Plant clearance officer.* The term "plant clearance officer" means the representative of the termination contracting officer or administrative contracting officer authorized to act for him in all matters relating to the disposal of contractor inventory and termination inventory. In appropriate instances, plant clearance officers may be appointed contracting officers with limited authority.

§ 1008.255 *Procuring contracting officer.* The term "procuring contracting officer" means those contracting officers authorized to execute contracts for the procurement of supplies and services.

§ 1008.256 *Production method changes.* The term "production method changes" includes all changes in the production methods which are made in the interests of increased efficiency or for the solution of any production problem, provided they do not alter the physical characteristics of the end product. Production method changes do not include engineering changes.

§ 1008.257 *Standby tooling.* The term "standby tooling" includes all special tooling that is to be held in storage in anticipation of a contemplated future use, including engineering and production data necessary to set up the equipment for production of parts for which the tooling is stored.

§ 1008.258 *Subcontractor.* The term "subcontractor" means any holder of one or more subcontracts under any AF prime contract or purchase order.

§ 1008.259 *Surplus.* The term "surplus" means excess contractor inventory which is not required by the Department of Defense or by other Federal agencies with which governing regulations provide the inventory must be screened.

§ 1008.260 *Termination authority.* The term "termination authority" refers to a written authorization to proceed with termination.

§ 1008.261 *Termination contracting officer.* The term "termination contracting officer" means those contracting officers authorized to terminate contracts and/or settle terminated contracts.

§ 1008.262 *Termination request.* The term "termination request" as used in this part means the purchase request or other written document which initiates the request for termination of the contract. Except for directives which may be issued by Hq USAF directing the termination of items, the purchase request or other written document is generally prepared by the office which originally initiated the request for procurement to the buying office.

§ 1008.263 *Unadjusted contractual changes (UCC's).* The term "unadjusted contractual changes" means any contractual changes which have not been incorporated in the contract by change order, supplemental agreement, or otherwise. The term includes, without limitation, all changes evidenced by a contract change notification, by delivery schedule change, and by change with respect to spare parts or contract provisions for price redetermination.

SUBPART C—TERMINATION FOR CONVENIENCE

§ 1008.301 *Termination clause.* (a) Where a contract does not contain a Termination for the Convenience of the Government clause, the following procedures will apply:

(1) If it is determined to be in the best interest of the Government to terminate a contract for the convenience of the Government and the contract does not contain a clause expressly reserving the right of the Government to terminate, the contracting officer will forward to the contractor a copy of an appropriate Termination clause, together with a request that the contractor agree to a termination of the contract according to the provisions of the clause.

(2) If the contractor agrees in writing to a termination pursuant to such clause, the contracting officer will issue a Notice of Termination and the case will then be

processed according to this part. However, in the event the contractor is agreeable to a termination at "no-cost" to the Government, the contracting officer may enter into a "no-cost" termination supplemental agreement as set forth in §§ 8.712–6 and 8.712–7 of this title without the issuance of a termination notice and the incorporation of a Termination clause in the contract.

(3) If the contractor declines to agree upon a termination of the contract in the manner set forth in this section, the contracting officer will submit the matter promptly for advice and instructions to the Termination Staff Branch (MCPPJT), Hq AMC. If termination is desired, the termination notice will be sent to the contractor. In reviewing such matters, reviewing authorities should consider all factors, particularly: (i) Whether the termination, if effected, will constitute a breach of contract by the Government, (ii) what the dollar amount of a potential liability may amount to, and (iii) whether, when taken in perspective, the action will be economically beneficial to the Government.

§ 1008.303 *Partial termination.* (a) When any part of the supplies or services called for under a contract are to be terminated and the contractor is obligated to continue further work under the contract, the deletion will be processed as a partial termination as set forth in this part.

(b) When the supplies or services called for under the contract are to be terminated in their entirety or if the termination of a part of the supplies or services would result in the contractor not being required to perform any further work, the deletion will be processed as a complete termination.

§ 1008.304 *Notice of termination.* (a) On centrally procured items, termination should be taken only when the estimated cost of supplies or services to be terminated exceeds $1,000; on locally procured items, $300. However if the termination action can be effected at "no cost" to the Government, then the termination may be accomplished where the cost of supplies and services involved would be less than $1,000 or $300 respectively. These criteria apply to all activities including those overseas.

(b) While there are no hard-and-fast rules as to when supplies or services should be terminated, the following criteria are relevant to the decision and should be considered in arriving at a decision to terminate:

(1) Items which are on order, undelivered, but for which, as far as can be foreseen, the Air Force will have no use, should normally be terminated.

(2) If the undelivered portion of a contract comprises a small quantity, the policies set forth in paragraph (a) of this section should normally be followed and the small quantity should be accepted; this is particularly so if the costs of the termination would be disproportionate to the contract price of the items concerned.

(3) The probable amount of the net settlement (as distinguished from the gross settlement) and the consequent net reduction in total contract price; the type and nature of the termination inventory which will be involved; and the possible utilization, diversions, and recoveries from sales and other dispositions should also be considered.

(4) Whether adequate stocks of supplies of the items being considered for termination exists.

(5) Possible future obsolescence of the items.

(6) Probable additional costs and operational burdens to the Air Force in connection with any termination inventories which might require storage.

§ 1008.306 *Duties of contracting officer after notice of termination*—(a) *General.* On termination of a contract for the convenience of the Government, the termination contracting officer assigned the case for settlement will promptly arrange for an initial conference with the contractor. Topics to be discussed at the conference should include but are not necessarily limited to:

(1) General principles relating to the settlement of any termination claim, including obligations of the contractor under the Termination clause of the contract.

(2) Extent of the termination and point at which work is stopped.

(3) Status of any continuing work and any plans, drawings, or information which would have been required to be delivered had the contract been completed.

(4) Obligation of the contractor relating to termination of any subcontracts and purchase orders and the general principles to be followed in settlement of any claims.

(5) Number of subcontractors or suppliers involved and the date their termination notices were issued.

(6) Facilities of the contractor for the review and settlement of termination claims of subcontractors.

(7) Arrangements for transfer of title and delivery to the Government of any materials required by the Government.

(8) General principles and procedures to be followed in the protection, preservation, and disposition of contractor's and subcontractors' termination inventory, including the preparation of Termination Inventory Schedules.

(9) Contractor's accounting practices and the preparation of the Schedule of Accounting Information.

(10) Form in which contractor's Settlement Proposal will be submitted.

(11) Accounting reviews of contractor's and subcontractors' settlement proposals.

(12) Requirement, if any, for interim financing in the nature of partial payments or guaranteed loans.

(13) Tentative time schedule for the negotiation of the settlement, including submission of Settlement Proposals, Termination Inventory Schedules, and accounting information schedules by the contractor and subcontractors.

§ 1008.310 *Fraud or other criminal conduct.* In the event of suspicion of fraud or other criminal conduct, the termination contracting officer will report the facts of the case to higher authority.

§ 1008.311 *Settlement of two or more claims jointly.* In negotiating a joint settlement of two or more termination claims of the same contractor, the termination contracting officer will observe the provisions of Limitation on Settlements and Limitation of Certain Costs. The joint settlement will not under any circumstances be used as a means of allowing the contractor an amount which, if the termination claims had been settled separately, would be in excess of the contract price of each contract.

§ 1008.350 *Termination of letter facilities contracts, facilities contracts, and facilities leases.*

§ 1008.350–1 *Termination of letter facilities contracts*—(a) *General.* This section sets forth the procedures for processing the partial and complete terminations of letter facilities contracts. Such type of contracts provides for reimbursement of costs exclusive of overhead (or burden) and limits the total amount that may be expended as well as the amount which may be reimbursed thereunder. However, such type of contracts further provides that in the event of termination thereof reimbursement of overhead expenses may be made. The following paragraphs of this section prescribe, in addition to other matters, the settling of the item of overhead whether the contractor "vouchers out" under the termination or submits his claim on a settlement proposal.

(b) *Partial terminations.* Because of the exclusion and limitations mentioned in paragraph (a) of this section, in the event of a partial termination of a letter facilities contract, payments made to a contractor prior to termination should be considered in the nature of progress payments. Under a partial termination of such type of contract the terminated portion usually consists of the further use by the contractor of facilities previously acquired (even if installed), installation costs of such facilities, the contemplated use by the contractor of machine tools and equipment remaining to be completed, machine tools and equipment on order which have been partially completed and which are directed to be canceled, and costs of initial repairs and parts replacement of Government furnished machines and equipment. The contracting officer and the contractor may agree upon the total amount due the contractor for the acquisition of machine tools and equipment, installation, initial repair and replacement costs, and termination claims of vendors and suppliers (subcontractors); the settlement may also include applicable costs of an overhead nature (including General and Administrative Expense) pertaining to facilities already acquired by the contractor up to the date of settlement or such other date on or after the date of the Termination Notice as may be agreed upon between the parties.

(c) *Complete termination.* If the letter facilities contract has been completely terminated and the contractor elects to "voucher out" his costs, including overhead costs, attention is invited to the fact that, before any such overhead costs may be reimbursed, the con-

tract must be amended. Where a partial termination is involved and the continuing work can be completed within a reasonable period of time and/or before the parties are ready to effect settlement, it is recommended that the termination be considered as a complete termination of the contract.

SUBPART E—SETTLEMENT OF CONTRACTS TERMINATED FOR CONVENIENCE—GENERAL

§ 1008.501 *Methods of settlement.* Negotiation is the preferred method of settlement and should be used to the maximum extent possible. In those exceptional cases where it is not possible to settle by negotiation all elements of the termination claim, the termination contracting officer and the contractor may negotiate a settlement as to those elements of the termination claim on which agreement can be reached; the termination contracting officer should render a written determination or finding concerning those elements of the termination claim on which the parties cannot agree. If the contractor has filed an appeal, or has indicated that an appeal will be taken from the determination, or if the amount (or any part thereof) due the contractor has not been paid to him when the settlement agreement is to be executed, then the settlement agreement should incorporate, in addition to its other provisions, an appropriate reservation with respect to the rights of the parties under the determination.

§ 1008.503 *Fixed-price contracts; settlement proposals.*

§ 1008.503–2 *Bases for settlement proposals.*—(a) *Inventory basis.* Under the inventory basis for settlement proposals, the contractor lists only his costs relating and allocable to the terminated portion of the contract. Inventory charges are presented by itemizing separately, at the purchase or manufacturing costs, the metals, raw materials, purchased parts, work-in-process, finished components, dies, jigs, fixtures, and tooling allocable to the terminated portion. Similarly, the allocable portion of charges such as engineering costs, preparatory costs, and general and administrative expenses relating to the terminated portion of the contract are separately itemized. To this is added an allowance for profit or an adjustment is made for loss. Settlements with subcontractors, settlement expenses, and other proper charges are then added to complete the gross claim. Appropriate credits, if established or ascertained at the time of the submission of the proposal, should then be deducted.

(b) *Total cost basis.* The total cost basis for settlement proposals will be approved by the termination contracting officer only in cases involving total termination and only when use of the inventory basis is not practicable. If the termination contracting officer approves the submission of a termination claim on a total-cost basis, he should, in appropriate cases, require the contractor to submit a detailed estimate of the cost to complete the contract. Under this basis, the contractor lists as one item in the settlement proposal, all of his costs for direct material. Therefore it is important that the claim for inventory be verified for quantity, allocability, and physical location of material. In accomplishing such verification, a review should be made of the contractor's bill of materials. Examples of circumstances in which the total-cost basis may be used are:

(1) If production has not commenced and the accumulated costs represent planning and "get ready" expenses.

(2) If the contractor's accounting system will not readily lend itself to the establishment of unit costs for work-in-process and finished products.

(3) If the contract involves retroactive pricing only.

(4) If the termination is total and involves a letter contract.

(5) If the contract does not specify unit prices.

§ 1008.504 *Fixed-price contracts—Negotiated settlements.*

§ 1008.504–50 *Equitable adjustment in unit prices under fixed-price contracts in cases of partial termination.* (a) If, as a result of a partial termination, the contractor determines that an adjustment in price is necessary for the continuing portion of the contract and submits in writing a request according to the termination clause of the contract for an equitable adjustment of the price or prices specified in the contract, the termination contracting officer will send the request to the appropriate procuring contracting officer.

(b) The procuring contracting officer will have final responsibility for negotiating an equitable adjustment in the price relating to the continued portion of the contract and will effect a supplemental agreement covering any changes in price. Consideration for the change in price will be specified in the supplemental agreement. The procuring contracting officer will satisfy himself on the basis of evidence he deems proper (including coordination with the termination contracting officer), that no portion of any increase in price has been included in any termination settlement previously made or currently in process.

(c) The termination contracting officer responsible for the termination settlement will satisfy himself on the basis of evidence he deems proper (including coordination with the procuring contracting officer) that no portion of the costs included in the equitable adjustment for the continued portion of the contract are included in the termination settlement.

§ 1008.505 *Fixed-price contracts; settlement by determination.* In rendering a determination settlement, where it is apparent that the contractor would have incurred a loss on the entire contract had it been completed, the allowable costs will be appropriately reduced and no profit whatsoever will be allowed. Thus, regardless of whether the settlement is to be arrived at by agreement, or by determination, there will be, in the case of a loss contract, an adjustment to reflect the indicated rate of loss.

§ 1008.507 *Limitation on settlements.*

§ 1008.507–1 *Deductions.* (a) In determining the amount to be deducted representing the fair value of any property which is destroyed, lost, stolen, or damaged, consideration will be given to the direct cost and any burden charges including profit which the contractor included in his settlement proposal.

(b) In addition to the deductions listed under § 8.507–1 of this title, there will be deducted from the amount found to be due to the contractor under a settlement, whether by negotiation or by determination: (1) any unliquidated advance, partial or other payments theretofore made to the contractor, and (2) any claim which the Government may have against the contractor in connection with the contract concerned.

§ 1008.508 *Settlement of cost-type contracts; general considerations.*—(a) *General.* (1) Where the complete termination of a cost-plus-a-fixed-fee contract is involved, the termination contracting officer assigned the terminated contract for settlement will immediately ascertain whether the contractor desires to voucher out his costs on Standard Form 1034 or whether the settlement will include costs and fixed fee.

(2) If decision has been made that the settlement will include costs and fixed fee, the termination contracting officer will follow the procedure set forth in §§ 8.510–1 (d), 8.510–2, 8.510–3, 8.511, and 8.512 of this title and promptly establish an audit status data.

(3) If decision is made that costs will be vouchered out by the contractor, the termination contracting officer will immediately request the contractor to submit a settlement proposal for adjustment of the fixed fee and promptly proceed to negotiate a settlement regardless of the status of the submission and payment of the cost vouchers. Under no circumstances will the contractor be permitted to voucher out the amount of the fixed fee. After agreement is reached as to the amount of the fixed fee to be reduced, a supplemental agreement will be executed evidencing the agreement of the parties.

(b) *Cost-type contracts; procedure where there have been no reimbursed costs under the contract.* If no costs have been reimbursed under the contract, and if the settlement is to include costs and fixed fee, a settlement of all claims of the Government and the contractor relating to the terminated contract may be made without following the procedure prescribed in §§ 8.510, 8.511, and 8.512 of this title. The provisions of the particular contract governing the types of reimbursable costs will constitute the basis of negotiation.

§ 1008.509 *Cost-type contracts; negotiated settlements; procedure where settlement limited to fixed fee.*

§ 1008.509–2 *Adjustment of fixed fee.* (a) The standard termination clause for CPFF contracts provides that the termination contracting officer and the contractor may agree upon, i. e., negotiate, the settlement of the fixed fee. Therefore, any method which is fair and equitable to both parties may be used to adjust the fixed fee unless a specified basis is prescribed in the contract. Where the parties are unable to agree on an adjustment of the fixed fee and the termi-

nation was effected for the convenience of the Government, the percentage of completion basis must be used in rendering the determination for that portion of the fixed fee payable.

(b) Generally, the percentage of completion basis will constitute a fair and equitable method of adjusting the fixed fee. One method of arriving at the percentage of completion is to compare the actual costs incurred with the estimated cost to complete the contract, adjusting the resulting percentage according to the difficulty or importance of each type of costs concerned. Under this method, it is necessary to obtain a breakdown of the estimated costs negotiated in connection with the awarding of the contract and an estimate of the cost to complete each category of items shown in the settlement proposal.

(1) The first step in the computation is to segregate the costs contained in the original cost estimates used in arriving at the contract price into the categories listed in the settlement proposal. The weight to be given each category, expressed in a percentage, will depend on the importance of the type of cost or the difficulties in the accomplishment of the contractual requirement. No specific formula can be prescribed for developing the weighted percentages for each category of costs; the weighting necessarily must be predicated on proper evaluation and judgment by the termination contracting officer of the importance and difficulties of the various categories of work and the circumstances surrounding each individual contract. Generally, material purchases (including purchased parts) should carry a lower weight than work which is subcontracted or direct labor costs incurred by the contractor. The latter category of costs should carry a higher weight than costs incurred for work performed for the contractor outside its own plant.

Example of the first step: If the direct material costs represented 30 percent and the direct labor 20 percent of the contract costs, these percentages should, if justified by a proper evaluation, be adjusted to reflect the fact that the direct labor costs represented a greater factor in work accomplished than that represented by direct material costs. The result would be adjusted weighted percentage for such categories of perhaps 12 percent for direct material (giving consideration to the extent of subcontracting included) and 28 percent for direct labor.

(2) The second step would be to compare the actual allowable costs incurred under each category with the estimated costs to complete such category of work to determine the extent to which the contractor had completed each element included in the claim.

For example, if the actual allowable costs incurred for direct labor was $500,000 and the estimated direct labor costs to complete the contract was $500,000, the direct labor would then be 50 percent complete even though the original estimated direct labor costs did not correspond with the total of the actual allowable costs incurred and the estimated costs to complete the work under the contract.

(3) The third step would be to multiply the percentage of completion of each category (as determined in step 2) by the (weighted) percentage established for the category under step 1. Accordingly, if the direct labor was 50 percent complete (as described in step 2) and the direct labor had been weighted as 28 percent (as described in step 1), this particular category of the claim would represent a percentage of completion under the contract of 14 percent.

(4) The fourth step would be to add the percentage of completion ascertained for each category.

EXAMPLE OF FIXED-FEE COMPUTATION DESCRIBED IN SUBPARAGRAPH (b)

	Negotiated estimated cost	Percentage of total	Weighted percentage of each category	Allowable cost incurred	Estimated cost to complete	Percentage of completion each category	Percentage of contract completed
1. Direct material, including subcontract parts	$1,200,000	30	12	$700,000	$350,000	66⅔	8
2. Direct labor	800,000	20	28	500,000	500,010	50	14
3. Indirect factory expense	1,000,000	25	32	650,000	650,000	50	16
4. Dies, jigs, fixtures, and special tools	600,000	15	18	720,000	80,000	90	16.2
5. General and administrative expense	400,000	10	10	270,000	180,000	60	6
Total cost	4,000,000	100	100	2,840,000	1,760,000		60.2

The above method of computing the percentage of completion of a CPFF contract is not intended to be inflexible where the settlement of the fee is being effected by negotiation, but, in such cases it can serve as a useful basis for arriving at a negotiated adjustment settlement of the fixed fee.

(c) It should be noted that in the determination of the extent of completion, each category of the work accomplished is separately evaluated, giving greater weight to those elements which reflect the more substantial or significant work. Thus, if the production costs disclosed that a large quantity of raw material was received upon which only a small amount of direct labor hours had been incurred when compared with the direct labor hours originally estimated under the entire contract, then it would be obvious that very little fabrication or work-in-process had been performed on the material. In such case, the allowable percentage of fixed fee relating to the direct material should be considered in the nature of a handling change and weighted lower than other categories of costs. This same method of evaluation can be applied to tooling costs, engineering, and other costs listed in the claim.

(d) In evaluating the category of tooling costs, care should be taken to ascertain if the completed tooling on hand at the time of termination represents all the tooling required under the entire contract. The fact that the contractor has on hand complete tooling in connection with that portion of the contract which has been performed does not mean that the tooling is 100 percent complete. In order for the tooling to be 100 percent complete, it must be all the tooling, including maintenance of such tooling which would have been required had the contract been fully performed.

(e) The ratio of costs incurred to the total estimated costs of performing the contract is another method of determining percentage of completion. However, inasmuch as any substantial overrun or underrun could result in a misleading percentage, and since this method does not take into consideration the various degrees of complexities or difficulties of the work accomplished, this method will rarely be used. Its real value lies in its use for comparison with the percentage of completion figure computed under the procedure outlined in paragraph (b) of this section.

(f) Another method of arriving at an adjustment of the fixed fee on the basis of percentage of completion is to have the engineering and other technical personnel concerned with the contract evaluate the percentage of completion of work under the contract from a strictly technical standpoint. Here again, however, care must be exercised by the termination contracting officer to insure that the technical evaluation is based on physical completion and not on costs incurred as such costs may represent a substantial overrun or underrun of the estimated costs.

(g) In adjusting the fixed fee, consideration may be given to including an amount for the work accomplished by the contractor in settling its subcontracts, provided the fixed fee will not be based on the amount of the subcontract settlements.

(h) It is not necessary to agree on the amount of fixed fee applicable to each element of the termination claim; a lump-sum fee may be agreed upon. However, under no circumstances will the fixed fee, either as it may be negotiated as to each category of the claim or as a lump sum, be used as a device for allowing the contractor either costs or fixed fee which would otherwise be disallowable.

(i) The foregoing methods of adjusting the fixed fee are applicable whether the termination involved is a partial or complete termination of a CPFF contract.

(j) If a contract is canceled for the default of a contractor, the amount of fixed fee which may be allowed under the standard CPFF Termination clause is determined on the basis of the number of completed items delivered under the contract in relation to the total number of such items called for under the entire contract. For example, if the contract calls for 100 units and on the effective date of the default termination the contractor has delivered one completed unit, the fixed fee allowable would be 1/100 of the total fixed fee under the contract. If no items have been completed and de-

livered, the contractor is not entitled to any fee regardless of the status of completion of work under the contract.

§ 1008.514 *Cost-type contracts; partial termination.* In order that the termination contracting officer may properly evaluate and adjust the fixed fee it is necessary that he ascertain the costs incurred allocable to the terminated portion of the contract. To the extent possible, actual costs incurred should be obtained; however, if they are unavailable, reliable estimated costs may be used to expedite the settlement. The amount of the fixed fee pertaining to the work performed on the terminated portion of the contract is then negotiated. The settlement will reflect a decrease in the fixed fee ascertained by deducting from the total amount of the fixed fee allocable to the terminated portion of the contract the amount negotiated as compensation for work performed under the terminated portion. The decrease in estimated costs is established by deducting from the estimated costs allocable to the terminated portion of the contract the actual or estimated costs incurred in connection with the terminated portion. An amendment to the contract, substantially as set forth in § 1008.712–50, should then be executed to decrease and reestablish the total fixed fee and estimated costs under the contract as a result of the partial termination. This amendment, unlike the settlement agreement in the case of a complete termination of the contract, does not provide for payment of the amount agreed upon as a result of the termination. It reestablishes the total contract price and the amount of the fixed fee, thus enabling the contractor to obtain reimbursement by the submission of a Standard Form 1034 voucher under the contract as amended.

§ 1008.515 *Audit of settlement proposals and of subcontract settlements.* (a) Every settlement proposal, whether that of a contractor or subcontractor, will be subject to an accounting examination and recommendations regardless of the amount involved.

(b) Each contractor and each subcontractor is required to certify that he has examined the settlement proposals of his immediate subcontractors regardless of the amount of the settlement proposals. The termination contracting officer will satisfy himself that the reviewing contractor or higher tier subcontractor has established an adequate system for the examination of these settlement proposals, and that accounting examinations are accomplished by competent accounting personnel. The termination contracting officer will require the contractor to submit a copy of the accounting examination to him when the subcontractor's settlement proposal is submitted for ratification or approval.

§ 1008.516 *Contracting officer's negotiation memorandum.* (a) The settlement memorandum, which is required for every settlement regardless of the amount involved, will be prepared in such a manner that standing alone it will impart to any reviewing authority a complete narrative summary of the termination settlement.

(b) If a lump-sum settlement has been negotiated, the settlement memorandum will set forth in narrative form the various factors considered by the termination contracting officer as to each element of the claim and indicate generally the extent to which the contracting officer considered the item in determining the amount of the lump sum settlement. If it was agreed that any item was disallowed completely, that should be indicated. It is not necessary, however, that a specific amount for each element be stated unless the negotiation resulted in agreements for individual elements of the settlement proposal.

(c) If the negotiated settlement was agreed upon on an item-by-item basis, the termination contracting officer will set forth the specific amounts allowed and disallowed for each item of the claim as well as a narrative explanation of the factors considered.

§ 1008.518 *Settlement of subcontract claims.*

§ 1008.518–2 *Duty of prime contractor and subcontractor.* Each contractor and each subcontractor will carefully examine and approve each settlement proposal submitted to him by a lower tier subcontractor. Each contractor and subcontractor will use his own staff to accomplish these functions.

§ 1008.518–4 *Basis of settlement.* It is not required that subcontractors' claims be filed on the standardized forms. It is essential that the information be compiled in a form acceptable to the termination contracting officer, and it is mandatory that the certificates set forth on the standardized forms be executed in the applicable situations.

§ 1008.518–6 *Authorization for settlement under $10,000 of subcontractors' termination proposals without approval or ratification.* (a) The termination contracting officer has the authority to grant the contractor authorization for settlements with subcontractors under $1,000.

(b) The termination contracting officer may authorize the contractor to settle with its subcontractors when the settlement is over $1,000 and under $10,000. This authorization may be for any amount which the termination contracting officer has determined the contractor is capable of settling but cannot be in excess of $10,000.

(c) The termination contracting officer will periodically selectively review the settlements made by the contractor, particularly checking allocability to the terminated portion of the contract, and will evidence such reviews in the docket file by appropriate memorandum setting forth in detail the date and extent of reviews and his findings. Any subcontractor settlements which are not allocable as disclosed by such periodic reviews will not be included in the settlement with the contractor.

(d) Plant Clearance Provisions. Contractor may dispose of all termination inventory where the termination settlement of a subcontractor's claim is within the limits of the delegation of authority without being subject to §§ 8.614–1 (a), 8.614–4, and 8.614–5 (a) of this title. Where the subcontractor has on hand completed articles allocable to the terminated subcontract, disposal of such completed articles may be accomplished without screening provided the total of the amount represented by the completed articles (at the subcontract price) added to the termination settlement does not exceed the authority granted to the prime conractor. (See examples A and B below.) Where the cost of the completed articles (at the subcontract price) when added to the amount of the subcontract settlement exceeds the contractor's authority, disposition of all such completed articles is subject to all the provisions of § 8.614 of this title. (See examples C and D below.)

Example A ($10,000 subcontract authorization):

Subcontract termination (Inventory $5,000).	
Settlement (Other costs $1,000)	$6,000
Completed articles	3,000
Total	9,000

Example B ($6,000 subcontract authorization):

Subcontract termination (Inventory $2,000).	
Settlement (Other costs $1,500)	3,500
Completed articles	2,000
Total	5,500

In examples A and B the total is less than the authorization: the completed articles and the inventory are excepted from §§ 8.614–1 (a), 8.614–4, and 8.614–5 (a) of this title.

Example C ($10,000 subcontract authorization):

Subcontract termination (Inventory $4,000).	
Settlement (Other costs $1,000)	$5,000
Completed articles	7,000
Total	12,000

Example D ($6,000 subcontract authorization):

Subcontract termination (Inventory $2,500).	
Settlement (Other costs $1,500)	4,000
Completed articles	3,000
Total	7,000

In examples C and D the total is in excess of the authorization. The inventory will be excepted from §§ 8.614–1 (a), 8.614–4, and 8.614–5 (a) of this title. The total value of the completed articles (not merely the amount in excess of the authorization) will be subject to all the provisions of § 8.614 of this title.

(e) The authorization which may be granted under § 8.518–6 of this title by the termination contracting officer to a contractor will be made in writing. Such authorization does not empower the contractor, either expressly or by implication, to grant similar authority to its subcontractors. However, a subcontractor may be granted such authority either by the termination contracting officer having cognizance over the settlement of the applicable terminated prime contract, or by a termination contracting officer located in the geographical area of, or having cognizance over, the subcontractor's AF work.

§ 1008.518–11 *Government assistance in settlement of subcontracts*—(a) *General.* Basic termination policy requires prime contractors to settle the termina-

tion claims of their subcontractors. A subcontractor has no contractual rights directly against the Government upon the termination of a prime contract. The rights of the subcontractor are against the prime contractor or intermediate subcontractor who is directly obligated to it on the subcontract it holds. It is recognized, however, that the amount of the subcontract termination settlement eventually becomes a part of the prime contract termination settlement upon approval by the Government. In certain instances, therefore, it is advisable for the termination contracting officer to participate in the negotiation settlements between the prime contractor and subcontractor; this would be so, particularly, in cases where large and substantial sums are involved. In addition, there may be instances where because of the distances involved or for other reasons assistance by the Government in settling the terminated subcontract is advisable.

(b) *Circumstances permitting Government assistance.* Under some circumstances, the termination contracting officer may assist the prime contractor in settling his subcontracts. However, it is emphasized that assistance should be provided only in exceptional cases where the interests of the Government may be served best. An example is a situation where the prime contractor has made all reasonable efforts to negotiate a settlement of subcontractor's claims, such efforts are unsuccessful or appear unlikely to meet with success, and assistance by the Government will facilitate expeditious settlement of the prime contract.

(c) *Inter-AMA referral for negotiation.* The termination contracting officer will obtain the prime contractor's consent and prepare in triplicate a letter of transmittal of the subcontract case for negotiation. The letter of transmittal will contain (or inclose in triplicate) the following:

(1) Name and address of prime contractor.

(2) Prime contract number.

(3) Termination docket number.

(4) Name and address of subcontractor.

(5) Copy of terminated subcontract.

(6) Copy of Termination Notice sent by prime contractor to subcontractor.

(7) Statement of payments made for completed items and any other advance or partial payments.

(8) Copy of termination claim filed by subcontractor if a claim has been filed.

(9) Specific detailed reasons in support of referral for direct negotiation of subcontractor's claim by the Government.

(10) Copy of correspondence containing written consent given by the prime contractor to direct negotiation on behalf of the prime contractor by the Government of subcontractor's termination claim.

(11) Identification of assignees, sureties, and guarantors of the subcontractor.

(12) A summary of all prior negotiations between the prime contractor and the subcontractor.

(13) Such other available information as may be helpful in negotiations and processing of subcontractor's claim.

(d) *Action by AMA and/or APD office in which the subcontractor is located.* Upon receipt of a letter of transmittal of a subcontract case for negotiation, the chief of the APD or the AFPR having jurisdiction over the subcontractor will assign a contracting officer and any other personnel necessary to administer the negotiation of the amount due the subcontractor. The termination contracting officer to whom the subcontract is assigned will have complete charge of and responsibility for handling the subcontractor's claim and will perform the duties normally required in the negotiation of the amount due a prime contractor on a termination claim. Appropriate assistance in plant clearance matters will be furnished by the office in whose jurisdiction the subcontractor is located. The final summary of plant clearance activities by the plant clearance officer will be made directly to the contracting officer to whom the subcontract is assigned, instead of the contracting officer administering the prime contract. Direct communication between the contracting officer administering the terminated subcontract and the contracting officer administering the prime contract is authorized.

(e) *Agreement as to the amount due subcontractor.* When the subcontractor and the contracting officer have agreed as to the amount due on the subcontractor's termination claim, the contracting officer will execute a certificate with respect to such agreement. If no agreement can be reached after a reasonable period of negotiation, the contracting officer will return the subcontract file to the contracting officer administering the terminated prime contract, with a summary of the negotiations and the principal bases for disagreement. Every reasonable effort should be made, however, to establish the amount due the subcontractor by negotiation.

(f) *Payment.* The contracting officer administering the negotiation of the amount due the subcontractor will furnish the subcontractor a copy of the certificate. Payment in these cases will be made through the prime contractor just as in any other termination subcontract settlement subject to any right of set-off which the prime contractor may have against the subcontractor.

(g) *Common subcontractors.* The procedures in this section may be used with respect to any subcontractor who is ascertained by the cognizant chief, APD, to be a common subcontractor for substantially the same material under more than one unsettled terminated prime contract.

(h) *Tripartite settlements.* In certain exceptional instances both a tripartite negotiation and settlement agreement may be deemed advisable. Payment of the amount of settlement in such cases should be made through the prime contractor.

§ 1008.518–12 *Assignment of rights under subcontracts.* If the Government assumes the direct settlement of a subcontractor termination claim under the assignment-of-rights provision of the standard termination clauses, the termination contracting officer will obtain a written assignment from the contractor. When the settlement has been agreed upon between the subcontractor and the termination contracting officer, the parties will enter into a bilateral settlement agreement substantially in the form set forth in § 1008.712–54.

§ 1008.518–13 *Settlement of subcontracts assigned to the Government*—(a) *General.* In exceptional cases it may be advisable or appropriate for the Government to assume for direct settlement the termination claim of a terminated subcontractor. If the termination contracting officer handling a prime contractor's termination claim is of the opinion, from all the facts, that the interests of the Government may best be served by effecting a direct settlement of the subcontractor's termination claim, the procedure in paragraph (b) of this section will be followed. The following are some examples of situations in which the best interests of the Government would be served by effecting direct settlements with subcontractors:

(1) If a subcontractor is the sole source for a product and it appears that a delay by the prime contractor in settlement of its claim will jeopardize the financial position or structure of the subcontractor.

(2) If the business relationship between a contractor and a subcontractor has deteriorated to such an extent that fairness or the best interests of the Government require a direct settlement with the subcontractor.

(3) If the matter is of such urgency or importance to the AF program that abstaining from making a direct settlement would impair or threaten to impair that program.

(b) *Procedure.* (1) The termination contracting officer will send a letter to AMC, recommending and requesting approval to assume the subcontractor's termination claim for direct settlement. The contracting officer will set forth in the letter the pertinent facts relating to the claim and will specify the reasons relied upon by the contracting officer in recommending the assumption for direct settlement.

(2) If the request is approved by AMC, the contracting officer will then obtain from the prime contractor an assignment. In addition, the contracting officer should obtain from the subcontractor whose termination claim is being assumed by the Government for direct settlement a written concurrence.

(3) The contracting officer will then process the settlement according to normal termination procedures. Upon settlement of the termination, the contracting officer will prepare and enter into a direct settlement agreement with the subcontractor.

§ 1008.522 *Partial payments upon termination.*

§ 1008.522–4 *Security for partial payments.* (a) Generally, the Government should take title to any property when a partial payment is made to the contractor. In such instances, a written transfer

of title from the contractor to the Government of the property, free and clear of any and all encumbrances thereon, will be obtained. Where the termination contracting officer deems it in the best interest of the Government not to accept title upon the making of a partial payment to the contractor, a form of lien will be obtained from the contractor as security for the partial payment.

(b) Whenever any property, upon which the Government has title or a lien by virtue of a partial payment, is disposed of by a contractor pursuant to authorization therefor by the termination contracting officer, the proceeds received or derived from such disposal will be immediately credited to, or turned over to, the Government in the manner directed by the contracting officer.

§ 1008.550 *Recoupment of renegotiation debts*—(a) *Definitions.* As used in this section, the following terms will have the meanings indicated:

(1) "Defaulting contractor" is a prime contractor or a subcontractor in default in payment of its indebtedness to the United States for profits agreed or determined to be excessive under statutory renegotiation proceedings.

(2) "Default list" is the list of defaulting contractors, entitled "Contractors Indebted to the United States," issued periodically by the Chief, Finance Division, Comptroller Department, Hq USAF.

(b) *Responsibilities.* Contracting officers charged with the settlement of terminated contracts will determine from the default list the renegotiation debt status of each prime contractor and subcontractor whose termination claim is in process of settlement. Contracting officers will make a reasonable effort, under the circumstances of each case, to identify all subcontractors who have submitted claims under terminated prime contracts for the purpose of determining from the default list the renegotiation debt status of each such subcontractor. Such renegotiation debt status will be coordinated with the appropriate finance officer.

(c) *Procedures.* (1) The contracting officer negotiating a termination settlement will direct the prime contractor to make no termination payments to any defaulting subcontractor, except after withholding for the account of the Government, the amount of subcontractor's renegotiation debt to the Government.

(2) Proof of withholding for the account of the Government, or of payment to the Government, will be accepted by the contracting officer as satisfaction of the defaulting subcontractor's claim to the extent of the amount so withheld or paid over.

(3) Whenever the contracting officer sends a finance officer a voucher for a partial payment or a settlement payment, any of the proceeds of which would normally be paid to, or for the benefit of, any defaulting contractor, he will attach to the voucher a statement enabling the finance officer to make appropriate deductions and requesting the finance officer to advise the payee of the deductions made. At the same time, the contracting officer will, by letter, advise the payee of the voucher as to the deductions being made and as to the manner in which the deductions are to be given effect in transmitting payments down the contractual chain.

§ 1008.551 *Settlement of unadjusted contractual changes (UCC's).* (a) If the outstanding UCC's relate to both the terminated and the continuing portions of the contract, the TCO will effect the termination settlement on the basis of the established contract price as it exists prior to its being adjusted as a result of the unadjusted contractual changes. In such cases, a provision should be included in the settlement agreement reserving the contractor's rights with respect to the outstanding UCC's. If all the outstanding UCC's are formalized by the procuring contracting officer (buyer) prior to the termination settlement of the partial termination, the revised contract price will be used as the basis for the settlement of the partial termination. In such cases, a reservation of the contractor's rights is not required.

(b) *Contractual documents.* Prior to execution of the termination supplemental settlement agreement, each UCC relating to the terminated portion must be either incorporated in an executed contractual instrument by the buyer, incorporated in the termination supplemental settlement agreement, or expressly excluded in the termination supplemental settlement agreement. When UCC's are formalized in the termination settlement, a statement and listing of the UCC's which have been included in the settlement will be incorporated in the termination supplemental settlement agreement.

§ 1008.555 *Settlement of claims and property disposal resulting from engineering changes.* (a) Property which becomes obsolete or excess by reason of a contract modification or engineering change under a fixed-price prime contract will be disposed of according to appropriate provisions of Subpart F, Part 8, Chapter I, of this title, if the cost of the property is involved in the contractor's claim for an equitable adjustment in price. All property which becomes obsolete or excess by reason of a contract modification or an engineering change under a cost-reimbursement contract will be disposed of according to appropriate provisions of Subpart F, Part 8, Chapter I, of this title. If such obsolete or excess property has been retained or disposed of by the contractor at prices approved by the contracting officer or properly authorized plant clearance officer, according to Subpart F, Part 8, Chapter I, of this title, the amount agreed upon for the retention or the amount realized from the disposition will be recognized as the proper credit to be allowed for the property by the contracting officer, Hq AMC, or the contracting officer of the appropriate AMC field procurement activity, responsible for negotiating the adjustment necessitated by the change.

(b) If contract modifications or engineering changes in prime contracts result in a total or partial cancellation of any subcontracts, the provisions of Part 8, Chapter I, of this title will be followed in determining the amount of the subcontract cancellation charges and in disposing of the subcontractor's termination inventories to be included in the contractor's claim for equitable adjustment. The amount of any such subcontract settlements which have been approved or ratified by a contracting officer will be accepted as a proper cost by the contracting officer, Hq AMC, responsible for negotiating the equitable adjustment necessitated by the change, and, in the case of cost-reimbursement-type contracts, will be recognized as a reimbursable item of cost by the administrative contracting officer responsible for certifying the public voucher covering such costs.

(c) *Procedure.* (1) Costs quoted as a part of Engineering Change Proposals submitted by contractors may be based upon preliminary estimates, including the estimated cost of settling subcontracts to be terminated and estimated property disposal credits. CCN's may be issued on such proposals based upon those estimates.

(2) To the extent that supplemental agreements that formalize CCN's involve subcontract cancellation charges and property disposal credits, they will be based upon actual settlement costs and actual credits.

(i) If the quotation to be formalized by a contract supplemental agreement involves charges for property made obsolete or excess by reason of a contract modification or engineering change, and the property disposal action has been completed, the contractor will be required to indicate: The manner in which credit has been, or is to be, allowed the Government for such property, or that that property has been turned over to the Government. To the extent that property has been turned over to the Government, the quotation will be accompanied by an inventory of such property. In order that there is no delay in issuance of supplemental agreements, in the event property disposition is incomplete at the time the supplemental agreement can otherwise be accomplished, property disposal credits may be excluded from the supplemental agreement and reserved for future settlement by appropriate reference in the supplemental agreement. In this event, the property will be accounted for, and any credits may be accumulated and subsequently credited to the contract provided there is no undue delay in processing the credits.

(ii) If it is impractical to segregate property disposal credits by supplemental agreement or by contract, such credits may be allowed to the Government in such other manner as the contracting officer may approve, provided such credits to the Government fully reflect actual, not estimated, property disposal credits to which the Government is entitled. In this case, the contracting officer must determine that the Government's interests in the disposal credits are fully protected.

(iii) If the quotations to be formalized by a supplemental agreement involve any subcontract cancellation charges, the contractor will be required to indicate that the charges represent actual

settlements approved or ratified by a contracting officer. In order that there will be no delay in issuance of a supplemental agreement, in the event it is impossible to agree upon actual subcontractor cancellation charges at the time the supplemental agreement is accomplished, such charges may be excluded and reserved for future settlement, provided the contractor submits with his proposal a list of the subcontracts to be adjusted and an estimate of the maximum amount of funds required for settlement of the excluded subcontracts. In such case, the supplemental agreement accomplishing the adjustment will specifically exclude subcontracts not yet settled and will include an agreement for the settlement of the excluded subcontracts at a later date, and subsequent quotations may be submitted, including actual subcontract cancellation charges, and formalized by supplemental agreement. (Subcontract cancellation charges subsequently submitted may be accumulated for incorporation in a supplemental agreement provided they are referenced to the applicable change orders which generated such cancellation charges.)

(d) *Price contractor's cost-reimbursement type proposal for adjustment in fee.* Proposals of a cost-reimbursement type for adjustment in fixed fee by reason of an engineering change may, in the absence of actual known costs and to the extent deemed proper by the contracting officer, be based on estimates. In adjusting the prime contractor's fixed fee, the amount of subcontractors' termination claim settlements will not be used as the basis for the adjustment. However, consideration may be given in adjusting the prime contractor's fixed fee to the work performed under the terminated subcontracts and the work accomplished by the prime contractor in effecting settlements of its terminated subcontracts.

SUBPART F—TERMINATION INVENTORY

§ 1008.600 *Scope of subpart.* If property which has become obsolete or excess by reason of a contract modification, engineering change, or price redetermination, has been retained or disposed of by the contractor at prices approved by the contracting officer, or properly authorized plant clearance officer, according to this subpart, the amount agreed upon for the retention or the amount realized for the disposition will be recognized as the proper credit to be allowed for the property by the contracting officer responsible for negotiating the adjustment necessitated by the change or the price redetermination clause.

§ 1008.601 *General policies.*

§ 1008.601–2 *Responsibility for sales.* (a) The contractor is required to use its best efforts to sell termination inventory, including termination inventory in the possession of subcontractors, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the termination contracting officer. With respect to property which has become excess other than by termination of a contract, the contractor may be required under the terms of the contract to render assistance in the sales thereof. In this instance the plant clearance officer or the termination contracting officer will follow the terms of the contract. In the absence of a contractual provision, the contractor's assistance will be requested.

(b) Contractors may retain termination inventory or otherwise effect disposal if the Government does not exercise its option to acquire title to such termination inventory. When this information is available, the option will be set forth in the Notice of Termination; otherwise the Government will notify the contractor as soon as possible.

§ 1008.603 *Inventory schedules.*

§ 1008.603–1 *Submission of inventory schedules.* Termination inventory schedules are prepared by the contractor with the aid and assistance of the plant clearance officer and generally serve two principal purposes: To support the amount of inventory costs included in the contractor's claim, and to aid in arranging for the removal, storage, sale, or other disposition of contractor inventory. All property resulting from terminations, changes, or completions of contracts must be listed on termination inventory schedules, including excess Government-owned property and any other contractor-owned property which the Government is obligated, or has an option, to take over for any reason.

§ 1008.608 *Sale or other disposition of termination inventory.*

§ 1008.608–2 *Competitive sales.* (a) Contractor sales: Contractor sales include all sales of termination inventory made by AF contractors, whether or not such sales are subject to approval of a contracting officer. Contractor sales may be made of property owned by the contractor or by the Government, if the Government has the right to receive the proceeds of sale or a credit for such proceeds. If a sales contract requires approval of a contracting officer, any plant clearance officer may be designated as an authorized representative of the contracting officer. Sales are to be evidenced by forms used by the contractor provided they are consonant with good business practices.

(b) Direct sales: Direct sales include all sales made by contracting officers or plant clearance officers, and may only be made of property owned by the Government. In no case will property be disposed of by direct sale when provisions exist for crediting the proceeds of a contractor sale to an AF contract or termination settlement claim, or where the contractor has incurred expenses in effecting the sale.

(c) The following additions to General Sale Terms and Conditions, will be made a part, by attachment, of any invitation for bid which offers for sale definite quantities of property on a unit-price basis. Such additions will be appropriately numbered as indicated in this paragraph.

No. 17. Deposits or bonds to accompany bids. Bids must be accompanied by bid deposits of cashier's check, certified check or postal money order made payable to the Treasurer of the United States, bonds or notes of the United States (at par value) deposited in accordance with Treasury Department Regulations or by a bid bond on the standard Government form (U. S. Standard Form 24) in an amount equal to at least 20 percent of the total sum of the bid. Bids received not accompanied by the required bid deposit or bid bond may not be considered. If the bidder does not receive an award, or if a bid deposit exceeds the total sum bid on the items accepted by the Government, such bid deposit or excess thereof will be promptly returned to the bidder or purchaser. In other cases, the bid deposit will be retained as a guaranty for faithful performance of the contract: *Provided, however,* That if a bid bond is submitted, it must be replaced immediately upon the acceptance of the bid by a performance bond on the Standard Government form (U. S. Standard Form 25) in an amount equal to at least 20 percent of the total sum of the items awarded or the bidder may deposit cashier's check, certified check, or postal money order made payable to the Treasurer of the United States or bonds or notes of the United States (at par value) deposited in accordance with Treasury Department Regulations but such performance bonds or deposit shall not in any event exceed 100 percent of the award: *And provided further,* That if the deposit consists of cashier's check, certified check, postal money order, or United States bonds or notes and the contract by its terms cannot be performed in less than 30 days, the purchaser shall have the option of substituting a performance bond on U. S. Standard Form 25 in an amount equal to 20 percent of the total sum of the items awarded.

No. 18. Cash payment. Notwithstanding the provisions of the clause entitled "Payment," payment in cash will not be accepted under this contract.

No. 19. Damage to property of a Government contractor. The purchaser shall reimburse the Government for any damage to the property of a Government contractor or subcontractor caused by the removal operations of the purchaser.

No. 20. Adjustment for variation in quantity. When property is sold on a unit-price basis, the Government reserves the right to vary the quantity tendered or delivered to the purchaser by 10 percent. If the Government tenders or delivers a quantity up to 10 percent in excess of that stated in the invitation for bid, the purchaser agrees to accept such quantity and pay the Government therefor at the unit price set forth in this contract. If the Government tenders or delivers a quantity less than that stated in the invitation for bid, the purchaser agrees to accept the quantity tendered or delivered unless the variation exceeds 10 percent of the quantity stated in the invitation for bid. In such event the Government will refund the purchaser the difference between the quantity paid for and the quantity delivered, calculated upon the basis of the unit price set forth in this contract.

No. 21. Liability for damage. The Government accepts no liability for damages to the purchaser's equipment, to its employees or to anything or person whatsoever.

No. 22. Nondiscrimination in employment. (Insert the clause set forth in ASPR 12–804 (32 CFR 12.804), substituting the word "purchaser" for "contractor" wherever found in this clause.)

No. 23. Warranty against multiplicity of bids. If an individual or partner, the bidder warrants that he has no property interest in any other bidder, who, to his knowledge, has submitted a bid in response to the same item number(s) in this invitation as bid herein; if a corporation, the bidder warrants that it is not affiliated by stock ownership or community or financial interest with any other corporation which, to the knowledge of the corporate signatory, has submitted a bid in response to the same item number or numbers of the invitation as

bid herein. If it should be determined that the bidder has such an interest, then his bid, together with such other bid or bids, may be rejected.

No. 24. Scrap warranty. With respect to all scrap covered by this contract the Purchaser upon request, will execute a scrap warrant to the Government.

No. 25. Interest warranty. The Purchaser warrants that he is not an officer or enlisted member of the Armed Forces of the United States, or a member of the immediate household of such officer or enlisted member, and further that he is not an officer or employee of the United States, nor an agent for any of the above mentioned persons.

(d) When property is sold on an indefinite quantity unit-price basis, General Sale Terms and Conditions 18, 19, and 20, as indicated in paragraph (c) of this section, will be changed to read as follows:

No. 18. Contract period, termination, and payment.

(i) *Contract Period.* This contract will extend from _____ or from date of Government's acceptance, if subsequent thereto, through _____, both dates inclusive, unless sooner terminated under the provisions of this contract.

(ii) *Termination.* This contract shall remain effective until date of expiration provided that it may be earlier terminated at the convenience of the Government upon 10 days' notice in writing given by the Contracting Officer to the Purchaser.

(iii) *Payment.* Notwithstanding the provisions of the clause entitled "Payment," payment in cash will not be accepted under this contract. The Contracting Officer or Plant Clearance Officer will issue invoices to the Purchaser as deemed advisable to the best interest of the Government and the Purchaser will submit payment as invoiced within five days from date of receipt of such invoice.

No. 19. Delivery and removal. Removal of the property will be made at the discretion of the Contracting Officer or Plant Clearance Officer and will be made by the Purchaser at such time and from such location as may be directed by the Plant Clearance Officer. The Purchaser shall reimburse the Government for any damage to Government property or to the property of a Government Contractor caused by the removal operations of the Purchaser.

No. 20. Adjustment and variation in quantity. The quantities of the various items listed are based upon the best information available and in each case represent the estimated and not the actual amounts which will be available for delivery during the period stated herein. Any variation between the quantity or weight for such item tendered and delivered to the Purchaser will be adjusted on the basis of the unit price quoted for such items but no adjustment for such variation will be made where an award is made on a "price for the lot" basis.

§ 1008.608–4 *Proceeds of sale.* The proceeds of any such sale or acquisition will be credited to the contract under which the property was purchased, or in such other manner as the termination contracting officer may approve, and will be based on actual, rather than estimated, property disposal credits to which the Government is entitled. If it is impracticable to segregate property disposal credits by contract, the termination contracting officer may approve allowances of credits in any manner determined to fully protect the interests of the Government.

§ 1008.608–6 *Applicability of antitrust laws.* (a) Pursuant to § 8.608–6 of this title, whenever property with a total acquisition cost to the Government of $1,000,000 or more is offered for sale by competitive bid, a provision, comparable to the following statement, will be included in the invitation for bids:

If, under this invitation, a bidder is the successful bidder on property with a total acquisition cost to the Government of $1,000,000 or more, the award will be subject to a determination by the Attorney General that the award would not be incompatible with existing antitrust laws.

(b) In a negotiated sale of property with a total acquisition cost of $1,000,000 or more, the prospective purchaser will be informed that final consummation of the sale is subject to determination by the Attorney General that the sale would not be incompatible with existing antitrust laws.

§ 1008.610 *Destruction or abandonment.* If the acquisition cost of material, including Government-furnished property, exceeds $1,000, it will not be destroyed or abandoned without prior approval of a property disposal review board according to the provisions of § 8.613–2 (d) of this title. If the acquisition cost of the material, including Government-furnished property, exceeds $100,000, it will not be destroyed or abandoned without obtaining the additional prior approval of the Property Disposal Review Board located at Hq AMC.

§ 1008.612 *Removal and storage.*

§ 1008.612–50 *Storage of contractor inventory at no cost to the Government.* (a) The procedures outlined herein are designed for use where storage of AF property, which has become excess by reason of changes, terminations, expirations, or completions of AF contracts, will be accomplished by the contractor at no cost to the Government.

(b) The plant clearance officer, subject to the approval of the contracting officer, will have prepared an appropriate storage contract. The agreement should be executed by an official of the contractor and the contracting officer.

(c) Care will be taken to insure that the cost of storage which is purported to be at no cost to the Government is not being recovered by the contractor as an indirect charge to other Government work unless expressly approved by the contracting officer.

(d) Where it is anticipated that there may be future additional storage requirements for property generated under any of the contractor's AF contracts, and that such storage may also be at no cost, the storage contract may be made "open-end."

§ 1008.613 *Review of property disposal.*

§ 1008.613–1 *Property disposal review boards.* The prohibition against a person serving in any action in which he participated will not be interpreted to prevent plant clearance personnel from appearing before the board or from giving technical advice or statements of opinion at the request of the plant clearance officer or the board.

§ 1008.614 *Subcontractor termination inventory.* If settlement of subcontractors' termination proposals under $1,000, or between $1,000 and $10,000, without approval or ratification is authorized, no screening or referral action is required. In the absence of the authorization noted, subcontractors' inventories located outside the geographical area of the termination contracting officer may be referred to the plant clearance officer in the area in which the subcontractor is located for the purpose of effecting plant clearance action. When referrals for plant clearance of subcontractors' inventories are made, the termination contracting officer and the plant clearance officer will observe the following:

(a) In the initial conference to be held with the prime contractor, or as soon thereafter as practicable, the contracting officer and plant clearance officer charged with reviewing subcontractors' claims resulting from the termination or modification of the prime contract, will obtain the following information whenever subcontractor's inventory is involved.

(1) Name and address of all subcontractors whose subcontracts have been or will be terminated.

(2) Purchase order numbers assigned by the prime contractor to all terminated subcontractors.

(3) Copy of termination notice issued to each subcontractor.

(4) Approximate acquisition cost of inventory, if known.

The plant clearance officer should inform the prime contractor of the need for properly instructing subcontractors in the preparation of inventory schedules.

(b) All inventory schedules prepared by the subcontractor will be submitted by the subcontractor (certified by him as to allocability to the terminated contract) to the prime contractor. Partial schedules covering substantial portions of contractor inventory may be submitted, in which case a prime contractor will indicate by written certificate whether the property listed is allocable to the subcontractor's terminated contract, and will deliver the schedules to the contracting officer responsible for reviewing subcontractors' claims.

§ 1008.653 *Redistribution and disposal of contractor inventory; foreign.*

§ 1008.653–8 *Sales.* (a) The contractor, if called upon, is required to use its best efforts to sell termination inventory (see contract termination clause), including termination inventory in the possession of subcontractors, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the termination contracting officer. Contractor's assistance may be requested for the disposition of contractor inventory which has become excess by reason other than termination of contracts. In those oversea areas where disposal agencies of the Air Force or other military source are established, such disposal agencies may be used for disposal of surplus contractor inventory. Local conditions and the economics of a particular situation should determine the advisabil-

ity of using either a contractor sale or the services of the established disposal agency. Personnel of the procuring activity will not themselves undertake sales of surplus contractor inventory unless specific approval is obtained from the chief of the foreign procurement activity or his delegated representative.

(b) Custom duties, taxes, or similar charges may be levied by certain foreign governments against the seller or purchaser of foreign excess property sold within their jurisdiction. Each sales offering will include a statement and each contract will include a clause providing that the purchaser will pay all duties, taxes, etc., and furnish the AF contracting officer receipts therefor, prior to the release of the property. Since the laws of each country in which foreign excess property may be sold will govern the assessment and collection of duties, taxes, etc., the United States diplomatic or consular representative, in the area where the sales are to be made, will be consulted and requested to effect appropriate arrangements with the foreign government concerned.

(c) All notices of sale and all sales contracts will include the following provision:

The property sold hereunder will not be imported into the United States of America, unless the Secretary of Agriculture (in the case of any agricultural commodity, food, or cotton or woolen goods), or the Secretary of Commerce (in the case of any other property) has determined that the importation of such property would relieve domestic shortages or otherwise be beneficial to the economy of the United States, and this sale is made expressly subject to this condition.

SUBPART G—FORMS

§ 1008.712–50 *Supplemental settlement agreements for CPFF partial terminations.* The following supplemental agreement will be used in settlements of CPFF partial termination claims covering adjustment of estimated cost and fixed fee.

SUPPLEMENTAL SETTLEMENT AGREEMENT

This Supplemental Settlement Agreement entered into this _____ day of _____, 195__, between the United States of America, hereinafter called "the Government," represented by the Contracting Officer executing this Agreement, and _____,

(i) a corporation organized and existing under the laws of the State of _____,

(ii) a partnership consisting of _____,

(iii) an individual doing business as _____, (hereinafter called "the Contractor"), with its (his) principal office or place of business located at _____,

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract AF _____ under date of _____, which together with any and all amendments, changes, and supplements thereto, is hereinafter referred to as "the Contract," the same being a cost-plus-a-fixed-fee contract; and

Whereas, pursuant to Clause _____ of the Contract, by Notice of Termination dated _____ the Government advised the Contractor of the partial termination of the Contract, as of the date and to the extent provided in such notice and as a result of which the Contract was terminated by the reduction of work hereinafter specified and hereinafter called "the terminated portion of the Contract"; and

Whereas, the continued work under the Contract is substantial and it is the desire of the parties hereto that an adjustment be made only of the estimated cost and the fixed fee under the Contract as a result of such partial termination, as hereinafter set out;

Whereas, post-termination and settlement expenses, as defined in the Armed Services Procurement Regulation, have been incurred by the Contractor in connection with the partial termination; and it is the desire of the parties hereto to determine the amount of the same and to provide for the payment thereof; (Optional)

Now Therefore, the parties hereto agree as follows:

Clause 1. Clause _____ of the Contract is hereby amended so as to delete therefrom the terminated portion of the Contract designated as follows:

Item No.	*Part No.*
Nomenclature	*Quantity Canceled*

Clause 2. The estimated cost stated in Clause _____ of the Contract relating to the terminated portion of the Contract is hereby decreased by the sum of _____.

Clause 3. The Contractor's allowable costs for the terminated portion of the Contract will continue to be reimbursed on Form 1034 cost vouchers in accordance with the applicable provisions of the Contract and of Section VIII of the Armed Services Procurement Regulation.

Clause 4. The fixed fee stated in Clause _____ of the Contract relating to the terminated portion of the Contract is hereby decreased by the sum of _____.

Clause 5. The total sum allotted to the Contract is hereby decreased by the sum of _____.

Clause 6. Except as hereby modified, either expressly or by necessary implication, all the terms, covenants and conditions of the Contract shall remain in full force and effect.

In Witness Whereof, the Government and the Contractor have executed this Supplemental Agreement as of the date first herein written.

THE UNITED STATES OF AMERICA

By _____
(Contracting Officer)

_____
(Name of Contractor)

By _____
_____
(Name) (Title)

Business Address:
_____
_____

Two Witnesses to execution by the Contractor

_____
(Name)

_____
(Address)

_____
(Name)

_____
(Address)

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

In Witness Whereof, I have hereunto affixed my hand and the seal of said corporation this _____ day of _____ 19__.

[Corporate Seal]

_____
(Secretary)

§ 1008.712–51 *Supplemental settlement agreement form for settlement of two or more termination claims.*

This Supplemental Agreement of Settlement entered into this _____ day of _____, 19__, between the United States of America (hereinafter called "the Government") represented by the Contracting Officer executing this Agreement, and _____,

(i) A corporation organized and existing under the laws of the State of _____,

(ii) A partnership consisting of _____,

(iii) An individual doing business as _____, (hereinafter called "the Contractor"), with its (his) principal office or place of business located at _____.

Whereas, the Contractor and the Government have entered into _____( ) separate Contracts which are set forth in Exhibit "A" attached hereto and made a part hereof and under the respective dates as set forth in said Exhibit "A," which contracts together with any and all Amendments, Changes and Supplements thereto, are hereinafter collectively called "the contracts"; and

Whereas, the "Termination For Convenience of the Government" clause of each contract provides that the performance of the work under each contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interests of the Government and that the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such terminations; and

Whereas, by _____( ) separate notices of terminations dated as set forth in said Exhibit "A" attached hereto, the Government advised the Contractor of the complete terminations of the contracts for the convenience of the Government; and

Whereas, as used herein the following terms shall have the meanings hereinafter set forth:

The term "termination inventory" shall mean any items of physical property purchased, supplied, manufactured, furnished or otherwise acquired for performance of the Contracts which are properly allocable to the terminated portions of the Contracts, but shall not include any facilities, machinery, material, special tooling, or equipment which are subject to a separate contract or special contract provision governing the use or disposition thereof. It includes "Contract termination inventory" which consists of all items of termination inventory properly allocable directly to the terminated portions of the Contracts, and "subcontract termination inventory" which consists of all items of termination inventory properly allocable to the terminated portions of any subcontracts under the Contracts.

The term "subcontract" means any contract, agreement, or purchase order, and any preliminary contractual instrument, calling for the performance of any work, or for the making or furnishing of any material required for the performance of the Contracts. The term also includes any such contract, agreement, purchase order, or other instrument, placed under any one or more subcontracts as herein defined.

The term "scrap" shall mean any items of termination inventory which have no reasonable prospect of sale except for their basic material content.

Now, Therefore, the parties do mutually agree as follows:

Clause 1. The Contractor certifies that all Contract termination inventory (including scrap) has been retained or otherwise acquired by it, sold to third parties, returned to suppliers, stored for the Government, de-

livered to the Government, or otherwise accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this Agreement.

Clause 2. The Contractor certifies that, prior to the execution of this Agreement, each of the Contractor's immediate subcontractors whose claim is included in the claim settled by this Agreement has furnished to the Contractor a certificate stating (i) that all of its subcontract termination inventory (including scrap) has been retained or otherwise acquired by it, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract or subcontracts and (ii) that the subcontractor has received from each of the immediate subcontractors whose claim was included in its claim a substantially similar certificate.

b. The Contractor hereby transfers and conveys to the Government all the right, title, and interest, if any, which the Contractor has received, or is entitled to receive, in and to subcontract termination inventory, if any, not otherwise properly accounted for, and hereby assigns to the Government any and all of its rights relating thereto.

Clause 3. The Contractor certifies that, with respect to all items of termination inventory the costs of which were taken into account in arriving at the amount of this settlement, or in the settlement of any subcontract claim included in this settlement: (i) all such items are properly allocable to the terminated portions of the Contracts; (ii) such items are not in excess of the reasonable quantitative requirements of the terminated portions of the Contracts; (iii) such items do not include any items reasonably usable, without loss to the Contractor, on its other work; and (iv) the Contractor has informed the Contracting Officer of any substantial change in the status of such items between the dates of its termination inventory schedules and the date of this agreement.

Clause 4. It is hereby agreed that all funds paid or to be paid hereunder to the Contractor for the benefit of subcontractors or suppliers shall be held in trust by the Contractor for the benefit of such subcontractors or suppliers until such time as payment of such funds to the respective subcontractors or suppliers is accomplished or until refund by the Contractor to the Government as hereinafter provided. In all cases where the Contractor has not previously made such payments, the Contractor shall, within ten (10) days after receipt of the payment provided for hereunder, pay to each of its immediate subcontractors and suppliers (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor so elects, any amounts then due and payable to the Contractor by such subcontractors and suppliers. If the Contractor fails to make any such payment within ten (10) days, the Contractor will, upon request, return to the Government the amount so payable to such immediate subcontractors and suppliers, less any amount then due and payable to the Contractor by them.

Clause 5. a. The Contractor has received the sum of $_____ on account of work and services performed, or articles delivered under the completed portions of the contracts. The Government as a part of this negotiated settlement hereby confirms and acknowledges the right of the Contractor, subject to the provisions of Clause 6 hereof, to retain such sum heretofore paid and agrees that such sum constitutes a portion of the total amount to which the Contractor is entitled in settlement of the contracts.

b. In addition, upon the execution of this Agreement the Government agrees to pay to the Contractor or its assignee, upon presentation of properly executed invoices and vouchers the sum of $_____ arrived at by deducting from the sum of $_____ (Use proper method as set forth in Clause 5b, page 899.3, ASPR, Section VIII, depending on whether inventory or total costs basis claim is filed by the Contractor.) (1) The amount of $_____ representing all unliquidated partial or progress payments previously made to the Contractor or its assignee and all unliquidated advance payments (with interest, if any thereon), and (2) the amount of $_____ representing all applicable property disposal credits. The said sum, together with all other sums heretofore paid, constitutes payment in full and complete settlement of the amount due the Contractor by reason of the complete termination of work under the contracts and of all other claims and liabilities of the Contractor and the Government under the contracts, except as hereinafter provided in Clause 6.

c. For the purposes of budgetary allocation, the sums specified in paragraph "b" above shall be apportioned among the several contracts as set forth in Exhibit "A" of this Agreement.

Clause 6. (Standard reservations as set forth in ASPR Section VIII are to be used when applicable in addition to any special reservations needed to protect the rights of the parties.)

EXHIBIT A

(1) Contract No.	(2) Date of contract	(3) Date of notice of termination	(4) Docket No.	(5) Gross settlement	(6) Less partial payments	(7) Less property disposal credits	(8) Termination amount payable

§ 1008.712–52 *Supplemental settlement agreement (amendment) form for settlement of partial termination of letter facilities contract.* The following supplemental agreement will be used in settlement of partial termination claims involving letter facilities contracts.

Amendment No. _____ to Letter Contract No. _____ Docket No. _____.

This Supplemental Settlement Agreement (designated as Amendment No. _____) entered into on this _____ day of _____, 19__, between the United States of America (hereinafter called "the Government"), represented by the Contracting Officer executing this agreement, and _____,

(i) A corporation organized and existing under the laws of the State of _____,

(ii) A partnership consisting of _____,

(iii) An individual doing business as _____ (hereinafter called "the Contractor"), with its (his) principal office or place of business located at _____,

Witnesseth that:

Whereas, the Contractor and the Government have entered into Letter Contract No. _____ under date of _____, which, together with any and all amendments, changes, and supplements thereto, is hereinafter referred to as "the Letter Contract"; and

Whereas, the Termination Clause of the Letter Contract provides that the Government may at any time terminate said Letter Contract in whole or in part for its convenience by giving the Contractor written notice of such termination, and that in such event the Government and the Contractor may agree upon the amount or amounts to be reimbursed the Contractor as more specifically described in said Clause; and

Whereas, the Government, by notice of termination dated _____ advised the Contractor of the partial termination of the Letter Contract as of the date and to the extent provided in such Notice (as amended) as a result of which the Letter Contract was terminated by the reduction of work hereinafter specified and hereinafter called "the terminated portion of the Letter Contract"; and

Whereas, the Contracting Officer, pursuant to Armed Services Procurement Regulation 8–514 (1), has determined that the terminated portion of the Letter Contract and the costs relating thereto are clearly severable from the continuing portion of the Letter Contract (the term "continuing portion" as used herein meaning that portion of the partially terminated Letter Contract which was not already completed at the effective date of termination, and which the Contractor must continue to perform and deliver to the Government); and

Whereas, the Government and the Contractor have agreed upon a settlement as hereinafter set forth with respect to the terminated portion of the Letter Contract; and

Whereas, the Letter Contract in its existing form preclude complete reimbursement by the Government to the Contractor of allowable costs (as determined under the Cost Principles referenced therein) with respect to the continuing portion of said Letter Contract; and

Whereas, the continuing portion of the Letter Contract is substantial, and the Government has administratively determined that it is in its best interests to have such continuing portion completed and delivered; and

Whereas, as used herein, the following terms shall have the meanings hereinafter set forth:

The term "termination inventory" shall mean any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the Letter Contract which are properly allocable to the terminated portion of the Letter Contract. It includes, "Contract Termination Inventory" which consists of all items of termination inventory properly allocable directly to the terminated portion of the Letter Contract, and "subcontract termination inventory" which consists of all items of termination inventory properly allocable to the terminated portion of any subcontract under the Letter Contract.

The term "subcontract" means any contract, agreement, or purchase order, and any preliminary contractual instrument, calling for the performance of any work, or for the making or furnishing of any material, required for the performance of the Letter Contract. The term also includes any such contract, agreement, purchase order, or other instrument, placed under any one or more subcontracts as herein defined.

The term "scrap" shall mean any items of termination inventory which have no reasonable prospect of sale except for their basic material content.

Now, Therefore, the parties hereto do mutually agree as follows:

Clause 1. The terminated portion of the Letter Contract is as set forth in Exhibit "A," attached hereto and made a part hereof.

Clause 2. The Contractor certifies that all Letter Contract termination inventory (including scrap) has been retained or otherwise acquired by it, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this Agreement.

Clause 3. a. The Contractor certifies that, prior to the execution of this Agreement, each of the Contractor's immediate subcontractors

whose claim is included in the claim settled by this Agreement has furnished to the Contractor a certificate stating (i) that all its subcontract termination inventory (including scrap) has been retained or otherwise acquired by it, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract or subcontracts, and (ii) that the subcontractor has received from each of the immediate subcontractors whose claim was included in its claim a substantially similar certificate.

b. The Contractor hereby transfers and conveys to the Government all their right, title, and interest, if any, which the Contractor has received, or is entitled to receive, in and to subcontract termination inventory, if any, not otherwise properly accounted for, and hereby assigns to the Government any and all of its rights relating thereto.

Clause 4. The Contractor certifies that, with respect to all items of termination inventory, the costs of which were taken into account in arriving at the amount of this settlement, or in the settlement of any subcontract claim included in this settlement: (i) all such items are properly allocable to the terminated portion of the Letter Contract; (ii) such items are not in excess of the reasonable quantitative requirements of the terminated portion of the Letter Contract; (iii) such items do not include any items reasonably usable, without loss to the Contractor, or its other work; and (iv) the Contractor has informed the Contracting Officer of any substantial change in the status of such items between the dates of its termination inventory schedules and the date of this agreement.

Clause 5. In all cases where the Contractor has not previously made such payments, the Contractor shall, within 10 days after receipt of the payment provided for hereunder, pay to each of its immediate subcontractors and suppliers (or to their respective assignees) the respective amounts to which they are entitled, after deducting it, if the Contractor so elects, any amounts then due and payable to the Contractor by such subcontractors and suppliers.

Clause 6. Upon the execution of this Agreement, the Government agrees to pay to the Contractor or its assignee, upon presentation of properly certified invoices or vouchers, the sum of _____, arrived at by deducting from the sum of _____ (1) the amount of _____ representing all unliquidated partial or progress payments previously made on account to the Contractor or its assignee and all unliquidated advance payments (with interest, if any, thereon) applicable to the terminated portion of the Letter Contract and (2) the amount of _____ representing all applicable property disposal credits. Said sum together with all other sums heretofore paid, constitutes payment in full and complete settlement of the amount due the Contractor with respect to the terminated portion of the Letter Contract except as hereinafter provided in Clause 7.

Clause 7. Upon payment of said sum of _____, all obligations of the Contractor to perform further work or services or to make further deliveries under the terminated portion of the Letter Contract and all obligations of the Government to make further payments or to carry out undertakings in connection therewith shall cease: *Provided, however*, That nothing herein contained shall impair or affect in any way any covenants, terms, or conditions of the Letter Contract (as hereinafter amended) relating to the completed or continued portion thereof: *And provided further*, That, with respect to the terminated portion of the Letter Contracts, the following rights and liabilities of the parties are reserved (such reservations as may be necessary and proper). (See reservations in ASPR 8-712.4, Article 6.)

In Witness Whereof, the parties hereto have executed this Supplemental Agreement as of the day and year first above written:

THE UNITED STATES OF AMERICA,
By _____
_____
(Contracting Officer)
_____
(Contractor)
By _____
_____
_____
(Title)
_____
(Address)

§ 1008.712-53 *Form of triparty agreement for direct settlement of subcontracts.* The following format will be used for the agreement when the Government settles with the consent of, and through, the prime contractor, the termination claim of a fixed-price subcontractor.

This Agreement, entered into on this _____ day of _____, 195_, between the United States of America (hereinafter called "the Government"), represented by the Contracting Officer executing this agreement, and _____;

(i) A corporation organized and existing under the laws of the State of _____;
(ii) A partnership consisting of _____;
(iii) An individual doing business as _____, (hereinafter called "the Contractor"), with its principal office or place of business located at _____, and _____;

(i) A corporation organized and existing under the laws of the State of _____;
(ii) A partnership consisting of _____;
(iii) An individual doing business as _____, (hereinafter called "the Subcontractor"), with its principal place of business located at _____, Witnesseth that:

Whereas, the Government and the Contractor have previously entered into Contract No. _____, under which contract (hereinafter called "the Contract") a Subcontract was entered into between the abovenamed Contractor and Subcontractor (hereinafter called "the Subcontract"); and

Whereas, the Contract has been terminated for the convenience of the Government and the Subcontract has been completely terminated as a result thereof; and

Whereas, the Government, pursuant to 32 CFR 8.518-11, has undertaken to settle the termination claim of the Subcontractor and to make payment in connection therewith through the Contractor and has so notified the Contractor and Subcontractor, both the Contractor and the Subcontractor having previously consented to such direct settlement of the Subcontractor's termination claim; and

Whereas, the term "Subcontract termination inventory," as used herein, shall mean all materials (including a proper part of any common materials), determined by the parties to the pertinent Subcontract under the Contract, in connection with the settlement thereof, to be properly allocable to the terminated portion of the Subcontract, except any machinery or equipment subject to a separate contract or contract provision specifically governing the use or disposition thereof:

Now, Therefore, the parties hereto do mutually agree as follows:

Clause 1. The Subcontractor certifies that all Subcontract termination inventory (including scrap) has been retained, or otherwise acquired by it, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereto, if any, have been taken into account in arriving at this Agreement.

(b) With respect to all the aforesaid Subcontract termination inventory not so disposed of prior to date of execution of this Agreement, and described in the inventory schedules submitted by the Subcontractor in advance of or in connection with its Settlement Proposal, the parties shall promptly execute a storage agreement.

Clause 2. (a) The Subcontractor certifies that, prior to the execution of this Agreement, each of its respective immediate subcontractors whose claim is included in the claim settled by this Agreement has furnished to the Subcontractor, a certificate stating (i) that all of its Subcontract termination inventory (including scrap), has been retained, sold, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the Subcontract or Subcontracts, and (ii) that the Subcontractor has received from each of its immediate subcontractors whose claim was included in its claim a certificate substantially similar to clause (i) and this clause (ii) of this Clause 2 (a).

(b) The Contractor and Subcontractor each hereby transfers and conveys to the Government all the right, title and interest, if any, which either or both the Contractor and Subcontractor has received, or is entitled to receive, in and to Subcontract termination inventory, if any, not otherwise properly accounted for, and each of them hereby assigns to the Government any and all of its rights relating thereto whether arising under negotiated settlements, formula determinations or otherwise.

Clause 3. It is hereby agreed that all funds paid or to be paid hereunder to the Contractor for the benefit of the Subcontractor shall be held in trust by the Contractor for the benefit of such Subcontractor until such time as payment of such funds to the Subcontractor is accomplished or until refunded by the Contractor to the Government as hereinafter provided. In all cases where either the Contractor or the Subcontractor hereunder has not previously made such payments the Contractor and the Subcontractor respectively shall, within ten (10) days after receipt by it of the payment provided for hereunder, pay to each of its immediate subcontractors and suppliers (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor or the Subcontractor, as the case may be, so elects, any amounts then due and payable either to the Contractor or Subcontractor by such subcontractors and suppliers. If the Contractor or the Subcontractor fails to make any such payment within ten (10) days after receipt thereof by it, such failing Contractor or Subcontractor will, upon request, return directly to the Government the amount so payable to the Subcontractor or such immediate subcontractors and suppliers, less any amount then due and payable to the Contractor or the Subcontractor, as the case may be, by them.

Clause 4. Upon execution of this Agreement (and of the storage agreement(s) referred to in Clause 1),[1] the Government agrees to pay to the Contractor for prompt payment to the Subcontractor hereunder, upon presentation of properly certified invoices or vouchers, the sum of $_____ (Net amount of settlement), arrived at by deducting from the sum of $_____ (Gross amount of settlement) the amounts of (1)

[1] This parenthetical phrase is to be inserted only when the second form of Clause 1 is used.

$_____, representing unliquidated partial payments previously made on account of the termination claim(s) of the Subcontractor under its Subcontract(s) and (2) $_____, representing all applicable property disposal credits. Said sum, together with all other sums heretofore paid by the Government or the Contractor, constitutes payment in full and complete settlement of the amount due the Subcontractor by reason of the complete termination of work under the Contract(s), and the Subcontract(s) insofar as it pertains to the terminated portion(s) of the Subcontract(s), (except as hereinafter provided in Clause 5 of this Agreement).[2]

Clause 5. In consideration of the payment of said sum of $_____ (Net amount from clause 4), the Contractor and the Subcontractor do hereby assign, transfer, and set over to the United States of America all of their rights, title and interest, if any, in and to the claim against the Government for fair compensation for the termination of the Subcontract and all rights and claims of the Subcontractor against the Contractor for fair compensation for such termination, to the extent that the terminated Subcontract is allocable to the terminated portion of the Prime Contract.

(Or)

Clause 5. In consideration of the payment of said sum of $_____ (Net amount from clause 4), the Subcontractor hereby releases the Government and the Contractor from all liability with respect to its claim for fair compensation for the termination of the Subcontract under the Contract.

Clause 6. Notwithstanding any other provision of this agreement, the following rights and liabilities of the parties under the Subcontract are hereby revised:

All rights and liabilities, if any, of the parties under those clauses inserted in the Contract because of the requirements of Acts of Congress and Executive Orders, shall be reserved as far as the Subcontractor as well as the Contractor is concerned. These clauses pertain to, without limitation, the following topics: labor law, contingent fees, domestic articles, employment of aliens, "Official not to benefit."

Clause 7. Approval of Agreement.[3] This Agreement shall be Subject to the written approval of _____ or his duly authorized representative and shall not be binding until so approved.

Clause 8. Except for the original signing of this Agreement; and except as otherwise stated herein, the term "Contracting Officer" as used herein shall include his duly appointed successor or his duly designated representative. Agreement as of the date first herein written.

NOTE: Type or print names under all signatures.

THE UNITED STATES OF AMERICA,
By _____
(Contracting officer)
_____
(Name of prime contractor)
_____
Its _____
Business address:
_____
_____
Two witnesses to execution by Contractor:
_____
(Name)
_____
(Address)
_____
(City and State)
_____
(Name)
_____
(Address)
_____
(City and State)
_____
(Name of subcontractor)
By _____
Its business address:
_____
_____
Two witnesses to execution by subcontractor:
_____
(Name)
_____
(Address)
_____
(City and State)
_____
(Name)
_____
(Address)
_____
(City and State)

NOTE: See corporate secretary's certificate in par. 8–712.50 (32 CFR 8.712–50); see also AFPI 53–407 (32 CFR 1053.407).

§ 1008.712–54 *Direct settlement agreement by Government with subcontractors.* The following form of settlement agreement is suggested for use in direct settlement of subcontractor termination claims by the Government with subcontractors based upon assignment to the Government of the prime contractor's rights under terminated subcontracts.

This Agreement, entered into this _____ day of _____, 19__, between the United States of America (hereinafter called "the Government"), represented by the Contracting Officer executing this Agreement, and _____(Name of subcontractor),

(i) A corporation organized and existing under the laws of the State of _____,

(ii) A partnership consisting of_____,

(iii) An individual doing business as _____, (hereinafter called "the Subcontractor"), with its (his) principal office or place of business located at _____,

Witnesseth that:

Whereas, the Government and _____ (Name of prime contractor) (hereinafter called "the Contractor"), have previously entered into Contract No. _____, under which Contract (hereinafter called "the Contract") a Subcontract was entered into between the Contractor and Subcontractor (hereinafter called "the Subcontract");

Whereas, the Subcontract has been _____ (Partially or completely) terminated as a result of the termination in whole or in part of the Contract for the convenience of the Government; and

Whereas, the Government, pursuant to section 8–518.12 of the Armed Services Procurement Regulation, has undertaken to settle directly the claim of the Subcontractor for fair compensation and has so notified the Subcontractor and the Contractor in writing and the Subcontractor having consented to such direct settlement, the Prime Contractor having assigned to the Government all its rights, title and interest in and to the terminated Subcontract; and

Whereas, as used herein the following terms shall have the meanings hereinafter set forth;

Whereas, the term "Contract termination inventory," as used herein, shall mean all materials (including a proper part of any common materials), determined by the parties hereto, in connection with this settlement, to be properly allocable to the terminated portion of the Contract, except any machinery or equipment subject to a separate contract or contract provision specifically governing the use or disposition thereof; and

Whereas, the term "Subcontract termination inventory," as used herein, shall mean all materials (including a proper part of any common materials), determined by the parties to any pertinent subcontract under the Contract, in connection with the settlement thereof, to be properly allocable to the terminated portion of any such subcontract, except any machinery or equipment subject to a separate contract provision specifically governing the use or disposition thereof;

Now, Therefore, the parties hereto do mutually agree as follows:

Clause 1. The Subcontractor certifies that all Subcontract termination inventory (including scrap) has been retained or otherwise acquired by it, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this Agreement.

(Or)

(Alternative)—Clause 1. (a) The Subcontractor certifies that a portion of the Subcontract termination inventory (including scrap), has been retained or otherwise acquired by it, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this Agreement.

(b) With respect to all Subcontract termination inventory not so disposed of prior to the date of execution of this Agreement, and described in the inventory schedules submitted by the Subcontractor in advance of or in connection with its Settlement Proposal, the parties shall promptly execute a storage agreement. (See AFPI 8–758 (32 CFR 1008.758).)

Clause 2. (a) The Subcontractor certifies that, prior to the execution of this Agreement, each of the Subcontractor's immediate subcontractors whose claim is included in the claim settled by this Agreement has furnished to the Subcontractor a certificate stating (i) that all of its termination inventory (including scrap) has been retained or otherwise acquired by it, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the Subcontract or Subcontracts, and (ii) that the immediate subcontractors have received from each of their subcontractors whose claims were included in its claim a substantially similar certificate.

(b) The Subcontractor hereby transfers and conveys to the Government all the right, title and interest, if any, which the Subcontractor has received, or is entitled to receive, in and to the subcontract termination inventory, if any, not otherwise properly accounted for, and hereby assigns to the Government any and all of its rights relating thereto.

Clause 3. The Subcontractor certifies that, with respect to all items of Subcontract termination inventory the costs of which were taken into account in arriving at the amount of this settlement, or in the settlement of any claim included in this settlement: (i) all such items are properly allocable to the terminated portion of the Subcontract; (ii) such items are not in excess of the reasonable quantitative requirements of the terminated portion of the Subcontract; (iii) such items do not include any items reasonably usable without loss to the Subcontractor on its other work; and (iv) the Subcontractor has informed the Contracting Officer of any substantial change in the status of such items

[2] This parenthetical phrase in brackets is to be inserted only when the second form of Clause 5 is used and rights are excepted from the release.

[3] Where approval of settlement review board is necessary or the contracting officer requests such approval, the foregoing clause will be inserted in the agreement.

between the dates of its termination inventory schedules and the date of this Agreement.

Clause 4. It is hereby agreed that all funds paid or to be paid hereunder to the Subcontractor for the benefit of subcontractors or suppliers shall be held in trust by the Subcontractor for the benefit of such subcontractors or suppliers until such time as payment of such funds to the respective subcontractors or suppliers is accomplished or until there is a refund by the Subcontractor to the Government as hereinafter provided. In all cases where the Subcontractor has not previously made such payments, the Subcontractor shall, within ten (10) days after receipt of the payment provided for hereunder, pay to each of its immediate subcontractors and suppliers (or to their respective assignee) the respective amounts to which they are entitled, after deducting, if the Subcontractor so elects, any amounts then due and payable to the Subcontractor by such subcontractors and suppliers. If the Subcontractor fails to make any such payment within ten (10) days, the Subcontractor will, upon request, return directly to the Government the amount so payable to such immediate subcontractors and suppliers, less any amount then due and payable to the Subcontractor by them.

Clause 5. Upon execution of this Agreement (and of the storage agreement referred to in Clause 1),[1] the Government agrees to pay to the Subcontractor or its assignee, upon presentation of properly certified invoices or vouchers, the sum of $_____ (insert net amount of settlement), arrived at by deducting from the sum of $_____ (insert gross amount of settlement) the amounts of (1) $_____ representing unliquidated partial payments previously made on account of the termination claim of the Subcontractor; and (2) $_____ representing all applicable property disposal credits. Said sum, together with all other sums heretofore paid by the Government or the Contractor constitutes payment in full and complete settlement of the amount due the Subcontractor by reason of the complete termination of work under the Subcontract (except as hereinafter provided in Clause 7 of this Agreement).

Clause 6. In consideration of the payment of said sum of $_____ (net amount from Clause 5) the Subcontractor does hereby assign, transfer, and set over to the United States of America all of its right, title, and interest in and to its claim for fair compensation for the termination of the Subcontract and all its rights and claims against _____ (Prime Contractor) for fair compensation for such termination, to the extent that the terminated portion of the Subcontract is allocable to the terminated portion of the Prime Contract.

(Or)

Clause 6. In consideration of the payment of said sum of $_____, the Subcontractor hereby releases the Government from all liability with respect to its claim for fair compensation for the termination of the Subcontract under the Contract. In consideration of the payment of said sum, the Subcontractor also hereby releases _____ (Prime Contractor) from all liability and obligation to pay such claim for fair compensation for such termination in connection with the settlement of the Prime Contract to which the terminated portion of the Subcontract is allocable.

Clause 7. Notwithstanding any other provision of this Agreement, the following rights and liabilities of the parties under the Subcontract are hereby reserved:

All rights and liabilities, if any, of the Government and the Contractor under those clauses inserted in the Contract because of the requirements of acts of Congress and Executive orders, shall be reserved as far as the Subcontractor is concerned. These clauses pertain to, without limitation, the following topics: Labor law, contingent fees, domestic articles, employment of aliens, "officials not to benefit."

Clause 8. Approval of Agreement.[2] This Agreement shall be subject to the written approval of _____ or his duly authorized rerpesentative and shall not be binding until so approved.

Clause 9. Except for the original of this Agreement, and except as otherwise stated herein, the term "Contracting Officer" as used herein shall include his duly appointed successor or his duly designated representative.

In Witness Whereof, the parties hereto have executed this Agreement on the date first herein written.

NOTE: Type or print names under all signatures.

Two witnesses to execution by subcontractor:

_____
(Name)

_____
(Address)

_____
(City and State)

_____
(Name)

_____
(Address)

_____
(City and State)

THE UNITED STATES OF AMERICA,

By _____
(Contracting Officer)

_____
(Name of subcontractor)

By _____

Its _____

Business Address:

_____

_____

§ 1008.712–55 *Settlement of reservations.* The following form of settlement agreement is suggested for use in the settlement of exclusions or reservations.

This Settlement Agreement, entered into on this _____ day of _____, 19__, by the United States of America (hereinafter called "the Government"), represented by the Contracting Officer executing this Agreement, and _____,

(i) A corporation organized and existing under the laws of the State of _____,

(ii) A partnership consisting of _____,

(iii) An individual doing business as _____, (hereinafter called "the Contractor"), with its principal office or place of business located at _____,

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No. _____ under date of _____, which, together with any and all amendments, changes, modifications and supplements thereto, is hereinafter referred to as "the Contract"; and

Whereas, the Contract has been terminated; and

Whereas, a final settlement agreement was executed in connection with the termination of the Contract, said final settlement agreement being dated _____, and being designated as Supplement No. _____ to the Contract; and

Whereas, said final settlement agreement excepted from the settlement therein contained certain items as more fully described in said final settlement agreement, including the item(s) described in Clause 1 of this Agreement; and

Whereas, the Government and the Contractor have agreed to a settlement of said item(s) described in Clause 1 of this Agreement;

Now, Therefore, the parties hereto do mutually agree as follows:

Clause 1. The Government agrees to pay to the Contractor the sum of $_____ on account of the following item(s):

Item 1:

Clause 2. The Contractor hereby releases and forever discharges the Government from all liability, and from all claims and demands which the Contractor now has or may hereafter have, under the Contract insofar as it pertains to the Contract, based upon the item(s) described in Clause 1 of this Agreement.

In Witness Whereof, the parties hereto have executed this Agreement on the date first herein written.

NOTE: Type or print names under all signatures.

THE UNITED STATES OF AMERICA,

By _____
(Contracting Officer)

_____
(Name of contractor)

By _____

Its _____

_____
(Business address)

Two witnesses to execution by contractor:

_____
(Name)

_____
(Address)

_____
(City and State)

_____
(Name)

_____
(Address)

_____
(City and State)

§ 1008.751 *Termination clause for fixed-price contracts for personal services.*

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

(a) This contract may be terminated by the Government at any time within the period of its duration upon not less than 15 days' written notice by the Contracting Officer to the Contractor. The Contractor, with the written consent of the Contracting Officer, may terminate this contract upon not less than 15 days' written notice to the Contracting Officer, and the consent of the Contracting Officer shall not unreasonably be withheld.

(b) After receipt of a Notice of Termination, or subsequent to the written consent of the Contracting Officer as hereinabove provided, the Contractor shall (1) discontinue all work to the extent and on the date specified in such Notice, and (2) transfer title and deliver to the Government, in the manner, to the extent and at the times directed by the Contracting Officer, the completed and partially completed work, material, plans, drawings, data, information, reports, and other property produced as a part of, or acquired in connection with the performance of, the work terminated in such Notice.

(c) Upon termination of work as provided in this clause, the Contractor shall be paid that part of the fixed price set forth in this clause of this contract entitled "Payments"

[1] This parenthetical phrase is to be inserted only when the second form of Clause 1 is used.

[2] Where approval of settlement review board is necessary or the Contracting Officer requests such approval, the foregoing Clause will be inserted in the Agreement.

which has accrued for services rendered hereunder up to the effective date of such Notice and other amounts properly owing to the Contractor under the said "Payments" clause which are theretofore unpaid. Settlement of the termination of the contract under the provisions of this paragraph (c) shall be evidenced by a Supplemental Agreement to the contract. In the event of the failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amount so determined.

(d) Any dispute arising out of the termination of the contract under this clause shall be decided in accordance with the procedure prescribed in the "Disputes" clause hereof.

§ 1008.752 *Termination clause for technical services contracts.* The following clause will be set forth in any fixed-price contract for technical services.

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interests of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall (1) discontinue all work to the extent and on the dates specified in such Notice; (2) proceed promptly with the return to its plant of such of its contractor personnel as may be covered by said Notice; and (3) transfer title and deliver to the Government, in the manner, and to the extent and at the times directed by the Contracting Officer, the completed and partially completed work, material, plans, drawings, data, information, reports, and other property produced as a part of, or acquired in connection with the performance of the work terminated in such Notice.

(c) Upon termination of work, as provided in this clause, the Contractor shall, in respect to such contractor personnel as may be covered by said Notice of Termination, be paid that part of the fixed price set forth in the clause of this contract entitled "Payments" which has accrued for services rendered hereunder up to the effective date of such Notice, and for time necessary for such contractor personnel to return to the plant of the Contractor after the effective date of said Notice and any other amounts properly owing to the Contractor under said "Payments" clause which are theretofore unpaid. If, at the date of said Notice, certain costs have actually been incurred by the Contractor in connection with the contract preliminary to the departure of the contractor personnel covered by said Notice of Termination from the plant of the Contractor which are allocable to the entire period of performance contemplated hereunder, the Government will pay to the Contractor such sum as the Contracting Officer and the Contractor may agree is properly allocable to the terminated portion of the contract. Settlement under the provisions of this paragraph (c) shall be evidenced by a Supplemental Agreement to the Contract. In the event of the failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amount so determined.

(d) Any dispute arising out of the termination of the contract under this clause shall be decided in accordance with the procedure prescribed in the "Disputes" clause hereof.

§ 1008.753 *Termination clause for time-and-material contracts.* The following clause will be used in any time-and-material contract:

TERMINATION

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, (1) whenever the Contractor shall default in performance of this contract in accordance with its terms (including in the term default any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of 10 days (or such longer period as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default, or (2) whenever for any reason the Contracting Officer shall determine that such termination is in the best interests of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If, after Notice of Termination of this contract for default under (1) above, it is determined that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of the clause of this contract entitled "Excusable Delays," the Notice of Termination shall be deemed to have been issued under (2) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(b) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall (1) stop work under the contract on the date and to the extent specified in the Notice of Termination; (2) place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination; (4) assign to the Government, in the manner and to the extent directed by the Contracting Officer all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated; (5) with the approval or ratification of the Contracting Officer, which approval or ratification shall be final and conclusive for all the purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable, in whole or in part, in accordance with the provisions of this contract; (6) transfer title (to the extent that title has not already been transferred) and, in the manner, to the extent, and at the times directed by the Contracting Officer, deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination; (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Government; and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the Contractor has been or will be reimbursed under this contract; (7) use its best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in provision (6) of this paragraph: *Provided, however,* That the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer: *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of work covered by this contract or paid in such manner as the Contracting Officer may direct; (8) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and (9) take such actions as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest. The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting any amount reimbursable under the provisions of this clause. At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same, provided that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim, in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than 2 years from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such 2-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such 2-year period or any extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall there-

upon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause which amount or amounts may include a reasonable allowance for profit on work done. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

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

(1) If the termination of the contract is for the convenience of the Government:

(i) There shall be included for direct labor hours (as defined in the Schedule of the contract) an amount which shall be determined by multiplying the number of direct labor hours expended prior and up to the effective date of termination by the hourly rate or rates set forth in the Schedule less any hourly rate payments theretofore made to the Contractor.

(ii) There shall be included therein all costs of material reimbursable in accordance with this contract, not previously paid to the Contractor for the performance of this contract prior to the effective date of the Notice of Termination.

(iii) There shall be included therein the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory.

(2) If the termination of the contract is for the default of the Contractor:

(i) There shall be included for all direct labor hours (as defined in the Schedule of the contract) an amount which shall be determined by multiplying the number of direct labor hours expended prior and up to the effective date of termination by the hourly rate or rates set forth in the Schedule less the profit factor contained therein as indicated in the Schedule and less any hourly rate payments theretofore made.

(ii) There shall be included therein such costs as are set forth in subparagraphs (1) (ii) and (iii) of this paragraph (e): *Provided*, however, That there shall not be included any amounts for the preparation of the Contractor's Settlement Proposal.

(3) If the amount determined under subparagraphs (1) and (2), above, is less than the total payments theretofore made to the Contractor, the Contractor shall repay the excess amount to the Government.

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

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

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

(i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however*, That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until 10 days after the date of such retention or disposition.

(j) Unless otherwise provided for in this contract, or by applicable statute, the Contractor from the effective date of termination and for a period of 6 years after final settlement under this contract shall preserve and make available to the Government at all reasonable times at the office of the Contractor, but without direct charge to the Government, all its books, records, documents, and other evidence bearing on the cost and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

§ 1008.756 *Assignment to the Government of prime contractor's rights under terminated subcontracts.* As directed by the termination contracting officer, pursuant to the provisions of the termination clause, the prime contractor is obligated to assign to the Government all its right, title, and interest under any purchase orders or subcontracts terminated by reason of their relation to the terminated portion of the prime contract. The following is a suggested form of assignment.

ASSIGNMENT

Clause 1. On this _____ day of _____, 19__ _____ (Name of Prime Contractor), hereinafter called "the Prime Contractor," hereby transfers and assigns to the United States Government all of the right, title and interest of the aforesaid Prime Contractor in and to it Subcontract (or Purchase Order) No. _____, with _____ (Name of Subcontractor), hereinafter called "the Subcontractor," insofar as such Subcontract or Purchase Order is allocable to the terminated portion of its Prime Contract No. _____.

Clause 2. The United States Government hereby accepts the aforesaid transfer and assignment by the Prime Contractor of all of the Prime Contractor's right, title and interest in and to the aforesaid Subcontract or Purchase Order and assumes and undertakes to settle with and pay directly to the said Subcontractor such amounts as may be found to be due said Subcontractor by reason of the termination of said Subcontract or Purchase Order, insofar as such amounts are allocable to the terminated portion of the said Prime Contract.

Clause 3. The Prime Contractor hereby releases the United States Government from any obligation which the United States Government now has or may have to reimburse the Prime Contractor for any sums which the Prime Contractor might be required to pay to the Subcontractor by reason of the termination of the said Subcontract or Purchase Order.

Clause 4. The United States Government hereby releases the Prime Contractor from all obligation to negotiate and settle with and pay to the Subcontractor the amounts which are or will be due to the Subcontractor by reason of the termination of the said Subcontract or Purchase Order, insofar as such amounts are allocable to the terminated portion of the Prime Contract under which the said Subcontract or Purchase Order was issued and terminated. The United States Government further agrees to hold the Prime Contractor harmless in the event that any litigation arises in connection with such obligation, subject to the provisions of paragraph 5 hereof and any other limitations within the purview of the Armed Services Procurement Regulation and other existing applicable regulations as well as those set forth in the Contracting Officer's letter dated _____ directing the Prime Contractor to make this assignment.

Clause 5. In the event that the Subcontractor institutes litigation against the Prime Contractor in connection with any obligation referred to herein, the Prime Contractor hereby agrees promptly to notify the United States Government of such action and to defend such litigation or, if the United States Government so requests, to permit the United States Government to assume the defense of such litigation. The failure of the Contractor to comply with the provisions of this paragraph shall relieve the United States Government from all liability under this Assignment Agreement, or otherwise, to pay any claim arising in connection with any of such obligations.

In Witness Whereof, this Assignment Agreement has been executed by the Contractor and for and on behalf of the United States Government by the Contracting Officer as of the date first above written.

NOTE: Type or print names under all signatures.

_____
(Name of contractor)

By _____

Its _____

THE UNITED STATES OF AMERICA,

By _____
(Contracting Officer)

Two witnesses to execution by contractor:

_____
(Name)

_____
(Address)

_____
(City and State)

_____
(Name)

_____
(Address)

_____
(City and State)

§ 1008.757 *Security for partial payments.* The following tender and acceptance of lien will be used as security for partial payments to contractors:

(Name of Prime Contractor)
Contract No. ---
Subcontract (Purchase Order) No. ---

Prior to transfer to the United States Government of title to property the cost of which is included in the termination settlement claim and/or application of the undersigned Contractor, dated ---, for partial payment in the amount of $---, under Contract No. ---, the Contractor hereby warrants the title to all of said property to be free and clear of liens and encumbrances. In consideration of said partial payment in the sum of $--- being made by the United States Government to or for the benefit of the undersigned Contractor, the United Government is hereby granted a lien, paramount to all other liens, upon all property the cost of which is included in the said termination settlement claim and/or partial payment application. The undersigned Contractor hereby agrees not to further encumber said property prior to transfer of title thereto to the Government and its disposition under applicable Government regulations. The lien hereby granted will be discharged upon transfer of title to said property to the Government free and clear of all other liens and encumbrances and disposition of said property under proper Government direction, authority, or approval.

(Name of contractor)
By ---

(Name and official title or partner)
Business Address:

Dated ---
Accepted:

(Contracting Officer)

§ 1008.758 *Storage agreement.* The following form will be used to document storage of, and cover related services in connection with, Government property.

(a) *General.*

(Cover Sheet)

Contract No. AF ---

PR No.

SERVICE CONTRACT

UNITED STATES AIR FORCE

(Title of office in the field organization originating the Contract)
Contractor: ---
Contractor's address: ---
Contract for: ---
Amount: ---
Location of property: ---
Payments to be made by Air Force Finance Officer, at ---

The services to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the allotments below enumerated, the available balances of which are sufficient to cover the cost thereof.

The (---) (Designation of APD or AFPRO) at --- is designated as the office having overall administrative responsibility for this Contract.

This Contract, entered into this --- day of --- 19 --, by the United States of America, hereinafter called "the Government," represented by the Contracting Officer executing this Contract,* and --- a corporation organized and existing under the laws of the State of --- a partnership consisting of --- doing business as ---, an individual doing business as --- of the City of ---, in the State ---, hereinafter called "the Contractor,"

Witnesseth that:

Whereas, the Government owns certain property, as hereinafter described, as a result of change, termination, expiration, or completion of Contract No. (or Contracts numbered); and

Whereas, the Government has determined that such property shall be properly prepared for shipping and/or storage purposes;

Now, Therefore, in consideration of the premises and of the mutual covenants and agreements herein contained, and for other good and valuable considerations, the parties hereto agree as follows:

Clause 1. *Title to property.* The Contractor hereby acknowledges and confirms that the Government has title to said property, free and clear of any and all liens and encumbrances whatsoever. Said property consists of the following: (here list and describe the property. If the list is lengthy, attach it as an Exhibit to the Contract. In such event revise the last sentence above to read: "Said property is listed and described in Exhibit 'A' attached hereto and made a part hereof." If the list is so bulky as to make the use of an attached Exhibit impracticable then the listing of the property may be incorporated by reference, in which event a provision should be inserted stating, in essence, that the property is listed and described in a Schedule or List designated as "---" and consisting of --- number of pages, which Schedule has been prepared by ---, and certified by the preparing party as correct as to quantities and description, and true copies of which Schedule are on file with the Government in the Office of the Contracting Officer and at Headquarters, Air Materiel Command, Wright-Patterson Air Force Base, Ohio, and with the Contractor.)

Clause 2. *Services.* The Contractor agrees to perform all the services necessary in the handling, storage, preservation, packing, and delivery of the property, preparation for shipment, including local delivery (or other services), described in more detail as follows: (Appropriate description of services. Where appropriate, give location of property before and after storage. In cases involving packaging, set forth standards of packaging.)

The work will be executed in the best and most workmanlike manner by qualified, careful, and efficient workmen, with material of the best quality to be furnished by the Contractor at the Contractor's own expense, conforming to standard commercial practice.

Clause 3. *Period for performance.* The Contractor shall begin performance of the services set forth in Clause 2 on or before ---, and shall complete all of such services not later than ---.

Clause 4. *Consideration.* Upon completion of the services described in Clause 2, to the satisfaction of the Contracting Officer, the Government will pay the Contractor upon receipt of properly certified invoices or vouchers, the sum of --- as full payment for the services to be furnished hereunder.

Clause 5. *Inspection.* (Insert the clause set forth in AFPI 7-4037 (32 CFR 1007.4037).)

*This contract has been negotiated to the provisions of Section 2 (c) (10) of the Armed Services Procurement Act of 1947 (Public Law 413—80th Cong.). Any required determinations and findings have been made.

Clause 6. *Waiver of lien.* The Contractor hereby waives any lien on the property hereinabove described, to which it may be entitled and agrees it will not assert any lien thereon.

Clause 7. *Termination for convenience of the Government.*

(a) Performance of work under this Contract may be terminated, in whole or from time to time in part, by the Government whenever the Contracting Officer shall determine that such action is in the best interests of the Government.

(b) The Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination under this Clause, which amount or amounts may include a reasonable allowance for profit only in those cases where profit was allowed in the original contract price and only on costs for work done in connection with the terminated portion of the Contract. The Contract shall be amended accordingly and the Contractor shall be paid the agreed amount.

(c) Any disputes which may arise hereunder shall be subject to the provisions of the "Disputes" clause of this contract.

Clause 8. *Disposition of property.* In the event of contract completion or termination, partial or complete, the Contractor shall use its best efforts to sell any of the property, in the manner, to the extent, at the times and at the prices directed or authorized by the Contracting Officer: *Provided, however,* That the Contractor (i) shall not be required to extend credit to any purchaser and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer: *And provided further,* That the net proceeds from such sale or disposition of property shall, upon the direction of the Contracting Officer, be retained as a disposal credit or shall be forwarded to the Contracting Officer in the form of a certified check, postal money order or bank draft made payable to the Treasurer of the United States. The Contractor also agrees to furnish certified weights and scrap warranties if the material is sold as scrap.

Clause 9. *Segregation of property.* All the property shall be kept separate from all other property whether or not the property may, by law or by custom, be considered fungible, and shall be identified as Government-owned property. This does not require, however, that the property be stored in separate rooms, on different floor levels than other similar property, or in a particular space.

Clause 10. *Deliveries.* Deliveries of all, or from time to time, of part of the property from storage to the Government at the storage site or to its designated carrier or transfer agent will be accomplished by the Contractor on receipt of a written order from the Contracting Officer. However, such deliveries shall be accomplished subject to any limitations contained within Clause 2 of this tract.

Clause 11. *Changes.* The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this Contract, in any one or more of the following: (i) method of shipment or packing; and (ii) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, performance of this Contract, an equitable adjustment shall be made in the Contract price or delivery schedule, or both, and the Contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this Clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change; *Provided, however,* That the Contracting Officer, if he decides that the facts

justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this Contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

Clause 12. *Convict labor.* (Insert the clause set forth in ASPR 12-203 (32 CFR 12.203).)

Clause 13. *Eight-hour law of 1912.* (Insert the clause set forth in ASPR 12-303.1 (32 CFR 12.303-1).)

Clause 14. *Nondiscrimination in employment.* (Insert the clause set forth in ASPR 12-804 (32 CFR 12.804).)

Clause 15. *Officials not to benefit.* (Insert the clause set forth in ASPR 7-103.19 (32 CFR 7.103-19).)

Clause 16. *Covenant against contingent fees.* (Insert the clause set forth in ASPR 7-103.20 (32 CFR 7.103-20).)

Clause 17. *Disputes.* (Insert the clause set forth in ASPR 7-103.12 (32 CFR 7.103-12).)

Clause 18. *Liability for Government-owned property.*

(a) Except as otherwise specifically provided in this Contract, the Contractor assumes the risk of, and shall be responsible for, any loss or damage, resulting from lack of reasonable care on the part of the Contractor, to property of the Government in the possession or control of the Contractor in connection with this Contract (hereinafter called "Government property").

(b) Except for loss, destruction, or damage resulting from the Contractor's willful misconduct, negligence, or lack of good faith with respect to the protection of Government property, the Contractor shall not be liable for loss or destruction of or damage to such Government property (1) caused by any peril while the property is in transit off the Contractor's premises, or (2) caused by any of the following perils while the property is on the Contractor's or Subcontractor's premises, or on any other premises where such property may properly be located, or by removal therefrom because of any of the following perils:

Fire; lightning, windstorm, cyclone, tornado, hail; explosion; riot; riot attending a strike, civil commotion; vandalism and malicious mischief; aircraft or objects falling therefrom; vehicles running on land or tracks, excluding vehicles owned or operated by the Contractor or any agent or employee of the Contractor; smoke, sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby rising of a body of water; hostile or warlike action, including action in hindering, combating, or defending against an actual, impending, or expected attack by any government or sovereign power (de jure or de facto), or by any authority using military, naval, or air forces, or by an agent of any such government, power, authority, or forces; or other peril, of a type not listed above, which is customarily covered by insurance (or by a reserve for self-insurance) in accordance with the normal practice of the Contractor, or the prevailing practice in the industry in which the Contractor is engaged with respect to similar property in the same general locale.

The perils as set forth in (1) and (2), above, are hereinafter called "excepted perils."

(c) The Contractor represents that it is not including in the price hereunder, and agrees that it will not hereafter include in any price to the Government, any charge or reserve for insurance (including self-insurance funds or reserves) covering loss or destruction of or damage to the Government property caused by any excepted peril.

(d) Upon the happening of loss or destruction of or damage to any Government property caused by an excepted peril, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has directed that no such organization be employed), shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order and furnish to the Contracting Officer a statement of: (1) the lost, destroyed, and damaged Government property; (2) the time and origin of the loss, destruction, or damage; (3) all known interests in commingled property of which the Government property is a part; and (4) the insurance, if any covering any part of or interest in such commingled property. The Contractor shall be reimbursed for the expenditures made by it in performing its obligations under this subparagraph (d) (including charges made to the Contractor by the Loss and Salvage Organization, except any of such charges the payment of which the Government has, at its option, assumed directly), to the extent approved by the Contracting Officer and set forth in a supplemental agreement.

(e) With the approval of the Contracting Officer after loss or destruction of or damage to Government property, and subject to such conditions and limitations as may be imposed by the Contracting Officer, the Contractor may, in order to minimize the loss to the Government or in order to permit resumption of business or the like, sell for the account of the Government any item of Government property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor, that separation is impracticable.

(f) Except to the extent of any loss or destruction of or damage to Government property for which the Contractor is relieved of liability under the foregoing provisions of this Clause, and except for reasonable wear and tear or depreciation, or the utilization of the Government property in accordance with the provisions of this Contract, the Government property (other than property permitted to be sold) shall be returned to the Government in as good condition as when received by the Contractor in connection with this Contract.

(g) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government property, caused by an excepted peril, it shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction, or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

(h) The Government shall at all reasonable times have access to the premises wherein any Government property is located.

Clause 19. *Taxes.* (Insert the clause set forth in ASPR 11-401 (32 CFR 11.401).)

Clause 20. *Assignment of claims.* (Insert the clause set forth in ASPR 7-103.8 (32 CFR 7.103-8).)

Clause 21. *Notice to the Government of labor disputes.* (Insert the clause set forth in ASPR 7-105.3 (32 CFR 7.105-3).)

Clause 22. *Furnishing of materials and supplies by the Government at its option.* (Insert the clause set forth in AFPI 7-4009 (32 CFR 7.4009).)

Clause 23. *Inspection and audit of books.* (Insert the clause set forth in AFPI 7-4023 (32 CFR 7.4023).)

Clause 24. *Default.* (Insert the clause set forth in ASPR 7-103.11 (32 CFR 7.103-11).)

Clause 25. *Renegotiation.* (Insert the clause set forth in ASPR 7-103.13 (32 CFR 7.103-13).)

Clause 26. *Gratuities.* (Insert the clause set forth in ASPR 7-104.16 (32 CFR 7.104-16).)

Clause 27. *Definitions.* (Insert the clause set forth in ASPR 7-103.1 (32 CFR 7.103-1).)

Clause 28. *Equipment.* If this Contract covers packing and crating services of $1,000 or more, this Clause will be a part of this Contract:

The Contractor warrants that he has sufficient equipment facilities and plant capacity to perform the services for the estimated quantities of items set forth in the schedule during the Contract period.

Clause 29. *Weighing and marking.* If this Contract covers packing and crating services of $1,000 or more, this clause will be a part of this Contract:

Each contained (box, crate, barrel, etc.) shall be weighed and marked by the Contractor at the time packing and crating services are performed, except as otherwise provided for in this Contract. The costs of weighing and marking are included in the Contract price for items calling for packing and crating services. The Contractor guarantees that the scales used for weighing are accurate and that their accuracy will be checked and certified by an inspector acceptable to the Contracting Officer not less often than once each 6 months. The costs of such inspections will be borne by the Contractor. The Contractor also guarantees that all weighing and marking will be accurately performed. Failure to satisfactorily meet these requirements, as determined by the Contracting Officer, will be sufficient reason for termination of the Contract by the Government. Each container will be suitably and legibly marked as designated by the Contracting Officer or his authorized representative. Necessary information and instructions relating to markings required will be provided by the Contracting Officer or his representative, for each order against this Contract. Such markings will be governed by regulations applicable to the ordering agency.

Clause 30. *Examination of records.* (If the amount of this contract exceeds $1,000, insert the clause set forth in ASPR 7-104.15 (32 CFR 7.104-15).)

Clause 31. *Utilization of small business concerns.* (If the amount of this contract exceeds $5,000, insert the clause set forth in ASPR 7-104.15 (32 CFR 7.104-15).)

Clause 32. *Subcontracts for work or services.* (Insert the clause set forth in ASPR 7-4030 (b) (32 CFR 7.4030 (b)).)

Clause 33. *Extras.* (Insert the clause set forth in ASPR 7-103.3 (32 CFR 7.103-3).)

Clause 34. *Military security requirements.* (According to the requirements of ASPR 7-104.12 (32 CFR 7.104-12), insert the clause set forth in ASPR 7-104.12 (32 CFR 7.104-12).)

Clause 35. *Buy American Act.* (Insert the clause set forth in ASPR 7-103.14 (32 CFR 7.103-14).)

Clause 36. *Reporting of royalties.* (If the amount of this contract exceeds $10,000, insert the clause set forth in ASPR 9-110 (32 CFR 9.110).)

Clause 37. *Government property.* The Contractor shall comply with the provisions of Appendix B, Manual for Control of Government Property in Possession of Contractors, of the Armed Services Procurement Regulation.

Clause 38. *Approval of Contract.* (Insert the clause set forth in ASPR 7-105.2 (32 CFR 7.105-2).)

In Witness Whereof, the parties hereto have executed this Contract as of the date first herein written.

NOTE. Type or print names under all signatures.

THE UNITED STATES OF AMERICA,
By _____
(Contracting Officer)
_____
_____
(Name of contractor)
By _____
Its _____
_____
(Business address)
Two witnesses to execution by contractor:
_____
(Name)
_____
(Address)

(b) *No-cost storage.* The following changes will be made to the Storage Agreement Form provided in paragraph (a) of this section, to facilitate its use in the execution of a No-Cost Storage Agreement.

(1) Cover sheet: delete any reference to the making of payments.

(2) Clause 2, Services: delete and replace by the following:

The Contractor agrees to perform all services necessary in the handling, preservation and storage of the property (delete "handling" and/or "preservation" if inapplicable), and without cost to the Government release such items upon the expiration of the storage period set forth in Clause 3 below. The work will be executed in the best and most workmanlike manner by qualified, careful, and efficient workmen with material of acceptable quality to be furnished by the Contractor at the Contractor's own expense, conforming to standard commercial practice. The Contractor will permit the withdrawal for use and subsequent return to storage of such items as are requested by the Contracting Officer at no additional cost: *Provided, however,* That if such items are withdrawn and forwarded to a Government depot or Government contractor other than subject Contractor, removal and return of said items shall be at the expense of the Government: *And provided further,* That in the event shipping instructions are issued by the Contracting Officer for items included herein which items are to be forwarded to a Government depot or to a contractor other than subject Contractor, but which instructions are withdrawn before shipment is effected and it can be reasonably shown that Contractor has acted in furtherance of said orders, payment for packaging, preservation, and crating of said items shall be borne by the Government. With these exceptions, the services to be rendered by the Contractor under the contract will not be made the basis of any future claim against the Government for other compensation. The property will be stored on the Contractor's premises at _____.

(3) Clause 4, Consideration: delete and replace by the following:

Performance of the work, set forth in Clause 2, will be at no cost to the Government. Furthermore, no charge for work performed under this contract will be recovered as an indirect charge to other Government work unless expressly approved by the Contracting Officer.

(4) Insert the following Clause, to be numbered "5." All clauses which follow should be renumbered to follow consecutively from this Clause.

RIGHT OF USE

Upon the written consent of the Contracting Officer, the Contractor shall have the right to remove any and all of the property from storage at such times as the Contractor or its Subcontractors require the same for the performance of contracts with the Government. The Government shall make no charge under this contract for such use. The Contractor shall have the right to modify and adapt the property at no cost to the Government under this contract to the extent necessary for use in the performance of such Government contracts, and may return the property to storage as so changed or altered. In using the property, whether altered or unaltered, the Contractor will perform reasonable maintenance, repair and service consonant with sound manufacturing procedure. At such time or times as the purpose for which such property is removed is completed, the Contractor shall return such property to storage, in its original condition, excepting alterations and reasonable wear and tear. Return to storage will be effected by the Contractor unless otherwise authorized by the Contracting Officer. The Contractor shall make no charge under this contract for the cost of removing, preserving, repackaging, and returning to storage property removed for use in the performance of contracts with the Government. (Delete "preserving" and/or "repackaging" if inapplicable.)

(5) Clause 19, Taxes: delete in its entirety.

(6) Clause 20, Assignment of Claims: delete in its entirety.

(7) Clause 22, Furnishing of Materials and Supplies by the Government at Its Option: delete the last sentence and substitute: "In such event the Government will be equitably reimbursed by the contractor upon delivery of the fair market value of such materials and supplies prevailing at that time.

(8) Clause 28, Equipment: delete in its entirety.

(9) Clause 29, Weighing and Marketing: delete in its entirety.

(10) Clause 30, Examination of Records: delete in its entirety.

(11) Clause 31, Utilization of Small Business Concerns: delete in its entirety.

(12) Clause 32, Subcontracts for Work or Services: insert the clause set forth in § 1007.4030 (b) of this chapter.

(13) Clause 33, Extras: delete in its entirety.

(14) Clause 34, Military Security Requirements: unless this clause is mandatory according to the requirements of § 7.104–12 of this title, delete in its entirety.

(15) Clause 36, Reporting of Royalties: delete in its entirety.

(16) Clause 37, Approval of Contract: delete in its entirety.

(17) Optional clause: to be included as a clause within the storage contract whenever conditions outlined in § 1008.612–50 (d) exist.

"OPEN END" STORAGE PROVISION

Items of property, allocable to any or all of the Contractor's existing or subsequent contract or contracts, and available for storage as excess by reason of changes, terminations, expirations, or completions of USAF Contracts, shall be stored under the terms of this contract if, as to these items, the Contractor agrees to storage under this contract. The Contractor will submit for the approval of the Contracting Officer a list of such items of property to be incorporated within this contract; this list is to be exclusive of items used and returned by the Contractor under Clause 5, "Right of Use." Upon approval by the Contracting Officer, the list will be embodied within the contract as a consecutively lettered exhibit. Where submission of a list would be uneconomical, the Contractor may submit a description of such property, which description may take the form of appropriate references to listing contained in accountable property records.

(18) All other clauses will be as set forth in paragraph (a) of this section.

§ 1008.761 *Default letters.* (a) The letters referred to in § 1008.2004 (c) should be in substantially the following forms:

(1) Delivery schedule or extension thereof has expired.

You are notified that since you have failed to perform Contract No. _____ within the time required by the terms thereof, the Government is considering canceling said contract pursuant to General Provision _____ (Default). It is requested that you submit to the undersigned Contracting Officer within 10 days from the date of receipt hereof, any facts or circumstances which you believe excuse your failure to perform. Your attention is invited to the respective rights of the Contractor and the Government under General Provision _____ (Default) and the penalties that may be invoked in the event the decision is made to terminate your right to proceed.

(2) Delivery schedule has not expired.

You are notified that the Government considers your (specify the Contractor's failure or failures) a condition that is endangering performance of the contract in accordance with the terms. Therefore, unless such condition is cured within ten (10) days after receipt hereof (or such longer time as the Contracting Officer may deem appropriate) the Government may terminate subject contract for default under General Provision No. _____ (Default).

(b) The letter referred to in § 1008.2006 (d) should be in substantially the following form:

You are hereby notified that the Government will withhold default action under General Provision No. _____ on subject contract until _____ to allow you to (complete performance) (deliver item number) (on upon whatever basis the contractor is delinquent) so long as you continue to

make progress towards its completion by that date. In the event you fail to deliver within this time, termination action may be initiated without further notice. Moreover, the Government reserves all its rights under General Provision No. ____ (Default).

(c) The Show Cause Notice referred to in § 1008.2007 (a) should be in substantially the following form:

The Government hereby gives a notice of its intention to terminate your Contract No. ____, under the provisions of Clause ____ (Default) thereof. (Pending decision you are instructed to stop all work and to make no further commitments under subject contract and to advise all subcontractors and suppliers to do likewise.)[1]

Pending a final decision in this matter, it will be necessary to determine whether your failure to perform arose out of causes beyond your control and without fault or negligence on your part. Accordingly, you are hereby afforded the opportunity to present, in writing, any facts bearing on this question to Commander, AMC, Wright-Patterson Air Force Base, Ohio, Attn: MCPPJT (with copy thereof to the undersigned for information), on or before ____ (Date) (at least 10 days after date of this notice). Failure of the contractor to present any excuses within this time may be considered as an admission that none exist.

§ 1008.762 *Cover pages for supplemental agreements.*

§ 1008.762–1 *Cover page for supplemental agreement to fixed-price contract for supplies/services/research and development.*

Supplemental Agreement No. ____
to Contract No. ____
Purchase Order No. ____
Classification: ____
Docket No. ____

SUPPLEMENTAL AGREEMENT TO FIXED PRICE CONTRACT FOR SUPPLIES/SERVICES/RESEARCH AND DEVELOPMENT

(United States Air Force)

Contractor:
Agreement for: Partial
Complete termination settlement of contract
Settlement negotiated by:

1. Gross termination settlement		____
Less: 2. Gross disposal credits		____
3. Net settlement cost:		
Less: 4. Advance payments outstanding	____	
5. Interest on advance payments (to miscellaneous receipts)	____	
6. Partial payments outstanding	____	
7. Previous partial settlements (Contractor and subcontractor)	____	____
8. Termination amount payable:		
9. Total contract price (prior to this agreement) or contract price of item/units terminated		____
10. Payments to date	____	
11. Termination amount payable	____	
Less: 12. Final contract price		____
13. Reduction in contract price (credit)		____

The Finance Officer concerned is: Finance Officer, USAF ____

The Finance Officer will make payment out of any available balance of funds heretofore obligated on the original contract (or purchase order) as amended to date. The Finance Officer will follow the established practice of making payment from the various accounts on the basis of items involved.

NO PR ISSUED

This cover sheet is for administrative purposes only and not a part of the agreement.

Strike out inapplicable items

[1] Use stop work sentences only in the event there are no further requirements for the items or services or the contract contains a specific provision permitting work stoppage such as is contained in construction contracts.

§ 1008.762–2 *Cover page for supplemental agreement to CPFF contract for supplies/services/research and development.*

Supplemental Agreement No. ____
to Contract No. ____
Purchase Order No. ____
Classification: ____
Docket No. ____

SUPPLEMENTAL AGREEMENT TO COST-PLUS-FIXED-FEE CONTRACT FOR SUPPLIES/SERVICES/RESEARCH AND DEVELOPMENT

(United States Air Force)

Contractor:
Agreement for: Final settlement of terminated contract
Supplement negotiated by:

1. Gross termination settlement		____
Less: 2. Gross disposal credits	____	
3. Miscellaneous charges against Contractor under contract	____	
4. Net settlement cost		____
Less: 5. Advance payments outstanding	____	
6. Interest on advance payments	____	
7. Other payments made	____	____
8. Termination amount payable		____
9. Estimated cost-plus-fixed-fee (Prior to this Agreement):		
10. Net settlement cost	____	____
11. Estimated reserve for excluded claims	____	
Less: 12. Final contract price: (Consisting of $____ for reimbursement of costs and $____ for adjusted fixed fee.)		____
13. Reduction in contract price (credit)		____

The Finance Officer concerned is: Finance Officer, USAF ____

The Finance Officer will make payment out of any available balances of funds heretofore obligated on the original contract (purchase order) as amended to date. The Finance Officer will follow the established practice of making payment from the various accounts on the basis of items involved.

NO PR ISSUED

This cover sheet is for administrative purposes only and not part of the agreement.

Strike out inapplicable items

§ 1008.762–3 *Cover page for supplemental agreement to CPFF contract for supplies/services/research and development.*

Supplemental Agreement No. ____
to Contract No. ____
Purchase Order No. ____
Classification: ____
Docket No. ____

SUPPLEMENTAL AGREEMENT TO COST-PLUS-FIXED-FEE CONTRACT FOR SUPPLIES/SERVICES/RESEARCH AND DEVELOPMENT

(United States Air Force)

Contractor:
Agreement for: Partial settlement of terminated contract
Settlement negotiated by:

1. Amount of reduction in estimated cost	____
2. Amount of reduction in fixed fee	____
3. Total credit to contract	____

Finance Officer concerned is ____

NO PR ISSUED

This cover sheet is for administrative purposes only and not part of the agreement.

Strike out inapplicable items

§ 1008.762–4 *Cover page for supplemental agreement to fixed-price contract for supplies/services/research and development.*

Supplemental Agreement No. _____
to Contract No. _____
Purchase Order No. _____
Classification: _____
Docket No. _____

SUPPLEMENTAL AGREEMENT TO FIXED PRICE CONTRACT FOR SUPPLIES/SERVICES/RESEACH AND DEVELOPMENT

(United States Air Force)

Contractor:
Agreement for: Partial
Complete termination of contract at no cost
Settlement negotiated by:
Contract price of items/units terminated (credit) _____

Finance Officer concerned is: Finance Officer, USAF _____

NO PR ISSUED

This cover sheet is for administrative purposes only and not part of the agreement.

Strike out inapplicable items

§ 1008.762–5 *Cover page for supplemental agreement to fixed-price contract for supplies/services/research and development.*

Supplemental Agreement No. _____
to Contract No. _____
Purchase Order No. _____
Classification: _____
Docket No. _____

SUPPLEMENT AGREEMENT TO FIXED PRICE CONTRACT FOR SUPPLIES/SERVICES/RESEARCH AND DEVELOPMENT

(United States Air Force)

Contractor:
Agreement for: Settlement of excluded portion of previous settlement of—
Partial
Complete termination of contract
Settlement negotiated by:

1. Gross amount this settlement	_____
Less: 2. Disposal credits	_____
3. Net cost this settlement	_____
4. Amount payable	_____
5. Reserved for this settlement (By Supp. No. _____)	_____
Less: 6. Net cost this settlement (3)	_____
7. Reduction in contract price (Credit)	_____

The Finance Officer concerned is: Finance Officer, USAF _____

The Finance Officer will make payment out of any available balances of funds heretofore obligated on the original contract (or purchase) as amended to date. The Finance Officer will follow the established practice of making payment from the various accounts on the basis of items involved.

NO PR ISSUED

This cover sheet is for administrative purposes only and not part of the agreement.

Strike out inapplicable items

§ 1008.762–6 *Cover page for supplemental agreement to fixed-price contract for supplies/services/research and development.*

Supplemental Agreement No.	To Contract No.	Docket No.
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

SUPPLEMENTAL AGREEMENT TO FIXED-PRICE CONTRACTS FOR SUPPLIES/SERVICES/RESEARCH AND DEVELOPMENT

(United States Air Force)

Contractor:
Agreement for: Consolidated settlement of termination of contracts

1. Consolidated gross termination settlement	_____
2. Consolidated net settlement cost	_____
3. Consolidated termination amount payable	_____

Recapitulation and direction to paying Finance Officer as to each contract are set forth in succeeding pages of this cover sheet.

This cover sheet is for administrative purposes only and not part of the agreement.

(Page __ of __ Page Cover Sheet)

§ 1008.762–7 *Cover page for amendment to letter contract.*

Amendment No. _____
to Letter Contract No. _____
Classification: _____
Docket No. _____

AMENDMENT TO LETTER CONTRACT

(United States Air Force)

Contractor:
Agreement for:
Settlement of partially/completely terminated letter contract
Settlement negotiated by:

1. Gross termination settlement		_____
Less: 2. Disposal credits		_____
3. Net settlement cost		_____
Less: 4. Advance payments outstanding	_____	
5. Interest on advance payments (to miscellaneous receipts)	_____	
6. Partial payments outstanding	_____	
7. Previous partial settlements (contractors and subcontractors)	_____	
8. Termination amount payable		_____
9. Total authorized for obligation and expenditure (prior to this agreement)		_____
10. Payments to date	_____	
11. Termination amount payable (item 8)	_____	
12. Final amount authorized and obligated and/or expended		_____
13. Reduction in total authorized for obligation and expenditure (credit)		_____

The Finance Officer concerned is _____

The Finance Officer will make payment out of any available balances of funds heretofore obligated on the letter contract as amended to date. The Finance Officer will follow the established practice of making payment from the various accounts on the basis of items involved.

NO PR ISSUED

This cover sheet is for administrative purposes only and not part of the agreement.

§ 1008.762–8 *Cover page for fixed-price contract for supplies.*

Contract No. _____
For Direct Settlement With Subcontractor Under Contract No. _____
Purchase Order No. _____
Classification: _____
Docket No. _____

FIXED PRICE CONTRACT FOR SUPPLIES
(United States Air Force)

Contractor:
Agreement for: Direct settlement of termination claim as subcontractor under contract No. _____
Settlement negotiated by:

1. Gross amount this settlement		_____
Less: 2. Disposal credits		_____
3. Net cost this settlement		_____
Less: 4. Partial payments		_____
5. Amount payable		_____

The Finance Officer concerned is: Finance Officer, USAF _____

The Finance Officer will make payment out of any available balances of funds heretofore allotted to the original prime contract, viz:
Contract No. _____
Purchase Order No. _____, as amended to date.
Docket No. _____

NO PR ISSUED

This cover sheet is for administrative purposes only and not part of the agreement.

§ 1008.763 *Letter of consent by prime contractor to negotiation of amount due subcontractor.*

XYZ Corporation
GENTLEMEN:

1. Investigation discloses that settlement of terminated contract No. _____ may be expedited if the Government undertakes to negotiate the amount due _____ as a result of the termination by you of that company's subcontract (purchase order) under said prime contract. (If the prime contractor has requested assistance, this paragraph should be revised to conform with the facts.)

2. The Government will agree to be bound by the negotiation of the amount due said subcontractor by a contracting officer to be assigned for this purpose, if you will agree:

a. That the amount so negotiated, within maximum limits indicated by you, will be binding on you;

b. That you will upon request furnish any pertinent information accessible to you with respect to such claim;

c. That you will sign, in reliance upon the negotiated settlement made by the contracting officer to whom the subcontract is assigned for negotiation, the required certificate as to the subcontractor's charges being fair and reasonable and not more favorable to the subcontractor than you would make if reimbursement by the Government were not involved, which certificate may state that it is executed in reliance upon the determination made by the contracting officer; and

d. That you will make payment to the subcontractor of the amount certified by such contracting officer to be due the subcontractor, subject to any right of set-off you may have against the subcontractor.

3. If you sign and return the consent set forth below, the Government will undertake, to negotiate, the amount due the subcontractor on his termination claim.

4. The Government assumes no responsibility for settlement of the amount due to the subcontractor in the event that no agreement is reached by negotiation, nor does the Government hereby assume any obligation to make direct payment to the subcontractor of any amount.

_____
(Termination contracting officer)

The undersigned prime Contractor under Government contract No. _____ agrees to the direct negotiation by the Government of the amount due subcontractor, _____, resulting from the termination of contract (purchase order) No. _____ upon the conditions set forth in the foregoing letter, subject to a maximum limitation of $_____ (amount).

_____
(Prime Contractor)

§ 1008.764 *Form for certificate of amount due a subcontractor.*

Certificate

The undersigned certifies that, on the basis of negotiation with _____ (name and address of subcontractor) subcontractor to _____ (name and address of prime contractor) prime contractor with the Government under contract No. _____, he and the subcontractor have agreed upon the amount due said subcontractor on its termination claim resulting from termination of subcontract (purchase order) No. _____ and further certifies, on the basis of the subcontractor's certification, that all the property allocable to the terminated portion of the subcontract (or purchase order), the cost of which was included in the statement of charges submitted by the subcontractor, has been retained or disposed of, and the value thereof credited to subcontractor's claim, with due approval, or has been transferred to the Government; and the total amount negotiated as settlement with the subcontractor on said termination claim is _____, which sum was reduced by credits for disposal or retention of termination inventory in the amount of _____; that advance or partial payments applicable to this subcontract have been made to subcontractor by, or with the consent of contractor, totaling _____; and that the net amount owing by the prime contractor to the subcontractor is _____.

_____
(Termination contracting officer)

§ 1008.765 *Form for notice to and consent by the subcontractor to direct settlement by the Government of its termination claims.*

XYZ Corporation

Pursuant to the provisions of ASPR and AFPI 8–518.11 and 8–518.13 (32 CFR, Ch. I, Subch. A, and 1008.518–11 and 1008.518–13), the United States of America, acting through the undersigned Contracting Officer, proposes to settle directly the termination claim which you have filed with _____ (name and address of prime contractor) arising out of the termination of your subcontract No. _____ under Government prime Contract No. _____.

The Government will accept responsibility for settling your claim to the extent that it is allocable to the aforementioned Government contract on condition that you agree: (a) that your termination claim will be settled on the basis of the principles, policies and procedures set forth in ASPR and AFPI Sections VIII in the same manner as if your claim arose under a prime contract with the Government, (b) that upon the final settlement of your claim, by agreement or otherwise, you will, at the option of the Government, either (i) assign to the Government the claim against your purchaser resulting from the termination of your subcontract, or (ii) release your purchaser and the Government from all liability on account of the termination of your subcontract; and that you will execute such document or documents as a Contracting Officer of the Government may request to effect such assignment or release.

This proposal to accept responsibility for settling your claim, relates only to compensation for termination of your subcontract and does not include any claim which you may have for completed articles delivered to the prime Contractor prior to the termination of your subcontract or thereafter in accordance with the Notice of Termination, or any other claim which you may have against your prime Contractor under the subcontract.

If you will sign and return this consent set forth below, the Government will assume your termination claim for direct settlement on the foregoing conditions.

Very truly yours,

_____
(Contracting officer)

Contracting Officer:

The undersigned subcontractor under Government contract No. _____ consents to the direct settlement by the Government of its claim against _____ resulting from the termination of subcontract (purchase order) No. _____ upon the conditions set forth in the foregoing letter.

_____
(Subcontractor)

SUBPART T—CANCELLATION FOR DEFAULT

§ 1008.2002 *General.* (a) It is AF policy to use default concellation procedure when a contractor has not complied with the terms of the contract and, as a result of such noncompliance, cannot deliver to the Air Force the supplies and services called for under the contract in the manner and within the time which the Air Force has need for such supplies and services. AF policy is not to use default cancellation as a punitive measure but to use it as a method to insure the contractor's adherence to his contractual obligations and to protect the Government from losses which the Government may sustain as a result of the contractor's failure to comply with its contract obligations.

(b) It is estimated that the cost to the Government (exclusive of costs involved in any appeal by the contractor) or processing a cancellation for default involves a minimum administrative expense of $200. Therefore, in cases where the contracting officer is of the opinion that default action is warranted, but determines by contacting other potential

suppliers that the excess costs of reprocurement will not exceed $200, a no-cost convenience supplemental agreement may be entered into with the contractor if the contracting officer deems such action to be in the best interests of the Government. The contracting officer must then prepare a statement of findings for the contract file stating, along with the reasons therefor, the estimated excess costs of reprocurement and the sources that were contacted to obtain such estimate.

(c) Under a fixed-price type contract canceled for the default of a contractor, the Government may elect to take the inventory or any part thereof and pay the contractor according to the provisions of the Default clause; or the Government may elect not to take any of the inventory and pay the contractor only for supplies or services previously delivered or furnished. In either event, the contractor may be held liable to the Government for any excess costs the Government may incur in reprocuring the items terminated. In the case of cost-reimbursement type contracts canceled for default, the contractor is normally reimbursed his allowable costs and the fee reduced where appropriate. When a time-and-material contract is canceled for default, the contractor is normally reimbursed his allowable costs less the profit factor. In defaults involving the foregoing types of contracts, the Government does not generally hold the contractor liable for excess costs for reprocurement.

(d) In some instances it may be determined that a default cancelation of a particular contract would not be in the best interests of the Government because such a termination would have adverse effects upon reproduction under Government contracts. In such instances, the Government may elect not to exercise its rights under the default provisions of the contract on the premise that such action would not be in the best interests of the Government.

§ 1008.2004 *Responsibility of administrative contracting officer.* Administrative contracting officers have primary responsibility for initiating action pertaining to possible cancellation of contracts.

(a) Upon determination or notification that a contractor is delinquent as to any substantive provision of the contract, the administrative contracting officer will furnish full information to the procuring contracting officer (buyer), and recommend that the contractor be notified of the possibility of the contract being canceled for default.

(b) If the procuring contracting officer concurs in the advisability of so notifying the contractor, the administrative contracting officer will within 5 days notify the contractor by letter that the Government is considering cancellation for default by reason of the contractor's failure to comply with the delivery schedule, failure to make progress so as to endanger performance, or failure to comply with other contractual provisions (whichever is applicable).

(c) The contractor should be requested to submit within 10 days (or such longer time as the administrative contracting officer deems reasonable under the circumstances) its reasons why the contract should not be canceled for default. The letter should be forwarded by registered mail, return receipt requested, and should call the contractor's attention to the penalties that may be invoked if the contract is canceled for default. Suggested forms for this letter are set forth in § 1008.761 (a). One copy of the letter will be furnished to each of the following:

(1) The office having primary production responsibility.

(2) The responsible procuring contracting officer.

(3) Contractor's sureties, assignees, or guarantors, if any.

(4) The appropriate finance officer where the contractor has a guaranteed loan, progress payment, or advance payment.

§ 1008.2005 *Responsibility of production follow-up activities.* Where a contract is 90 days delinquent and a Show Cause Notice has not been furnished the contractor, the office having primary production responsibility will prepare, document, and deliver to the administrative contracting officer, within a period not exceeding 5 days immediately following the 90th day of delinquency, the production analysis data necessary to support a recommendation by the administrative contracting officer that the contractor be advised of possible default cancellation.

§ 1008.2006 *Responsibility of procuring contracting officer.* Procuring contracting officers will decide whether or not to cancel the contract for default. Procuring contracting officers may initiate default cancellation action based upon information furnished by an administrative contracting officer or upon their own initiative.

(a) Within 10 days after receiving a recommendation from the administrative contracting officer that the contractor should be notified of possible default cancellation, the procuring contracting officer will notify the administrative contracting officer of his concurrence or nonconcurrence. If the procuring contracting officer is unable to make a decision within 10 days, he will notify the administrative contracting officer of the date when a decision may be expected.

(b) In making a decision as to whether or not the contractor should be notified, the procuring contracting officer will consider all relevant factors including:

(1) Whether the contractor is entitled to, or consideration exists for, an extension of the delivery schedule by change order.

(2) Whether or not the contractor's delays are presently known to be excusable.

(3) Whether a failure to act would waive the delivery schedule in the contract and leave the Government with no firm date within which the contractor is required to perform.

(c) If the procuring contracting officer decides not to pursue further action for cancellation for default at that time, he will prepare a statement of findings and place it in the contract file. In addition, he will send a letter to the contractor notifying him that the Government will withhold further default action until a definite date provided the contractor continues to make progress toward the completion of the contract. Further, the letter will provide that the Government expressly reserves all of its rights under the default provisions of the contract.

(d) If consideration does not exist for an extension of the delivery schedule, and the contractor makes no application for an extension under applicable directives, the procuring contracting officer will immediately prepare and forward AFPI Form 49, "Termination Authority." The Termination Authority will recommend investigation for default cancellation and be supported by a memorandum stating the basic reasons therefor.

(e) Procuring contracting officers will, if requirements still exist, cause new procurements to be initiated within 30 days after receipt of notice that the contract has been canceled for default. Such reprocurement may, however, be effected prior to the issuance of the notice of default cancellation in those instances when the reprocurement meets the criteria for a public exigency. Upon receipt of the purchase request, the procuring contracting officer will take prompt action concerning the reprocurement. Reprocurement on the basis of a specification which is materially changed may release a fixed-price contractor from liability for excess costs of reprocurement. New contracts replacing canceled contracts will be placed according to all applicable procurement directives.

(f) If the requirements for the supplies or services under a delinquent contract no longer exist, and the contractor is amenable to the acceptance of a no-cost cancellation, the contracting officer may enter into a no-cost settlement agreement, if the contracting officer deems such action to be in the best interests of the Government. However, in such cases if the contractor is not amenable to acceptance of a no-cost settlement and the elements of actionable default are present, the contracting officer will send the file to Hq AMC for possible default cancellation. In the event a no-cost settlement agreement is entered into between the parties instead of processing the contract for default cancellation, a memorandum stating and explaining fully the reasons for such action will be placed in the contract file.

PART 1009—PATENTS, COPYRIGHTS, AND TECHNICAL DATA

Sec.

1009.050 Definitions.
1009.051 Policy.

Subpart A—Patents

1009.103 Patent indemnification of Government by contractor.
1009.103-4 Waiver of indemnity by the Government.
1009.103-50 Indemnification of contractor by the Government.

Subpart B—Copyrights

Sec.
1009.203 Material in which no adverse copyright should be established.
1009.251 Copyright infringement claims.

Subpart J—Processing of Purchase Requests and Military Interdepartmental Purchase Requests for Review

1009.1003 Exceptions to recommendations of the staff judge advocate.

Subpart K—Processing and Clearance of Invention Subcontract and Royalty Reports

Sec.
1009.1103 Definitions.
1009.1105 Responsibility of contractor.

AUTHORITY: §§ 1009.050 to 1009.1105 issued under sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314.

§ 1009.050 *Definitions*—(a) *Chief, Patents Division.* The term "Chief, Patents Division" means the Chief, Patents Division, Office of The Judge Advocate General, USAF, Hq USAF.

(b) *Patent officer.* The term "patent officer" means the staff judge advocate of an activity of the Department of the Air Force or any commissioned officer or civilian employee of that activity, who by reason of having had substantial experience in invention, patent, copyright, and trade mark matters has been appointed by the head of that activity for the processing of such matters within the activity.

§ 1009.051 *Policy.* Contracts should be negotiated or advertised and written to secure to the Government the benefits which the Government should receive, under the policies stated in Subchapter A, Chapter I, of this title, through the inclusion of appropriate patent, copyright, and technical data provisions with due regard to the fair treatment of industry.

SUBPART A—PATENTS

§ 1009.103–4 *Waiver of indemnity by the Government.* When it is determined to be in the interest of the Government, specific patents and/or applications for patents may be excludeed from the indemnity with the approval of the Deputy Chief of Staff, Materiel, Hq USAF.

§ 1009.103–50 *Indemnification of contractor by the Government.* No provision whereby the Government expressly agrees to indemnify the contractor against liability for patent infringement will be included in any contract except with the express approval of Hq USAF.

SUBPART B—COPYRIGHTS

§ 1009.203 *Material in which no adverse copyright should be established.* When it is desirable to provide, that no adverse copyright should be established in copyrightable material produced under contract for the Government, the contracting officer will request the drafting of an appropriate clause which must be included in the contract to make the provision effective.

§ 1009.251 *Copyright infringement claims.* (a) The jurisdiction of the Court of Claims has not been extended to tort cases for infringement of copyrights. Hence, no action may be brought against the United States in that court for an infringement of a copyright. The immunity of the United States from liability for copyright infringement, however, may not extend to its agents or employees.

(b) Immunity of the United States from liability to answer for damages for copyright infringement does not relieve Government officers, agents, and employees, acting within the scope of their official duties, from the duty of following the procedures set forth in this subpart.

SUBPART J—PROCESSING OF PURCHASE REQUESTS AND MILITARY INTERDEPARTMENTAL PURCHASE REQUESTS FOR REVIEW

§ 1009.1003 *Exceptions to recommendations of the staff judge advocate.* (a) Whenever a prospective contractor refuses to accept a provision, the use of which is authorized but is not mandatory, the matter will be referred to the staff judge advocate for further consideration and recommendation. The staff judge advocate will recommend in writing acceptance of any substitute provision proposed by the contracting officer or will furnish the contracting officer a written statement of the reasons why the proposed provision should not be accepted.

(b) The contracting officer will not accept any bid or proposal or request preparation of a contract so long as there is any disagreement between the prospective contractor and the recommendations of the staff judge advocate concerning patent, copyright, or technical data clauses, unless an exception from the recommendations of the staff judge advocate has been approved.

SUBPART K—PROCESSING AND CLEARANCE OF INVENTION, SUBCONTRACT AND ROYALTY REPORTS

§ 1009.1103 *Definitions.* (a) "Office administering the contract" means the administrative contracting officer, or, if there is no administrative contracting officer assigned, the activity charged with the administration of the contract.

(b) "Contract" as used in this subpart means the contract and all supplemental agreements and change orders thereto.

(c) "Clearance" means a letter or other formal communication forwarded to the appropriate audit liaison office or finance office by the appropriate staff judge advocate's office charged with the requirement of furnishing such communications pursuant to this subchapter, stating that the reporting requirements of the Patent Rights and/or the Reporting of Royalties clause contained in a contract have been complied with by the contractor.

§ 1009.1105 *Responsibility of contractor.* AF contracts containing a Patent Rights clause or a Reporting of Royalties clause place upon the contractor the obligation of forwarding the following information pertaining to inventions, subcontracts, and royalties directly to the office administering the contract:

(a) *Invention reports.* If the contract contains a Patent Rights clause, the following forms of reports are required:

(1) *Invention disclosure reports.* Written disclosures of each Subject Invention which reasonably appears to be patentable should be submitted promptly after the invention is conceived or first actually reduced to practice. See paragraph (c) (i) of the Patent Rights clause set forth in § 9.107–1 (c) of this title. Since no forms have been prepared by the Government for the use of contractors in forwarding Invention Disclosure Reports, contractors will submit such reports on their own forms or by letters. Each Invention Disclosure Report should be submitted in two copies and should contain or be accompanied by the following information:

(i) Name of inventor.

(ii) Title of invention.

(iii) Patent application serial number and/or contractor's invention docket number.

(iv) Date of filing or approximate date of expected filing.

(v) A statement as to whether or not a patent application claiming the invention has been or will be filed by or on behalf of the contractor.

(vi) A statement as to whether or not a confirmatory license has been forwarded to the contracting officer.

(vii) Where the contractor is investigating whether to file or has determined to file an application or where contractor is of the opinion that the invention is of doubtful patentability, inferior from an engineering standpoint or unlikely to be incorporated in equipment subsequently to be manufactured for the Government, a brief written description accompanied by appropriate drawings or sketches illustrating the invention.

(viii) Where the contractor decides not to file an application for a patent but has reason to believe that the invention has military value or is likely to be incorporated in equipment furnished to the Government, a written description, drawings and other data constituting the invention disclosure, which should be sufficiently complete to permit further patent processing by the Government with a minimum of delay.

(2) *Interim reports of inventions.* Interim Reports are required only under the versions of the Patent Rights clause in effect since January 4, 1955. The contractor is required under paragraph (c) (ii) of the clause set forth in § 9.107–1 (c) of this title to submit an Interim Report at least every 12 months, commencing with the effective date of the contract, listing all Subject Inventions which were conceived or first actually reduced to practice more than 3 months prior to the date of the report, or certifying that there were no such inventions. Each Interim Report will list any such inventions not listed in a prior Interim Report. The contractor has the option of submitting Interim Reports by either of the following methods:

(i) By the use of section I, of DD Form 882, "Report of Inventions and Subcontracts" in three copies, as authorized in §§ 9.107–1 (c) and 16.809 of this title.

(ii) By the use of contractor's own form or letter. If this alternative is used, the form or letter should be submitted in three copies and contain all of the information specified in this subparagraph.

(3) *Final reports of inventions.* The contractor is required under paragraph (c) (iii) of the clause set forth in § 9.107–

1 (c) of this title to submit a Final Report of Inventions prior to final settlement of the contract. The Final Report should include: A summary list of all Subject Inventions required by the contract to be reported, including all such inventions which have been previously reported in Invention Disclosure Reports or in Interim Reports of Inventions; and a statement that the inventions listed in the Final Report are the only Subject Inventions required to be reported under the contract. The Final Report must be accompanied by an Invention Disclosure Report of the content specified in paragraph (a) (1) of this section for each Subject Invention conceived or first actually reduced to practice in the performance of the contract and concerning which such a report has not previously been furnished. A negative report must be submitted by the contractor when there were no Subject Inventions under the contract. The contractor has the option of submitting Final Reports by either of the following methods:

(i) By the use of section I, DD Form 882, "Report of Inventions and Subcontracts," in three copies as authorized in §§ 9.107–1 (c) and 16.809 of this title.

(ii) By the use of contractor's own form or letter. If this alternative is used, the form or letter should be submitted in three copies and contain all the information specified in this subparagraph.

(b) *Subcontract reports.* The contractor is required, under the provisions of paragraph (h) of the Patent Rights clause set forth in § 9.107–1 (c) of this title, to furnish a Subcontract Report at the earliest practicable date but in any event prior to final settlement of the contract.

(1) If there were no subcontracts containing a Patent Rights clause, a negative report is required.

(2) For each subcontract containing a Patent Rights clause, the report should include: The name and address of the subcontractor; subcontract number; a copy of the subcontract Patent Rights clause or the date on which a copy was previously furnished to the office administering the contract; and notice when such subcontract is completed, and the date. The contractor has the option of submitting the required information by either of the following methods:

(i) By the use of section II, DD Form 882, "Report of Inventions and Subcontracts," in three copies as authorized in §§ 9.107–1 (c) and 16.809.

(ii) By the use of contractor's own form or letter. If this alternative is used, the form or letter should be submitted in three copies and contain the information specified in subparagraph (2) of this paragraph.

(c) *Royalty reports.* If the contract contains the Reporting of Royalties clause set forth in § 9.110 of this title and is in an amount which exceeds $50,000, the contractor is required to submit Royalty Reports under the provisions of either paragraphs (a) or (b) of the clause. When the contractor is operating under a blanket license agreement, e. g., one which either does not list any patents but authorizes use of all patents of the licensor covering a particular subject matter, or one which lists a great number of patents a sampling of which would indicate the subject matter covered, the contractor should furnish a copy of the license agreement, together with a listing of representative patents or applications covering inventions used in the performance of, and in the equipment delivered to the Government under, the contract.

(1) Royalty Reports under paragraph (a) of the clause.

(i) The contractor is required to report in writing as soon as practicable after execution of the contract the following information pertaining to royalties in excess of $250 (including the initial $250) paid or expected to be paid directly to any one person or firm in connection with the performance of the contract:

(*a*) The name and address of each such person or firm to whom royalties are paid.

(*b*) The patent numbers, patent application serial numbers (with filing dates), or other identification of the basis for such royalties.

(*c*) Brief description of the royalty-bearing unit, component or process, including part and model number if any.

(*d*) Total dollar amount of royalties.

(*e*) Percentage rate or dollars and cents amount of royalties on each such unit or process, if the dollars and cents amount of royalties is reported in lieu of the percentage rates of royalties, the unit price of the unit or component to which the royalties are charged should also be reported.

(ii) The contractor has the option of submitting the required information by either of the following methods:

(*a*) By the use of DD Form 783, "Royalty Report," in four copies as authorized in §§ 9.110–1 and 16.806 of this title.

(*b*) By the use of contractor's own form or letter. If this alternative is used, the form or letter should be submitted in four copies and contain the information specified in subparagraph (1) (i) of this paragraph.

(iii) A negative report must be submitted when no royalties in excess of $250 have been paid or are to be paid to any one person or firm in connection with the performance of the contract, but no report is required covering royalties paid by subcontractors.

(iv) If the contract does not contain a Patent Rights clause in addition to the Reporting of Royalties clause, the royalty report may be submitted at any time after execution of the contract. If, however, the contract contains a Patent Rights clause and a Reporting of Royalties clause, the royalty report should be submitted at the same time as the Final Report of Inventions set forth under paragraph (a) (3) of this section.

(2) Royalty Reports under paragraph (b) of the clause.

(i) When the contractor has obtained approval under the provisions of paragraphs (b) and (c) of the clause to file a single consolidated report of royalties, two copies of the letter of approval may be submitted in lieu of the report required by paragraph (a) of the clause.

(ii) Reports authorized under paragraph (b) of the clause will be submitted according to the letter of approval as soon as practicable after the close of the accounting period covered by the report and contain the required information. No forms have been prepared, or are required, by the Government for use in making such reports and, hence, contractors may submit the required information by use of contractor's own form or letter.

(iii) A negative report must be submitted for the accounting period when the total amount of royalties accruing to each licensor is at a rate less than $1,000 per annum on the contractors over-all business.

(iv) The contractors listed below have been authorized, under the provisions of paragraph (b) of the Reporting of Royalty clause of § 9.110 of this title, to file single, consolidated reports in lieu of furnishing a report under paragraph (a) of the clause.

American Phenolic Corporation, 1830 South 54th Avenue, Chicago, Illinois.

Bell Aircraft Corporation, Post Office Box No. 1, Buffalo 5, New York.

Bell Helicopter Corporation, Post Office Box No. 482, Fort Worth 1, Texas.

Boeing Airplane Company, Seattle Division, Seattle 14, Washington.

Curtiss-Wright Corporation, Wright Aeronautical Division, Wood-Ridge, New Jersey.

General Electric Company, One River Road, Schenectady 5, New York.

North American Aviation, Inc., International Airport, Los Angeles 45, California.

Western Electric Company, 195 Broadway, New York 7, New York.

Westinghouse Electric Corporation, East Pittsburgh, Pennsylvania.

PART 1010—BONDS AND INSURANCE

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1010.2701–2 Interpretations.

AUTHORITY: §§ 1010.101 to 1010.2701–2 issued under sec. 8012, 70A Stat. 468; 10 U. S. C. 9012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314.

SUBPART A—BONDS

§ 1010.101 *Definitions.*

§ 1010.101–50 *Annual bid bond.* An annual bid bond is a single bond which secures all bids submitted by a contractor to a procuring activity, or to such contracting officers of a procuring activity as may be designated by that activity, during a specific fiscal year in response to formal advertising. Such bond is furnished in lieu of separate bid bonds. It is used only in connection with contracts other than construction contracts.

§ 1010.101–51 *Annual performance bond.* An annual performance bond is a single bond executed in lieu of executing separate performance bonds for each contract. It is used only in connection with contracts other than construction contracts. (See § 1010.103–3.)

§ 1010.101–52 *Fidelity bond (blanket).* A fidelity bond (blanket) is a bond under which the obligor agrees to indemnify an employer up to an amount stated in the bond for losses caused by dishonesty on the part of all employees except those expressly excluded by written endorsement on the bond. (See § 1010.107 (a).)

§ 1010.101–53 *Forgery bond or policy (depositor's form).* A forgery bond or policy (depositor's form) is a bond or policy under which the obligor agrees to reimburse a purchaser and others named in the bond or policy (the insureds) in an amount stated in the bond or policy. (See § 1010.107 (b).)

(a) For losses caused by the forging or altering of a check, draft, or similar instrument issued by or purported to have been issued by any of the insureds named in the bond or policy; and

(b) For losses resulting from the fact that a check or draft has been obtained from the insureds through the device of impersonation.

§ 1010.101–54 *License or permit bond.* A license or permit bond is a bond which secures to a municipality or other public authority the payment of fines or the amount of any losses sustained as a result of action taken, or omitted to be taken, in violation of the terms of a license or permit. The indemnity sometimes runs to third persons in addition to the municipality.

§ 1010.101–55 *Consent of surety.* A consent of surety is an instrument by which the surety or sureties on a bond or bonds supporting a contract consent(s) to a supplemental agreement or to a change order which modifies or amends the contract, and agree(s) that the bond or bonds previously given to support the basic contract will apply to the contract as modified.

§ 1010.102 *Bid bonds*—(a) *Specific bid bonds.* Whenever a bid bond is required, the procuring contracting officer will require a bond in an amount deemed adequate for the protection of the Government. Usually the penal sum will be at least as much as the penal sum of the performance and/or payment bond, and usually the penal sum will not be less than 20 percent of the amount of the bid. Standard Form 24, "Bid Bond," will be utilized.

(b) *Annual bid bonds.* Annual bid bonds may be used only in connection with contracts other than construction contracts. Such bonds will cover all bids submitted to the Air Force (or components thereof if the bond is so restricted) during the fiscal year for which the bond is issued. Contractors who have filed acceptable annual bid bonds will be listed, and the list will be distributed periodically.

§ 1010.103 *Performance bonds.*

§ 1010.103–1 *Performance bonds in connection with contracts other than construction contracts*—(a) *General.* Performance bonds will be required when, in the opinion of the procuring contracting officer, they are necessary to protect the interests of the Government. The penal sum of percentage will be fixed by the procuring contracting officer in an amount deemed adequate for the protection of the Government, but usually such penal sum will not be less than 20 percent of the total amount of the contract.

(b) *Additional performance bonds.* If a performance bond has been required in connection with a contract other than a construction contract, and there is executed a change order in excess of $25,000 or a supplemental agreeement providing for any increase in the contract price, an additional performance bond to cover the increase shall be furnished unless it is waived in accordance with law. In lieu of an additional bond, a consent of surety in the form set forth in § 1010.203 (a) may be furnished.

§ 1010.103–2 *Performance bonds in connection with construction contracts*—(a) *General.* Performance bonds will be required in connection with all construction contracts exceeding $2,000 in amount (except cost-type contracts as specified in paragraph (c), of this section, as required by the act of August 24, 1935, as amended (49 Stat. 793; 40 U. S. C. 270a–270e), popularly known as the Miller Act. The penal sum of the performance bond will be in an amount deemed adequate by the procuring contracting officer for the protection of the Government, but not in a lesser amount than any payment bond required in connection with the same contract. The requirement of a performance bond may be waived for so much of the work under the contract as is to be performed in a foreign country, provided the procuring contracting officer finds that it is impracticable for the contractor to furnish such bond. For required contract clause, see § 1007.3103–9 of this chapter.

(b) *Additional performance bonds.* When, in connection with a construction contract, there is executed a change order in excess of $25,000, or a supplemental agreement providing for any increase in the contract price, an additional performance bond to cover the increase will be furnished. In lieu of an additional bond, a consent of surety in the form set forth in § 1010.203 (a) (1) may be furnished.

(c) *Requirement in cost-type construction or facilities contracts.* (1) The Miller Act provides that performance and payment bonds are required in construction contracts which exceed $2,000 in amount. However, under the authority of Regulations Governing the Authority to Contract Under Title II of the First War Powers Act, as Amended, (55 Stat. 839; 50 App. U. S. C. 611) and Executive Order 10210 (16 F. R. 1049) Issued Thereunder, the Secretary of the Air Force has waived performance and payment bonds under cost-type (with or without fixed fee) construction contracts and cost-type facilities contracts involving construction work. Under cost-type contracts such bonds are unnecessary and any governmental expense for them is unwarranted. This is so for the reasons:

(i) That in cost-type contracts, performance bonds are no protection against default since the government could most probably not hold a cost-type contractor liable for excess damages.

(ii) That sufficient protection under cost-type contracts is accorded the materialmen without the use of payment bonds by reimbursing the contractor for costs incurred which would include amounts paid to materialmen.

(2) Accordingly, notwithstanding the existing requirements of § 10.103–2 of this title, performance bonds will not be required in connection with cost-type (with or without a fixed fee) construction contracts and cost-type facilities contracts involving construction work except where an official determines that, because of special circumstances involved in the particular case, a performance bond will be required.

§ 1010.103–3 *Annual performance bonds.* Annual performance bonds may be used only in connection with contracts other than construction contracts.

Any such bond will be available to cover only the contracts awarded by a single purchasing office or activity because of the need to record obligations under the bond which have the effect of progressively reducing the unobligated penal amount thereof. An additional bond will be required whenever the unobligated balance of penal amount of a particular bond is insufficient to satisfy additional contractual bond requirements.

§ 1010.104 *Payment bonds.*

§ 1010.104–1 *Payment bonds in connection with contracts other than construction contracts.* Payment bonds will not usually be required in connection with contracts other than construction contracts even though performance bonds are required.

(a) *Additional payment bonds.* (1) If a payment bond has been required in connection with a contract other than a construction contract, and there is executed a change order in excess of $25,000, or a supplemental agreement providing for any increase in the contract price, an additional payment bond to cover the increase shall be furnished, unless it is waived in accordance with law. In lieu of an additional bond, a consent of surety in the form set forth in § 1010.203 (a) (1) may be used.

(2) When, in connection with a construction contract, there is executed a change order in excess of $25,000 or a supplemental agreement providing for any increase in the contract price, an additional payment bond to cover the increase shall be furnished. In lieu of an additional bond, a consent of surety in the form set forth in § 1010.203 (a) (1) may be used.

§ 1010.104–2 *Payment bonds in connection with construction contracts—*(a) *General.* Payment bonds will be required in connection with all construction contracts exceeding $2,000 (except cost-type contracts as set forth in paragraph (b) of this section) as required by the Act of August 24, 1935, as amended (49 Stat. 793; 40 U. S. C. 270a–270e), popularly known as the Miller Act. The requirement of a payment bond may be waived for that portion of the work which is to be performed in a foreign country, provided the procuring contracting officer finds that it is impracticable for the contractor to furnish such bond. For required contract clause, see § 1007.3103–9 of this chapter.

(b) *Requirement in cost-type construction or facilities contract.* Notwithstanding the existing requirements of § 10.104–2 of this title, payment bonds will not be required in connection with cost-type (with or without a fixed fee) construction contracts and cost-type facilities contracts involving construction work, subject to the same exception, authority to make exception, and procedure as is provided in § 1010.103–2 (c) for performance bonds.

(c) *Penal sum.* The penal sum of the payment bond will be as follows:

(1) When the contract price is not more than $1,000,000, the penal sum will be 50 percent of the contract price.

(2) When the contract price is more than $1,000,000, but not more than $5,000,000, the penal sum will be 40 percent of the contract price.

(3) When the contract price is more than $5,000,000, the penal sum will be $2,500,000.

§ 1010.105 *Advance payment bonds.* Generally, the security provisions of an advance payment agreement should make it unnecessary to require a bond to protect the interests of the Government. However, Hq AMC, will recommend a bond requirement when such requirement is deemed necessary for adequate security. Whenever a bond requirement is made, the penal sum of the bond will equal the full amount of the advance payment it supports.

§ 1010.106 *Patent infringement bonds.* Even if a performance bond has not been executed, the requirement of a patent infringement bond will be the exception rather than the rule. Where, however, a supply contract or construction contract contains a patent clause of the type set forth in Part 9, Chapter I, of this title and the financial responsibility of a contractor is unknown or doubtful, a patent infringement bond may be required.

(a) On such bonds the penal sum will be the lowest which, in the exercise of sound judgment, is deemed adequate for the protection of the interests of the United States.

§ 1010.107 *Other types of bonds—*(a) *Fidelity bonds.* (1) Fidelity bonds will be required in connection with cost or cost-plus-a-fixed-fee supply contracts, construction contracts, or contracts for the operation of Government-owned plants, only in those cases, where, it is desirable to obtain the investigating and claim facilities of a surety company and such bonds are considered to be reasonably necessary for the protection of the contractor or the Government.

(2) When a fidelity bond is required, the Primary Commercial Blanket form of fidelity bond as standardized by the Surety Association of America or its equivalent is the approved form of fidelity bond. A rider should be attached thereto providing for notice to the procuring activity concerned in the event of any change in or cancellation of the bond.

(b) *Forgery bonds.* (1) This type of bond will be required in connection with cost or cost-plus-a-fixed-fee supply contracts, construction contracts, or contracts for the operation of Government-owned plants, only when the Commander, AMC, or his delegatee determines that a forgery bond or policy is desirable in order to obtain the investigating and claims facilities of a surety company and such bonds are considered to be reasonably necessary for the protection of the contractor or the Government.

(2) The depositor's form of forgery bond or policy as standardized by the Surety Association of America or its equivalent is the approved form of forgery bond. A rider should be attached thereto providing for notice to the procuring activity concerned in the event of any change in or cancellation of the bond.

§ 1010.108 *Execution and administration of bonds—*(a) *Surety bond provisions in invitations for bids on other than construction contracts.* When a bid bond and performance bond are required, the invitation for bids must include provisions similar to the following:

(1) *Bid guaranty requirement.* Bids in a total sum of _____ must be accompanied by a guaranty in the amount of 20 percent of the aggregate amount of the bid unless bidder has an annual bid bond on file with MCPPBB.

(2) *Type of bid guaranty.* Bidder shall indicate the particular form of guaranty applicable to this bid by checking the appropriate box below:

☐ Standard Form 34, "Annual Bid Bond (Supplies)," on file (insert serial number) _____.

☐ Standard Form 24, "Bid Bond," executed by surety company.

☐ Standard Form 24, "Bid Bond," with security in form of certified check, cash, etc. The Government reserves the right to retain any such security until the contract is awarded or until an acceptable performance bond has been submitted by the successful bidder. In case certified checks are used as security, such checks will be drawn to the order of the Treasurer of the United States.

(3) *Performance bond requirement.* Contractors entering into contracts with the Government for any or all of the articles called for under this Invitation for Bids will be required to furnish a satisfactory performance bond on Standard Form 25 or Standard Form 27 in penal amount of 20 percent of total amount of contract.

(b) *Patent infringement bond.* The appropriate patent infringement bond form follows:

Know all men by these presents, that we, _____ as Principal, and _____ as Surety, are held and firmly bound unto the United States of America, hereinafter called the Government, in the penal sum of _____ dollars, lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas the principal entered into a certain contract, hereto attached, with the Government, dated _____, 19__, for _____ and whereas the said principal has specifically obligated himself in said contract to hold and save the Government, its officers, agents, servants, and employees, harmless from liability of any nature or kind, including cost and expenses, for or on account, of any patented or unpatented invention, article, or appliance manufactured or used in the performance of that contract, including their use by the Government of the articles therein contracted for:

Now, therefore, if the principal shall well and truly perform and fulfill the above undertaking and agreement, and shall promptly make payment of any judgment and costs obtained against the United States under the provisions of the Act of June 25, 1910 (36 Stat. 851), as amended by the Act of July 1, 1918 (40 Stat. 705), or expenses incident thereto, then this obligation to be void, otherwise to remain in full force and effect.

In witness whereof, the above bounden parties have executed this instrument under their several seals this _____ day of

_____, 19__, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representatives, pursuant to authority of its governing body.

SUBPART B—SURETIES ON BONDS

§ 1010.201 *General requirements of sureties*—(a) *Corporate sureties*—(1) *Acceptability.* To be acceptable, the corporate surety must have obtained from the Secretary of the Treasury authority to do business under the Act of August 13, 1894 (28 Stat. 279), as amended by the Act of March 23, 1910 (36 Stat. 241): 6 U. S. C. 8. Treasury Department Form 356, "Companies Holding Certificates of Authority From the Secretary of the Treasury Under Act of Congress Approved July 30, 1947, 6 U. S. C. 6–13) as Acceptable Sureties on Federal Bonds," is published annually. This form indicates the maximum penal sum in which any corporate surety may underwrite any one obligation. Any corporation whose name is on this form is acceptable within the limits of such approval.

(2) *Corporate cosureties.* More than one corporate surety may be accepted as surety upon any recognizance, stipulation, bond, or undertaking in connection with either supply or construction contracts, provided that in no case will the liability of any such cosurety exceed the maximum penal sum in which the corporate surety is qualified to underwrite any one obligation. On bonds covering supply contracts where the amount of the bond is greater than the underwriting limitation of the corporate surety, the latter may reinsure with a corporation on the acceptable list of corporate sureties, having the required underwriting capacity. Reinsurance agreements are not acceptable in connection with construction contracts. It is not necessary that corporate cosureties obligate themselves for the full amount of the bond. Each corporate surety may set forth the limit of its liability in the bond as a definite and specified sum in which the corporate surety is qualified to underwrite any one obligation. As further indicated by the aforementioned forms, the sureties must, however, bind themselves "jointly and severally" for the purpose of allowing a joint action or actions against any or all of them. When the bond is to be executed by two or more corporate sureties, Standard Form 27 will be used in the case of a performance bond, and Standard Form 27A will be used in the case of a payment bond, each in accordance with the accompanying instructions.

(b) *Individual sureties*—(1) *Acceptability.* Individual sureties are acceptable for all types of bonds other than fidelity, forgery and annual bid bonds, provided that they meet the requirements specified in subparagraphs (3), (4), and (5) of this paragraph.

(2) *Number.* If individual sureties are used, at least two responsible individuals will be on each bond.

(3) *Citizenship.* Except as prescribed in subparagraph (4) of this paragraph, individual sureties will be citizens of the United States.

(4) *Domicile.* Sureties on bonds executed in foreign countries, the Canal Zone, Puerto Rico, Hawaii, Alaska, Guam, or any possession of the United States, to secure the performance of contracts entered into in those places, need not be citizens of the United States. However, unless they are citizens of the United States, they must be domiciled in the country, Territory, or possession where the contract is to be performed.

(5) *Extent of liability.* The liability of each individual surety shall extend to the entire penal amount of the bond.

(6) *Justification.* Individual sureties will each justify in an amount not less than the penal amount of the bond.

(7) *Stockholders as sureties.* In connection with any bond of which a corporation is the principal obligor, a stockholder of that corporation is acceptable as cosurety on the bond: *Provided,* That his net worth exclusive of his stock holdings in the corporation is equal to the amount for which he justified: *And provided further,* That such fact is expressly stated in his affidavit of justification.

(8) *Affidavit of individual surety.* Standard Form 28 will be used in connection with the justification of an individual surety.

(c) *Partnerships as sureties.* A partnership or other unincorporated association, as such, will not be accepted as a surety. The individual members of the partnership or association may, of course, if they meet other requirements, qualify as sureties. Individual members of a partnership or association will not, however, be acceptable as sureties on bonds under which the partnership or association, or any copartner or member thereof, is the principal obligor.

(d) *Substitution or replacement of a surety.* In case of financial embarrassment, failure, or other disqualifying cause on the part of a surety under a bond, the Commander, AMC, will require the substitution of a new surety satisfactory to him.

§ 1010.203 *Consent of surety*—(a) *Consent of sureties to modification.* If a contract is supported by a payment or a performance bond, the consent of the surety should be obtained to contract modifications accomplished by supplemental agreement or change order as follows:

(1) *Supplemental agreements.* Subject to the provisions of subparagraph (3) of this paragraph, the consent of the surety should be obtained to any supplemental agreement; provided, that if a supplemental agreement is issued pursuant to the "Changes" clause of the contract, and expressly refers to that clause as the authority for issuance, consent of the surety is required only if the supplemental agreement increases the contract price by more than $25,000.

(2) *Change orders.* Subject to the provisions of subparagraph (3) of this paragraph, the consent of the surety should be obtained to any change order which increases the contract price by more than $25,000, or which grants an extension of performance time unless the extension of performance time is granted pursuant to the "Changes" clause of the contract, and expressly refers to that clause as the authority for the grant.

(3) *Exception to requirement of consent surety.* The provisions of subparagraphs (1) and (2) of this paragraph, are subject to the qualification that the consent of a surety under a bond executed prior to the execution of a supplemental agreement or change order is not necessary, if:

(i) An additional bond is furnished in support of the supplemental agreement or change order, and

(ii) Such surety is also surety on the additional bond.

(b) *Forms of consent of surety authorized for use.* The following formats will be prepared by typewriter as required; they will not be established as local forms nor reproduced as such for subsequent fill-in purposes.

(1) Consent of surety to a modification providing for an increase in the penal sums of bonds previously given:

CONSENT OF SURVEY

Date _____

Contract No. _____ Modification No. _____

Consent of Surety is hereby given to the foregoing contract modification, and the surety agrees that its bond or bonds shall apply and extend to the contract as modified or amended thereby. The principal and surety further agree that on and after the execution of this consent, the penalty of the aforementioned performance bond or bonds is hereby increased by _____ dollars[1] and the penalty of the aforementioned payment bond or bonds is hereby increased by _____ dollars.[1]

In presence of—

_____

_____

[SEAL]

_____

(Individual principal)

_____

(Business address)

_____

(Corporate principal)

_____

(Business address)

Attest:

_____

By _____

(Affix corporate seal)

_____

_____

(Corporate surety)

_____

(Business address)

_____

By _____

(Affix corporate seal)

(2) Consent of surety without providing for an increase in the penal sums of bonds previously given:

CONSENT OF SURETY

Date _____

Contract No. _____ Modification No. _____

Consent of Surety is hereby given to the foregoing contract modification, and the surety agrees that its bond or bonds shall

[1] Here fix an amount of increase at least in the same proportion that the penalty on the original bond bears to the contract price on the original contract. The penalty of the payment bond shall not be increased beyond two million five hundred thousand dollars.

apply and extend to the contract as modified or amended thereby.

In presence of

(Address)

(Corporate surety)

(Business address)

Attest:

By ---

(Affix corporate seal)

SUBPART D—INSURANCE UNDER FIXED-PRICE CONTRACTS

§ 1010.401 *Policy.* Insurance in connection with fixed-price contracts: The requirements under applicable laws, such as State laws governing workmen's compensation and employers' liability coverage and Federal laws, such as the Federal Longshoremen's and Harbor Workers' Act where applicable, or, in the case of common carriers, cargo insurance as required by Interstate Commerce regulations, are sufficient to compel the contractor to comply with such laws. The contracting officer will not, therefore, impose insurance requirements other than evidence from the contractor that such laws have been complied with. Where a performance bond supports the contract such evidence will not be necessary.

(a) *Insurance on Government property.* Under the degree of responsibility for Government property established by contract clause, the purchase or nonpurchase of property insurance is discretionary with the contractor, and insurance requirements will not be imposed by the contracting officer.

(b) *Insurance in special cases.* In special cases, when it is deemed necessary in connection with the performance of a contract, other types of insurance may be required.

§ 1010.451 *Work at Government installation.* If work under a fixed-price contract is at a Government installation, the contractor should be required to present evidence of the following kinds of insurance: workmen's compensation insurance; comprehensive general liability insurance; automobile liability insurance. Although it is usually reasonable to assume that a reputable contractor is aware of his obligations to the public and has a personal interest in being insured for such obligations, the procuring contracting officer prior to the award of a contract will determine that the contractor does carry insurance of the above types which is reasonable as to form and limits.

§ 1010.452 *Required endorsement.* Waiver of subrogation. Unless an additional premium is required, an insurance policy covering operations under a Government contract will be endorsed waiving the insurer's right of subrogation against the Government for losses under the policy arising out of operations in connection with the AF contract, except where specific exception is made in another section of this part.

SUBPART E—INSURANCE UNDER COST-REIMBURSEMENT-TYPE CONTRACTS

§ 1010.501 *Policy.* The following instructions are applicable to each of the types of insurance discussed in the sections under this subpart, except where specific exception is made.

(a) *Required endorsements* — (1) *Waiver of subrogation.* Unless an additional premium is required, an insurance policy covering operations under a Government contract will be endorsed waiving the insurer's right of subrogation against the Government for losses under the policy arising out of operations in connection with the AF contract, except where specific exception is made to another section of this subpart.

(2) *Notice of cancellation.* Every insurance policy, the cost of which is wholly or in part reimbursed under AF cost-reimbursement-type contracts, will be endorsed to give at least 30 days notice, prior to cancellation of the policy, to: Commander, Air Materiel Command, Attn: Bonds and Insurance Section (MCPPBB), Hq AMC, Wright-Patterson Air Force Base, Ohio.

§ 1010.501–2 *General liability insurance*—(a) *Comprehensive general liability insurance.* (1) This insurance protects the insured against loss due to claims for bodily injury and property damage resulting from accidents arising out of the existence or use of premises of the contractor, or the conduct of the contractor's business operations (except those claims arising from motor vehicle accidents which occur outside his premises, these claims covered by workmen's compensation law, or other exclusions stated in the policy). This insurance will be required with limits of $50,000 per person, $100,000 per accident. The Government assumes the risk for the contractor's insured third-party liability.

(2) General liability insurance for damage to property of others may be purchased under the general liability policy where, in the opinion of the contracting officer, the exposure under the contract operations is such as to warrant obtaining the specialized claims and investigative services of the insurance carrier in the event of extensive damage to property of others. Prior approval for the purchase of this type of insurance will be obtained from the Commander, AMC, and limits of $50,000 per accident with an aggregate limit of $100,000 for each year of policy coverage will be considered adequate. However, where commingling of operations permits the Government's protection at a nominal cost under insurance carried by the contractor in the course of his commercial operations, the participation in such insurance will be deemed in the best interest of the Government.

(3) If, at a given location, operations under a cost-type contract are commingled with commercial operations and/or operations under fixed price contracts, and the cost-type operations constitute only a minor portion of total operations, the limits of liability for insurance prescribed in this section may be higher than normally acceptable.

(4) Contractual liability insurance protects the contractor against loss arising under assumption of liability by agreement. This insurance will be provided in the comprehensive general liability policy where a contractor has assumed liability under:

(i) A lease of premises;

(ii) An easement agreement;

(iii) An agreement required by municipal ordinance;

(iv) A sidetrack agreement; or

(v) An elevator- or escalator-maintenance agreement.

The purchase of insurance for other assumed liability may be approved where assumption of such liability by the contractor has been authorized and the Commander, AMC, determines that the purchase of such insurance is necessary.

(5) Where insurance prescribed by this section is purchased for contracts to be performed outside the continental limits of the United States, its Territories and possessions, the Commander, AMC, is authorized to revise downward the monetary limits prescribed in this section.

§ 1010.501–3 *Automobile liability insurance.* Automobile public liability and property damage insurance will be required with limits of $50,000 per person and $100,000 per accident for bodily injury liability and $5,000 for property damage liability on the comprehensive policy form covering all owned, nonowned, hired, and Government-furnished motor vehicles which will be used in the contract operations where use will not be limited exclusively to the premises on which the work under such contract is performed. The risk of liability losses which, in compliance with Government requirements, are uninsured or exceed the amount of insurance, is assumed by the Government. This is consistent with the Government policy of being a self-insurer. In the event vehicles insured under an automobile liability policy are used by the contractor in connection with his other operations as well as operations under AF cost-reimbursement-type contracts, and the latter operations constitute a minor part of the total, limits of liability other than those stated may be approved. When such insurance is purchased for contracts to be performed outside the continental limits of the United States, its Territories and possessions, the Commander, AMC, is authorized to revise downward the monetary limits prescribed in this section.

§ 1010.501–4 *Aircraft public and passenger liability insurance.* (a) Under a cost-type contract, the contractor will carry insurance required by law and insurance for his legal liability in accordance with the following requirements:

(1) Workmen's Compensation Insurance will be carried as required by the applicable workmen's compensation laws. This coverage will not necessarily be on a seperate policy if the contractor conducts other operations in addition to operations involving an aviation hazard. One policy can cover all operations of a contractor statewide, countrywide, or even worldwide. Subpart T of this part treats this coverage in greater detail. The statements therein are equally applicable to aviation risks.

(2) Aircraft Liability Insurance will be carried by the contractor, providing

bodily injury coverage including passenger liability if the exposure exists and property damage coverage. The limits of liability should be $50,000 per person and $100,000 per accident for bodily injury, and $50,000 per accident for property damage.

(3) Airport Liability Insurance, if the operation of an airport is necessary for or incident to performance of a contract, will be carried by the contractor for bodily injury at limits of $50,000 per person and $100,000 per accident. Property damage coverage will not be carried.

(4) Hangar Keeper's Liability Insurance is a form of insurance which normally should not be necessary in performance of a cost-type contract. Even if it can be demonstrated that a Hangar Keeper's Liability exposure does exist under a cost-type contract, insurance is not necessary. It is the intent of the Government to indemnify the contractor for claims and losses resulting from this liability.

(b) Aircraft Hull Insurance and Airplanes in the Open Insurance shall not be purchased to cover aircraft manufactured, modified, or serviced under a Government cost-type contract. Such aircraft are Government property. Consequently, the contractor is relieved of liability in accordance with the provisions of the Government Property clause in the contract. Aircraft not owned by the Government and used in connection with operations under a cost-type contract may be insured under either above types of insurance and the cost of the insurance will be allowable.

(c) Under a cost-type contract, the contractor is entitled to reimbursement of costs and expenses incurred in the defense and/or discharge of such claims of others on account of death or bodily injury of persons or loss or destruction of or damage to property as may arise out of or in connection with the performance of the work under the contract if such claims are, in accordance with Government policy, uninsured or insurance is inadequate.

(d) Approval of insurance in connection with cost-type contracts is not always based upon strict compliance with the Government policy expressed in the preceding paragraphs. Practical consideration may justify deviation from normal practice. For example, if operations under cost-type contracts are commingled with fixed-price contracts and/or commercial operations and the cost-type contract operations constitute a minor part of the total, it might be advisable to go along with the contractor's existing insurance program.

§ 1010.501–50 *Boiler and machinery insurance.* This type of insurance protects the contractor against loss due to accidents arising from boilers, pressure vessels, or machinery. The chief value of this insurance is the inspection service by qualified insurance personnel afforded under the insurance policy. The purchase of such insurance by Air Force cost-reimbursement-type contractors is authorized as an item of reimbursement.

§ 1010.501–51 *Group insurance plans.* Group life insurance plans and such other forms of insurance as are provided voluntarily to employees in order to furnish benefits in the event of death, disability, dismemberment, hospitalization, surgical, or medical care will be subject to review by the Commander, AMC. Where employees under the cost-reimbursement-type contract are added to the contractor's already existent group life or similar type of insurance policies, provision should be made at contract termination to see that any experience refund due from the last year of contract operation will be credited proportionately to the contract.

§ 1010.501–54 *Products liability insurance.* In applying the policy set forth in § 1010.2701, the responsible contracting officer will recognize as a cost only that part of the premiums for the approved Products Liability Insurance which is identifiable with the contract work.

§ 1010.501–55 *Use and occupancy insurance*—(a) *Policy.* When costs in connection with Use and Occupancy Insurance are presented for allowance, the aggregate indemnity available will be analyzed. Only that percentage of total insurance cost which is identifiable with indemnity benefits determined to be acceptable within the intent of paragraph (b) of this section will be allowable for reimbursement or cost determination purposes.

(b) *Insurance costs*—(1) *Allowable costs.* For insuring those items of fixed charges and other expenses which are allowable items of costs in Air Force contracts, this form of insurance will be considered an allowable cost. Such fixed charges and other expenses include, but are not limited to, salaries of employees under contract and other key employees, rents, most insurance premiums, and charges for noncancellable contracts for light, heat or power.

(2) *Unallowable costs.* The cost of insuring the net profit a contractor is prevented from earning during a period of business interruption or suspension is not considered an allowable cost in contracting. Similarly, certain items of fixed charges such as interest, Federal income taxes, donations, and certain advertising expenses are likewise considered unallowable costs in Air Force contracts.

§ 1010.503 *Government property.* See § 13.503 of this title for applicable clause, § 7.203–22 of this title for Insurance Liability to Third-Persons Clause.

Insurance on Government property. The policy of the Air Force is generally not to require or approve insurance covering loss of or damage to property, legal title to which is in the United States, used in connection with cost-reimbursement-type Air Force contracts. Ordinarily, the contractor will be relieved of liability for loss or damage to Government property in accordance with the provisions contained in the Government Property clause of the contract.

SUBPART T—WORKMEN'S COMPENSATION INSURANCE

§ 1010.2002 *Policy.* (a) With respect to workmen's compensation, the contractor is required to carry insurance. Such insurance will pay the contractor's employees all his statutory obligations and will indemnify the contractor for other losses in accordance with policy provisions.

(b) Self-insurance: Self-insurance for workmen's compensation is acceptable in fulfillment of the workmen's compensation insurance requirement. The contractor's self-insurance plan is subject to approval by appropriate state authorities. However, such approval is not the sole consideration in Air Force approval. The self-insurance must not expose the Air Force to a cost which would exceed the cost of commercial insurance. As a matter of fact, the cost of self-insurance should be less if for no other reason than the absence of acquisition cost which constitutes a significant percentage of the premium paid to a commercial insurer. The acquisition cost is the amount paid by the insurance company for securing business, such as commissions to agents and brokers and in some companies field supervision costs.

SUBPART Y—PENSION PLAN COSTS IN AIR FORCE CONTRACTS

§ 1010.2501 *Approvals required.*

§ 1010.2501–1 *Internal Revenue Service.* Internal Revenue Service approval of the pension plans is required before pension plan costs can be deducted as expenses for corporate income tax purposes. When required for corporate income tax purposes, the Internal Revenue Service approval is also required before allowing pension plan costs under Air Force contract.

§ 1010.2501–2 *Procuring contracting officer's responsibility.* It is the responsibility of the procuring contracting officer to obtain approval of the contractor's pension plan from Bonds and Insurance Section (MCPPBB), Hq AMC, before awarding to a contractor a negotiated fixed-price contract in an amount in excess of $1,000,000.

§ 1010.2507 *Reversion credits.* (a) Whenever the procuring contracting officer is informed by the Bonds and Insurance Section that a suitable discount of pension plan costs has not been negotiated, the net cost, after deduction for current dividends and reversion credits, of pension plans under cost-type contracts and negotiated fixed-price contracts subject to price redetermination will be allowed, provided the contractor is willing to accept the following clause in his Air Force contract:

RECOVERY OF PENSION BENEFITS TO THE GOVERNMENT

Within 9 months following termination or completion of this contract, the Contractor will submit to the Contracting Officer a statement of the value of the nonvested benefits which have been canceled and which it is reasonably anticipated will be canceled in the future as a result of dismissal of employees, together with extracts from the records of the Contractor showing how said value is arrived at. Upon receipt of such statement, the Contracting Officer will negotiate with the Contractor to determine the amount of the refund or allowance, if any, which is due to the Government by reason of the fact that such nonvested benefits were purchased in connection with work under Government contracts. The amount agreed upon by negotiation shall be applied in reduction of any payments to

be made by the Government under this contract or will otherwise be credited or paid by such other means as the Contracting Officer may direct. Failure to agree upon the amount or method of repayment shall be treated as a dispute within the meaning of the Disputes clause, hereof.

(b) All existing cost-type contracts should be reviewed for consideration of the use of this clause. Also, all existing fixed-price contracts with price redetermination articles should be reviewed prior to the time of price redetermination for consideration of the use of this clause. It is not generally considered practical to use the clause in paragraph (a) of this section in those contracts where the contractor has less than $1,000,000 of Government contracts since the value of the canceled nonvested benefits is small. In such contracts a discount of these pension plan costs is considered more practical.

SUBPART Z—ACCIDENT AND DISABILITY INSURANCE FOR OCCUPATIONAL HAZARDS

§ 1010.2600 *General.* These risks may be insured in most cases under one of the master policies issued by the Indemnity Insurance Company of North America. These master policies insure employees of contractor who are engaged in extrahazardous operations under a contract with any one of the services of the Department of Defense. Master Policy FD–502 covers research operations for an annual cost of $40 per employee with a principal sum of $10,000. Master Policy FD–508 covers other than research operations for an annual cost of $40 per employee in the Western Hemisphere and $60 per employee outside the Western Hemisphere, with a principal sum of $10,000. A contractor can insure those employees who are engaged in extrahazardous operations under a Government contract by contacting the insurance company (Indemnity Insurance Company of North America; 620 Woodward Bldg., Washington 5, D. C.).

SUBPART AA—PRODUCTS LIABILITY INSURANCE UNDER AIR FORCE CONTRACTS

§ 1010.2701 *Policy.* (a) Subject to the approval by the responsible contracting officer of the terms, limits, and rates involved, Products Liability Insurance is authorized in connection with contracts for the manufacture of aircraft, and the premiums covering such approved insurance will be recognized as a cost.

(b) Except with the approval of Secretary of the Air Force, no provision shall be included in any contract for the manufacture of aircraft executed as of a date on or after November 17, 1952 which provides for reimbursement to, or indemnification of, a contractor on account of liability to third persons for loss or damage to property, death, or bodily injury where the liability arises out of a "products hazard" as that term is defined in the usual type of aircraft Products Liability Insurance Policy.

§ 1010.2701–2 *Interpretations.* (a) In applying the policy set forth in § 1010.2701, the responsible contracting officer will recognize as a cost only that part of the premiums for the approved Products Liability Insurance which is identifiable with the contract work.

(b) The policy stated in § 1010.2701 will apply only to contracts for the manufacture of new aircraft and contracts for the modification of existing aircraft. For the purpose of applying this policy, aircraft is defined as a vehicle capable of being airborne and designed to carry at least one person in normal flight.

PART 1011—FEDERAL, STATE, AND LOCAL TAXES

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1011.054 Disputed tax matters.

Subpart A—Federal Excise Taxes

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AUTHORITY: §§ 1011.054 to 1011.2103 issued under sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314.

§ 1011.054 *Disputed tax matters.* All matters reaching a point of dispute with taxing authorities regarding the validity of or refunds for taxes imposed upon or assessed against the property of or transactions with cost-plus-fixed-fee contractors or contractors who have provision for tax-escalation in their contracts, or any tax dispute involving the United States Air Force, will be reported directly to The Judge Advocate General, USAF, with a detailed factual statement thereon, before entering into negotiations with the Federal, State, or local tax officials.

SUBPART A—FEDERAL EXCISE TAXES

§ 1011.101 *Retailers' excise tax*—(a) *General.* When title passes and when the tax attaches is dependent upon the intention of the parties as gathered from the contract of sale and the attendant circumstances. In the absence of expressed intention, the legal rules of presumption followed in the jurisdiction where the sale is made govern in determining when title passes. Generally, title passes upon delivery of the articles to the purchaser or to a carrier for the purchaser, see 26 CFR (1939) 320.4 (b) (Treasury Regulation (T. R.) 51). Every person who sells at retail any article covered by §§ 11.101–1 to 11.101–4 of this title, or leases such article is liable for tax whether such sale or lease is made directly or through an agent.

(b) *Credit or refund.* If the price upon which the tax was computed is subsequently reduced, credit or refund may be obtained by the retailer. Claim by a retailer for credit or refund must show, among other things, that the tax has not been collected from the purchaser or has been repaid to him or that his written consent to the allowance of the credit or refund has been obtained. Where an article sold under a contract is returned to the retailer from whom purchased, whether before or after use, by reason of a defect or failure under a warranty of the contract, and a new article of the same kind is given without charge in exchange therefor, no tax is payable with respect to the transaction.

§ 1011.101–2 *Furs.* Where fur on the hide or pelt is supplied to a dresser or dyer of fur skins or a manufacturer or repairer of fur articles, who produces a taxable article for the use of the supplier of the fur, the tax applicable to such transaction is to be computed upon the fair retail market value of the finished article. Generally, the fair market value may be considered as the retail sales price for which the same or a similar finished article is sold by retailers generally in the ordinary course of the retail trade.

§ 1011.101–5 *Special fuels.* Diesel fuel and special motor fuel procured by a delivery order under a Military Petroleum Supply Agency (former Armed Services Petroleum Purchasing Agency) contract are tax-exclusive unless delivered by the contractor into the tank of a highway motor vehicle, in which event the fuel is subject to tax as indicated in § 11.101–5 (a) and (b) of this title. Small purchases of fuel, other than AF Form 15 purchases, not under a Military Petroleum Supply Agency contract, will be tax exclusive unless all the fuel purchased under a particular contract is for a taxable use as set forth in § 11.101–5 (a) and (b) of this title, in which event a tax at the appropriate rate will be paid. The refunds or credits for certain uses of tax-paid fuels, out-

lined in § 11.101–5 (c) of this title, will not be claimed unless the amount recoverable is in excess of $100.00. Any such refunds or credits will be obtained from the contractor by adjustment of the contract price. In such case, evidence of such non-taxable use may be furnished. The format of an exemption certificate for this purpose is set forth in § 1011.206 (a) (3).

§ 1011.102 *Manufacturers' excise tax*—(a) *General.* When title passes and, thus, when the tax attaches is dependent upon the intention of the parties as gathered from the contract of sale and the attendant circumstances. In the absence of expressed intention, the legal rules of presumption followed in the jurisdiction where the sale is made govern in determining when title passes. Generally, title passes upon delivery of the articles to the purchaser or to a carrier for the purchaser. Charges for coverings, containers, and the like, are included in the sale price for purposes of computing the tax, even when there is an agreement that the manufacturer will refund to the purchaser a specified amount upon return of the covering or container. However, when such coverings or containers are returned by the purchaser, and the manufacturer actually refunds the amount agreed upon, the tax should be adjusted, except where the administrative cost would make tax adjustment uneconomical.

(b) *Credit or refund.* If the price upon which the tax was computed is subsequently reduced, credit or refund may be obtained by the manufacturer. Claim by a manufacturer for credit or refund must show, among other things, that the tax has not been collected from the purchaser or has been repaid to him or that his written consent to the allowance of the credit or refund has been obtained.

§ 1011.102–1 *Motor vehicles.* (a) Chassis and bodies: The chassis and body are treated separately for tax purposes. Thus, chassis and bodies may be taxable at different rates although combined. The respective selling prices of the body and chassis must include all instruments, parts, and accessories made a part thereof, or attached to, or sold in connection therewith. Where doubt exists as to whether a part or accessory should be included in the sale price of the body or of the chassis, the custom of selling such part or accessory with either bodies or chassis, when sold separately, will determine the rate of tax. If the purchaser of a tax-paid chassis attaches thereto a body manufactured by him and sells the completed vehicle, he is liable for the tax on the sale price of the body. However, if the completed vehicle is sold for a lump sum, the tax attaches to such lump sum, unless the sale price of the body is stated as a separate item on the invoice to the customer, or unless such sale price can be established by adequate records. A like rule applies where the manufacturer of a chassis installs thereon a tax-paid body and sells the completed vehicle. Bodies are exempt from tax when sold by the manufacturer to a manufacturer of automobiles to be sold by the purchaser; however, a chassis manufacturer who purchases a body tax-free is required to pay tax on his sale of the completed vehicle as the manufacturer of both chassis and body. There is no provision permitting a manufacturer of automobile chassis to sell such chassis tax free to manufacturers of automobile bodies.

(b) Unpublished Internal Revenue rulings have held this tax inapplicable to motor driven machines which are not designed for highway use, or are barred from such use by reason of overweight, overwidth or for any other reason. Similar rulings apply to trailers (oxygen or bomb dollies) not constructed primarily for highway use or not adaptable for such use without adjustment. Replacement parts for such vehicles, if a part is interchangeable in taxable vehicles as well as nontaxable vehicles are taxable.

§ 1011.102–3 *Gasoline.* (a) Aircraft gasoline procured by delivery orders under Military Petroleum Supply Agency contracts will be tax exclusive, other gasoline so procured will be tax inclusive. As indicated in § 11.102–3 (b) of this title, the ultimate purchaser of gasoline upon which a tax of 3 cents per gallon has been paid is entitled to a refund of 1 cent per gallon for such gasoline not used as fuel in a highway vehicle, which: At the time of such use is registered, or is required to be registered, for highway use under the laws of any State or foreign country; or if owned by the United States, is used on the highway. This refund will not be claimed.

(b) Reference is made to § 11.204 of this title and § 1011.204, which establish policy and procedures concerning gasoline purchased for aircraft and vessels. However, purchases of aircraft gasoline on AF Form 15 will be inclusive of Federal excise taxes and no exemption certificate will be issued for such taxes.

§ 1011.102–4 *Lubricating oils.* (a) Lubricating oils, including oils for cutting, procured by delivery orders under a Military Petroleum Supply Agency contract normally will be tax inclusive at the appropriate rate of 6 cents or 3 cents per gallon. Small purchases of oil, not under a Military Petroleum Supply Agency contract, will be tax inclusive only to the extent required by the Internal Revenue Code, as outlined in § 11.102–4 (a) and (b) of this title.

(b) Exemption certificates: An exemption certificate is available when lubricating oils are sold by the manufacturer directly for nonlubricating purposes, provided that:

(1) The manufacturers have definite knowledge, prior to or at the time of sale, that the product is purchased for such purposes;

(2) An appropriate certificate is furnished the manufacturer. This exemption will be used in any case in which such use appears advantageous. The format of an exemption certificate for this purpose is set forth in § 1011.206 (a) (3).

(c) The refunds and credits outlined in § 11.102–4 (c) of this title will not be utilized unless the amount recoverable is in excess of $100. Any such refunds or credits will be utilized through the contractor by adjustment of the contract price.

§ 1011.102–7 *Electric light bulbs.* An electric light bulb or tube is any device designed for the diffusion of artificial light for illuminative or decorative purposes through the use of electricity.

§ 1011.102–8 *Radio and television receiving sets, phonographs and records.* In connection with the exemption for radio and television components set forth in § 11.102–8 (b), the procedure set forth may not require the issuance of tax exemption certificates by AF personnel. Procuring contracting officers and offices responsible for administering contracts are cautioned to exercise care to make sure all benefits of this exclusion are obtained by the Government. In connection with contracts written prior to August 31, 1955 on which deliveries are to be made after that date, the prices therein should be adjusted to reflect this relief from tax available to the manufacturers.

§ 1011.102–11 *Firearms, shells, and cartridges.* (a) Definitions: The term "firearms" includes all portable weapons, such as rifles, carbines, machine guns, shotguns, and fowling pieces, from which a shot, bullet, or projectile may be discharged by an explosive. The terms "shells" and "cartridges" include all combinations of projectile, explosive, and container which are designed, assembled, and ready for use without further manufacturing in portable firearms, including pistols and revolvers.

(b) Exemption: Generally, clearly identified orders or contracts of a military department when signed by an authorized officer of such department will be accepted in support of the exemption. In the absence of such orders or contracts, a statement signed by an authorized officer of a military department that the firearms, shells, or cartridges were purchased with funds appropriated for the military departments will be acceptable.

(c) Procurements involving the purchase of "firearms," "shells" or "cartridges" for the Air Force will be exclusive of Federal excise taxes.

§ 1011.103 *Excise taxes on facilities and services.*

§ 1011.103–2 *Transportation of persons.* It is not necessary that the transportation be between two definite points. If not otherwise exempt, a payment for continuous transportation beginning and ending at the same point is subject to the tax. A plane does not fall within the category of a motor vehicle, and therefore, is not entitled to the tax exemption applicable where a motor vehicle has a seating capacity of less than 10 adult passengers, including the driver, and is not operated on an established line. The tax does not apply to payments for transportation where the charge is 35 cents or less. The exemption is determined by the amount paid for a single one-way trip. An amount paid for the charter of a car, train, motor vehicle, aircraft, or boat is exempt from the tax if the payment repre-

sents a per capita charge of 35 cents or less for each person actually transported. Any amount paid for seating or sleeping accommodations is not subject to the tax where the amount of the related payment for transportation is 35 cents or less.

§ 1011.103–4 *Transportation of oil by pipeline.* The fair charge for transportation will be computed from actual bona fide rates or tariffs; or if no such rates or tariffs exist, then on the basis of the actual bona fide rates or tariffs of other pipelines for like services; or if no such rates or tariffs exist, then on the basis of a reasonable charge for such transportation. The term "transportation" will not include any movement through lines of pipe within the premises of a refinery, a bulk plant, a terminal, or a gasoline plant, if such movement is not a continuation of a taxable transportation. The crossing of rights-of-way, streets, highways, railroads, levees, or narrow bodies of water, in connection with such a movement will not of itself constitute such movement as being "transportation."

§ 1011.104 *Use tax on highway motor vehicles.* There is no requirement for the payment of the tax imposed by section 4481 of the Internal Revenue Code of 1954 as exemption from this tax as to use by the United States of any highway motor vehicle, whether or not owned by the United States, has been authorized by the Secretary of the Treasury pursuant to the authority of section 4483 (b) of the Internal Revenue Code of 1954 as added by section 206 (a) of the Highway Revenue Act of 1956 (70 Stat. 391; 26 U. S. C. 4483 (b)).

SUBPART B—EXEMPTIONS FROM FEDERAL EXCISE TAXES

§ 1011.201 *Supplies for exportation or shipment to a possession.* The exemption for exports and for shipments to possessions will be claimed only according to the policy set forth and exemption certificates will be issued only when contracts show the exclusion of the applicable Federal Excise Taxes from prices. The following is the form of certificate to be used as proof of exportation or of shipment to a possession and will be reproduced by typewriter only:

(Date)

(Contractor)

The undersigned does hereby certify that

(Quantity and description of articles)

which were purchased for export under

(Contract No.)

were in fact exported to a foreign country or possession of the United States (other than Alaska or Hawaii) and a copy of export bill of lading No. ---- or loading manifest No. ---- pursuant to which the articles were shipped, is being retained in the files of ----

(Indicate office)

(Contracting Officer)

This certificate is not intended for use as proof in claiming drawback or import taxes.

§ 1011.201–1 *Retailers' excise tax*—(a) *How to claim exemptions.* (1) To exempt from tax a sale for export or for shipment to a possession of the United States, two conditions must be met:

(i) That the article be identified as having been sold by the retailer for export or for shipment to a possession of the United States.

(ii) That it be exported or be shipped to a possession of the United States in due course.

(2) Proof of exportation or of shipment to a possession will be furnished the retailer by the contracting officer and will be in the form set forth in § 1011.201. The port of embarkation will be required to furnish certification of export or shipment to a possession to the contracting officer with a statement describing where the applicable bill of lading or loading manifest is being retained.

(3) Proof of exportation or shipment to a possession will be furnished only when the purchase is on a tax exclusive basis and the contract provides for such evidence of exemption.

§ 1011.201–2 *Manufacturers' excise taxes*—(a) *How to claim exemptions.* (1) To exempt from tax a sale for export or for shipment to a possession of the United States, two conditions must be met:

(i) That the article be identified as having been sold by the manufacturer for export or shipment to a possession of the United States.

(ii) That it be exported or be shipped to a possession of the United States in due course.

(2) An article will be regarded as having been sold by the manufacturer for export or shipment to a possession if the manufacturer has in his possession at the time title passes or at the time of shipment, whichever is prior:

(i) A written order or contract showing that the manufacturer is to ship the article to a foreign destination or to a possession; or

(ii) Where delivery by the manufacturer is to be made within the United States:

(*a*) A statement from the purchaser showing that the article is purchased to fill existing or future orders for delivery to a possession or foreign destination; or that the article is purchased for resale to another person engaged in the business of exporting or shipping to possessions who will export or ship the article; and that such article will be transported to its foreign destination or to a possession in due course prior to use or further manufacture and prior to any resale except for export or shipment to a possession.

(*b*) Proof of exportation or of shipment under TR 46, section 316.26. Such proof will be furnished the manufacturer by the contracting officer and will be in the form set forth above in § 1011.201. The port of embarkation will be required to furnish certification of export or shipment to a possession to the contracting officer with a statement describing where the applicable bill of lading or loading manifest is being retained.

(3) The written order or contract of sale or the statement referred to in subparagraphs (2) (i) and (ii) of this paragraph suspends liability for the payment of the tax by the manufacturer on such sales for export or shipment to a possession for a period of 6 months from the date when title passes or the date of shipment, whichever is prior. If within this period the manufacturer has not received and attached to the order, contract, or statement, proper "proof of exportation" or "proof of shipment to a possession," the temporary suspension of the liability for the payment of the tax ceases and the manufacturer will include the tax on the sale of such article in his return for the month in which the 6-month period expires.

(4) This exemption is limited to sales by a manufacturer, and is not applicable to sales for export or shipment to a possession from the stock of a person who was not the manufacturer, producer, or importer.

(b) *Proof of exportation.*

(1) Exportation may be evidenced by one of the following:

(i) A copy of the export bill of lading issued by the delivering carrier.

(ii) A certificate by the agent or representative of the export carrier showing actual exportation of the article.

(iii) A certificate of landing signed by a customs officer of the foreign country to which the article is exported.

(iv) Where such foreign country has no customs administration, a statement of the foreign consignee showing receipt of the article.

(2) In any case where the manufacturer is not the exporter, such manufacturer must have in his possession a statement from the person to whom he sold the article stating that the article was in fact exported in due course by him or was sold to another person who in due course exported the article. This statement must indicate what evidence is available to show that the article was in fact exported in due course prior to use or further manufacture and prior to resale in the United States other than for export. Such evidence must be that described in subparagraph (1) of this paragraph, and the statement must show where such evidence is readily available for inspection by Government officers.

(3) In all cases the sales records together with the evidence of exportation must be preserved by the manufacturer for a period of at least 4 years from the last day of the month following the sale and must be readily accessible for inspection by internal revenue officers.

(4) In any case where the manufacturer does not have in his possession within the 6-month period proof of exportation as outlined herein, the manufacturer must pay the tax involved. If proof of exportation later becomes available, a claim for refund of any tax paid may be filed on TD Form 843, or a credit may be taken upon any subsequent monthly return.

(5) The same provisions of these instructions as relate to proof of exportation apply to sales for shipment to a possession of the United States if the articles are in due course so shipped. The words "for export or shipment to a possession," stamped on the contract or written purchase order, have been approved by the Internal Revenue Service

as satisfactory evidence that the manufacturer's sale of the article has been made for export or shipment to a possession of the United States.

(c) *Policy.* The policy of the Department of the Air Force is to purchase from manufacturers, producers and importers on a tax-exclusive basis when both the following conditions are present:

(1) The purchase is a substantial one.

(2) Exportation or shipment to a possession is intended at the time of purchase and exportation or shipment will follow immediately after delivery from the manufacturers.

§ 1011.202 *Supplies and services for the exclusive use of the United States.* Exemption from the tax on transportation of persons is obtained without use of exemption certificates by use of a SF 1169, "Transportation Request." Exemption from the tax on transportation of property is obtained without use of exemption certificates by use of a Standard Form 1103, "U. S. Government Bill of Lading." Exemption from the tax on communication services furnished the Government is obtained by excluding it from the price. This exemption is not available when communication or transportation services are furnished directly to Government contractors.

§ 1011.204 *Supplies for vessels and airplanes*—(a) *Exemption.* This exemption will be used only when:

(1) The purchase is directly from a manufacturer, producer, or importer, as distinguished from retailers, or others who resell to the department supplies upon which the manufacturers' excise tax is imposed.

(2) An exception to the rule set forth above in subparagraph (1) of this paragraph permits claiming this exemption in connection with purchases of special fuel § 11.101–5 of this title even though the tax is levied on the retailer. A suitable modification of the exemption certificate set forth in § 1011.206 (a) (1) will be made by deleting the word "manufacturer" and inserting the word "vendor," when this exemption is claimed in connection with purchases of special fuels.

(3) At the time purchase determination is made, the supplies are intended for use in "vessels of war" of the United States, which term includes every description of watercraft or other contrivance constituting a part of the armed forces of the United States used or capable of being used as a means of transportation on water and aircraft (including pilotless aircraft and guided missiles) owned by the United States and constituting a part of the armed forces thereof.

(b) *Claiming exemption.* Contracts will specifically provide that the tax is not included in price.

(c) *Proof.* See § 11.206 (a) (1) with respect to the proof necessary to make purchases on a tax-exclusive basis pursuant to this exemption and format for an exemption certificate for this purpose.

(d) *Purchase on tax-inclusive basis.* Purchases which qualify for such exemption may, however, be made on a tax-inclusive basis if the contracting officer determines that the administrative burden incident to obtaining the exemption outweighs the corresponding benefits accruing to the Government.

(e) *Definition.* "Sea stores" includes all articles purchased for use or consumption by the passengers or crew, or both, of a ship or an aircraft while on its voyage.

§ 1011.205 *Other exemptions*—(a) *Cost-reimbursement contracts.* The special exemptions from Federal excise taxes available on cost-reimbursement contracts are set out in § 1011.402.

(b) *Distilled spirits and alcohol.* Distilled spirits of 160 degrees or more of proof, alcohol, and specially denatured alcohol, may be withdrawn tax free by the United States or any Government agency thereof (26 CFR 171.265–266, 182.171–174).

(1) The authority to sign applications to the Treasury Department Commissioner of Internal Revenue, for permits to procure tax-free and specially denatured alcohol (TD Form 1444, "Alcohol for Use of United States," and TD Form 1486, "Specially Denatured Alcohol for Use of United States"), has been delegated to the Secretary to the:

(i) Commander, AMC.

(ii) Deputy and Assistant Deputy Director/Procurement, Hg AMC.

(iii) Director of Procurement and Production, Topeka Air Force Depot, Topeka, Kans.

and, while he is so acting, to the person acting for the time being in any of the foregoing capacities. The above authority will not be redelegated.

(2) TD Forms 1444 and 1486 will be submitted to the Treasury Department, Internal Revenue Service, attn: Deputy Commissioner, Alcohol Tax Unit, Washington 25, D. C., by letter of transmittal. The letter of transmittal will contain the following information:

(i) That the appropriate form is submitted in triplicate according to Internal Revenue Regulations for permit to procure tax-free or specially denatured alcohol.

(ii) Name and location of supplier.

(iii) Name and location of consignee.

(iv) Purpose for which alcohol will be used.

(v) Address to which permit is to be sent (requesting activity).

(3) All procuring contracting officers except those located in the Directorate of Procurement and Production, Hq AMC, will submit applications and letters of transmittal to Topeka AF Depot, Topeka, Kans., for signature by the Depot Director of Procurement and Production and for forwarding to the Treasury Department. Hq AMC activities will submit applications and letters of transmittal to the Deputy Director/Procurement for signature.

(4) TD Form 1444, "Alcohol for Use of United States," and TD Form 1486, "Specially Denatured Alcohol for Use of United States," will no longer be stocked in AF supply depots. Using activities may secure these forms by writing directly to the nearest Assistant Regional Commissioner, Alcohol and Tobacco Tax Division, Internal Revenue Service. Assistant regional commissioners are located in Atlanta, Ga., Boston, Mass., Chicago, Ill., Cincinnati, Ohio, Dallas, Tex., New York, N. Y., Omaha, Nebr., Philadelphia, Pa., and San Francisco, Calif.

(c) *State and local government exemptions.* The taxes found in Subpart A, Part 1011, of this chapter do not apply to sales for the exclusive use of any State, Territory of the United States, or any political subdivision of any of the foregoing, or the District of Columbia. This is inapplicable to sales for the exclusive use of the United States. However, the Air Force may indirectly benefit from this exemption when procuring from such agencies. For example, state universities are usually regarded as political subdivisions of the state, and their purchases for the performance of an AF contract should exclude these taxes where this exemption is available thus reducing the price or cost to the Air Force.

(d) *Additional exemptions.* In addition to the exemptions discussed herein, certain miscellaneous exemptions from Federal excise taxes, applying to private as well as Government procurement, are available. Any exemption for which no policy is otherwise provided need not be claimed, in which event contract prices will not exclude taxes on the basis of such an exemption and proof of such an exemption will not be furnished to contractor.

§ 1011.206 *Tax exemption forms*—(a) *Certificates of exemption.* The certificates described in this section will be reproduced locally by typewriter only.

(1) *Supplies for vessels and aircraft tax exemption certificates.* The tax exemption certificates to be used by purchasers of articles for use as fuel supplies, ships' stores, sea stores, or legitimate equipment on certain vessels, including aircraft, will be as prescribed in Treasury Regulations or as shown below. The certificate will be numbered and a record will be kept of each certificate issued, showing person to whom issued, number of the applicable contract, type of supplies involved, and period covered by the certificate.

EXEMPTION CERTIFICATE

(For use by purchasers of articles for use as fuel supplies, ships' stores, sea stores, or legitimate equipment on certain vessels (Sec. 4222 of the Internal Revenue Code)).

* ----------
(Date)

The undersigned purchaser hereby certifies that he is an authorized agent of the United States Air Force and that the article or articles specified in the accompanying order, or as specified below or on the reverse side hereof, will be used only for fuel supplies, ships' stores, sea stores, or legitimate equipment on a vessel belonging to the following class which is among those enumerated in section 4222 of the Internal Revenue Code:

Vessels of war of the United States or a foreign nation (aircraft owned by the United States or a foreign nation and constituting a part of the armed forces thereof).

It is understood that if the article is used for any purpose other than as stated in this certificate, or is resold or otherwise disposed of, this fact must be reported to the manufacturer. It is understood that this certificate may not be used in purchasing articles tax free for use as fuel supplies and so

forth, on pleasure vessels, or on any type of aircraft except civil aircraft employed in foreign trade or trade between the United States and any of its possessions, and otherwise entitled to exemption, and aircraft owned by the United States or any foreign country and constituting a part of the armed forces thereof. It is also understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to a penalty equivalent to the amount of tax due on the sale of the article and, upon conviction, to a fine of not more than $10,000, or to imprisonment for not more than 5 years, or both, together with costs of prosecution. The undersigned also understands that he must be prepared to establish by satisfactory evidence the purpose for which the article was used.

Contract No.----------
Period of Contract----------
Type of Supplies----------

UNITED STATES AIR FORCE,
By ----------
Name
Grade
Title
Address
Identification Card No.

Figure 1

(2) *Liquid-fuel exemption certificates.* The exemption certificate to be used is shown in this subparagraph:

EXEMPTION CERTIFICATE

Certificate Serial No. ------

(For use by purchasers of benzol, benzene, naphtha, or other taxable liquid, for other than as a fuel for the propulsion of motor vehicles, motorboats, or airplanes, and otherwise than in the manufacture or production of such fuel.)

(Date)

Contract:
Contractor:
Product:
End Use:

The undersigned hereby certifies that he is officially authorized to issue tax-exemption certificates for the Department of the Air Force under the above-described contract and that the product indicated above, being purchased under said contract, will not be used as a fuel for the propulsion of motor vehicles, motorboats, or airplanes, and will not be used in the manufacture or production of such fuel, but will be used for the purpose shown.

The undersigned understands that if the benzol, benzene, naphtha, or other taxable liquid is used, sold, or otherwise disposed of except as above stated, the Department of the Air Force will be liable for the tax upon such use, sale, or other disposition of such product. It is understood that the fraudulent use of this certificate to secure exemption will subject all guilty parties to a fine of not more than $10,000 or to imprisonment for not more than 5 years, or both, together with costs of prosecution. The undersigned also understands that the Government must be prepared to establish by competent evidence that the product was actually used for the purpose or purposes for which purchased as stated in this certificate.

Contract Period----------

UNITED STATES AIR FORCE,
By ----------
Name
Grade
Title
Address
Identification Card No.

Figure 2

(3) *Lubricating oils exemption certificates.* The exemption certificate to be used is shown in this subparagraph:

EXEMPTION CERTIFICATE

Certificate Serial No. ------

(For use by purchasers of lubrication oil for nonlubricating purposes.)

(Date)

Contract:
Contractor:
Product:
End Use:

The undersigned hereby certifies that he is officially authorized to issue tax exemption certificates for the Department of the Air Force under the above-described contract, and that the product indicated above, being purchased under said contract, will be used or resold for lubrication, but will be used for the purpose shown.

The undersigned understands that if the nonlubricating oil is used, sold, or otherwise disposed of except as above stated, the Department of the Air Force will be liable for the tax upon such use, sale, or other disposition of such product. It is understood that the fraudulent use of this certificate to secure exemption will subject all guilty parties to a fine of not more than $10,000 or to imprisonment for not more than 5 years, or both, together with costs of prosecution. The undersigned also understands that the Government must be prepared to establish by competent evidence that the product was actually used for the purpose or purposes for which purchased as stated in this certificate.

Contract Period

UNITED STATES AIR FORCE,
By ----------
Name
Grade
Title
Address
Identification Card No.

Figure 3

(b) *Who may execute.* (1) Tax exemption certificates will be executed only by those officers and Federal employees who have been supplied with Standard Form 1094C, "U. S. Government Tax Exemption Identification Card."

(2) The identification cards of authorized officers and employees of AF activities responsible for procurement or contract administration will be signed by the commander or other officers at such activities who have been delegated authority to designate contracting officers.

(c) *Preparation and execution of exemption certificate*—(1) *Methods.* In the preparation and execution the following methods will be followed:

(i) The typewriter will be used when practicable; otherwise, ink or indelible pencil will be used. The use of ordinary lead pencil is prohibited. All blank spaces must be properly filled in or lined out, and no exemption certificate will be delivered to a contractor unless fully and properly executed, except that the Internal Revenue Service has advised that a statement on the exemption certificate of the amount of Federal tax is not necessary. The amount of tax should be stated, however, if readily available. When Federal excise taxes have been excluded from the contract price of articles or supplies purchased, but the exact amount of the tax cannot be determined at that time, a blanket tax exemption certificate may be issued to cover all sales under the contract. The certificate will cover all articles purchased under the contract, including delivery orders placed thereunder by other officers.

(ii) A separate certificate for each kind of tax involved will be prepared. In the issuance of these certificates, the blank spaces will be filled in showing on each certificate the separate amounts of the taxes involved (if known) so that the certificates may be used only for the purpose intended.

(iii) Where the supplies or work covered by the contract is not taxable as such and the certificate is to be used for the purpose of obtaining exemption on the articles to be incorporated in the supplies or work covered by the contract, the amount of the tax to be shown on the certificate will be stated as "None." No tax should be shown on the certificate except the tax imposed directly upon the supplies or work covered by the contract.

(iv) Certificates may be modified as necessary with respect to contracts for construction, alterations, improvements, and repairs. The person issuing a tax exemption certificate will insert on the lines provided therefor his identification card number, signature, and title.

(2) *When exemption certificates are issued to contractors.* An exemption certificate covering Federal excise taxes will be executed and delivered to the contractor upon request at any time after the execution of the contract, provided: (i) The contract so provides, (ii) the supplies are taxable, and (iii) the supplies are purchased by the Government at a price which is exclusive of such tax. In such a case, the description of the supplies furnished tax-free will be inserted on the tax exemption certificate. Certificates will be numbered and a record will be kept of each certificate issued, showing to whom issued, the numbers of the applicable contracts, the type of supplies involved, and the period covered by the certificate.

(3) *Blanket tax exemption certificates.* Contracts Under Federal Supply Schedules.

(i) A separate certificate should be issued for each order covering purchases under Federal Supply Schedules. Upon application of the contractor, where it is impracticable to furnish separate certificates, blanket exemption certificates to cover purchases under term contracts may be issued. Such a certificate should cover all orders between given dates, and it is recommended that such a period should not exceed 1 month. Certificates should only be issued where the tax is applicable and the order indicates the tax is not included in the price.

(ii) Contractors are required to indicate the number of the applicable blanket tax-exemption certificate on their invoices.

(iii) The order need not contain the number of the applicable tax-exemption certificates. A reference to the Federal Supply Schedule contract number will be sufficient.

SUBPART C—STATE AND LOCAL TAXES

§ 1011.301 *Applicability*—(a) *General rules for availability of exemption*

from State and local taxes. (1) *"Purchase articles."* According to § 1011.302, tax-exemption certificates may be issued for State and local taxes where the prices paid by the Government exclude such tax.

(2) *"Subsidiary articles."* Sales of subsidiary articles are normally not exempted from State or local taxes and there is, therefore, generally no occasion for the issuance of tax-exemption certificates with respect to such taxes on subsidiary articles.

§ 1011.302 *Tax-exemption forms.* (a) Tax-exemption certificates are used for establishing exemptions from State and local taxes. For this purpose certificates should be prepared according to the requirements of the particular State or local tax authority concerned. In most cases, Standard Form 1094 will be the appropriate form of tax-exemption certificate. Except as provided in paragraph (b) of this section, no tax-exemption certificate will be issued with respect to a State or local tax unless the contract shows that the price paid by the Government is exclusive of the tax to which the certificate pertains or unless the contractor consents to the deduction of such tax from the contract price and the acceptance of the tax-exemption certificate in lieu thereof.

(b) When impossible for any reason to effect a purchase excluding the amount of any State or local tax which is deemed to be locally applicable to Government purchases, Standard Form 1094 will be executed and delivered to the finance officer to whose accounts the vouchers in the transaction pertain, together with a written statement to the effect that the vendor refused such certificate. This tax-exemption certificate is for the use of the Comptroller General in obtaining a refund of the amount of taxes involved. The serial number of the tax-exemption certificate will be shown on the payment voucher.

(1) When Standard Form 1094 (or other appropriate certificate), executed under the conditions stated in this paragraph, is received in the finance office, the bureau or office number of the payment voucher will be noted on the certificate and the finance office will bill the State or local taxing agency for refund of the taxes paid. The amount collected will be credited by the finance officer to the appropriation(s) from which the vouchers were paid or to miscellaneous receipts account, "575594—Refund, State and Local Taxes," if the appropriation cannot be readily identified.

(2) If the finance office fails to obtain refund of the amount of taxes paid, it will promptly send the tax-exemption certificate, if available, together with all correspondence with the taxing agency relating thereto, and information as to the finance officer's voucher number on which payment for the merchandise was made, to the Settlements Division, Air Force Finance Center, Denver, Colo., for processing for settlement by the General Accounting Office under Section 236, Revised Statutes, as amended by the Budget and Accounting Act, 1921.

§ 1011.350 *Particular State or local taxes.* The various State and local tax laws are not uniform in their application and therefore it is not possible to furnish detailed information and instructions on each of such taxes. Where difficulties have developed and the Air Force desires to adopt a uniform policy with respect to any State or local tax, this information will be supplied as added sections subsequent to this section.

§ 1011.351 *Indiana gross income tax.*

§ 1011.351–2 *Applicability of section.* This section applies to all AF personnel concerned with the execution and administration of AF contracts placed with contractors in the State of Indiana, which contracts call for interstate shipment, originating in Indiana.

§ 1011.351–3 *General.* To insure that Government contractors will pay under protest any Indiana State gross income and bonus tax which may be imposed by the State of Indiana on supplies shipped from points within the State of Indiana to points outside of that State, procedures as set forth in this section will be followed pending rendition of a court decision as to the legality of the tax as applied to purchases by the Government.

§ 1011.351–4 *Procedures*—(a) *Negotiated fixed-price contracts*—(1) *Contract clause.* The following clause will be added to the clause prescribed in § 11.401 of this title in all negotiated fixed-price supply contracts containing § 11.401 of this title which provide for shipment by the contractor or by the Government of supplies from points within the State of Indiana to points outside of that State:

(g) The Indiana Gross Income and Bonus Tax is hereby construed, for the purpose of this clause, to be a direct tax as defined in paragraph (a) of this clause. All contract prices for supplies to be furnished hereunder shall include such Indiana Gross Income and Bonus Taxes as are imposed by the State of Indiana. The Contractor agrees, however, in any instance where the State seeks to impose such tax on receipts from supplies which are shipped outside the State of Indiana either by the Contractor, or the Government, to pay such taxes under protest. The Contractor further agrees, as directed by the Contracting Officer to do so, to take all necessary action, in cooperation with and for the benefit of the Government, to secure a refund of such tax, in which event the Government agrees to reimburse the Contractor for any and all reasonable expenses incurred at the direction of the Contracting Officer. In the event the State of Indiana exempts the Contractor from payment of such tax, or in the event the Contractor is successful in securing a refund of such tax, the Contractor agrees to reimburse the Government for the amount of such tax and any interest refunded. In the event of administrative proceedings or litigation concerning such tax, the Contractor shall keep the Contracting Officer informed thereof and shall authorize representatives of the Government to collaborate with counsel for the Contractor in settling or prosecuting claims for refund of such tax.

(2) *General.* Administrative and local purchase contracting officers will advise contractors that, if they have made payment on such tax under protest on shipments made on commercial bills of lading, and have been reimbursed for same by the Government, claim for refund will be made and the refund, together with any interest received thereon, be paid to the Government.

(b) *Cost-reimbursement contract*—(1) *Contract clause.* In each cost-reimbursement-type supply contract providing for shipment of supplies from points within the State of Indiana to points outside the State of Indiana, an appropriate clause may be included in the contract to insure that the contractor pays under protest any Indiana gross income and bonus tax imposed by the State of Indiana. The following clause may be used:

The Contractor agrees in any instance where the State of Indiana seeks to impose the Indiana Gross Income and Bonus Tax on receipts from supplies which are shipped outside the State of Indiana, either by the Contractor or by the Government, to pay such taxes under protest and such taxes as paid will be reimbursable items of cost. The Contractor further agrees, as directed by the Contracting Officer to do so, to take all necessary action, in cooperation with and for the benefit of the Government, to secure the refund of such tax, in which event the Government agrees to reimburse the Contractor for any and all reasonable expenses incurred at the direction of the Contracting Officer. In the event the State of Indiana exempts the Contractor from the payment of such tax, or in the event the Contractor is successful in securing refund of such tax, the Contractor agrees to reimburse the Government for the amount of such tax refunded together with any interest thereon. In the event of administrative proceedings or litigation concerning such tax, the Contractor shall keep the Contracting Officer informed thereof and shall authorize representatives of the Government to collaborate with counsel for the Contractor in settling or prosecuting claims for refund of such tax.

(2) *General.* The clause set forth in this paragraph need not be included in IFB's issued in connection with formally advertised procurements. However, where the contract of the successful bidder provides for shipment by the contractor, or by the Government, of supplies from points within the State of Indiana to points outside of that State, the contract may be amended to include an appropriate clause which will insure that the contractor will pay under protest any Indiana gross income and bonus tax imposed by the State of Indiana.

(c) *Memorandum of the Indiana Department of State Revenue, dated December 27, 1950.* Memorandum of the Indiana Department of State Revenue, December 27, 1950, has been changed. In an amendment issued March 30, 1952, the State has restricted the retroactive application of referenced Memorandum and has amended it to provide that contracts and sales to the Federal Government will be considered until January 1, 1951 as being under the directives, bulletins, and regulations issued by said department prior to December 27, 1950. This action in effect eliminates any 1950 Indiana gross income tax on Government lump-sum contracts and alters tax imposed upon receipts from cost-reimbursement-type contracts with the Government. Administrative and local purchase contracting officers will inform each contractor to seek refunds of such 1950 taxes as were paid by the contractor and reimbursed by the Government on Government lump-sum contracts and

cost-reimbursement-type contracts, to the extent the taxes applicable thereto were reduced. The refunds thereon, plus the interest, should be paid by the contractor to the Government.

(d) *Records.* Each purchasing officer will keep an appropriate accounting of all contracts in which a special clause treating the Indiana gross income and bonus tax is included.

SUBPART D—CONTRACT CLAUSES

§ 1011.401 *Fixed-price contracts*—(a) *Use of clause.* The tax clause prescribed for use in fixed-price contracts is set forth in this section and is entitled, "Federal, State, and Local Taxes."

(1) Paragraph (b) of the clause provides that all applicable Federal taxes are included in the contract price unless otherwise provided in the contract. If it is desirable and permissible to obtain exemptions from Federal excise taxes affecting the procurement, a special provision will be inserted to this effect.

(2) Paragraph (c) of the clause, dealing with State and local taxes, provides that the contract price does not include any State or local direct tax in effect on the contract date, except as otherwise provided in the contract. A direct tax is defined by paragraph (a) to mean any tax or duty directly applicable to the completed supplies or services covered by the contract, and any other tax or duty from which the contractor or the transaction is exempt. This definition is amplified by the statement that the term includes any tax or duty "directly applicable to the importation, production, processing, manufacture, construction, sale or use of such supplies or services," that is, the completed supplies or services covered by the contract, "as distinguished from taxes directly applicable to materials and components used in the manufacture or furnishing of the completed supplies or services." Then taxes are listed which are not included in the definition, such as social security, property, and income taxes, and other taxes not within the definition of direct tax. An example of such other taxes is a sales tax on materials purchased by the contractor for use in the performance of the contract where no exemption is available. In short, as a general principle, the tax on purchase articles will not be included; however, the contractor may include in his price provisions for taxes applicable to the purchase of materials needed for the contract where there is no exemption under State or local law.

(3) The rights and obligations of the parties are defined in paragraph (d) in regard to the claiming of exemptions, if this should become necessary, from direct taxes not included in the contract price, and the procedure is outlined which is to be followed if exemptions are not obtained. Paragraph (e) provides for price adjustments in the event of an increase or decrease in the tax burden resulting from Federal, State, or local action subsequent to the contract date. This is not limited to direct taxes, but also contemplates taxes "directly applicable to the materials or components used in the manufacturing or furnishing of completed supplies or services covered by the contract." Such tax, while not within the definition of direct tax, will affect the contract price more than any other nondirect taxes such as those for social security or unemployment compensation. The risk of increase in taxes of the latter type is left on the contractor, who, conversely, will benefit from any decrease thereof.

(b) *Special provisions in contracts*—(1) *General.* Special provisions may be included in any contract with respect to any State or local tax regarding which a doubt exists concerning the applicability of exemption to the transaction covered by the contract. Any such special provisions should clearly specify whether such tax is to be included in or excluded from the office and whether the Government must pay or reimburse the contractor for the tax if no exemption is applicable. Contracting officers, when practicable, will take precautions to see that contractors do not include in the bid or price an amount for any State or local sales or use taxes which do not apply to sales to the Federal Government, or any other State or local taxes, exemption from which is available in the case of transactions to which the Federal Government is a party.

(2) *Exemptions.* The standard tax article states that, unless otherwise indicated in the contract, the prices set forth include applicable Federal taxes. As outlined in Chapter I of this title and in Subpart B of this part, several exemptions from Federal excise taxes are available to the United States and certain of these are to be claimed. When the exemption is claimed, the tax must be excluded from the contract price. Where a contract containing the standard tax article provides for the procurement of an item for which such an exemption is available, the Federal tax so excluded must be shown expressly in the contract. Invitations for bids should require bidders to indicate in their bids the taxes to be excluded from the contract price. The tax provisions of each contract must be in conformity with the invitation for bids and bid forms.

(3) Special provisions and instructions as to individual State and local taxes will from time to time be furnished in paragraphs under Subpart C of this part.

§ 1011.402 *Cost-reimbursement contracts*—(a) *General.* In connection with such contracts, tax payments present primarily a problem in allowable costs and should be treated in general from this viewpoint. The cost principles set forth under Chapter I of this title and this chapter provide that taxes (other than Federal income and excess-profits taxes, and taxes and expense in connection with financing or refinancing or refunding operations) which are directly applicable to the completed supplies and services or in any way directly related to the products or furnishing of such supplies or services, shall constitute an item of allowable costs. It should be noted that construction contracts differ since the ASPR cost principles' statement of unallowable costs under such contracts lists taxes, fees, or charges imposed upon, by reason of, or measured by, the contractor's fee. However, items that may be covered by exemption certificates or proof of exemptions should not be considered as allowable costs unless, in the case of State or local taxes, the authorities refuse to recognize the exemptions. In such a case the contractor should be reimbursed for payment of the tax provided he does so in a manner that preserves all rights of the Government to refund and agrees to cooperate with the Government to obtain such refund.

(b) *Exemptions from Federal excise taxes; cost-reimbursement contracts*—(1) *Purchase and subsidiary articles.* (i) A prime cost-reimbursement contractor is not liable for Federal excise taxes with respect to taxable purchase articles which the manufacturer fabricates or assembles out of materials owned by the United States. However, no exemption certificate is necessary to establish the contractor's nonliability.

(ii) Under an informal ruling of the Internal Revenue Service cost reimbursement contractors are entitled under section 3451 of the Internal Code to purchase tax free direct from the manufacturers thereof those articles which the Government is entitled to purchase tax free under section 3451 of the Internal Revenue Code (SPJGT/7570, July 12, 1944). However, Air Force cost-reimbursement contractors are subject to the same restrictions as to policy of claiming such exemptions set out in § 1011.203 and cannot be compelled to claim any such exemptions. Where the exemptions are claimed, the exemption certificate should be in the special form illustrated in § 1011.206 (a) (2), or as prescribed in Treasury Regulations 44 (26 CFR (1939) 314.28) and Regulations 46 (26 CFR (1939) 316.28).

(iii) It is noted that cost-reimbursement subcontractors are not entitled to exemptions under section 3451, IRC, and no such exemption certificates will be issued to them. Cost-reimbursement prime and subcontractors are entitled to purchase subsidiary articles tax free as provided in § 1011.206 (b) (4) of this part and § 11.204 of this title.

SUBPART T—FOREIGN TAXES

§ 1011.2000 *Scope of subpart.* (a) This subpart sets forth the policy of the Department of Defense with respect to exemption from the payment of foreign taxes and customs duties on the expenditure of funds appropriated to the Departments of the Army, Navy, and Air Force, and funds allocated to the Department of Defense by the Director for Mutual Security.

(b) This subpart applies to the exemption from taxes and customs duties as covered by agreements with Belgium, Denmark, France, Federal Republic of Germany, Iceland, Italy, Japan, Luxembourg, Netherlands, Norway, and the United Kingdom. It will become applicable to any other country at such time as a tax agreement is signed with such country. Import, export, procurement of goods and services and construction in countries other than those enumerated in this section and § 1011.2001 (a) and (b) will proceed without reference to the policy set forth in this subpart until such time as a tax

agreement may be concluded with a particular country.

§ 1011.2001 *General.* (a) All import and export of goods, all construction and all procurement of goods and services in the countries enumerated in § 1011.2000 (b) will be in accordance with the terms of the agreements that have been concluded with those countries providing for relief from the payment of taxes on United States dollar expenditures for the common defense. Compliance with the pertinent tax agreement will constitute complete compliance with this section. Post exchange purchases and counterpart expenditures are not within the scope of the tax exemption agreements covered by this section. In addition, tax exemption need not be sought on procurement amounting to less than $1,000, except payments relating to infrastructure where the administrative burden of obtaining relief is out of proportion to the relief obtained. Exemption from the payment of social security contributions and charges in the nature of service charges need not be sought except in those cases where exemption is granted by the pertinent tax agreement or by other arrangements.

(b) Messages DEF 91060 of January 3, 1952, DEF 81609 of January 9, 1952, DEF 910404 of February 18, 1952, and DEF 902223 of February 28, 1952 are rescinded so far as they concern foreign taxes, except as they apply to Greece, Turkey, and Portugal, where they will continue to apply until such time as tax agreements are signed.

(c) Appropriate modifications will be made in existing contracts on which payments had not been completed on the effective date of the applicable tax agreement.

§ 1011.2002 *Tax clauses for use in contracts with foreign governments and foreign contractors.* The following clauses will be inserted as applicable in all contracts hereafter effected with foreign governments and foreign contractors (except Canadian Commercial Corporations):

(a) *Clause for use in fixed-price contracts between the Government of the United States and foreign contractors (except foreign governments).*

TAXES

(1) The contractor warrants that the contract prices, including the prices in subcontracts hereunder, do not include any tax or duty which the Government of the United States and the Government of _____ have agreed shall not be applicable to expenditures in _____ by the United States or any tax or duty from which the contractor, or any subcontractor hereunder, is exempt under the laws of _____. If any such tax or duty has been included in the contract prices through error or otherwise, contract prices shall be correspondingly reduced.

(2) If for any reason after the contract date the contractor is relieved in whole or in part from the payment or the burden of any tax or duty included in the contract prices, the contract prices shall be correspondingly reduced.

(3) If, after the contract date, the Contractor is required to bear the burden of any increase in taxes on this transaction or on supplies, materials, or components used in the manufacture or furnishing of complete supplies or services covered by this contract, which are not excluded or required to be excluded pursuant to paragraph (1) hereof, the contract prices will be increased accordingly. The Contractor will submit a written request for such price revision, together with any substantiating evidence as may be required by the Contracting Officer within thirty days of the effective date of any such increase in taxes or within such further time as the Contracting Officer may allow.

(b) *Clauses for use in fixed-price contracts between governments.*

TAXES

(1) The contract prices, including the prices in subcontracts hereunder, do not include any tax or duty which the Government of the United States and the Government of _____ have agreed shall not be applicable to expenditures in _____ by the United States, or any other tax or duty not applicable to this contract under the laws of _____. If any such tax or duty has been included in the contract prices through error or otherwise, the contract prices shall be correspondingly reduced.

(2) If, after the contract date, the Government of the United States and the Government of _____ shall agree that any tax or duty included in the contract prices shall not be applicable to expenditures in _____ by the United States, the contract prices shall be reduced accordingly.

(c) *Clause for use in cost-type contracts between the Government of the United States and foreign contractors (except foreign governments).*

TAXES

Any tax or duty from which the United States Government is exempt by agreement with the Government of _____ or from which the contractor or any subcontractor hereunder is exempt under the laws of _____, shall not constitute an allowable cost under this contract.

(d) *Clause for use in cost-type contracts between governments.*

TAXES

Any tax or duty from which the United States Government is exempt by agreement with the Government of _____ or from which any subcontractor hereunder is exempt under the laws of _____, shall not constitute an allowable cost under this contract.

SUBPART U—COLLECTION AND PAYMENT OF FEDERAL EXCISE TAXES BY THE GOVERNMENT WHERE THE UNITED STATES IS VENDOR

§ 1011.2100 *Collection from purchaser or user.* Except as provided in § 1011.2102, the amount of the Federal excise tax will be collected from the purchaser when articles subject to tax under § 11.103 or § 11.101 of this title, and the following sections of this subpart, purchased free of tax, are sold to individuals or used for other than the use of the United States.

§ 1011.2102 *Transfers of Government-owned property.* In connection with the following types of transfers of Government-owned property purchased by the Government free of tax, the amount of the Federal tax need not be collected from the purchaser.

(a) All sales of surplus property and Government-owned contractor inventory (excepting gasoline), as defined in the Federal Property and Administrative Services Act of 1949 as amended (63 Stat. 377; 5 U. S. C. 124 et seq.).

(b) All sales of scrap or of used property.

(c) Transfers to a cost-plus-fixed-fee contractor of Government-owned property for use in connection with the performance of the contract.

(d) Sales to a lump-sum contractor of Government-owned property for use in connection with the performance of the contract.

(e) Transfers to other agencies of the Government, including transfer for disposition to the Federal Supply Service.

(f) Transfer to any State, Territory of the United States, or political subdivision thereof, or the District of Columbia, when original sales to such agencies or instrumentalities are tax exempt.

§ 1011.2103 *Sale of property to a lump-sum contractor.* As indicated in § 1011.2102 (d), where the sale of property to a lum-sum contractor is involved, the amount of the Federal tax, as such, need not be collected from the contractor. The contractor, however, should not derive the benefit arising from the fact that the Government originally acquired the property free of tax. Accordingly, in fixing the sales price to be paid to the Government by the lump-sum contractor, one of the elements included in the price will be the amount of the Federal excise tax which would ordinarily be payable upon a sale of similar property by a vendor other than the Government.

PART 1012—LABOR

Subpart A—Basic Labor Policies

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Subpart F—Walsh-Healey Public Contracts Act

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1012.602 Applicability.
1012.603 Responsibilities of contracting officers.

Subpart H—Nondiscrimination in Employment

1012.804 Special requirements or emergencies.
1012.806 Administration.
1012.806-4 Complaints.
1012.806-7 Reporting channels.
1012.806-50 Contact with the President's Committee.

AUTHORITY: §§ 1012.101 to 1012.806-50 issued under sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U. S. C. 2301-2314.

SUBPART A—BASIC LABOR POLICIES

§ 1012.101 *Labor relations.*

§ 1012.101-50 *Actions affecting labor policies.* AF activities will not take any independent action concerning labor matters unless the action is within an established AF policy.

§ 1012.101-51 *Communications regarding labor matters.* No direct communication is authorized with the national headquarters or national offices of any labor organization or Federal agency, except with the specific prior approval of Hq USAF.

(a) Commanders of major air commands and separate operating activities in the continental United States are authorized to communicate with local labor organizations and local offices of Federal agencies as required to carry out their responsibilities.

(b) Commanders of major oversea commands are authorized to take such action on labor matters within their commands consistent with established AF policies.

§ 1012.101-53 *Removal of items from plants or facilities affected by work stoppages.* The Commander, AMC, is responsible for the removal of items from plants or facilities affected by work stoppages and is authorized to direct removal of critical items which are urgently needed.

§ 1012.101-54 *Inspection of material during labor disputes.* Despite the existence of a labor dispute, inspection functions at contract plants or sites will be performed, as normally required during contract performance, except where the safety of the inspector may be endangered.

§ 1012.101-55 *Admission of labor representatives to contract sites.* AF activities normally will not prevent the access of labor union representatives to contract sites for the conduct of union business if their activities are compatible with: (a) performance of the contract work involved and (b) applicable safety and security regulations.

§ 1012.102 *Overtime, extra-pay shifts, and multi-shift work.*

§ 1012.102-50 *Contract requirements*—(a) *Definitions.* (1) "Premium wage compensation" means compensation paid for overtime, extra-pay shifts, and multishifts worked in performance of an AF contract.

(2) "Overtime" refers to hours worked in excess of 8 hours per day or 40 hours per week.

(3) "Extra-pay shifts" and "multi-shifts" for the purpose of this chapter refer to those scheduled for other than normal working hours for which extra compensation is paid.

(b) *Types of contract clauses.* There are two types of clauses which are permitted with respect to contractually authorizing AF contractors to pay premium wage compensation in connection with AF contracts:

(1) That which directly authorizes a stipulated amount or percentage of premium-wage compensation (no standard clause available).

(2) That which authorizes, upon a later determination by the contracting officer responsible for administration of the contract, the use of premium-wage compensation, in addition to the premium-wage compensation (if any) already specifically authorized by the contract (for clauses, see § 1007.4031 of this chapter).

§ 1012.102-51 *Interservice agreements.* The contracting officer administering the contract is the AF officer authorized to enter into agreements with the other department or departments concerning overtime, extra-pay shifts, and multi-shifts.

§ 1012.103 *Federal and State labor requirements.*

§ 1012.103-50 *State labor standards.* State labor standards governing maximum hours of employment, meal and rest periods, night work, and other similar conditions of employment will be observed to the maximum extent possible in performing AF contracts.

(a) *Administration.* (1) The Air Force will not initiate applications to State agencies or officials for the suspension or relaxation of State labor standards.

(2) Contracting officers may support applications of contractors or suppliers when all of the following circumstances are present:

(i) If the required products or services are in short supply and failure to meet production schedules for critically needed end-items will result unless the suspension or relaxation of State labor standards is approved.

(ii) If there are no alternative sources of supply for such products or services available within the required delivery schedule.

(iii) If remedial action (such as recruitment, training, and more effective utilization of manpower) is not practicable.

(iv) If the granting of the application will not result in impairment of working conditions to the extent that productivity at the facility will be adversely affected.

(3) Air Force letters of support will be addressed to the appropriate State agency and will include:

(i) The facilities and services affected.

(ii) The extent of relaxation of the particular State labor standard required to complete the specific work in conformity with the procurement schedule.

(iii) The period of time required for completion of the work.

SUBPART B—CONVICT LABOR

§ 1012.202 *Applicability.* The contracting officer is responsible for making the determination as to the applicability of the convict labor law to a contemplated procurement.

SUBPART C—EIGHT-HOUR LAW OF 1912 (OTHER THAN CONSTRUCTION CONTRACTS)

§ 1012.302 *Applicability.* The contracting officer will determine the applicability of the Eight-Hour Law of 1912 (62 Stat. 989; 40 U. S. C. 324-326) to a contemplated procurement.

SUBPART D—LABOR STANDARDS IN CONSTRUCTION CONTRACTS

§ 1012.401 *Statutes and regulations.*

§ 1012.401-50 *Definitions.* For purposes of the acts cited in § 12.401 of this title:

(a) The terms "building" or "work" refer to construction activity, including without limitation buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, streets, tunnels, sewers, mains, power lines, pumping stations, railways, airports, terminals, docks, piers, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping.

(b) The terms "public building" or "public work" include building or work of which the construction, alteration, or repair is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public, regardless of whether title thereto is in the United States.

(c) The terms "construction," "alteration," or "repair" include all types of work done on a particular building or work at the site thereof, including without limitation, altering, remodeling, painting, and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work by persons employed by the contractor or subcontractor. Demolition of existing structures is not included.

(d) A construction contract for purposes of §§ 12.403-1 and 12.403-2 of this title is in excess of $2,000 if the contract is in an actual amount (not merely an estimated amount) in excess of $2,000. A contract initially less than $2,000 which is later increased over that amount by supplemental agreement or change order is in excess of $2,000 from the effective date of such a change in the contract amount, and the requirements of the Davis-Bacon Act, if otherwise applicable, are applicable to that part of the contract which has not been performed on such date.

§ 1012.402 *Applicability.* The contracting officer will determine the applicability of the acts cited in § 12.401 of this title.

§ 1012.404 *Administration and enforcement.*

§ 1012.404–1 *In General*—(a) *Administration of labor standards.* It will be the responsibility of the contracting officer administering contracts to administer construction contracts according to the applicable labor standards provisions in this subpart.

(b) *Preconstruction letter or conference.* The contracting officer administering the contract will notify the contractor of his responsibilities under the labor standards provisions of the contract, by either a preconstruction letter or conference. A contractor-signed copy of AFPI Form 27, "Preconstruction Conference Checklist," will be included in the contract file when the conference system is used. The preconstruction letter or conference should inform the contractor of his obligations with respect to the labor standards statutes, regulations, and provisions set forth in this subpart and in Subpart D, Part 12, of this title.

(c) *Examination of records.* Prior to the approval of payment on any construction contract, the contracting officer administering the contract will initiate such examinations into the records and activities of the contractor and his subcontractor(s) as are necessary to insure full compliance with the applicable labor statutes and labor standards provisions in this subpart.

§ 1012.404–2 *Wage determinations.* The wage rate determination, issued by the Department of Labor pursuant to the Davis-Bacon Act, as amended (46 Stat. 1494; 40 U. S. C. 276a), is a schedule of the minimum hourly rates of wages to be paid laborers and mechanics employed by the contractor and his subcontractors performing work called for by the contract. It normally includes all the classifications of laborers and mechanics expected to be employed on the work. There are two types of determinations: area determinations and individual determinations.

(a) Area (54A) determinations are determinations which provide wage rates for all contracts which may be awarded for work at an installation or within a given geographical area (usually a county) during the 90-day life of the determination. These determinations contain all the classifications of laborers and mechanics usually needed for construction work. Hq USAF maintains the area determination on a continuous basis by requesting a new determination from the Department of Labor prior to the expiration of each current determination. Area determinations will be maintained only for those installations where the volume of contracts being executed makes it impracticable to obtain individual determinations. Area determinations will normally not be maintained for installations other than bases or facility plants usually requiring at least four construction contracts per quarter.

(b) Individual determinations are determinations which are provided by the Department of Labor for a single contract. Such a determination must be obtained for each contract subject to the Davis-Bacon Act, as amended, (46 Stat. 1494; 40 U. S. C. 276a) unless an area (54A) determination is applicable. The classifications of laborers and mechanics in these determinations are limited to those classes employed in the type of work required by the contract, as indicated in the request.

(c) Use of the wage rate determination: The Specifications of every contract subject to the Davis-Bacon Act will include a copy of a current wage rate determination. Contracting officers will not accept purchase requests covering projects subject to the act until the required determination has been incorporated in the specifications. Contracts may be advertised up to the expiration date of the determination; however, bids will not be opened after expiration until a new determination has been received and bidders advised of changes therein. Wage rates included in the contract at the time of award are applicable to that contract for its duration. These same rates may be used for additional or new work not included in the specification if an area determination was used in the IFB or RFP and that determination is still in effect at the time of the change. If the area determination has expired or if an individual determination was used, a new wage determination must be used for such new or additional work.

(1) *Fixed-price contracts (formally advertised or negotiated.)* Once a contract is awarded, the wage rates contained in the specifications are the minimum rates that can be paid by the contractor or his subcontractors during the life of the contract.

(2) *Cost-reimbursement type, time and material, and labor-hour contracts and subcontracts.* The wage rates established for and included in cost-reimbursement type prime or subcontracts (including time and materials contracts and labor-hour contracts) according to the Davis-Bacon Act are the minimum rates that can be paid during the life of the contract. Reimbursement to contractors and subcontractors holding the foregoing types of contracts for wages paid to laborers and mechanics are based on this wage schedule; all applications of prime and subcontractors to use higher wage rates require specific approval by the contracting officer. Subcontracts awarded pursuant to a cost-reimbursement type, time and material, or labor-hour contract will include wage rates prevailing at the time of the subcontract award.

(d) Modifications: The date modifications, superseding determinations, or new determinations are received by Hq USAF will be the date used in the field in determining whether any changes incorporated therein must be considered in the bidding or whether the rates contained in the original determination may still be used. Accordingly, all determinations are time-date stamped to indicate the date received by Hq USAF. If the date stamped is 5 days or more prior to the bid opening, such changes must be incorporated in the contract. If such changes include downward revisions of any of the applicable wage rates or if such changes include upward revisions of applicable wage rates not acceptable to the low bidder without a price modification, the procurement will be readvertised. If there are no changes to applicable wage rates or if there are upward revisions which the low bidder will accept without a price revision, the changed wage rates may be included by amendment to the Invitation for Bids.

(e) Posting.

(1) The contracting officer will require the contractor to display the Wage Rate Information Poster (SOL–155), together with the applicable wage determination.

(2) The contracting officer will insure that construction contractors will be furnished a Wage Rate Information Poster (Department of Labor Poster No. SOL–155) promptly upon the making of the award.

(3) The contracting officer will insure that there is inserted in the blank box in the middle of the poster, in a prominent manner, the name and address of the AF office responsible for the administration of the contract, where workers may file any complaints they may have as to violations of applicable labor law standards.

§ 1012.404–3 *Additional classifications.* If a classification is omitted in the determination, or the need for an additional classification arises prior to contract award, an emergency request for a supplementary determination should be sent to Hq USAF. If the need for additional classifications arises after award of the contract, the contracting officer may authorize the contractor to employ such classifications on the work, provided the contractor has furnished a signed request justifying use of such classifications and the wage rates proposed to be paid. If the request is approved, one copy will be returned to the contractor, one copy will be made a part of the contract records, and two copies will be sent immediately to Hq USAF. If disagreement or doubt exists as to the proper classification or wage rate, the question together with a specification description of the work to be performed by the classification and the recommendation and comments of the contracting officer, will be referred immediately to Hq USAF.

§ 1012.404–4 *Apprentices.* Apprentices may be employed on the work only under a bona fide apprenticeship program registered with a state apprenticeship council which is recognized by the Federal Committee on Apprenticeship, Department of Labor, or, if no such recognized council exists in the State, the apprentices must be registered under a program with the Bureau of Apprenticeship, Department of Labor. A copy of the apprenticeship registration certificate, or a certification by the contractor that his apprentices are properly registered, will be furnished to the contracting officer, together with copies of the first payrolls upon which such apprentices are listed. The number of persons employed in the classification of apprentices may not exceed the ratio approved by the council or bureau.

§ 1012.404–5 *Subcontracts.* The prime contractor will submit to the contracting officer a list of all subcontracts and subcontractors to be engaged on

work at the site, indicating names and addresses, amount of subcontract, and nature of work involved. This list will be kept up to date during performance of the contract and will include all subcontractors, not merely first tier subcontractors.

§ 1012.404–6 *Payrolls and affidavits*—(a) *Submission.* The prime contractor will submit and cause all his subcontractors to submit through him to the contracting officer, copies of payrolls showing all laborers and mechanics engaged on the contract at the site of the work, including names, classifications, hours worked each day, total hours each week, rate of pay, total wages, deductions from wages, and net amount of wages, each payroll to be accompanied by a sworn affidavit in the form prescribed in § 16.803–1 (c) of this title attesting to compliance with the labor standards provisions of the contract. The receipt of these affidavits is a condition precedent to payment under the contract. The addresses of all employees listed on the payrolls will be submitted with the payrolls on which their names first appear. A listing of employees or copies of hiring slips with appropriate data will suffice for this purpose.

(b) *Payroll deductions.* (1) No payroll deductions are authorized except as follows:

(i) Where required by Federal, State, or local statute or ordinance to be made by the employer from the wages earned by the employee.

(ii) Bona fide prepayment of wages without discount or interest.

(iii) Deductions required by court process, provided that the contractor or subcontractor will not be permitted to make such a deduction in favor of the contractor, subcontractor, or any affiliated person, or where collusion or collaboration exists.

(iv) As permitted by subparagraphs (2), (3), and (4) of this paragraph.

(2) Deductions which meet the standards set forth in this subparagraph are permissible provided the contractor or subcontractor has made written application by registered mail to the Secretary of Labor (copies must be furnished the contracting officer) indicating that:

(i) The deduction is not prohibited by law.

(ii) That the employee has consented voluntarily to the deduction in writing, prior to the payroll period, and the consent is neither a condition for obtaining employment nor for continuation of employment or that the deduction is provided for in a bona fide collective bargaining agreement and is for the benefit of the employee or the labor organization which represents the employee.

(iii) That no profit, benefit, or payment is obtained directly or indirectly by the contractor, subcontractor, or any affiliated person from the deduction and that no portion of the funds, whether in the form of a commission or otherwise will be returned to the contractor, subcontractor, or any affiliated person.

(iv) That the deduction is for the convenience and in the interests of the employee and that the deductions are customary in this or comparable situations.

Subject to the foregoing standards and application to the Secretary of Labor by the contractor or subcontractor in good faith, deductions may be made. However, if the Secretary of Labor decides on his own motion or on the motion of an affected person or agency that the deduction does not meet the standards set forth in this subparagraph, he will give written notice to the contractor or subcontractor and request additional supporting evidence for the deduction. If on the basis of such additional evidence the deduction still does not meet the standards set forth in this subparagraph, the deduction will cease to be permissible 7 days after the contractor or subcontractor and the Air Force have been notified of the Secretary's decision.

(3) Upon application to and receipt of written permission from the Secretary of Labor, and subject to the standards set forth in subparagraphs (2) (i), (ii) and (iv) of this paragraph, deductions may be made by a contractor or subcontractor or any affiliated person for membership fees in group benefit or retirement associations, for board and lodging, or for other purposes where the Secretary of Labor concludes the deduction is required by compelling circumstances: provided, however, that the contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction. A copy of the Secretary's decision will be sent to the applicant and the Air Force.

(4) According to and subject to the standards set forth in subparagraph (2) of this paragraph, general permission is hereby granted to make payroll deductions for:

(i) The payment of the purchase price of United States Defense Stamps and Bonds and United States Tax Savings Notes.

(ii) The repayment of loans to or the purchase of shares in credit unions organized and operated according to District of Columbia, Federal, or State credit union statutes.

(iii) Contributions to a Federal Government or quasi-governmental agency.

(iv) The payment of dues or premiums to unaffiliated insurance companies or associations for medical or hospitalization insurance where the employer is not required by Federal, State, or local laws to supply such insurance or benefits.

(v) Contribution to bona fide charities such as the Red Cross and Community Chest.

(vi) Regular union initiation fees and membership dues where a collective bargaining agreement provides for such deductions. This does not include work permits or special assignments.

(5) When the employee does not have full and actual freedom of disposition of his wage payment, whether made in cash or by check, any restricted payment made to the employee is considered a deduction under this subpart.

(6) Nothing herein will be construed to permit any deduction which the contractor or subcontractor knew, or in exercise of good faith should have known, did not meet the foregoing standards. The Secretary of Labor may notify the contractor or subcontractor that a deduction will be permitted only if certain conditions with respect thereto are observed. The contractor or subcontractor or any affiliated persons will comply with such general rules and regulations concerning the deductions as the Secretary of Labor will make from time to time, notice of which will have been given to the contractor or subcontractor or any affiliated person making the deduction and to the Air Force either directly or through publication in the FEDERAL REGISTER.

(c) *Preservation of records.* The contractor and subcontractors will maintain neat and legible payroll records available for inspection by the Air Force or the Department of Labor during the performance of the contract and for a period of 3 years from date of completion of the contract. The contracting officer administering the contract will maintain the payrolls and affidavits as part of the contract file.

§ 1012.404–7 *Investigations.* The contracting officer administering the contract is responsible for accomplishment of investigations.

§ 1012.404–9 *Suspensions and deductions of contract payments.* (a) As to any alleged failure or refusal to pay wages due workers under the labor standards provisions of this Part, the contracting officer will inform the contractor of such allegation and, upon mutual agreement that the allegations are correct, request that the contractor provide for restitution according to § 1012.404–10. If restitution is not made, and violation of the Davis-Bacon Act is alleged, action will be taken to withhold moneys sufficient to cover the alleged unpaid wages.

(b) If it is finally determined that restitution is due any worker because of violation of the Davis-Bacon Act and the contractor refuses to make restitution, the worker may be advised that he may apply to the General Accounting Office for payment.

(c) As to alleged violations involving liability for penalties under the Eight-Hour Law, the contracting officer should withhold from payments due the contractor a sum sufficient to cover the estimated penalties possibly due the United States. Such an amount should continue to be withheld until action as set forth in paragraph (d) of this section is taken, or the contractor voluntarily pays the full amount of the penalties allegedly due, or the contracting officer is informed through channels that the Department of Labor has waived imposition of the penalties.

(d) When investigation discloses that penalties are due the United States, the contracting officer will forward to the disbursing officer who normally makes disbursement to the contractor, a voucher indicating the amount due the contractor, the amount to be paid to the United States as penalties, and sufficient information to explain the withholding. The voucher should be separate from that used to withhold any restitution

that may be due the contractor's employees. The contracting officer should retain complete information concerning the penalties, including justification therefor and method of calculation, to be furnished the disbursing officer if requested.

(c) In appropriate cases where an employer acting in good faith has inadvertently failed to pay the daily overtime compensation required by the Eight-Hour Law (40 U. S. C. 324–326) and subsequently makes delayed payment of the extra amount due his employees, although the employer is in technical violation of the Eight-Hour Law and subject to the 5-dollar per day penalty for each violation, a recommendation for nonimposition of penalties may be made.

§ 1012.404–10 *Restitution.* (a) As to labor standards violations determined to have involved underpayment of wages, the contracting officer may order restitution to be made, unless it appears that the violation is willful or aggravated. Computation of proper restitution may be made by the contractor and checked by the contracting officer. Upon completion of computations, a summary sheet listing names, addresses, and the unpaid amounts payable to the employees involved should be prepared by the contractor, a copy of which will be furnished to the contracting officer. The contracting officer will advise the contractor of the procedure which will satisfy him conclusively that proper restitution has been made, such as the witnessing of cash payments, the furnishing of canceled checks, or a certified copy of a supplemental payroll. When a case develops where it is indicated that the contractor or subcontractor is in aggravated or willful violation of the labor standards provisions or that criminal action might be undertaken because of willful violation of a criminal statute, no attempt should be made to effect restitution.

(b) When a contractor wishes to make voluntary restitution but the workers involved cannot be located, the contracting officer will collect such restitution and send it to the disbursing officer for forwarding to the General Accounting Office, accompanied by a list of such workers, their last known addresses, and the amount due each. Unless this procedure has been followed, voluntary restitution cannot be considered completed as to workers who cannot be located.

SUBPART F—WALSH-HEALEY PUBLIC CONTRACTS ACT

§ 1012.602 *Applicability*—(a) *Determination of applicability.* The contracting officer is responsible for making the determination as to the applicability of the Walsh-Healey Act (49 Stat. 2036; 41 U. S. C. 35–45) to a contemplated procurement.

(b) *Exceptions.* Section 6 of the Act (49 Stat. 2038; 41 U. S. C. 40) permits the Secretary of Labor to make exceptions to the requirement that the representations and stipulations of section 1 of the Act be included in department proposals or contracts which are subject to the Act in individual cases.

(1) All requests of present or prospective contractors for exceptions under section 6 of the Act will be addressed to the Commander, AMC. Such requests will be in writing, will be transmitted through the appropriate contracting officer, and will set forth all pertinent information, including the nature of the requested exception, the need therefor, and any action already taken by the contractor to avoid the necessity for the exception.

(2) If the Commander, AMC, concurs in the recommendation of the contracting officer, after review of the request and consideration as to whether the need for an exception can be avoided by using alternative facilities, he will send the request to Hq USAF, together with:

(i) A statement of all pertinent data.

(ii) His recommendation.

(iii) A letter stating the need for the exception, addressed to the Secretary of Labor and prepared for the signature of the Secretary of the Air Force.

(iv) Findings of fact as required by section 6 of the Act, prepared for the signature of the Secretary of the Air Force.

§ 1012.603 *Responsibilities of contracting officers.* The following paragraphs implement the corresponding paragraphs of § 12.603 of this title. The contracting officer is responsible for the following:

(a) Advising prospective contractors of possible applicable minimum wage determinations, by giving written or verbal information about such determinations in advance of or coincident with the negotiation of nonadvertised procurements, and by including the following provision in invitations for bids in the case of formally advertised procurements:

LABOR INFORMATION

Attention is invited to the possibility that wage determinations may have been made under the Walsh-Healey Public Contracts Act providing minimum wages for employees engaged in the manufacture for sale to the Government of the supplies covered by this Invitation for Bids. Information in this connection, as well as general information as to the requirements of the Act concerning overtime payment, child labor, safety and health provisions, etc., may be obtained from the Wage and Hour and Public Contracts Division, Department of Labor, Washington 25, D. C. Requests for information should state the Invitation number, the issuing agency and the supplies covered.

The contracting officer is responsible for being generally cognizant of the minimum wage determinations of the Secretary of Labor currently in effect. Information regarding minimum wage determinations may be secured from the Regional Directors of the Wage and Hour and Public Contracts Division, U. S. Department of Labor.

(b) Insuring that contractors who are awarded contracts subject to the Walsh-Healey Public Contracts Act are furnished posters PC–13 (revised April 1955), entitled "Government Contract Notice to Employees."

SUBPART H—NONDISCRIMINATION IN EMPLOYMENT

§ 1012.804 *Special requirements or emergencies.* When, in negotiated procurement, an offeror who would otherwise be qualified for award refuses to accept the clause or requests a modification thereof, and an award omitting the clause or granting such modification is considered necessary or clearly in the best interests of the Government, a request for such deviation will be forwarded to Hq USAF.

§ 1012.806–4 *Complaints.* Complaints received by the Air Force alleging noncompliance with the provisions of the nondiscrimination clause will be reviewed by the initial receiving office to determine that they contain the identifying information called for by § 12.806–4 of this title. Complaints not received within 1 year from the date of the incident will not be processed.

§ 1012.806–7 *Reporting channels.* (a) Reports of investigations containing the information indicated in § 12.806–6 (a) of this title will be submitted in quadruplicate to Hq USAF through Hq AMC. The latter will prepare a summary report to accompany the investigation findings.

§ 1012.806–50 *Contact with the President's Committee.* There will be no contacts by AF personnel with the President's Committee on Government Contracts or its staff except after coordination with Hq USAF.

PART 1013—GOVERNMENT PROPERTY

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AUTHORITY: §§ 1013.101 to 1013.3402 issued under sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314.

SUBPART A—GENERAL

§ 1013.101 *Definitions.* (a) through (e). See § 13.101 (a)–(e) of this title.

(f) "Industrial facility" is further defined for contracting and costing purposes as including all property acquired for the performance of a contract, and not incorporated in the contract end items, of a type which would normally be capitalized for contractor's Federal income tax purposes if the contractor retained title thereto. For this purpose the term "property" includes improvements and attachments and any other items the cost of which would be so capitalized.

(g) through (o). See § 13.101 (g)–(o) of this title.

(p) "Facilities contract" means a contract between the Government and the contractor providing to the contractor existing Government facilities and/or funds for the acquisition of facilities for the production or development of USAF material and services.

§ 1013.101–50 *Bailment.* A delivery of Government property by the Air Force to a contractor for a specific purpose directly related to a prime AF contract, the property to be returned, or duly accounted for, to the Air Force when the special purpose is accomplished. Bailment does not include sale, donation, lease, the furnishing of property to a contractor under a facilities contract, or the furnishing of Government-furnished property for consumption or for incorporation in such a manner as to lose its identity into an end product delivered to the Government.

§ 1013.101–51 *Bailment agreement.* A bilateral contractual instrument which accomplishes the actual bailment of Government property, and contains all information concerning the individual bailment, including an adequate description of the property; purpose of the bailment; use to be made of the property; authorization for modifications which may be incorporated in the property; the place where the property is to be delivered and returned; the period of bailment and any special provisions deemed necessary by the Government.

§ 1013.101–52 *Charter carrier.* (Single or multiple-trip charter carrier.) Civil aircraft operating under contract to the Air Force but not under operational control of the Air Force.

§ 1013.101–53 *Civil aircraft.* Aircraft (domestic or foreign) operated by private individuals or corporations of any national registry, including foreign government-owned commercial aircraft, in other than military or governmental operations.

§ 1013.101–54 *Contract carrier.* Civil aircraft, the operations of which are controlled under terms of a contract administered by any department of the United States Government.

§ 1013.101–55 *Expendable property.* That property which will lose its identity or be consumed in the course of its use.

§ 1013.101–56 *Government-furnished aircraft equipment (GFAE).* That portion of Government-furnished property which, under the terms of an Air Force airframe contract, is procured by the Air Force and furnished direct to aircraft equipment or missile manufacturers for inclusion or incorporation in aircraft or missiles.

§ 1013.101–57 *Master bailment agreement.* A bilateral contractual instrument which sets forth the basic terms and conditions under which bailment of Government property to the contractor will be effected.

§ 1013.101–58 *Facilities expansion project.* All the activity involved in making Government-owned industrial facilities available to an AF contractor and in supervising their use, from the time it is determined that such facilities are required until the time the contractor is relieved of all responsibility with respect to them.

§ 1013.101–59 *Facilities lease.* A lease agreement between the Government and a contractor providing existing Government-owned industrial facilities to the contractor for the production or development of AF materiel and services.

§ 1013.101–64 *Real property.* Real property includes lands and interest therein, leaseholds, buildings, improvements and appurtenances thereto, and also includes piers, docks, warehouses, rights-of-way, and easements, whether temporary or permanent, and improvements permanently attached thereto. It does not include machinery, equipment, or tools which have not been affixed to, or which have been severed or removed from, any such lands or buildings.

§ 1013.101–65 *AF representative.* The term "AF representative," means an AF plant representative or chief of an air procurement district under the jurisdiction of an AMA commander; or the chief of a procurement office in: an AMC field procurement activity, an AF foreign procurement activity, a separate AMC activity, an AF local purchase activity, ARDC, or an AMA under the jurisdiction of AMFPA or AMFEA.

§ 1013.101–66 *Special nuclear material.* "Special nuclear material" is material such as plutonium or uranium enriched in the isotope 235 or the isotope 233, or any other material which the Atomic Energy Commission has determined to be capable of releasing substantial quantities of energy through nuclear

chain reaction of the material, or any other material artificially enriched by any of the foregoing.

§ 1013.102 *General policy.* AF policy is that Government property will be furnished to contractors, including subcontractors, only when specifically provided for in the terms of a written contract, bailment agreement, or lease. Any deviation from this policy will be granted only by the prior written approval of Hq USAF.

§ 1013.102–3 *Facilities.* The procuring activity will determine, when considering this factor, whether provision of facilities will be in the Government's best interests. In providing industrial facilities to contractors for production of AF materiel, the following policies will be observed:

(a) *Utilization of existing facilities.* Existing industrial facilities will be used in preference to Government-financed facilities expansions.

(b) *Capacity.* When Government financed industrial facilities are required they will be provided: only to the extent necessary to meet procurement requirements, or to provide limited facilities augmentation for selected aircraft, or to provide a minimum base for meeting mobilization requirements. Normally facility expansions will be based on a two shift, 5-day work week.

(c) *Expansion for mobilization.* Industrial expansion to meet phased military requirements for mobilization will be supported to the extent necessary to meet that portion of such requirements which is not covered by available Government-owned facilities together with such privately owned facilities as are expected to be made available for military production.

(d) *Dispersal.* All new projects undertaken or sponsored will comply with such dispersal standards as may be issued by proper Government authority.

(e) *Financing.* In general, the Department of Defense will not undertake financing of industrial facility expansions unless it can be demonstrated that it is necessary for the Government itself to perform or support the required production or service.

(f) *Test facilities at privately owned plants.* No Government financed test facilities will be constructed at a privately owned plant if such facilities duplicate available Government-owned test facilities. Exceptions to the above include: when it can be established that existing Government-owned facilities, regardless of service control, are being used to full capacity, or that existing Government-owned facilities are inadequate from the standpoints of technical characteristics, workload capabilities, or excessive distance from the development or production source of the weapon or equipment, and it would be impractical to locate additional capacity at another Government-owned facility.

(g) *Cooperative use of Government facilities.* The heavy cost and the large land areas frequently required for test and development facilities make it imperative that maximum utilization be made of each facility owned by the Government. Therefore, the following rules will be observed:

(1) Each facility will be acquired in a manner and under circumstances in which the Government's interest is complete and exclusive.

(2) Each facility will be operated according to a periodically established test program; wherever two or more military departments are engaged in programs involving a particular facility, the test program will be arranged by mutual agreement between the interested departments.

(3) Under regulations established by the Secretary of the cognizant military department, the technical findings resulting from operation of Government-owned facilities will be the property of the Government and will be made available for such dissemination and use as may, from time to time, be found to be in the interest of the Government.

(h) *Prior determinations for common use type facilities.* The procuring activity will make the following determination, prior to submitting requests for authority to acquire major common-use type facilities such as airfields, liquid oxygen plants, acceptance test stands, large environmental facilities, nuclear test facilities:

(1) The suitability of other like Government-owned facilities under the control of the Department of Defense, regardless of present occupancy, that are located within a reasonable distance of the proposed site, and the possibility of joint usage;

(2) The location of the proposed facility is the most suitable for the immediate requirement and the estimated present and future requirement of other contractors, and/or components of the Armed Forces;

(3) Where a future demand appears probable provisions have been made in the facility design to allow for suitable expansion if necessary.

(4) Dispersal criteria or applicability, see paragraph (d) of this section.

(i) *Nonseverable industrial facilities.* The construction or installation by the Government of nonseverable structures or industrial facilities on privately owned land is discouraged.

(j) *Rental.* Facilities may be provided on a rent-free basis where such rent-free use is authorized by an AF supplies or services contract and where the contractor is not placed in a favored competitive position. When the above conditions are not present, rental charges for use of the facilities will normally be at the following per annum rates based on acquisition cost:

(1) 5 percent on land and land improvements.

(2) 8 percent on buildings, building installations, land installations (on site), and land installations (off site).

(3) 6 percent on heavy presses and forging equipment.

(4) 12 percent on machine tools, production equipment, laboratory and test equipment, miscellaneous furniture and equipment, except as set forth in subparagraph (6) of this paragraph.

(5) 25 percent on portable tools and material handling and automotive equipment.

(6) Machine tools and metalworking equipment of those types contained in Standard Commodity Classification Major Group 34, Parts I and IV only, made available to contractors, will be provided at the same rental rates if the negotiations for providing the property commenced subsequent to January 31, 1955.

(i) Such rental will be charged on the basis of the time during which the property is available for use by the contractor, rather than on the basis of the time during which the property is actually used. The acquisition cost to be used for determining the rent will be the base price of the machine with standard accessories and attachments (less special tools and accessories) charged the Government when the machine was purchased. When special tools and accessories are included with the machine, the acquisition cost will be increased proportionately. If this information is not available or cannot be accurately estimated or obtained from the manufacturer of the machine, request should be made through channels to Hq USAF.

(ii) The rental will not be applicable and the rate may be negotiated in the following cases:

(*a*) In the case of leases which cover entire Government-owned plants or otherwise involved substantial Government-owned real property as well as equipment.

(*b*) With respect to Government-owned machine tools and metalworking equipment which a procuring activity, in aid of the Government's program for maintaining capacity for essential military production needs in the event of mobilization, desires to make or keep available at any plant for use by a contractor, provided either or both of the following conditions prevail:

(*1*) The items of machine tools and metalworking equipment are such that the size, complexity, or performance characteristics present unusual problems reflected in the time required in connection with preparing for shipment, shipping from storage or supply point, installing, and making ready for operation.

(*2*) The items of machine tools and metalworking equipment are contained in a complete complement of production equipment and tools, capable of producing military end items or components thereof, provided under a facilities contract, lease, or contract for operation of a Government-owned plant and being used for current production or being administered under standby provisions such as those contemplated by § 13.414 of this title.

(iii) In cases covered by subdivision (ii) of this subparagraph, the private party will pay a fair and reasonable rental, which will be established on the basis of sound commercial practice, including any prevailing commercial rates, and will be such to prevent the private party from obtaining an unfair competitive advantage by reason thereof. However, when in cases covered by subdivision (ii) of this subparagraph, property

is leased under Public Law 364, (80th Congress) (61 Stat. 774; 50 U. S. C. 6265–3) or Public Law 130 (83rd Congress), as extended (67 Stat. 177; 50 App. Supp. IV 1173), the rental may take into consideration obligations assumed by the private party to protect and maintain the property as well as to perform other services permitted by these laws to be accepted as all or part of the consideration for the lease.

(k) *Restricted items.* The following items are subject to special restrictions, as follows:

(1) *Office and cafeteria equipment.* Allowable items of furniture, office equipment, and cafeteria equipment will be provided AF prime contractors operating Government-owned or leased AF plants as required, and may be provided to other contractors operating privately owned or scrambled plants (part Government-owned) only in that quantity which is in excess of the contractor's normal peacetime requirements resulting from his constructing, leasing, or otherwise acquiring additional productive floor space. Cafeteria equipment such as tableware, trays, and kitchen utensils are considered expendable and will not be provided under facilities contracts. Capital equipment such as stoves, dishwashers, steam tables, and chairs may be provided, as above.

(2) *Vehicles.* Provisioning of vehicles will be according to Subpart GG of this part.

(3) *Nonstandard equipment.* Nonstandard equipment such as dollies, racks, trays, platforms, stools, and special tables used for handling, storing, and transporting materials and production components and usually scrapped at the end of supply contracts are not considered capital facilities and are not provided under facilities contracts or leases.

(4) *Production tooling.* Special tooling and special inspection gages will not be provided under facilities contracts. Production tooling will include tooling equipment and inspection gages designed for and limited to use in production of the particular production contracted for. Examples are templates, jigs, patterns, fixtures, and punching, forming and drawing dies and tools. Such costs must be absorbed in price of product, if applicable, negotiated with the appropriate contracting officer or the subcontractor's prime contractor.

(5) *Standard inspection equipment.* Standard inspection equipment and hand gages will not be provided under facilities contracts when items or sets are usable in the contractor's regular nonmilitary commercial manufacture.

(6) *Personal equipment.* Personal equipment such as flight clothing, parachutes, life vests, uniforms, shoes, helmets, goggles, and microphones will not be provided under facilities contracts.

(7) *Property $500 or less.* Items of property with a unit price of $500 or less, or with a normal life of less than 4 years on a 2-shift, 5-day-week basis, will not be acquired under facilities contracts. Capital items costing $500 or less will not be acquired under supply contracts. Examples of the above are: portable power and hand tools and standard inspection, laboratory, hospital, office, and cafeteria equipment. Deviations to this policy will be considered only where it is clearly demonstrated that: (i) procurement by the contractor is not economically feasible due to the nature of the procurement, or (ii) procurement by the Government would be in the best interests of the Government.

(l) *Rearrangement and reconversion.* Cost of rearrangement or relocations of facilities within any plant will not be allowed as a facilities cost but will be considered as a preproduction cost or as normal overhead. Cost of reconverting contractors' facilities to peacetime production including rehabilitation of buildings will not be paid for under facilities contracts.

(m) *Diversion.* If program changes or availability of equipment in AF equipment reserves necessitates diversion of machinery and equipment on hand, or on order, to another contractor, work, up to the point of actual installation by the receiving contractor, will be accomplished, and allowable costs therefor will be reimbursed, under the terms of the losing contractor's facilities contract, and existing purchase orders thereunder, unless authority is granted to supersede the existing purchase order by one issued by the requiring contractor.

(n) *Bailment.* Facilities will not be furnished under bailment contracts.

(o) *Replacement of contractor equipment.* No Government-owned machinery or equipment will be used to replace any privately owned machinery or equipment that is currently used on defense production or research and development contract, if the privately owned machinery or equipment is in suitable condition to perform satisfactorily the operations allotted it. Such privately owned facilities are to be kept on regularly scheduled production or research and development contracts.

(p) *Government bills of lading.* Facilities acquired under facilities contracts will be shipped on Government bills of lading where the Government takes title at the point of origin of shipment. Such facilities, to which the Government has taken title, will not be shipped on commercial bills of lading collect, or otherwise for conversion, unless specifically authorized by the transportation officer-in-charge, commercial traffic office air procurement district.

(q) *Facilities cognizance and responsibility.* In plants assigned to the Air Force for procurement responsibility, the Air Force will be responsible for administration, accounting, and any expansion of production facilities. In those plants assigned to other departments which require expansion due to AF production requirements, the Air Force will make funds available to the other department upon request for the AF proportionate share of each facility contract and vice versa in AF assigned plants expanded for requirements of other departments. In plants where procurement responsibility and mobilization and production planning responsibilities are not assigned, expansion will be financed and administered under a facilities contract or lease with the requiring department, unless the contractor has an existing facilities contract or lease with another department, in which case the facilities will be provided and administered thereunder by the other department. Each department will provide, administer, and account for facilities used solely in connection with its research, development experimental, and overhaul contracts which it issues and fully administers. Exceptions to the above will be made only by agreement between the departments concerned.

(r) *Who may issue facilities contracts.* Facilities contracts covering AF industrial facilities expansions within the Continental United States will be issued only by Hq AMC.

§ 1013.102–50 *Bailments.* Government property may be bailed to AF contractors for some specific purpose in connection with a prime AF contract when it has been determined that: the bailment is necessary in the interest of national defense, it will not adversely affect the competitive aspect of procurement, and the property is not available to the contractor in the open market within the time requirements of the Air Force.

NOTE: Reference (iii), above, it is recognized that some exceptions to this policy will be in the best interests of the Government, particularly in the case of contracts with universities because contractors of this nature do not have items of material normally considered as contractor owned and maintained by industrial firms. Accordingly, exceptions on an individual case basis may be authorized by Hq AMC, or Hq ARDC, as appropriate.

(a) Master bailment agreements, bailment agreements, and amendments thereto will be used to accomplish such bailments, except as follows:

(1) ARDC may furnish Government property, except aircraft and aircraft engines, to nonprofit research and development organizations under the provisions of nonprofit research and development contracts.

(2) Off-shore procurement activities may furnish Government property to AF contractors under the provisions of supplies or services contracts.

(b) Bailment of Government property will also be subject to the following conditions:

(1) Bailment agreements will not be issued unless the prime contract includes a provision therefor.

(2) Bailment of Government property to AF contractors will be kept to an absolute minimum, consistent with the best interest of the Government.

(3) Government property may only be bailed according to procedures prescribed herein, and will not be issued to a contractor by hand receipt or other informal means.

(4) Government property will not be bailed to a subcontractor but may be bailed to the prime contractor for use by its subcontractor, provided the responsibility of the prime contractor is not lessened.

(5) Aircraft will be bailed under appropriate bailment agreement. Aircraft assigned for the purposes of code CW

only, will not be bailed but will be furnished under the supply or services contract.

(6) Government property will not be bailed for the purpose of being incorporated in the end article, for the repair or maintenance of bailed aircraft (except special aircraft and engine maintenance tools necessary to accomplish the maintenance to be performed by the contractor under the terms of master bailment agreement), or to be expended or lose its identity in the performance of a contract.

(7) Except as provided for aircraft in subparagraph (5) of this paragraph, Government property will not be bailed for the purpose of its maintenance, repair, overhaul, or modification regardless of whether: the contractor is required to perform ground and/or flight or other functional tests to prove such maintenance, repair, overhaul, or modification, and such property is currently being produced or is already delivered to the Government. This does not prohibit the furnishing of the property as GFP under the prime contract.

(8) Government property will not be bailed for the purpose of installing additional equipment in such property. This does not prohibit the bailment of property for the purpose of testing the equipment already installed, or equipment to be installed solely for research and development purposes.

(9) Facilities as defined in § 13.101–6 of this title will not be bailed.

(10) Generally, special tooling, as defined in § 13.101–5 of this title, will not be bailed.

(c) Contracting officers of AMC field procurement activities may enter into and execute bailment agreements, and amendments thereto for the loan of Government property, except complete aircraft, to AF contractors.

§ 1013.102–51 *Emergency assistance to civil aircraft and military contract carriers.* Sections 5 (c) and (d), Air Commerce Act of 1926, approved May 20, 1926 (44 Stat. 571; 49 U. S. C. 175) provides the following authority:

Air navigation facilities owned or operated by the United States shall be available for public use under such conditions and to such extent as the head of the department or other independent establishment having jurisdiction thereof deems advisable and may by regulation prescribe.

The head of any Government department or other independent establishment having jurisdiction over any airport or emergency landing field owned or operated by the United States may provide for the sale to any aircraft of fuel, oil, equipment, and supplies, and the furnishing to it of mechanical service, temporary shelter, and other assistance under such regulations as the head of the department or establishment may prescribe, but only if such action is by reason of an emergency necessary to the continuance of such aircraft on its course to the nearest airport operated by private enterprise.

(a) Commanders of AF bases may approve the bailment of aircraft engine(s) to the owner or operator of a civil aircraft, if the owner or operator executes AF Form 180, "Hold Harmless Agreement," and a bailment agreement and:

(1) The aircraft is grounded due to loss or failure of an aircraft engine(s).

(2) A replacement engine is available. Military requirements must not be sacrificed.

(b) Commanders of AF bases may approve bailment of aircraft engine(s) and/or major components to the owner or operator of a military contract carrier if the conditions set forth in § 1013.102–51 (a) are met, and subject to the following exceptions:

(1) The aircraft must be operated as a military contract carrier.

(2) A major component will have a value in excess of $300, to be bailed, and will be:

(i) Available at the AF base.

(ii) Necessary for the safe return of the aircraft to its nearest operating base.

SUBPART B—MATERIAL

§ 1013.200 *Scope of subpart.* Special nuclear material furnished as Government property will not be deemed controlled by the use of such terms as "standard commercial or industrial practices" in the contract. Separate and detailed control procedures will be developed by the contractor for such property and will be consistent with the requirements of the Air Force and the Atomic Energy Commission with respect to controls for health, safety, security, and accountability.

SUBPART D—INDUSTRIAL FACILITIES

§ 1013.401 *Award of procurement contracts.—Procurement contracts requiring the provision of additional facilities under separate facilities contracts.* When a procurement contract, supplement, or change is negotiated on the basis that additional facilities will be provided to the contractor under a separate facilities contract (either directly by the Government or by contractor acquisition at Government expense), the following clause will be inserted into the procurement contract:

It is recognized that the contractor has requested the Government to provide the contractor with industrial facilities more fully described below, at an estimated cost of $------, for the performance of this contract. If such facilities are provided they may be used for the performance of this contract on a no-charge basis. It is agreed that, if such facilities are not provided in a timely manner, an equitable adjustment may be made in the terms and conditions of this contract.

§ 1013.402 *Separate facilities contract.* Where industrial facilities are to be provided a contractor under the circumstances set forth in § 13.402 (a) of this title, the supply, service, or research and development contract (procurement) will provide as follows:

(a) *Facilities in cost-type procurement contracts.* (1) Where existing facilities are to be furnished under the terms of a cost-type procurement contract, no separate clauses covering such facilities are required. The items of facilities will be listed and specified in the schedule as Government-furnished property.

(2) Where the acquisition or fabrication of facilities is authorized in a cost-type contract, the following clause will be set forth in the schedule. The facilities authorized will be listed following the clause, and the maximum cost of each set forth.

FACILITIES ACQUIRED OR FABRICATED

Subject to the approval of the Contracting Officer, the Contractor may acquire or fabricate the facilities hereafter listed at costs not to exceed those specified. Costs incurred therefor, if not in excess of those specified in the following list, will be allowable costs, but no fee will be paid thereon. The facilities so acquired or fabricated shall be considered Government property and subject to the provisions of the Government property clause of this contract.

(b) *Facilities in fixed-price procurement contracts.* (1) Where existing facilities are to be furnished under the terms of a fixed-price contract, no separate clauses covering such facilities are required. The items of facilities will be listed in the schedule as Government-furnished property.

(2) Where the acquisition or fabrication of facilities is authorized in a fixed-price contract:

(i) The general provisions of the contract will be designated "Section I," and the following clause will be set forth in the schedule. The facilities authorized will be listed following the clause and the maximum cost of each set forth.

FACILITIES ACQUIRED OR FABRICATED

Subject to the approval of the Contracting Officer, the Contractor may acquire or fabricate the facilities hereafter listed at costs not to exceed the costs specified in that list. The Contractor shall be reimbursed for costs incurred therefor in accordance with the General Provision hereof entitled "Reimbursement." Such facilities and the acquisition or fabrication thereof shall be subject to the provisions of both Section I and Section II of General Provisions of this contract. In the event of any inconsistency between Section I and Section II, the provision of Section II will be controlling with respect to facilities. Upon acquisition or fabrication the facilities shall be considered Government-furnished property and subject to the Government-Furnished Property clause of this contract.

(ii) In addition to the clause set forth in subdivision (i) of this subparagraph, the following will be included in the contract as General Provisions, Section II:

GENERAL PROVISIONS, SECTION II, APPLICABLE ONLY TO FACILITIES ACQUIRED OR FABRICATED

II–1 Reimbursement.

(a) Upon inspection and acceptance by the Contracting Officer of the facilities specified in the Schedule, the Government will pay to the Contractor the costs thereof as determined in accordance with Parts 2 and 6, Section XV, of the Armed Services Procurement Regulation for items other than construction and in accordance with Parts 4 and 6 of said Section XV for items of construction, if any.

(b) Once each month (or at more frequent intervals if approved by the Contracting Officer) the Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute Allowable Cost. As promptly as may be practical after receipt of each invoice or voucher and statement of cost, the Government shall, except as hereinafter provided, make payment thereon as approved by the Contracting Officer. Such payment may in-

clude progress payments made to subcontractors or suppliers for machine tools and construction projects ordered hereunder in those cases where the subcontractor or supplier requires progress payments therefor and the subcontract or purchase agreement therefor contains a progress payments clause approved in writing by the Contracting Officer. At any time or times prior to final payment under this contract the Contracting Officer may cause to be made such audit of the invoices or vouchers and statements of cost as shall be deemed necessary. Each payment theretofore made shall be subject to reduction to the extent of amounts included in the relative invoice or voucher and statement of cost which are found by the Contracting Officer on the basis of such audit not to constitute Allowable Cost, and shall also be subject to reduction for overpayments or to increase for underpayments on preceding invoices or vouchers.

(c) In securing all facilities, parts, materials, and services required from sources other than the Contractor, the Contractor shall obtain competition to the maximum practical extent and shall take advantage of the most advantageous prices with due regard to securing adequately prompt delivery of satisfactory facilities, parts, materials, and services.

(d) The Contractor represents that the costs to be incurred and for which it will be reimbursed under this clause are not and will not be included as an element of cost under any other provision of this contract or any other contract with the Government or suppliers of the Government, and do not include any allowance for profit or fee.

II-2 Overtime and premium wage compensation: *Insert the clause set forth in AFPI 7-4031* (b) (32 CFR 1007.4031 (b)).

II-3 Subcontracts: *Insert the clause set forth in AFPI 7-2703.11* (32 CFR 1007.2703-11).

II-4 Records: *Insert the clause set forth in ASPR 7-203.7* (32 CFR 7.203-7).

II-5 Title:

Title to all property purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government, whichever first occurs.

(c) If the contract does not contain the Patent Indemnity clause, § 9.103 of this title, and acquisition or fabrication of facilities is authorized, that clause will be inserted designated paragraph (a), and the paragraphs (b) and (c) set forth in § 1007.2704-2 of this chapter will be added thereto: if under the circumstances set forth in paragraph (a) (2) of this section, the clause will be made applicable only to the facilities, or if under the circumstances set forth in paragraph (b) (2) of this section, the clause will be added to the General Provisions, Section II.

(d) If the contract does not contain Patent Rights clause, § 9.107-1 of this title, and the facilities authorized involve research or development in design, manufacture, or modification, if under the circumstances set forth in paragraph (a) (2) of this section the clause will be added and made applicable only to the facilities, or if under the circumstances set forth in paragraph (b) (2) of this section, the clause will be added to General Provisions, Section II.

(e) If the facilities being authorized involve construction, as defined in § 12.402 of this title, the clause set forth in § 1007.2704-1 of this chapter will be added: if under the circumstances set forth in paragraph (a) (2) of this section, and made applicable only to the facilities being constructed, or if under the circumstances set forth in paragraph (b) (2) of this section, to General Provisions, Section II.

(f) When industrial facilities are to be both furnished and authorized for acquisition or fabrication in: the same cost-type contract, the provisions in paragraphs (a) (1), (a) (2), (c), (d) and (e) of this section will be followed or in the same fixed-price contract the provisions in paragraphs (b) (1), (b) (2), (c), (d), and (e) of this section will be followed.

§ 1013.403 *Single facilities contract.* (a) Facilities may be provided under one facilities contract for two or more plants of a contractor, provided that such plants are under the jurisdiction of the same APD or AFPRO and are sufficiently close geographically to permit administration of the contract by one contracting officer without delegation of secondary administration. Facilities at widely separated locations may only be provided under a single facilities contract when Hq AMC determines that separate facilities contracts are impracticable.

(b) Facilities for one plant or contiguous plants of a contractor will be provided under only one facilities contract. Two or more facilities contracts for one plant or contiguous plants of a contractor may only be issued when Hq AMC determines that the use of one facilities contract is impracticable.

(c) Separate divisions of a single corporation will be deemed to be separate contractors if such divisions are normally represented by separate business offices for the purpose of contract negotiation and administration.

(d) The rules limiting facilities contracts to one contract per location do not prohibit the issuance of a facilities lease agreement covering leased facilities at the same location. However, in many cases it will be practicable and appropriate to cover the new facilities under an amendment to the existing facilities contract, thereby eliminating the necessity for a separate lease. The issuance of such lease agreements will be subject to policies and procedures set forth in Subpart DD of this part.

§ 1013.406 *Nonseverable industrial facilities.* (a) A facility will be considered "nonseverable" when loss of value to it plus damage to the premises where installed, may, upon removal, reasonably be anticipated to exceed 50 percent of the installed cost of the facility item.

(b) Land is considered "controlled" by the Government when: The Government has the right at nominal or no cost to the exclusive use of the land during the reasonably anticipated useful life of the facility involved, or when the land owner has signed a firm contract to convey the land upon terms acceptable to the Government and such owner is sufficiently sound financially to guarantee such conveyance. The locating of facilities on land not actually owned by the Government is undesirable in the normal case and will not be permitted except when absolutely necessary.

(c) The estimated useful life of general purpose nonseverables will be interpreted as the useful physical life of the item involved, regardless of whether the contractor knows of any further requirements for such item. For special purpose nonseverables, i. e., the use of which without substantial modification or alteration is limited to the production for the Government of particular supplies or the performance of particular services for which provided, the estimated useful life will be interpreted as the estimated duration of the supply or service program involved.

§ 1013.406-1 *Nondisposable nonseverable facilities.* Depreciation rates for use in buy-back agreements of nonseverable facilities according to § 13.406-1 (a) of this title will not be in excess of normal depreciation rates for Federal Income Tax purposes unless specifically authorized. Such buy-back agreements will provide for a residual value of the facilities at not less than 20 percent of the original installed cost of the item.

§ 1013.406-2 *Abandonment of facilities and restoration of premises.* In any case where the land owner refuses to grant to the Government the right to abandon nonseverable facilities without restoration or rehabilitation of the premises, such provisions as are possible to protect the Government's interest will be negotiated and submitted for approval.

§ 1013.407 *Right of contractor to use.* (a) No-charge use of facilities is applicable to subcontractors and suppliers as well as prime procurement contractors.

(b) Facilities may be furnished to prime contractors and subcontractors (including suppliers) under a facilities contract containing a clause which permits the use of such facilities on a charge or no-charge basis, depending on the terms of the prime procurement contract concerned. Thus, if the price or fee of the prime procurement contract is contingent on the use of such facilities without charge, the facilities may be made available to the prime contractor on that basis. Where such facilities are furnished to a subcontractor or supplier, the use of such facilities on a no-charge basis is predicated on the authorization for such use contained in the prime procurement contract and the negotiation of the subcontract or purchase order on the basis of such authorization. The purpose and effect of these provisions will be to permit the buyer for the prime procurement contract to control the use of the property on a charge basis and on a no-charge basis, respectively.

(c) The buyer for the prime procurement contract will be responsible for obtaining adequate consideration for the no-charge use of facilities by the using contractors or subcontractors (including suppliers) and also for insuring that the using contractors or subcontractors (in-

cluding suppliers) are not accorded undue competitive advantage by such use.

(d) The responsibility for proper use by a contractor of new facilities rests with the administrative contracting officer of the facilities contract. In the determination of whether a no-charge use of facilities will be authorized, consideration will be given to the practicability of the administrative burden on the administrative contracting officer in policing such contracts and subcontracts.

(e) A rental charge for the use of facilities will normally be made at the per annum rates based on acquisition cost set forth in § 1013.102–3.

(f) Request for audit review by the Auditor General of the contractor's rental or usage reports are permissible. Such request will be made by the administrative contracting officer where he deems verification of the contractor's supporting records are necessary to substantiate the reasonableness of the contractor's report.

§ 1013.413 *Termination of facilities contracts.* Whenever practicable, facilities contracts will be closed out by property disposal actions under the continuing Plant Clearance clause of the contracts. When all property is thus disposed of and all other known claims under the contracts are settled, the administrative contracting officer will endeavor to obtain a release of the type described in § 16.812 of this title.

SUBPART E—CONTRACT CLAUSES

§ 1013.504 *Special tooling clause for fixed-price contracts.* (a) The provisions of the Special Tooling clause set forth in § 13.504 of this title are that special tooling acquired or manufactured by the contractor for use in the performance of the contract, and replacements thereof, will be contractor-owned until such time as the contracting officer exercises the Government's option and directs transfer of title thereto. Prior to this, and as a minimum, the contractor is obligated to appropriately identify the special tooling and to follow its normal industrial practice in maintaining property control records, making such records available to Government representatives for inspection at all reasonable times.

(1) The provisions of § 30.2 of this title do not apply during the period that the special tooling is contractor-owned and a property administrator will not be assigned to contracts solely on the basis of the Special Tooling clause. However, upon transfer of title to the Government the tooling does become subject to the provisions of § 30.2 of this title; a property administrator will be assigned, and retention or shipment by the contractor will be according to appropriate procedures. Provision that the contractor follow its normal industrial practice in maintaining property control records is not considered license for the maintenance of incomplete, inaccurate, or inadequate records under the guise of normality. Industrial practice is considered to require record of the quantity, description, location, and condition of special tooling acquired or manufactured for use under the contract. If the contracting officer deems it necessary to ascertain the adequacy of the contractor's records the technical advice of the property administrator, assigned to contracts with the same or nearby contractors, may be requested.

(2) It is anticipated that the contractor will advise the administrative contracting officer when: (i) Any substantial portion of usable tooling is no longer required for the performance of the contract, (ii) changes in design or specifications take place which effect the interchangeability of parts, and (iii) the contract is terminated or completed, furnishing a listing of the parts, products, or services for which the tooling was designed to manufacture or perform. Upon receipt of the listing, the administrative contracting officer will obtain information through the buying organization, if not already known, whether anticipated requirements exist to warrant exercise of the Government option to take title to the tooling. If it is determined that title to the special tooling should pass to the Government, the administrative contracting officer will notify the contractor and include the following: (i) Specify the particular products, parts, or services for which title to tooling should transfer, (ii) action required with regard to the storage, use, or shipment of the tooling involved, and (iii) disposition instructions for the remainder.

(3) A listing of the products, parts, or services to be manufactured or performed will be sufficient to permit the determination for disposition of such special tooling. Accordingly, the contract clause establishes this as a minimum requirement. However, to properly record a transfer of title for specific items of value to the protection of the interests of both parties, a listing of tooling must be obtained in such detail as would serve as a basis for the establishment of records of Government property.

(b) The following clause may be used whenever the special tooling is described as an end item in the contract for administrative convenience in pricing and payment, but delivery to the Air Force for use by the Air Force is not intended:

SPECIAL TOOLING

(a) Same as ASPR 13–504 (a) (32 CFR 13.504 (a)).

(b) Same as ASPR 13–504 (b) (32 CFR 13.504 (b)).

(c) Same as ASPR 13–504 (c) (32 CFR 13.504 (c)).

(d) Same as ASPR 13–504 (d) (32 CFR 13.504 (d)).

(e) Same as ASPR 13–504 (e) (32 CFR 13.504 (e)).

(f) Within 90 days after receipt of any list or notice under (c) or (d) above, or such further period as may be agreed upon by the parties, the Contracting Officer shall furnish to the Contractor: (i) a list specifying the particular products, parts, or services for which the Government may require special tooling, with a request that the Contractor deliver to the Government all usable items of special tooling which were used or designed for the manufacture or performance of any designated portion of such products, parts, or service, and which were on hand when production of such products or parts, or performance of such services, ceased; or (ii) an acceptance or rejection of any offer made by the Contractor under (e) above, or a request for further negotiation relating thereto; or (iii) subject to the provisions of (j) below, a direction to the Contractor to sell, or to dispose of as scrap, for the account of the Government, any or all the special tooling covered by such list; or (iv) a statement with respect to any or all the special tooling covered by such list that the Government has no further interest therein and waives its rights therein; or (v) any combination of the foregoing, as the circumstances warrant. The Contractor shall promptly comply with any request by the Contracting Officer under this paragraph to deliver any items of special tooling, and shall, subject to the provisions of (j) below, (1) immediately prepare such items for shipment by proper packaging, packing, and marking, in accordance with any instructions which may be issued by the Contracting Officer, and shall promptly deliver such items to the Government, as directed by the Contracting Officer, or (2) if a storage agreement has been entered into, prepare such items for storage in accordance therewith, as directed by the Contracting Officer. Any items of special tooling so delivered or stored shall be accompanied by operation sheets or other appropriate data necessary to show the manufacturing operations or processes for which such items were used or designed. If the Contracting Officer has requested further negotiations under (ii) above, the Contractor agrees that it will enter into such negotiations in good faith with the Contracting Officer. Any items of special tooling which are not disposed of by delivery to the Government under this paragraph, or by acceptance of an offer of the Contractor made under (e) above, or of such offer as modified in the course of negotiations, shall be disposed of in the manner set forth in (iii) or (iv) of this paragraph.

(g) Same as ASPR 13–504 (g) (32 CFR 13.504 (g)).

(h) Same as ASPR 13–504 (h) (32 CFR 13.504 (h)).

(i) Same as ASPR 13–504 (i) (32 CFR 13.504 (i)).

(j) Same as ASPR 13–504 (j) (32 CFR 13.504 (j)).

(k) Same as the second alternative paragraph (k) of ASPR 13–504 (32 CFR 13.504).

(l) Title to all special tooling shall pass to and vest in the Government upon acquisition thereof by the Contractor: *Provided, however,* That the Contractor's obligations, the Government's rights, and property control procedures relating thereto shall apply as set forth in this clause. The provisions of this contract relating to "Liability for Government-Furnished Property," and any other provisions of this contract defining liability for Government property shall be inapplicable to property to which the Government shall have acquired title solely by virtue of the provisions of this paragraph. The provisions of this paragraph shall not relieve the Contractor from any risk of loss, or destruction, or damage to property, title to which vests in the Government under the provisions hereof, or be construed as enlarging upon the Contractor's obligations as specified in this clause.

(c) Contracts which contain the clause provided by § 13.504 of this title may be amended in the above manner to provide that title to the tooling will vest in the Government immediately, when it is deemed necessary for administrative reasons to establish the Government as owner of the tooling, prior to the occurrence of any of the events set forth in § 13.504 (c) or (d) of this title.

§ 1013.550 *Bailment clauses.* The following general provisions with respect

to prime contract clauses will be used in connection with bailment of Government property to a contractor.

(a) Normally, no reference will be made in contracts to the bailment of property unless bailment is contemplated and the property is specifically listed in the prime or letter contract. In these instances where bailment is contemplated, the following clause is authorized for use:

It is contemplated by the parties hereto that the Government will bail (in addition to any property listed in this contract as to be "furnished" by the Government) to the Contractor the items listed below for use in connection with the performance of this contract, and that an appropriate written agreement of bailment will be entered into by and between the parties hereto for that purpose. In the event of delay or failure of the Government to bail such property, as aforesaid, the provisions of the clause of this contract entitled "Government-Furnished Property" or "Government Property" relating to failure or delay in the furnishing of property, shall be applicable. (List categories.)

(b) Where it is difficult to anticipate the bailment requirements at the time of execution of the prime contract, the following alternate clause is authorized for use:

It is anticipated that the Government may bail to the Contractor such Government property of the categories specified herein as may from time to time be deemed by the Contracting Officer to be necessary in the interest of the Government to so furnish, provided, however, the effect of such bailment upon the contract price (or in the case of cost-plus-fixed-fee (CPFF) contracts, "fixed fee") shall be reflected by adjusting the contract price in accordance with the procedures set forth in the Changes clause of this contract, and the contract amended accordingly by supplemental agreement or change order prior to the payment of Contractor's final invoice under this contract. Any property bailed pursuant to this paragraph shall be made available to the Contractor only under the provisions of a separate bailment agreement or agreements and this contract shall not be construed as affecting or committing the Government to the bailment of such property. (List categories.)

(c) Where it is difficult to anticipate the bailment requirements at the time of the execution of the letter contract, the following alternate clause is authorized for use:

It is anticipated that the Government may bail to the Contractor such items of Government property specified herein as may from time to time be deemed by the Contracting Officer to be necessary in the interest of the Government to so furnish, provided, however, the effect of such bailment shall be considered in any adjustments in amounts finally payable to the Contractor at the time of settlement of Contractor's termination claim or taken into account at the time of execution of the definitive contract contemplated hereby. Any property bailed pursuant to this paragraph shall be made available to the Contractor only under the provisions of a separate bailment agreement or agreements and this contract shall not be construed as effecting or committing the Government to the bailment of such property. (List categories.)

(d) Provisions for reimbursing the contractor for costs incurred in connection with bailed property during the period of bailment, including but not limited to transportation costs, furnishing fuel, lubricants, and coolants for aircraft, are matters requiring coverage in the prime contract prior to final payment and will not be included in the bailment agreement.

§ 1013.552 *Property records clause.* The following clause will be used in all contracts involving Government property where it has been determined that the Government will maintain the official contract records of Government property. If the determination is made before the contract is definitized, the clause will be included in the contract. If the determination is not made until after the contract is in effect, it will be added to the contract by the supplemental agreement.

PROPERTY RECORDS

The Government for its own convenience has determined that the official contract records in connection with Government property subject to this contract shall be maintained by the Government. The Government-furnished Property clause (or in cost-reimbursement type contracts, the Government Property clause) of this contract is hereby modified by deleting so much thereof as requires that the contractor maintain such records.

§ 1013.553 *Special nuclear material.* When special nuclear materials or instruments incorporating special nuclear material are furnished to a contractor as Government property, the following clause will be incorporated in the contract, in addition to the clause prescribed by §§ 13.502, 13.503, 13.505, or 13.506 of this title:

The contractor agrees to receive, use, handle, return or dispose of, any Special Nuclear Material, or instruments incorporating Special Nuclear Material, furnished under this contract in accordance with separate procedures for the control and handling of such material. The procedure will include, but will not be limited to health, safety, security, and accountability, and will be approved by the Contracting Officer. Nothing herein contained shall be deemed to alter the contractor's responsibility with regard to said Government property as set forth in the General Provision of this contract entitled "Government Furnished Property." The Government reserves the right at any time, when circumstances warrant, to withdraw, modify or qualify its approval of such procedures, and this contract will be equitably adjusted to the extent necessitated thereby.

SUBPART F—USE OF GOVERNMENT-OWNED INDUSTRIAL FACILITIES ON WORK OTHER THAN FOR A MILITARY DEPARTMENT

§ 1013.601 *Rental.*

§ 1013.601–50 *Procedure.* The following steps will be taken in processing contractor requests for lease of Government-owned industrial production equipment for other than defense production.

(a) *Contractor application.* To initiate proposal action, a prospective lessee will submit the following information in transmittal letter (six copies) to the AF plant representative or to the air procurement district that has cognizance over the contractor's home office:

(1) Name and address of the prospective lessee.

(2) If the contractor is currently engaged in production for the Air Force, a list of contract numbers and items. Also, a list of other military contract numbers and items produced within the preceding 12-month period.

(3) If the prospective lessee has a defense mobilization assignment, a brief explanation of any current defense production planning which would require utilization of the property in the event of an emergency.

(4) Period of time proposed for the lease agreement. (Special justification will be required for leases extending beyond a 5-year period.)

(5) Financial or other consideration that will be given to the Government for use of the production equipment. Listing, if any, all production equipment by general description that the lessee is to maintain in a non-use status as all or part of the consideration for use of the facilities requested. (Section 13.601 of this title and § 1013.102–3 (h) of this chapter.)

(6) Proposed use of the property. Statement as to whether the nondefense use will be in connection with a commercial product in a competitive field.

(7) Statement as to whether the lessee will maintain the property in good operating condition, including the making of repairs and replacing of parts, according to sound industrial practices.

(8) Description (in inclosures) of the property being requested for nondefense use.

(9) Indication of any other considerations which are applicable to the proposed lease agreement.

(b) *Review of applications.* Upon receipt of the contractor's application for lease of production equipment for other than defense production, the cognizant APD or AFPR office will review the application to insure the validity of individual items. It is important that the property be described adequately and that information concerning year built, cost, and conditions be identified accurately. Where historical data is lacking, the details of cost and conditions may be reasonably appraised and so indicated. Any discrepancies should be referred to the contractor with a request to adjust the proposal accordingly.

SUBPART T—BAILMENT

§ 1013.2001 *Bailment of Government property to contractors.* (a) The contractor will be required to take the following actions in all cases where he initiates the request for bailment or a request for an extension of and/or change in purpose of a bailment agreement:

(1) Applications for a new bailment, additional property to be bailed, requests for authorization to modify bailed property, or transfer of bailed property for use in connection with another prime contract will be submitted over the signature of an officer or employee authorized to bind the contractor, setting forth a description of the property, efforts made to obtain the property in the commercial market, use to be made of the property, period of time for which the property will be required, where delivery

will be accepted, and a statement to the effect that the contractor will accept the property subject to the terms of the master bailment agreement and a mutually acceptable bailment agreement or amendment to bailment agreement. Contractor will accomplish this action by completing in triplicate AFPI Forms 22 and 22A, and Part I, AFPI Form 22B.

(2) The contractor will submit only AFPI Form 22B where any of the following changes are considered necessary in the performance of the same contract under which the property is already bailed:

(i) A request that the period of time be extended.

(ii) A change in the purpose for which the property was originally bailed.

(iii) Change in the point of return.

(3) Deliver the completed forms to the cognizant AF representative.

(b) The cognizant AF representative will—

(1) Approve all flights of bailed aircraft prior to takeoff, ascertaining that the flight is in conformance with the terms of the contract and that none other than the crew members and passengers required to perform the mission are aboard the aircraft. Where aircraft are remotely located from the office of the AF representative, approval may be granted in advance for more than one flight; however, the AF representative will make a spot check on such flights to assure that the flights are being conducted for the purpose intended in the bailment agreement. As control procedures when bailed aircraft are involved, the AF representative may require the contractor to:

(i) Present to the AF representative forecasted flight dates for accomplishing any given flight program.

(ii) Present detailed flight plans for coordination and approval before each actual flight.

(iii) Prepare alternate flight plans so flight time would not be wasted in case of failure of individual test flight equipment.

(iv) Plan for participation of personnel from other commands, as well as AMC and ARDC.

(v) Submit adequate reports after each flight and maintain close surveillance to assure expeditious handling of necessary data for AMC and ARDC (appropriate ARDC center) approval.

(2) Determine and take the necessary action to insure that the bailed property is not used for any other purpose than prescribed in the prime contract and the bailment agreement, unless otherwise authorized in writing by the AF representative pursuant to the provisions of the bailment agreement.

(3) In the case of completed aircraft, arrange to inspect the aircraft before release by the contractor and send a certificate showing the date the aircraft was returned to the Government, including a copy of disposition documents, to the organization having control of the aircraft at the time it was bailed to the contractor.

(4) Insure reimbursement to the Government by the contractor of such liquidated damages as may be appropriate under the provisions of the bailment agreement which result from failure of the contractor to return bailed property within a reasonable time after receipt of disposition instructions.

(5) Insure that bailed property is not used for any purpose other than prescribed in the prime contract and bailment agreement, unless otherwise authorized pursuant to the provisions of the bailment agreement. The AF representative may authorize, bailed property, other than aircraft, to be used by the contractor for purposes in connection with the contract for which the property was bailed, or any other AF contract with the same contractor, even though such purposes are not specifically set forth in the bailment agreement. Such authorization will be predicated upon determination that such use of the property will not interfere with the performance of the contract for which it was originally bailed and will not extend the period of bailment.

(6) Under the provisions of the bailment agreement, authorize deviations for bailed property to be temporarily recalled from the contractor at any time during the life of the bailment to accomplish authorized AF missions by AF personnel when the bailment agreement contains a provision relieving the contractor of the responsibility for the property during the time required to complete the mission and until the property is returned to the possession of the contractor.

§ 1013.2002 *Bailment by AF bases of aircraft engines or major components to civil aircraft or military contract carriers.*

§ 1013.2002–1 *Bailment agreement to be used for the bailment of aircraft engine(s) for use on U. S. registered civil aircraft grounded at an AF base.*

BAILMENT AGREEMENT

AIRCRAFT ENGINE LOAN FOR USE ON UNITED STATES REGISTERED CIVIL AIRCRAFT GROUNDED AT A U. S. AIR FORCE BASE AND FOR THE PAYMENT THEREOF

_____
(Date)

Whereas, _____ (Airline) of _____ (Address) hereafter referred to as Bailee, is the _____ (Owner or operator) of the _____ (Type) civil aircraft, U. S. Registration No. _____ grounded at _____ Air Force Base because of _____ (Failure, loss) of engine(s), and

Whereas, the Bailee, which has executed AF Form 180, "Hold Harmless Agreement," to land at _____ Air Force Base, has requested loan of _____ engine(s) from the United States Air Force, hereafter referred to as Bailor, and

Whereas, approval of the Commander _____ (Name of Air Force Base), U. S. Air Force, has been obtained for the loan to _____ (Airline) of the following Air Force engine(s):

Manufacturer	*Type*
_____	_____
_____	_____
_____	_____
_____	_____

Serial No.	*Total engine hours since last overhaul*
_____	_____
_____	_____
_____	_____
_____	_____

and

Whereas, it has been determined that the loan of such engine(s) is necessary, by reason of an emergency, to the continuance of such aircraft on its course to the nearest airport operated by private enterprise, as authorized by Act May 20, 1926 (44 Stat. 571; 49 U. S. C. 175);

Now, therefore, in consideration of the promises and the mutual covenants and agreements herein contained, and for other good and valuable consideration, the parties hereto agree as follows:

1. a. Bare engines only will be loaned.

b. No exchange or trade of engines is involved.

c. The Bailor neither accepts responsibility, nor will it be held liable, for operational failure of the loaned engine(s).

d. The Bailor neither accepts responsibility, nor will it be held liable for the loss or damage of the Bailee's engine(s) left at the Bailor's installation.

e. Removal of the Bailee's engine(s) from the Bailor's premises will be accomplished within a reasonable time, not exceeding _____ days from date hereof, at no expense to the Bailor.

2. In consideration of the loan of the above enumerated engine(s), delivery of which is acknowledged upon signature hereto of a duly authorized representative of the Bailee, the Bailee promises and agrees:

a. To pay to the Bailor, for total hours of utilization of the engine(s) at an hourly rate based on the Bailor's average engine hour maintenance cost for the type and model of the loaned engine(s).

b. To pay to the Bailor all hauling, shipping, and handling costs incurred in the transfer of replacement engine(s) to _____ Air Force Base, said engine(s) to be obtained from the nearest Air Force Supply Depot and shipped by the least expensive mode of transportation commensurate with the urgency needs of the _____ Air Force Base for such replacement.

c. To pay to the Bailor all costs involved when Air Force personnel are required to install the engine(s) loaned to the Bailee.

d. To demount the Bailor's engine(s) from the Bailee's aircraft within _____ (hours, days) from the date of this agreement, prepare said engine(s) for shipment in accordance with United States Air Force procedure, and at the expense of the Bailee ship said engine(s) to such Air Force overhaul depot or other Air Force installation as may be designated by the Commander, Air Materiel Command, and to pay Bailor all expenses incurred in connection with inspection by the Air Force overhauling activity of returned engine(s), including but not limited to block test operations of the engine(s), and repreparation of the engine(s) for storage.

e. To pay to the Bailor all costs arising from the repair of any engine(s) damaged while in the possession of the Bailee or in the return shipment, which, in the judgment of the overhauling depot, can be economically repaired including the cost of all necessary repair parts, labor, and other operating expenses incidental thereto, block test operations of the engine(s), and repreparation of the engine(s) for storage.

f. To pay to the Bailor a sum equal to the total cost of replacement of the type and model of engine(s) on loan under this agreement when such engine(s) has (have) been lost or in the judgment of the overhaul depot has (have) been damaged beyond economical repair while in the possession of the Bailee or in the return shipment of the engine(s) to the designated Air Force installation.

g. The Bailee will ship the Bailor's engine(s) within 24 hours from receipt of notice by the Commander, Air Materiel Command, as to the Air Force installation to which the engine(s) will be returned or with _____ (hours, days) from date hereof when the giving of such notice is concurrent with the loan of the engine(s).

h. To pay to the Bailor an hourly rental of _____ for each hour or fraction thereof delay in return shipment of the engine(s) in accordance with g above.

i. To pay all fees and charges promptly to Headquarters, Air Materiel Command, Wright-Patterson Air Force Base, Ohio.

3. *Officials not to benefit.* No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

4. *Disputes.* Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Bailee. Within 30 days from the date of receipt of such copy, the Bailee may appeal by mailing or otherwise furnishing to the Contracting Officer a written appeal addressed to the Secretary, and the decision of the Secretary or his duly authorized representative for the hearing of such appeals shall, unless determined by a court of competent jurisdiction to have been fraudulent, arbitrary, capricious, or so grossly erroneous as necessarily to imply bad faith, be final and conclusive: *Provided*, That, if no such appeal is taken, the decision of the Contracting Officer shall be final and conclusive. In connection with any appeal proceeding under this clause, the Bailee shall be afforded and opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Bailee shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

5. *Labor provisions.* The following labor provisions shall apply to such portion of this bailment agreement which is performed within the continental limits of the United States.

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

No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the Bailee or any subcontractor contracting for any part of the said work, shall be required or permitted to work more than 8 hours in any 1 calendar day upon such work, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this clause. The wages of every such laborer and mechanic employed by the Bailee or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of 8 hours per day; and work in excess of 8 hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of 8 hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this clause a penalty of $5 shall be imposed upon the Bailee for each such laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than 8 hours upon said work without receiving compensation computed in accordance with this clause; and all penalties thus imposed shall be withheld for the use and benefit of the Government.

b. Nondiscrimination in Employment. In connection with the performance of work under this contract, the Bailee agrees not to discriminate against any employee or applicant for employment because of race, creed, color, or national origin; and further agrees to insert the foregoing provision in all subcontracts hereunder except subcontracts for standard commercial supplies or for raw materials.

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

6. *Covenant Against Contingent Fees.* The Bailee warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or undertaking for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Bailee for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion add to the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

In witness whereof, the parties hereto have executed this contract this _____ day of _____, 19____.

THE UNITED STATES OF AMERICA,
By _____
(Contracting Officer)
Bailor
By _____
(Official Title)
Bailee

I, _____, certify that I am the _____ of _____ (Bailee) and that as such I am authorized to execute the foregoing agreement on behalf of such bailee.

Accountability for the engine(s) loaned to _____ (Airline) under this agreement has been transferred to AF 2275 APO by authority contained in Message No. _____, Headquarters, Air Materiel Command, Wright-Patterson Air Force Base, Ohio, on AF Form 104B, "USAF Requisition and Shipping Document," attached to and made a part hereof.

§ 1013.2002–2 *Bailment agreement to be utilized for the bailment of aircraft engine(s) and/or components for use of civil air carriers at a U. S. Air Force base.*

BAILMENT AGREEMENT

AIRCRAFT ENGINE AND/OR COMPONENTS FOR USE OF CIVIL AIR CARRIERS, AT A U. S. AIR FORCE BASE, AND FOR THE PAYMENT THEREOF

_____
(Date)

Whereas, _____ (Airline) of _____ (Address) hereafter referred to as the Bailee, is the _____ (Owner or operator) of the _____ (Type) civil aircraft, U. S. Registration No. _____ grounded at _____ Air Force Base because of _____ (Failure or loss) of engine(s), and

Whereas, the Bailee, operating under Military contract _____ has landed at _____ Air Force Base, and has requested loan of _____ engine(s) from the U. S. Air Force, hereafter referred to as the Bailor, and

Whereas, approval for issue of engine(s) under above contract has been obtained from the Commander, _____ (Name of Air Force Base) for the loan to _____ (Airline) of the following Air Force engine(s):

Manufacturer	*Type*
_____	_____
_____	_____
_____	_____
_____	_____
Serial No.	*Total engine hours since last overhaul*
_____	_____
_____	_____
_____	_____
_____	_____

Whereas, it has been determined that the loan of such engine(s) is necessary, by reason of an emergency, to the continuance of such aircraft on its course to the nearest airport operated by private enterprise, as authorized by Act of May 20, 1926 (44 Stat. 571, 49 U. S. C. 175);

Now, therefore, in consideration of the promises and the mutual covenants and agreements herein contained, and for other good and valuable consideration, the parties hereto agree as follows:

1. a. Bare engines only will be loaned.

b. No exchange or trade of engines is involved.

c. The Bailor neither accepts responsibility, nor will it be held liable, for operational failure of the loaned engine(s).

d. The Bailor neither accepts responsibility, nor will it be held liable, for the loss or damage of the Bailee's engine(s) left at the Bailor's installation.

e. Removal of the Bailee's engine(s) from the Bailor's premises will be accomplished within a reasonable time, not exceeding _____ days from date hereof, at no expense to the Bailor.

2. In consideration of the loan of the above enumerated engine(s), delivery of which is acknowledged upon signature hereto of a duly authorized representative of the Bailee, the Bailee promises and agrees:

a. To pay to the Bailor, for total hours of utilization of the engine(s) at an hourly rate based on the Bailor's average engine hour maintenance cost for the type and model of the loaned engine(s).

b. To pay to the Bailor all costs involved when Air Force personnel are required to install the engine(s) loaned to the Bailee.

c. To demount the Bailor's engine(s), from the Bailee's aircraft within 5 days from receipt of notice from the Contracting Officer, directing its return to the Government. Prepare said engine(s) for shipment in accordance with U. S. Air Force procedure, and at the expense of the Bailee ship said engine(s) to such Air Force overhaul depot or other Air Force installation as may be designated by the Commander, Air Materiel Command.

d. To pay the Bailor all costs arising from repair of any engine(s) damaged while in the possession of the Bailee or in the return shipment, which, in the judgment of the overhauling depot, can be economically repaired, including the cost of all necessary repair parts, labor, and other operating expenses incidental thereto.

e. To pay to the Bailor a sum equal to the total cost of replacement of the type and model of engine(s) on loan under this agreement when such engine(s) has (have) been lost or in the judgment of the overhaul depot has (have) been damaged beyond economical repair while in the possession of the Bailee or in the return shipment of the engine(s) to the designated Air Force installation. This paragraph will not be effective in any instance where there is a confliction of contract requirements.

f. The Bailee will ship the Bailor's engine(s) within 5 days of receipt of notice from the Contracting Officer, directing its return to the Government, to the Air Force installation as directed by the Commander, Air Materiel Command, Wright-Patterson Air Force Base, Ohio.

g. To pay to the Bailor a daily rental of $15 for each day or fraction thereof delay in return shipment of the engine(s) in accordance with f above.

h. To pay all fees and charges promptly to Headquarters, Air Materiel Command, Wright-Patterson Air Force Base, Ohio.

3. *Officials not to benefit.* No member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

4. *Disputes.* Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Bailee. Within 30 days from the date of receipt of such copy, the Bailee may appeal by mailing or otherwise furnishing to the Commanding Officer a written appeal addressed to the Secretary, and the decision of the Secretary or his duly authorized representative for the hearing of such appeals shall, unless determined by a court of competent jurisdiction to have been fraudulent, arbitrary, capricious, or so grossly erroneous as necessarily to imply bad faith, be final and conclusive: *Provided*, That, if no such appeal is taken, the decision of the Contracting Officer shall be final and conclusive. In connection with any appeal proceeding under this clause, the Bailee shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Bailee shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

5. *Labor provisions.* The following labor provisions shall apply to such portion of this bailment agreement which is performed within the continental limits of the United States.

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

No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the Bailee or any subcontractor contracting for any part of the said work, shall be required or permitted to work more than 8 hours in any 1 calendar day upon such work, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this clause. The wages of every such laborer and mechanic employed by the Bailee or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of 8 hours per day; and work in excess of 8 hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of 8 hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this clause a penalty of $5 shall be imposed upon the Bailee, for each such laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than 8 hours upon said work without receiving compensation computed in accordance with this clause; and all penalties thus imposed shall be withheld for the use and benefit of the Government.

b. Nondiscrimination in employment. In connection with the performance of work under this contract, the Bailee agrees not to discriminate against any employee or applicant for employment because of race, creed, color, or national origin; and further agrees to insert the foregoing provision in all subcontracts hereunder except subcontracts for standard commercial supplies or for raw materials.

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

6. *Covenant against contingent fees.* The Bailee warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Bailee for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion add to the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

In witness whereof, the parties hereto have executed this contract this ---------- day of ---------- 195-----

THE UNITED STATES OF AMERICA,
By ----------
(Contracting Officer)
Bailor

By ----------
(Official Title)
Bailee

I, ----------, certify that I am the ---------- of (Bailee) and that as such I am authorized to execute the foregoing agreement on behalf of such bailee.

Accountability for the engine(s) loaned to ---------- (Airline) under this agreement has been transferred to AF 2275 APO by authority contained in Message No. ------, Headquarters, Air Materiel Command, Wright-Patterson Air Force Base, Ohio, on AF Form 104B, "USAF Requisition and Shipping Document," attached to and made a part hereof.

§ 1013.2003 *Interagency transfers of property for bailment.* (a) Government property other than AF may be bailed to contractors in accordance with this part for use in performance of AF contracts, including those issued as a result of a DD Form 448, "Military Interdepartmental Purchase Request (MIPR)," provided prior written approval is obtained from the cognizant service. Such property is first transferred to the Air Force on an interagency agreement. AFPI Form 22C will not be initiated prior to accomplishment of the interagency agreement.

(b) AF property may be available to other Government agencies for purpose of bailment. Transfer of such property will be accomplished under the provisions of an interagency agreement.

(c) AF property in a contractor's possession under the provisions of an AF bailment agreement may be made available for use under a contract between another Government agency and the contractor by amending the AF bailment contract with the contractor to so provide. An interagency agreement will not be necessary in these instances.

SUBPART X—FACILITY EXPANSION PROCEDURE

§ 1013.2401 *General.* Facilities leases are not authorized when the contractor is to be reimbursed for facilities costs unless approved by the Secretary. Facilities contracts are used whenever the contractor is to be reimbursed for facilities costs.

§ 1013.2402 *Procedure.* Where additional facilities are required, every effort will be made to select sources that demonstrate a willingness and ability to provide facilities. Air Force contractors (and subcontractors) are expected to furnish such support unless it is otherwise determined to be in the best interests of the government or where contractors can show that the economic risks do not justify further private participation. Contractors should be informed of the possible advantages through providing their own facilities by use of Certificates of Necessity and methods of depreciation now authorized for federal income tax purposes. AF contractors furnishing their own facilities are normally entitled to more profit considerations in the negotiation of prices and profits (§ 1003.703 of this subchapter). Facility expansion projects normally will be initiated as a result of existence of one of the following conditions: Situations in which procurement personnel are unable to locate contractors having or willing to provide capacity required to meet procurement programs, prime contractors unable to locate subcontractors having or willing to provide capacity to meet production requirements, and shortages of supply items or components in general use by a large segment of the aircraft industry, and where an exhaustive search has failed to disclose a source or supplier having or willing to provide the required capacity. In general the inability of industry to provide facilities rather than unwillingness will be the basis for initiation of Government financed expansions.

(a) *Screening idle and industrial reserve equipment.* The contractor will screen idle equipment lists according to AMCM 69–1 at the appropriate AMA headquarters and at Production Equipment Redistribution Group (PERG), Department of Defense (DOD), Washington, D. C., upon the authorization of the air procurement district or AF plant representative as such authority may be delegated. Allocation of equipment selected will be requested by the contractor through and with the concurrence of the air procurement district according to AMCM 69–1. The contractor will verify the characteristics of the selected equipment and certify that it will satisfactorily meet his requirements, and that the equipment will be accepted according to the terms of his facilities contract or lease.

(b) *Subcontract structure.* Prime contractors will be required to submit their contract structure showing all major subcontractors, production items, and production rates to Hq., AMC for approval of sources and capabilities.

(c) *Approval by administrative contracting officer of procurement subcontracts which require additional facilities.* Before approving a procurement subcontract, the administrative contracting officer will require the prime contractor to submit to the administrative contracting officer a signed subcon-

tractor Facility Expansion Capability Report indicating the following: Whether the selected subcontractor will require additional facilities and if so the estimated cost by Appendix A, Industrial Facilities; any financial assistance which will be required by the subcontractors; evidence showing the extent of the investigation of other potential sources made by the prime contractor including name of each source investigated, amount of Government-furnished facilities required by each, unit price of product, peak capacity, etc.; a description of the product including tolerances and material specifications detailed enough so that other potential subcontractors will be able to determine their capacity to produce it; and delivery schedules. The AF plant representative and air procurement district will screen the region for the purpose of locating additional sources that would require less facilities and send such information to the administrative contracting officer. AMA headquarters will screen the other air procurement districts for potential sources and will request lists of other potential sources located outside its own area. These sources will be furnished to the administrative contracting officer through the AMA. The administrative contracting officer will forward the information to the prime contractor and advise him to screen the additional sources and to indicate to the administrative contracting officer such sources as he considers suitable for the performance of the subcontract.

(d) *Minor subcontractors and suppliers.* Other subcontractors and suppliers not known at the time of negotiation of the prime procurement contract will submit applications and Appendices "A" (11 copies) for Government-provided facilities required by them direct to the air procurement district in whose area they are located. While under review, if the procedure in paragraph (c) of this section has not been complied with, the air procurement district will request from the air materiel area a list of available sources who have capacity for the proposed production. The air materiel area will in turn request a similar list as to sources outside the area. These additional sources will be screened to determine if any can perform the proposed production with less Government-Furnished Facilities than the original applicant.

(e) *Facilities leases.* In facilities expansions where the Government is furnishing only existing Government-owned machinery and equipment to contractors and suppliers for the performance of Government contracts, the machinery and equipment may be covered by a standard short form facilities lease agreement which will be accomplished and processed by the air materiel area according to Subpart DD of this part.

(f) *Requisitioning equipment from depot supply stock.* Where equipment urgently required for AF industrial installations cannot be secured on the open market but is available in depot supply stock, the appropriate air materiel area will requisition such items from the prime depot. Supply will be contingent upon availability of stock. Vehicles are excluded from the above procedure.

(g) *Limited power of attorney.* On a facilities expansion wherein the acquisition of office furniture and equipment will be authorized, a limited power of attorney will be issued according to Subpart CC of this part, upon the request of the administrative contracting officer or air procurement district permitting the contractor to purchase mandatory items and such other items as may be obtained at less cost directly from Federal Supply Schedules or General Services Administration.

§ 1013.2403 *Preliminary and formal applications for facilities.*

§ 1013.2403–1 *Preliminary facilities application.* The preliminary facilities application is used to establish the early identification of facilities projects for planning and budgeting purposes and for initiating facility expansions in directed programs. The preliminary application is prepared by contractors or AF sponsoring activities for each facilities project by individual location and by fiscal year requirements. It will enable contractors who are producing or plan to produce military items for the Air Force to furnish AMC with their projected facilities plans. Also, the preliminary application is a means whereby the AF sponsoring activities may submit future facilities requirements, covering end item programs which are directed to become production items or work, and as such may be supported by industrial facilities funds. The preliminary application may lack the complete descriptions of facilities, however, the over-all plans for accomplishing the end item of work should provide reasonable cost estimates. For end item projects which are sufficiently advanced to enable the contractors to furnish complete details and justifications, the formal application (§§ 1013.2403–2 and 1013.2404) and submission procedures (§ 1013.2402) should be followed. The preliminary facilities application consists of answers to paragraphs (a) through (f) of § 1013.2403–2 as applicable to the proposed facilities expansion.

§ 1013.2403–2 *Contractor's formal application for facilities.* A separate formal application for Government-provided facilities is required for each facilities expansion project. The formal application consists of two documents: a letter containing project information which is pertinent to the facilities expansion together with justifications as outlined in paragraphs (a) through (r) of this section, and an Appendix "A" prepared according to instructions in § 1013.2404.

(a) Contractor (or subcontractor), name (legal title), and address; company representative to contact, telephone number, and extension; type of company organization (corporation, partnership, etc.); state in which incorporated, if applicable.

(b) Location of proposed facilities expansion; indicate whether site privately-owned or Government-owned; if Government-owned, list the Government agency that has jurisdiction. Describe briefly the availability of labor, power, fuel, water, sewage disposal, housing, transportation, etc., considering the planned peak rates to be attained. State the advantage of the proposed geographic location.

(c) Purpose of expansion: Where applicable, identify R & D system to be developed, tested, or produced and give project number; list production program items (aircraft, missiles, engines, fuels, etc.) to be supported.

(d) Basis of need:

(1) Reference to approved programs or T/O and E's from which need for facilities directly arises. Relationship of this project, including phasing, to other elements of the same overall weapons systems program.

(2) With reference to end items:

(i) Specify phase, whether R & D, test model, or production for inventory. If the end item is in production, or scheduled for production, the description should include:

(*a*) Present production rate for this end item, in terms of units per month. Indicate shift basis.

(*b*) Maximum production rate that can be produced with current facilities per month. Indicate shift basis.

(*c*) Maximum production rates, including the present and proposed expansion, per month. Indicate shift basis.

(e) Estimated cost of facilities by the following schedule categories (see § 1013.2404 for description), and projected dates when funds are required:

Project schedules	Program year estimated					Total budget		
	1st quarter July 1	2d quarter October 1	3d quarter January 1	4th quarter April 1	Program year amount	Next fiscal year July 1	Follow on funds	Total project amount
I. Land, etc.								
II. Buildings, etc.								
III. Machinery, etc.								
IV. Portable Tools, etc.								
V. Installation								
VI. Indirect								
Totals								

(f) Explain briefly the types of construction or equipment required and method of computation used for developing the estimated cost for each schedule reflected under paragraph (e) of this section. Give details regarding critical long lead time items, architect and engineering, and engineering consultant services, others, as applicable. Also, include target dates for acquiring the facilities or services. Nonseverable facilities (which can generally be identified

as items in Schedules I and II) will not be located on private property except under abnormal circumstances when such action cannot be avoided. When (in the contractor's opinion) the locating of such items on private property is necessary, special information in support of this position and explaining why the contractor cannot provide such facilities is required. Likewise, according to § 1013.406, information is required as to what the useful life of the item will be and what buy-back or stand-by agreements would be acceptable to the contractor.

(g) Percentage of subcontracting planned by dollar amount and/or percent of total effort. Justify reasons for not subcontracting additional items. To the degree possible, identify subcontractors and items to be subcontracted. If facilities are anticipated for subcontractors, identify.

(h) Provide a 5-year summary of the contractor's financial progress as follows, by company division, if appropriate:

Year	Net profit	Dividends paid	Invested in facilities	Depreciation charged	Net company-owned facilities after depreciation	Retained income
1953						
1954						
1955						
1956						
Etc.						

(i) Provide a dollar comparison of:

Schedules	All facilities provided previously (at proposed location)		Facilities to be provided this proposal	
	Contractor	Government	Contractor	Government
I				
II				
III				
IV				
V				
VI				
Totals				

(j) The contractor will justify his reasons for not financing the proposed expansion with corporate funds. Indicate effort to obtain Government loan or Certificate of Necessity.

(End of Preliminary Application—Formal Application Continues)

(k) Give total number and cost of items to be produced. Give estimated peak production rate of facility under all out mobilization conditions, including this proposed expansion.

(l) What part of the expanded capacity will be used by other Services? Identify service and specific items involved.

(m) To what extent can the proposed facilities be used in connection with future technical developments?

(n) Does the proposal constitute a complete facility? If not, what elements are not included, and how will they be provided?

(o) Information Concerning Floor Space (as applicable to this project): If additional floor space will be required for the proposed expansion, the following information should be provided:

(1) Floor space in existing buildings (on location pertaining to this expansion) broken down into productive and nonproductive areas by the following categories: AF owned, privately owned, and leased.

(2) Portion of the above space now devoted to aeronautical production broken down in the same categories.

(3) The floor space in addition to that currently devoted to aeronautical production to be used for the proposed expansion, broken down in the same categories. Indicate proposed method of acquisition of additional floor space required to support this proposal.

(p) Information Concerning Labor (as applicable to this project):

(1)

	I	II	III	IV
	Direct employment (military contracts)	Direct employment (nonmilitary contracts)	Indirect employment	Total employment (Col. I+II+III)
A. Current employment				
B. Additional planned employment for previous submitted expansion proposals (approved or pending.)[1]		xxxxxxxxxxxxxxxxx		
C. Additional planned employment (new hires) as a result of this expansion proposal.[1]		xxxxxxxxxxxxxxxxx		
D. Additional estimated employment needed to meet scheduled peak requirements on nonmilitary production.	xxxxxxxxxxxxxxxxx			
E. Total planning employment (items A+B+C+D).				
F. Maximum employment which could be utilized effectively on a 1-shift operation.				

[1] This figure is a net increase in employment. It includes only newly recruited employees. It excludes training and upgrading of unskilled and semiskilled workers presently employed and presently employed workers made available for military production through "phasing out" projects or through intraplant rearrangements.

(2) A. On what date will planned peak employment be attained under this proposed facilities expansion? _____

B. On what date will planned total peak employment on non-military production be attained? _____

(3) List below additional (new hires) special technical or skilled personnel[1] required for:

Job title	*Full utilization of present and previously authorized facilities on military production*	*Full utilization of present and planned facilities on non-military production*	*Maximum employment as a result of facilities requested in this proposal*

(4) (i) Estimated number of workers required who must be recruited outside of the local labor market _____

(ii) Are local housing and rental units available at reasonable rates for the necessary in-migration? _____

(iii) If new construction is necessary, estimate the number of units which must be constructed _____

(5) What are the conditions of access roads to the plant and to the surrounding communities from which labor will be drawn? _____

(6) What is the normal commuting range to your plant? _____

(7) (i) Is there bus service between the facility and the various localities in which present and future employees live? _____

(ii) If not can such service be arranged during the hours when the shifts are changing? _____

(8) List any manpower problems anticipated in the performance of this contract not covered above:

_____

_____

(q) Information Concerning Screening of Existing Facilities (as applicable to this project):

(1) Have lists of available reserve plants of all three departments been screened? Identify and give brief description for rejection of facilities which appear to be suitable.

(2) Have production equipment inventories been screened?

(3) Have nonstocklisted inventories been screened?

[1] Include only workers in hard-to-recruit categories such as engineers, tool and die makers, etc.

(4) With respect to test facilities, are Government-owned facilities available, and if so, why are they not being used?

(5) Can production be effected in Government-owned—Government-operated facilities, e. g., arsenals, shipyards, or rehabilitated facilities, except for production for inventory.

(r) Reference to facilities clause in the Government procurement contract. Where applicable, quote the facilities clause in the procurement (end item) contract which refers to the facilities to be provided. Also give procurement contract number and date effected or anticipated date of procurement contract coverage.

§ 1013.2404 *Appendix A, industrial facilities.* This is a guide form and will be followed in the preparation of Appendix A by the contractor.

APPENDIX A

INDUSTRIAL FACILITIES

Date _____

Name and Address of Company

Nature of facilities: (Insert here the types of proposed facilities such as hangars, warehouse, machine tools, etc.)

Location: (Address where facilities are to be located.)

For the production of: (Give brief statement covering items to be produced and contemplated peak monthly rate of production on 2-shift, 5-day workweek.)

SUMMARY SHEET

	Estimated cost
Schedule I—Land and land improvements:	
(a) Land	$xxx, xxx
(b) Land improvements	xxx, xxx
Total	xxx, xxx
Schedule II—Buildings, etc.:	
(a) Buildings	x, xxx, xxx
(b) Building installations (not mechanical)	xxx, xxx
(c) Installations (on site)	xx, xxx
(c-1) Land installations (off site)	xx, xxx
Total	x, xxx, xxx
Schedule III—Machinery, equipment, etc.:	
(a-1) Machine tools	x, xxx, xxx
(a-2) Production equipment	xxx, xxx
(b) Building installations (mechanical)	xx, xxx
(c) Laboratory and testing equipment	xx, xxx
(d) Miscellaneous furniture and equipment	xx, xxx
Total	x, xxx, xxx
Schedule IV—Portable tools and materials handling and automotive vehicles:	
(a) Portable tools	xx, xxx
(b) Material handling and automotive vehicles	xx, xxx
Total	xx, xxx
Schedule V—Equipment installation costs	xx, xxx
Schedule VI—Indirect costs (overhead)	xxx, xxx
Grand total	xx, xxx, xxx

SCHEDULE I—LAND AND LAND IMPROVEMENTS

Item No. (a) Land:

Give legal description acreage, location, and estimated cost. A map, print, or drawing, must be furnished as exhibit 1, showing location of plant in relation to adjacent terrain features such as: airports, highways, railroads, power lines, etc., with appropriate identifying designation of each. Another print or drawing must be furnished as exhibit 2 showing plot plan in detail. Cost of land will include all estimated costs of sale which are payable by purchaser.

Total schedule I (a) _____ $xxx, xxx

Item No. (b) Land improvements:

(Itemize and give individual cost of each item—sufficient description must be furnished to justify cost as estimated.)

This will include improvements such as leveling, grading and drainage, and any other items not subject to depreciation. Full details of each item must be given and location of each shown on plot plan—exhibit 2.

Total schedule I (b) _____ $xxx, xxx

Total schedule I _____ $xxx, xxx

SCHEDULE II—BUILDINGS, ETC.

Item No. (a) Buildings:

(Itemize and give individual cost of each item—sufficient description must be furnished to justify cost as estimated.)

This will include a full list of structures, with complete description and estimated cost of each unit. One or more prints or sketches must be furnished as an exhibit showing, for each building, the proposed type of structure, floor plan and elevations, with brief memorandum specifications. One complete plot plan must be furnished as an exhibit showing proposed location of all buildings in relation to complete plant.

Cross references from descriptions to exhibits must be made where necessary to make details absolutely clear.

Total schedule II (a) _____ $x, xxx, xxx

Item No. (b) Building installations (not mechanical):

(Itemize and give individual cost of each item—sufficient description must be furnished to justify cost as estimated.)

This covers all installations of electric power and illumination, plumbing, heating, air conditioning, sprinkler systems, etc., usually including in building costs, with the exception of power lines, water lines, etc., outside of the building itself which are to be included in Schedule II (a) and (c-1). Items listed here should refer to the individual buildings as listed in Schedule II (a) above, and must be described in sufficient detail for cost evaluation.

Total schedule II (b) _____ $xxx, xxx

Item No. (c) Land installations (on site):

(Itemize and give individual cost of each item—sufficient description must be furnished to justify cost as noted.)

Included in this classification are paving of yards, runways, parking areas, etc., fencing of property, utilities improvements, and spur tracks on areas outside of buildings but on property owned or controlled by the Government and leased to the contractor. Give full details of each item and show location of each or plot plan—exhibit 2.

Total schedule II (c) _____ $xx, xxx

Item No. (c-1) Land installations (off site):

(Itemized and give individual cost of each item—sufficient description must be furnished to justify cost as noted.)

If there are costs for utilities, railroad extensions, etc., necessary, but not on property owned or controlled by the Government and leased to the contractor, such costs must be included in this section. An attempt should be made to get utility companies, railroad companies, etc., to absorb all or part of the costs of such items. If no portion of the cost of such items will be paid by the utility or railroad company, statement of refusal to pay such cost, signed by an official of such company, must be included.

Where the Government is requested to pay for all or part of such off-site installation costs, a definite statement from the applicant justifying the necessity for such costs must be included. Cross reference from descriptions to exhibits must be made in order that details may be made perfectly clear. In each such case an agreement for partial or complete reimbursement or an easement protecting the interest of the Government must be negotiated and included in the facilities contract.

Total schedule II (c-1) _____ $xx, xxx

Instructions for Listing Schedule III Items

1. These instructions are to establish a standard for listing all proposed items of machinery and equipment. In order to properly evaluate a list of equipment requested for any project, it is absolutely necessary for each item to be described so that it can be identified readily.

2. A satisfactory description should include the following data:

a. Manufacturer's name.

b. Manufacturer's model number.

c. Complete nomenclature and description of size and capacity, type (plain universal, knee or bed, vertical, horizontal, etc.), number of spindles, working heads or units, etc. (where applicable), including any special features.

d. Electrical characteristics (110 v, 220 v, 440 v, 3 phase, 60 cycle, AC or DC, etc.).

e. Any other information necessary to completely identify items desired.

f. Possible substitutions in order of desirability.

g. Date of delivery for each item as required to meet delivery schedule of the contract in question.

h. Estimated delivered cost of each item.

i. Full 17-digit Standard Commodity Classification Code as listed in Directory of Metalworking Machinery published by the Munitions Board Cataloging Agency. Related production equipment will also be coded to the full 17 digits. Codes can be obtained from the "National Military Establishment Classification of Equipment for Inventory Control" and the "Federal Supply Code for Manufacturers," dated November 1951. These directories may be obtained from the air procurement district having jurisdiction over the geographical area in which plant is situated.

j. Give specific nomenclature in all cases. For example: welders—indicate whether spot, arc, butt, flash, the manufacturer, throat size, electrical characteristics, frame size; furnaces—manufacturer, model, size and capacity, electrical specifications, whether gas, oil, or electrically fired, etc. Size and capacity can be given, along with complete nomenclature, even though model may not be applicable, for all items or related production equipment.

SCHEDULE III—MACHINERY, EQUIPMENT, ETC.

(a-1) Machine tools:

Item No.	Quantity	Description	Estimated cost	Date required
x	x	(Itemize and give individual cost of each machine tool—sufficient description must be furnished to justify cost. Include welders, presses and hammers.) Costs of installation will be entered parenthetically under description but not added in group or Schedule III (a-1) subtotal—this charge is reflected in Schedule V. Example: (Installation Cost $.....each)	$xxx,xxx	xx
		Total schedule III (a-1)	xxx,xxx	
		(a-2) Production equipment:		
x	x	(Itemize and give individual cost of each item—sufficient description must be furnished to justify cost.) Sheet metal equipment, foundry equipment, anodizing and plating equipment, and other production equipment of a permanent nature necessary for production. Show installation costs as indicated in Schedule III (a-1) instructions.	xxx,xxx	xx
		Total schedule III (a-2)	xxx,xxx	
		(b) Building Installations (Mechanical):		
x	x	(Itemize and give individual cost of each item—sufficient description must be furnished to justify cost.) Stokers, motors, generators, compressors, pumps, blowers, and their mechanical systems, installed in buildings, including cranes, hoists, conveyor systems, etc. Show installation costs and include in estimated cost of each item.	xx,xxx	xx
		Total schedule III (b)	xx,xxx	
		(c) Laboratory and Testing Equipment:		
x	x	(Itemize and give individual cost of each item—sufficient description must be furnished to justify cost.) Show installation costs, if any, and include in estimated cost of each item.	xx,xxx	xx
		Total schedule III (c)	xx,xxx	
		(d) Miscellaneous Furniture and Equipment:		
x	x	(Itemize and give individual cost of each item—sufficient description must be furnished to justify cost.) Office furniture and equipment, cafeteria furniture and equipment, standard work benches, stock bins, lockers, fire protection devices not part of building, etc. Show installation costs, etc.	xx,xxx	xx
		Total schedule III (d)	xx,xxx	
		Grand total schedule III	x,xxx,xxx	

SCHEDULE IV—PORTABLE TOOLS AND MATERIAL HANDLING AND AUTOMOTIVE VEHICLES

(a) Portable Tools:

Item No.	Quantity	Description	Estimated cost	Date required
x	x	(Itemize and give individual cost of each item—sufficient description must be furnished to justify cost as noted.) Portable electric and pneumatic tools.	x	x
		Total schedule IV (a)	xx,xxx	
		(b) Material Handling and Automotive Vehicles:		
x	x	(Itemize and give individual cost of each item—sufficient description must be furnished to justify cost as noted.) All automobiles, trucks, and tractors used for transportation, and material handling vehicles such as lift trucks, trailers, etc. (Automotive vehicles will be furnished only to AF contractors operating Government-owned or leased AF plants independently of any contractor-owned plant.)	x	x
		Total schedule VI (b)	xx,xxx	
		Grand total schedule IV	xx,xxx	

SCHEDULE V—EQUIPMENT INSTALLATION COSTS

Schedule III (a-1)	$xxx,xxx
Schedule III (a-2)	xx,xxx
Total schedule V	xxx,xxx

NOTE

Individual installation costs of Schedule III (a-1) and (a-2) items are delineated in the parentheses by item but the total thereof is excluded from Schedule III subtotals and totals and is entered lump sum above at Schedule V, Equipment Installation Costs.

SCHEDULE VI—INDIRECT COSTS (OVERHEAD)

	Estimated cost
(Set forth the estimated amount of indirect costs allocable to this expansion for which the contractors will request reimbursement, and include a brief explanation as to the contractors' method of allocating overhead to facilitate expansions of the types proposed herein.)	

§ 1013.2406 *Allowability of items under facilities and procurement contracts.*

§ 1013.2406–1 *List of items allowable under facilities and procurement contracts.*

Schedule	Facilities contract		Procurement contract [1]
	Contractor-owned plant	Government-owned	
Schedule I—Land and land improvements.	No	Yes	No.
(a) Land	No [2]	do	Do.
(b) Land improvements.	do	do	Do.
1. Clearing	do	do	Do.
2. Grading	do	do	Do.
3. Drainage	do	do	Do.
Schedule II—Buildings, etc. (capital value increases).	do	do	Do.
(a) Buildings, test cells and building alterations.	do	do	Do.
(b) Building installations (not mechanical).	do	do	Do.
1. Plumbing	do	do	Do.
2. Ventilation	do	do	Do.
3. Power wiring	do	do	Do.
4. Sprinkler system	do	do	Do.
5. Heating	do	do	Do.
6. Electric lighting	(Several units such as unit heaters, light fixtures, and transformers. Excluding installation costs may be allowed without requiring exception to ASPR XIII).		
7. Test rooms, i. e., altitude chambers, cold rooms.	No [2]	Yes	Do.
8. Air conditioning (except for processing only).	do	do	Do.
9. Other nonseverable facilities	do	do	Do.
(c) Land installations (on site)	do	do	Do.
1. Yard paving	do	do	Do.
2. Runways and taxiways	do	do	Do.
3. Railway siding	do	do	Do.
4. Utilities	do	do	Do.
5. Fencing	do	do	Do.
(c-1) Land installations (off site):			
1. Access roadway	do	No [2]	Do.
2. Railroad spur	do	do	Do.
3. Utilities extensions	do	do	Do.
4. Utilities	do	do	Do.
Schedule III—Machinery and Equipment:			
(a-1) Machinery	Yes	Yes	Do.
1. Standard (general purpose) machine tools.	do	do	Do.
a. Metal cutting	do	do	Do.
b. Forming	do	do	Do.
c. Blanking	do	do	Do.
d. Riveting	do	do	Do.
2. Standard types for specific industry (i. e., electronic).	do	do	Do.
3. Special or single purpose machinery.	do	do	Do.
a. Contractor designed	do	do	Do.
b. Noncontractor designed	do	do	Do.
4. Machine tool accessories	do	do	Do.
a. Dividing head	do	do	Do.
b. Taper attachment	do	do	Do.
5. Special tooling:			
a. Jigs and fixtures	No	No	Yes.
b. Dies	do	do	Do.
c. Drills, broaches, milling cutters, tool holders, grinding wheel dressers.	do	do	Do.
d. Snap gages, height gages, calipers, etc.	do	do	Do.

[1] See § 1013.2502 for possible exceptions.
[2] Except in accordance with 32 CFR Part 13 and as specifically authorized in facilities contract.

Schedule	Facilities contract		Procurement contract [1]
	Contractor-owned plant	Government-owned	
Schedule III—Machinery and Equipment—Continued			
(a-2) Related production equipment:			
1. Electric welding machines	Yes	Yes	No.
2. Heat treating equipment	....do	....do	Do.
3. Plating equipment	....do	....do	Do.
4. Anodizing equipment	....do	....do	Do.
(b) Building installations (mechanical):			
1. Cranes	Yes (excluding crane supports and rails).	Yes (including crane supports and rails).	
2. Hoists (air and electric)	Yes	Yes	Do.
3. Ventilating and exhaust fans	....do	....do	Do.
4. Conveyors	....do	....do	Do.
(c) Laboratory and testing equipment (quality control).	Yes (Standard items only if normal life is in excess of 4 years on a 2-shift 5-day week basis, and unit cost over $500).	Yes (Standard items only if normal life is in excess of 4 years on a 2-shift 5-day week basis, and unit cost over $500).	Yes (only if normal life is less than 4 years or unit cost less than $50).
1. Electronic testing equipment	Yes (Standard items only if normal life is in excess of 4 years on a 2-shift 5-day week basis, and cost over $500).	Yes (Standard items only if normal life is in excess of 4 years on a 2-shift 5-day week basis, and cost over $500).	Yes (only if normal life is less than 4 years or cost less than $50).
a. Oscilloscopes	....do	....do	Do.
b. Voltmeters, ammeters	....do	....do	Do.
c. Signal generators	....do	....do	Do.
2. Hardness testers	....do	....do	Do.
3. Laboratory ovens	....do	....do	Do.
4. Metallurgy spectographs and other related equipment.	....do	....do	Do.
5. Optical comparators	....do	....do	Do.
6. Standard gages and inspection equipment.	....do	....do	Do.
(d) Miscellaneous furniture and equipment.	Yes (if over and above contractor's normal peacetime needs as a result of Government contracts and unit cost over $500).	....do	Yes (if over and above contractor's normal peacetime needs as a result of Government contracts and unit cost less than $50).
1. Office equipment and furniture.	....do	....do	Do.
2. Standard steel work benches and shelving.	....do	....do	Do.
3. Standard steel lockers	....do	....do	Do.
4. Cafeteria equipment (excluding dishes, pans, etc.).	....do	....do	Do.
5. Hospital equipment	....do	....do	Do.
6. Time clocks and card racks	....do	....do	Do.
Schedule IV—Portable tools and material handling and automotive vehicles:			
(a) Portable tools	Yes (if standard commercial types with life in excess of 4 years on a 2-shift 5-day week basis and cost in excess of $500).	Yes (if standard commercial types with life in excess of 4 years on a 2-shift 5-day week basis and cost in excess of $500).	Yes (only if normal life is less than 4 years or cost less than $50).
1. Powered riveters, impact wrenches, screw drivers, drills, etc.	No	No	Yes.
2. Hand tools	Yes	Yes	No.
(b) Material handling vehicles:			
1. Fork lift trucks	....do	....do	Do.
2. Tractor, warehouse	....do	....do	Do.
(c) Automotive vehicles:			
1. Trucks, standard types	No	Yes (Totally Government-owned plants only).	Do.
2. Fire trucks, crash	Yes (see part 33 of this section).	....do	Do.
3. Trucks, gasoline	....do	....do	Do.
4. Sedans, station wagons	No	No	Do.
Schedule V—Installation costs (Schedule III and IV items).	Yes	Yes	Yes (with suitable clause in supply contract).
Other costs, preproduction costs:			
Plant and office rearrangement. (Includes light fixtures, plumbing, etc.).	No	No	Yes.
Plant rehabilitation	....do	Yes	No.
Plant layout and engineering costs	....do	No	Yes.
Plant reconversion costs	....do	....do	No.
Machine tool rehabilitation from Government reserves.	Yes	Yes	Yes (with suitable clause in supply contract).
Privately owned	No	No	No.

[1] See § 1013.2502 for possible exceptions.

SUBPART Y—INDUSTRIAL REAL PROPERTY—CONSTRUCTION, REHABILITATION, MODIFICATION, AND ALTERATION

§ 1013.2502 *General provisions.* Modifications, alterations, or additions to Government-owned real property provided to a contractor under the terms of a facilities contract will be accomplished as follows:

(a) All work of a capital nature must be approved by the ACO. These approvals are required regardless of whether the work is to be performed with Government or contractor funds.

(b) When the work is of a capital nature (i. e., of a type that would be capitalized under the contractor's approved accounting practice if the contractor were the owner of the property), the work will be performed and reimbursed as follows:

(1) Normally, the work will be performed at Government expense under the facilities contract.

(2) When the work is determined by the ACO to be "minor" in nature, it may be approved with the concurrence of the AFPR or chief, APD.

(3) When facility funds are not available, minor construction or rehabilitation may be performed at contractor's expense, provided that the ACO determines with the concurrence of the AFPR or chief, APD, that immediate accomplishment or start of construction is in the best interest of the Air Force. In such cases, the contractor must write off the costs involved for Government contract costing purposes according to his normal approved accounting practices as if the costs had been incurred in a contractor-owned plant, except that he will not be required to write off such items over a period of more than 5 years. Allocation of such costs will be subject to approval by the ACO.

(c) Except as provided in paragraph (b) of this section, the following provisions apply to all construction and/or building rehabilitation projects to be accomplished at industrial facilities under a facilities contract with appropriated Government funds. AF contracting officers may authorize major construction or building rehabilitation projects only upon prior specific approval of Hq AMC.

SUBPART Z—INDUSTRIAL REAL ESTATE—ACQUISITION AND DISPOSAL

§ 1013.2603 *Acquisition.* (a) The AF contractor will initiate the request for additional industrial real property in accordance with Subpart X, of this part.

(b) The following factors will be considered in the selection of real property for acquisition of industrial sites:

(1) Fulfilling the requirement with the minimum amount of real property necessary therefor.

(2) Satisfying the requirement with the most economical property suitable for the intended purpose.

(3) Utilizing property allocated for mobilization when the original mobilization requirement has become a current requirement.

SUBPART BB—FACTUAL APPENDICES

§ 1013.2801 *Authority.* Each facilities contract provides for the submission of "factual appendices" consisting of summaries and listings of facilities actually provided under the facilities contract.

§ 1013.2802 *General.* (a) Factual appendix "A," summary of expenditure: See § 1013.2802–1.

(b) A cover page to the Factual Appendixes will be included providing a certification by the contractor and approved by the Administrative Contracting Officer as follows:

To the best of my knowledge and belief I hereby certify that the submitted factual appendix is correct and represents the fa-

cilities provided (contractor) under subject facilities contract.

Signed: _____
(Responsible Representative of Contractor)

Approved: _____
(AF Administrative Contracting Officer)

(c) Following is a form of administrative notice used to effect distribution of Factual Appendixes.

Date _____

Subject: Appendix(es) A (A and X) to Special Facilities Contract No. _____ with _____ of _____

To: Distributees:

1. Forwarded herewith for your records are copies of (Initial) (Supplemental) Factual Appendix(es) A (A and X) dated _____ to subject contract which has (have) been approved by the Administrative Contracting Officer.

2. Attention is invited to the provisions of Clause _____ of (Supplemental Agreement No. 2 _____ to) subject contract relative to this (these) Appendix(es).

_____
(Contracting Officer)

Distribution:
1 signed cy to GAO
1 signed cy to Hq AMC, ATTN: MCPBI
1 signed cy to Contractor
Incl

§ 1013.2802–1 *Factual Appendix "A"—Summary of expenditures.*

Contractor _____ Contract No. _____ Date _____

Address _____

Nature of facilities: (Insert here the types of provided facilities such as hangars, warehouse, machine tools, etc.)

Location: (Address where facilities are located.)

For the production of: (Give brief statement covering items to be produced.)

A. SUMMARY OF EXPENDITURES

	Total Expenditures: Since last report	Total to date
Schedule I—Land and land improvements:		
a. Land	XXX. XX	XXX. XX
b. Land improvements	XXX. XX	XXX. XX
Total	XXX. XX	XXXX. XX
Schedule II—Buildings, etc:		
a. Buildings	XXX. XX	XXX. XX
b. Building improvements (not mech.)	XXX. XX	XXX. XX
c. Leasehold improvements	XXX. XX	XXX. XX
c-1. Off leasehold improvements	XXX. XX	XXX. XX
Total	XXX. XX	XXXX. XX
Schedule III—Machinery, equipment, etc.		
a-1. Machinery	XXX. XX	XXX. XX
a-2. Equipment	XXX. XX	XXX. XX
b. Building installation (mech.)	XXX. XX	XXX. XX
c. Laboratory and testing equipment	XXX. XX	XXX. XX
d. Furniture and fixtures	XXX. XX	XXX. XX
Subtotal	XXXX. XX	XXXX. XX
MACHINERY AND EQUIPMENT		
Total installation costs	XXX. XX	XXX. XX
Total rehabilitation costs	XXX. XX	XXX. XX
Total	XXXX. XX	XXXX. XX
Schedule IV—Portable tools and material handling and automotive vehicles:		
a. Portable tools	XXX. XX	XXX. XX
b. Material handling and automotive vehicles	XXX. XX	XXX. XX
Total	XXXX. XX	XXXX. XX
Grand total	XXXX. XX	XXXX. XX

Approved, date _____
AF Contracting Officer

_____

Date: _____

§ 1013.2802–2 *Factual Appendix "A"—Purchase facilities.*

SPECIAL FACILITIES CONTRACT AF33(038)-00000

Item	Quantity	Description	Acquisition cost	Manufacturer's serial No.	USAF marking	AMC approval authority and date	Purchase or work order
SCHEDULE I (a)—LAND							
1	XX	(Full description of land reqd) (Indicate price per acre) (See Plot plan, Exhibit D)	$3,640.00			MCPBF-10-53 Jan. 5, 1952	152-1
		Total schedule I (a)	3,640.00				
SCHEDULE II—BUILDINGS AND BUILDING INSTALLATIONS							
1	XX	(a-1) Building alterations: After Fire Station No. 2 to accommodate Cardox Fire truck (see Exhibit A)					
		(a-2) Buildings	$808.93			MCPBF-1-10-20 Jan. 6, 1952	153-1
2	XX	Construct fuel transfer test building for gusher program per Boeing drawing SK-2895 (see Exhibit C)	2,723.82			MCPBF-1-10-20 Mar. 21, 1949	155-1
		Total schedule II	3,532.75				
SCHEDULE III—MACHINERY AND EQUIPMENT							
1	10 ea.	(a-1) Machinery: Drills—Delta, slows peel, No. 17-207 pedestal type 17", complete with standard equipment to include the following: ½" Jacobs chuck, std tilting table and 1 hp motor No. 84-950-1 phase, 110 volt, 60 cycle a. c. (a) 246.47	$2,464.70	74-6907 74-1449 74-6908 74-1444 74-6953 74-1443 74-9679 74-6954 74-6952 74-7050	4-1998 4-1999 4-2000 4-2002 4-2001 4-2003 4-2004 4-2006 4-2007 4-2005	SOHAP/HFE/mf Jan. 6, 1952	300322
89	1 ea.	(c) Laboratory and test equipment pyrometer—optical double range, 1400° F. Leeds—Northrup Model 8621. (a) 280.00 each	280.00		3-519	SOHAP/JRM/fr Jan. 7, 1949	300346
SCHEDULE IV—PORTABLE TOOLS AND MATERIAL HANDLING AND AUTOMOTIVE VEHICLES							
1	2 ea.	(a) Portable tools: Taper—Coll, Segur, No. 79673 at 215.31	$430.62		2-4002 2-4006	SOHAP/JRM/bg Aug. 6, 1948	300297

§ 1013.2802–3 *Factual Appendix "A"—Government-furnished property.*

Contractor _____ Contract No. _____ Date _____

Address _____

A. GOVERNMENT FURNISHED PROPERTY

	Total: Since last report	Total to date
Schedule I—Land and land improvements:		
a. Land	XXX. XX	XXX. XX
b. Land improvements	XXX. XX	XXX. XX
Total	XXX. XX	XXX. XX

A. GOVERNMENT FURNISHED PROPERTY—continued	Total Since last report	Total to date
Schedule II—Buildings, etc:		
a. Buildings	XXX. XX	XXX. XX
b. Building installations (not mech.)	XXX. XX	XXX. XX
c. Leasehold improvements	XXX. XX	XXX. XX
c–1. Off leasehold improvements	XXX. XX	XXX. XX
Total	XXX. XX	XXXX. XX
Schedule III—Machinery, equipment, etc.		
a–1. Machinery	XXX. XX	XXX. XX
a–2. Equipment	XXX. XX	XXX. XX
b. Building installation (mech.)	XXX. XX	XXX. XX
c. Laboratory and testing equipment	XXX. XX	XXX. XX
d. Furniture and fixtures	XXX. XX	XXX. XX
Total	XXX. XX	XXX. XX
Schedule IV—Portable tools and material handling and automotive vehicles:		
a. Portable tools	XXX. XX	XXX. XX
b. Material handling and automotive vehicles	XXX. XX	XXX. XX
Total	XXXX. XX	XXXX. XX

SUBPART CC—LIMITED POWER OF ATTORNEY FOR PROCUREMENT FROM GENERAL SERVICES ADMINISTRATION OR FEDERAL SUPPLY SCHEDULE CONTRACTORS BY FACILITIES CONTRACTORS

§ 1013.2903 *Procedure.* When office furniture and equipment must be supplied under a facilities contract or a facilities clause of a supply or service contract and cannot be furnished from excess, it must be purchased under the Limited Power of Attorney set forth herein. Compliance with section 1316 of Public Law 207 (83d Congress) (67 Stat. 439), will be made by purchase from General Services Administration or by securing a release from that agency prior to purchase. Such release, to purchase from sources other than GSA, will be in writing and will be retained in the contract files of the Administrative Contracting Officer authorizing the purchase.

(a) *Limited power of attorney.* Facilities contractors designated to make procurements under the provisions of this Subpart will be given a limited power of attorney (see § 1013.2903–1 for form) by the contracting officer authorizing the contractor to issue purchase orders for the procurement of mandatory items and office furniture or equipment from the GSA or from a Federal Supply Schedule contractor; issue tax exemption certificates in lieu of payment of certain State and other taxes.

(b) *Supply schedules and catalogs.* Facilities contractors given this limited power of attorney should secure a copy of the required Federal Supply Schedules and Catalogs from the nearest GSA regional office to enable them to properly utilize the property sources made available to them.

(c) *Purchase order forms.* In submitting purchase orders to the GSA or Federal Supply Schedule contractors, the facilities contractor will use his regular purchase order form and place the order in the name of the U. S. Government (Department of the Air Force) by the contractor as agent. For example:

U. S. GOVERNMENT (DEPARTMENT OF THE AIR FORCE)

By: Richard Doe and Company
(Signature) _____
(Title) _____

The following statement will be included on purchase orders submitted to GSA or Federal Supply Schedule contractors:

This order is placed by Richard Doe and Company as agent for and on behalf of the U. S. Government (Department of the Air Force) under Facilities Contract No. _____ for furnishing the above property or equipment.

Purchase orders issued in accordance with the provisions of this Part will bear instructions to bill and forward the invoices to the purchasing facilities contractor. The facilities contractor will make payment and request reimbursement in the usual manner.

(d) *Typewriters.* Before submitting purchase orders for manually operated typewriters to Federal Supply Schedule (FSS) contractors, the facilities contractor will obtain a certificate of unavailability from the nearest GSA regional office. Upon issuance thereof by GSA, the facilities contractor will add the following statement to that required by § 1013.2903 (c) on the purchase orders. "This order is covered by General Services Administration Certificate of Unavailability No. TC _____."

(e) *Taxes.* All purchases made by the facilities contractors under Limited Power of Attorney as provided for in this subpart are to be made exclusive of the same taxes as would be the case if the purchase were made by an AF contracting officer direct. Assistance in tax problems will be provided by the judge advocate's office of the appropriate Air Materiel Area.

§ 1013.2903–1 *Form of limited power of attorney.*

HEADQUARTERS
AIR MATERIEL COMMAND
WRIGHT-PATTERSON AIR FORCE BASE, OHIO

Subject: Limited Power of Attorney, Contract No. _____

_____
(Contractor's Name)

_____
(Address)

1. You are hereby constituted and authorized to act as agent for and in behalf of the Government (Department of the Air Force) in the performance of the following acts:

a. The purchasing of such property authorized by the contracting officer for acquisition under facilities contract No. _____ as is available for purchase (mandatory items must be purchased if available) by Government agencies either directly from the General Services Administration or under Federal Supply Schedules.

b. The issuance of tax exemptions certificates in lieu of the payments of State or other taxes for which the Government (Department of the Air Force) is not liable on property purchased under the foregoing authorization.

2. This authority is granted for the performance of the above acts only and is not transferable or assignable to another.

_____
(Contracting Officer)

SUBPART DD—LEASING OF MACHINERY AND INDUSTRIAL EQUIPMENT

§ 1013.3001 *General.* It is AF policy to lease available Government-owned machinery and equipment to eligible contractors, subcontractors, and vendors when the leasing of such property is essential for defense production or development and the issuance of a facilities contract in the particular case is impractical or inappropriate. In addition to the other restrictions imposed hereby, items may be leased only if 75 percent or more of the production or development on the items to be leased will be for military end items or components. Prior to the issuance of any lease, the following determinations will be made.

(a) *Determination of availability.* (1) The property which may be leased under these procedures consists of machine tools and other items of production equipment which are determined to be: (i) Not necessary for direct use by the Air Force for programmed production, maintenance or repair requirements, operational needs, or for current or reserve inventories, (ii) not surplus to the needs of the Air Force within the meaning of the Act of October 3, 1944 (58 Stat. 765), (iii) not for the time being required for public use, and (iv) otherwise available for lease pursuant to applicable regulations, directives, or other instructions.

(2) Other property will not be considered available for lease unless it is first released by the agency having jurisdiction over such property. Such releases will not be made if the property is required for direct use by the Government for any current use or for reserve inventories. Such property also will not be declared available for lease if it is surplus to the overall requirements of the Air Force since such property must be disposed of according to surplus property regulations.

(3) No office furniture and equipment, vehicles other than materials-handling equipment, or special tooling will be considered available for lease under the provisions of this Part.

(b) *Determination of eligibility of proposed lessee.* For a company to be eligible for an AF lease, it must meet the following qualifications:

(1) The company must be financially able to perform the obligations of the proposed lease and to carry out the purposes thereof.

(2) The larger portion of the work to be performed with the leased items must be for the Air Force unless it is impossible to arrange the required lease through another service of the Depart-

ment of Defense, i. e., the Army or the Navy.

(3) The proposed lessee must furnish a written representation that he has not employed or retained any company or person (other than a full-time employee working solely for the prospective lessee) to secure the lease, and will furnish a written agreement to furnish information relating thereto as required by the contracting officer.

(c) *Determination of essentiality.* A determination that the leasing of AF property is essential in aid of defense production will not be made until it has been established that the failure to lease would result in the slippage of a current military production program.

(d) *Determination of impracticability or inappropriateness of use of a facilities contract.* A determination that the use of a facilities contract as prescribed by Part 13 of this title and this part is impracticable or inappropriate in the particular case will be made whenever it is desired merely to furnish existing property to a contractor for defense work and it is not intended to permit any rent-free use.

§ 1013.3003 *Processing of requests for leases.*

§ 1013.3003–3 *Determining proposed lessee's eligibility.* Upon receipt of a request for lease and after tentative agreement on the lease form, the chief, air procurement district must determine the proposed lessee's eligibility for a lease. The financial section in the AMA or air procurement district, as appropriate, will be requested, by means of an AFPI Form 63C, "Request for Financial Clearance," to determine the company's financial qualification. Such determination will be recorded in writing. The following instructions provide policies and procedures to be followed in connection with this determination:

(a) A proposed lessee is deemed qualified financially if he has sufficient funds available to indicate ability to complete satisfactorily the supply contracts or subcontracts involved, to pay the rental, and to perform the other obligations imposed by the terms of the proposed lease. The office requesting financial clearance will supply adequate information with respect to amount of rent, anticipated increase in production, and any other pertinent circumstances and terms of lease required to make a sound decision. In considering financial stability, particular care should be taken before issuing leases to enterprises that may have been set up without investment of any substantial amount of capital by the owners.

(1) If the financial evaluation required in paragraph (a) of this section discloses the lessee to be in a marginal financial position and the lessee is determined to be otherwise qualified for a facilities lease, the lessee may, in lieu of the above financial criteria, be granted financial clearance upon the performance of either of the following:

(i) Delivery to the administrative contracting officer of a certified check in an amount equivalent to 6 months' rental, made payable to Treasurer of the United States, accompanied by three executed copies of the Security Deposit Agreement set forth in subparagraph (2) of this paragraph. The deposit will be held by the Government according to the provisions of the Security Deposit Agreement. The administrative contracting officer will forward the deposit and the three copies of the agreement to the appropriate accounting office. At such time as the lessee's financial ability improves to the extent necessary to satisfy the financial criteria in this section, the deposit will be refunded to the lessee.

(ii) Delivery to the administrative contracting officer of a corporate or individual surety guaranteeing the lessee's full performance of the terms and conditions of the facilities lease, in an amount equal to 6 months' rental. Acceptability of sureties will be governed by the provisions of § 1010.201 of this chapter. The surety bond will name the United States Government as obligee and will continue in existence until the termination or expiration of such lease. The administrative contracting officer will forward the original fully executed bond, together with two copies, to the appropriate accounting office.

(2) Security Deposit Agreement.

Dated _____

Subject: Security Deposit Under Proposed Lease Agreement No. _____ between the *United States of America*, as Lessor and the _____ Company, as Lessee

(addressed to Administrative Contracting Officer)

Inclosed herewith is certified check in the sum of $_____ to be held as security by the Lessor without interest for the full and faithful performance of all the terms and conditions of subject proposed lease agreement covering machinery and equipment of an estimated acquisition value of $_____.

It is understood that after the expiration or termination in whole of the lease or at such earlier time as the Administrative Contracting Officer determines it to be no longer required, the lessor will return the security to the lessee provided the lessee has fully and faithfully performed under the terms of said lease agreement. In the event of lessee's default or non-performance under the terms of the lease, the lessor shall have the right to retain so much of the security as may be required to satisfy lessor's loss or damage and remit the balance of the lessee. If the lessor's loss or damage is in an amount greater than the amount of the security, the lessor shall have the right to retain the entire amount of said security and shall have recourse against the lessee for any deficiency.

In case of a dispute concerning a question of fact arising under this security deposit agreement or in connection with the security hereinabove described such dispute will be resolved in accordance with the provisions of the "Disputes" clause contained in the aforementioned Facilities Lease Agreement.

_____
(Signature of Lessee)

Accepted upon conditions stated above:

THE UNITED STATES OF AMERICA
By _____
(Administrative Contracting Officer)

§ 1013.3004 *Issuance of leases.*

§ 1013.3004–3 *Signature of leases.* Leases will normally be sent to lessees for signature prior to signature by the contracting officer. Three copies, including an original, one carbon-backed, and one ordinary carbon copy of the lease will be signed by the lessee and returned to the contracting officer. Upon receipt of the signed copies, the contracting officer will, if the lease is otherwise in order, sign the three lessee-signed copies and submit them with appropriate explanation and supporting file to the approving authority. In determining that the lease is in order, the contracting officer will verify the continuing availability of the terms covered in Appendix "A" of the lease in those cases where the property is not already in the lessee's possession.

§ 1013.3004–4 *Lessee's refusal to sign.* (a) Where a proposed lessee refuses to sign a lease covering property which may have been previously sent to him in anticipation of a lease agreement, action must be taken to protect the interests of the Government by disposition of the property involved and by investigation of the pertinent facts to determine whether or not a valid claim exists against the proposed lessee for transportation, packing, or other costs. If the contracting officer determines that a valid claim exists, the request for payment and collection will be processed.

§ 1013.3005 *Administration of leases.*

§ 1013.3005–2 *Government and AF priorities.* Under the provisions of the lease, the lessee is required to use the leased property subject to other Government priority systems for the performance of Government contracts or subcontracts in preference to any other work which he may wish to perform with the leased property, with first priority being given to AF contracts and subcontract. The contracting officer should have periodic checks made to assure that this provision of the lease is being complied with.

§ 1013.3005–3 *Insurance.* (a) Under the provisions of the lease, the lessee is required to maintain insurance in such amounts and in such form as the contracting officer may direct with respect to any risks or perils for which the lessee is responsible under the terms of the lease and which are customarily covered by insurance or by a reserve for self-insurance according to the normal practice of the lessee or the prevailing practice of industry in which the lessee is engaged with respect to similar property in the same general locale. Normally, lessees will carry this insurance without direction by the contracting officer. If the lessee does not carry such insurance, the contracting officer need not direct it to be carried, except in those cases where the lessee might be financially unable to repair or replace the Government property in the event of loss or damage thereto for which it is held liable.

(b) The lease provides that the lessee will save the Government harmless from certain liability claims. Because of this obligation, the lessee will normally carry public liability insurance, naming the Government as a cobeneficiary of the insurance. The amount and extent of

such insurance is not subject to approval by the administrative contracting officer except to the extent that such approval may be required by the terms of other Government contracts.

§ 1013.3005–4 *Maintenance.* (a) To prevent later disputes as to the adequacy of the lessee's maintenance program, the contracting officer should ascertain the lessee's proposed maintenance program for the Government property. Where the proposed maintenance program is inadequate and does not comply with sound industrial practice, the contracting officer will request the lessee to correct any deficiencies in the maintenance program. From time to time thereafter, he will check the lessee's maintenance of the leased property to insure that the maintenance program is being followed.

(b) Since the costs of repairs and parts replacements for leased property will be borne by the lessee according to the terms of the lease, title to the replaced parts will pass to the lessee at the time of replacement. Lessee's responsibility to return the leased property will be satisfied by returning the property containing the replacing parts, provided the parts have the same utility and are of a quality equal to or better than the original parts. Any or all parts installed or placed on the machine tools or equipment to cause it to perform the function for which it was designed, becomes the property of the Government and must be returned with the tool upon termination, in good operable condition, fair wear and tear excepted. Parts, supplemental equipment, and other items not included in the design function and which are not furnished by the Government, will remain the property of the contractor. The final determination in any specific case will be the responsibility of the administrative contracting officer.

§ 1013.3005–5 *Rent.* The contracting officer will give particular attention to the enforcement of the rental obligation imposed by the lease. Collections made must be sent for deposit to the appropriate accounting officer within 24 hours of receipt. At the time of transmittal or as soon thereafter as possible, the amount of the check (in payment of the rental indicated on supporting paper) will be certified by the contracting officer as correct. Such certification accompanied by supporting data, in triplicate, will be sent to the accounting officer, who will verify the accuracy and sufficiency of the documents submitted.

§ 1013.3005–6 *Transfer or return shipment of property.* Where a lessee desires or is required to return leased property to the Government, the property must be prepared and loaded on cars or trucks as provided in the lease. The foregoing will normally be performed at the lessee's expense.

§ 1013.3005–7 *Disposition of skids, crates, and other packing materials.* Since lessees are required to prepare leased property for shipment at their own expense according to the lease, skids, crates, and other packing materials received by the lessees on incoming shipments of leased property may be stored or otherwise disposed of as the lessee sees fit. The lessee's obligations with respect thereto will be satisfied by returning the leased items to the Government packed with skids, crates, and other materials. However, the incoming skids, crates, and other materials will not be disposed of until the lessee has signed the lease or acceptance agreement, thereby agreeing to prepare the leased items for shipment at his own expense.

§ 1013.3006 *Amending or terminating leases.*

§ 1013.3006–1 *Adding items to existing leases.* When it is desired to add items to existing leases, it will be necessary to follow the procedures for processing requests for new leases, including the establishment of the qualifications of the proposed lessee, the essentiality of the furnishing, and the availability of the property. Upon completion of these formalities, items will be added to existing leases.

§ 1013.3006–2 *Removal of items from contracts; terminations.* (a) According to the provisions of the lease, it is necessary to issue an appropriate contractual document to effect a total or partial termination of the lease whenever it is desired to remove all or part of the property from the lease. Such terminations may be effected according to the procedures authorized for termination of local purchase contracts. Termination settlement agreements to leases will be worded and approved according to applicable termination procedures.

(b) When a lessee desires to effect a partial termination of a lease to effect the disposition of leased property which is no longer needed, he will be required to execute a notice of the type set forth in paragraph (c) of this section. This will be done in quadruplicate with one copy carbon-backed. The contracting officer will execute the acknowledgement contained on such form according to the instructions therein. After execution by both parties, the notice will be reproduced and distributed in the same manner as a formal supplement to a lease agreement. When all the property has been removed from a lease or whenever desirable prior to that time, a termination supplemental agreement formalizing the previous informal terminations will be prepared, executed, and distributed according to normal readjustment procedures.

(c) Termination notice:

Dated _____

Subject: Facilities Lease Agreement No. _____

Notice of Partial Termination by Lessee, No. _____

Pursuant to the Clause entitled *Termination* of the subject lease agreement notice is hereby given that subject lease agreement is terminated 30 days after receipt of this notice by the Government insofar as such lease covers the item(s) listed below:

Quality Description AF Number(s)

It is understood and agreed that the aforementioned terminated portion of the basic lease will be properly included in and more particularly evidenced by a Termination Supplemental Agreement to the basic lease.

_____
(Lessee)

ACKNOWLEDGMENT OF RECEIPT OF NOTICE

This is to certify that the above notice was received by the Government on the _____ day of _____ 19__, and that the rental ending date for the item(s) listed in such notice is the _____ day of _____ 19__. (If applicable, insert here that items were removed from the plant prior to the 30-day period in which event the date of removal by the Government will be shown as the rental ending date and will be considered as the effective date of termination insofar as the tools removed are concerned.)

_____
(Contracting Officer)

(d) Normally leases will be terminated for the convenience of the Government only when the leased property is required for a more urgent defense program. Lease terminations for this purpose will be timed within the requirements of the more urgent programs to minimize the disruption of lessee's scheduled production.

(1) An item of leased property will be considered "not used for current defense production" if it is not and will not be required for the production of any defense items then on a firm order or contract.

(2) Delays up to 6 months in initiating action to terminate a lease may be allowed by the appropriate AMA where it determines that earlier terminations would work undue hardships upon the lessee. In determining whether undue hardships would be imposed upon a lessee, consideration should be given to:

(i) Commercial commitments.

(ii) Inability to obtain substitute machine tools or production equipment.

(iii) Substantial amount of investment in engineering, tooling, etc.

(iv) Bona-fide expectation that the lessee will, within a reasonable time (approximately 3 to 6 months), use the leased items for defense work.

(3) In establishing whether the leased items would be required in the event of mobilization, it must be determined what items would be produced by the lessee with the leased items and that such production would be needed. However, it may not be possible nor is it necessary to identify the lessee's mobilization schedule in terms of specific items or quantities.

§ 1013.3006–3 *Other amendments to existing leases.* If it is determined necessary to make amendments to existing leases for purposes other than adding or removing items, such changes may be incorporated in an appropriate supplemental agreement to the lease.

SUBPART EE—PURCHASE OF USED MACHINERY OR PRODUCTION EQUIPMENT

§ 1013.3101 *General.* Used metalworking machinery, including related production equipment, may only be purchased with Government funds provided:

(a) The new or departmental reserve equipment cannot be obtained in time for the required use.

(b) The used machinery is in good condition.

(c) The used machinery can be obtained and rehabilitated at a cost not to exceed the cost of new equipment of the same type.

(d) In exceptional cases, it is clearly demonstrated that the difference in cost is minor compared to the improvement in production schedules or other results to be obtained.

(e) Where items of machinery are authorized for purchase under supply contracts, according to § 13.402 of this title, the policy and procedures herein will govern.

(f) Generally, the purchase price of the used tool will not exceed the ceiling price established by current Government ceiling regulations.

(g) The used machinery is not now and has not previously been the property of the requesting contractor, except as approved by Hq AMC.

§ 1013.3102 *Procedures and responsibilities.* (a) Each contractor request for authority to purchase used machinery in lieu of new machinery will be submitted for approval to the designated contracting officer administering the facilities or supply contract who is hereby authorized to approve such requests meeting the criteria listed in this section.

(b) If a purchase order has been placed for the new machinery for which the used machinery is being substituted, and the new machinery cannot be justified for use by the contractor under the current program, the case will be referred to Hq AMC requesting consideration of the ordered new machine for use under the Air Force Production Reserve Program or to fill other contractors' requirements.

SUBPART GG—PROVIDING VEHICLES TO AIR FORCE CONTRACTORS

§ 1013.3301 *Policy.* (a) It is AF policy that contractors be required to provide all standard commercial vehicles. This will not prohibit the Government from furnishing such vehicles where it is more economical to do so, or otherwise determined to be in the best interests of the Government.

(b) Contractors may be provided special purpose vehicles which are not generally available on the open market and which do not have an existing and ready resale market.

(c) Construction vehicular equipment will be provided only under facilities contracts.

(d) Purchase of passenger-carrying vehicles by the contractor, where title to such vehicles rests in the Government under any provision of the contract, is subject to statutory restrictions. It is AF policy not to acquire title to passenger-carrying vehicles in this manner. Therefore, contractors will not be reimbursed for cost of acquiring passenger-carrying vehicles under such circumstances. Where vehicles are acquired by a cost-reimbursement-type contractor, and title is not vested in the Government, the contractor may charge depreciation for such vehicles to the contract provided that such charge is consistent with Part 15, Chapter I of this title and Part 1015 of this chapter.

§ 1013.3302 *Definition.* Industrial vehicular equipment provided as industrial facilities, as defined in § 13.101 (f) of this title, which is necessary in the accomplishment of the contract by having a direct application to the fabrication of the end item, used in actual test programs, utilized in research leading to further development and the development of items that are being produced or will be produced for the Air Force.

§ 1013.3305 *Lease; rental.* (a) The contractor may request authority to rent or lease and apply the costs against applicable AF contracts. Such requests must contain the following:

(1) Contractor's statement why he will not, or cannot, provide with private funds.

(2) Contractor's justification for the requirement, type, and quantity of vehicles required, and the costs of lease or rental.

(3) Name and address of lessor or rental agency.

(4) Recommendations and comments by the ACO on conditions connected with the action.

§ 1013.3309 *Restrictions and license.* (a) Government-owned motor vehicles will not be used by contractors for unofficial purposes, including transportation of personnel between their domiciles or residences and places of employment.

(b) Government license plates will not be used on Government-owned vehicles provided to a contractor under the provisions of this chapter. When license plates are required by operators of such vehicles under the state laws, all cost incident thereto will be borne by the contractor.

§ 1013.3310 *Maintenance.* When vehicles are to be provided to a contractor, the contracting officer will insert in the contract a provision requiring the contractor to maintain and repair Government-owned vehicles, including normal parts replacement.

§ 1013.3311 *Modification and cannibalization.* (a) It will become necessary from time to time to modify or cannibalize to meet production schedules. To keep such actions to an absolute minimum and maintain records of costs and usability, it will be necessary to receive written approval prior to modification or cannibalization of any item of vehicular equipment held under contract within the scope of this subpart.

(b) Such requests will include the following information:

(1) Nomenclature and AF identification number of the vehicle to be modified. When cannibalization is being requested both vehicles will be so identified.

(2) Estimated cost and time limitations involved.

(3) When modification is involved, the use will be justified and details of modification submitted.

(4) Requests for cannibalization of nonusable equipment must carry a recommendation of a qualified AF quality control representative, that the vehicle from which the parts will be taken is obsolete or beyond economical repair and cannibalization is justified and to the best interests of the Government. In such instances the fully cannibalized vehicle will be disposed of as scrap.

(c) Temporary cannibalization of usable equipment will be made at the discretion of the ACO, and the vehicle from which the parts are taken will be placed in operable condition by the contractor as soon as parts can be obtained.

§ 1013.3312 *Operation and personnel.* The ACO will direct the contractor to submit, for review, rules and regulations established by the contractor for the operation of Government-owned vehicles. The contracting officer will make unilateral declarations of idle equipment when it is determined that a contractor is misusing Government-owned vehicles. Government-operator permits will not be used by the contractor. The contractor is responsible, under the contract, to comply with local laws. The contracting officer will ascertain that the contractor provides competent, careful and conscientious operators in compliance with good commercial practice and State Safety Codes.

SUBPART HH—ACQUISITION OF EXCESS NONSTOCKLISTED FACILITIES

§ 1013.3402 *General conditions.* (a) It is AF policy that the providing of facilities to fill a contractor's requirement will be made from excess Government property in every possible instance.

(b) It is mandatory that shipping costs on facilities covered by this subpart be kept to a minimum. Therefore, it is generally to the best interest of the Government to reallocate property to requiring contractors nearest the initial point of shipment.

(c) Industrial facilities may be transferred to a requiring AF contractor when coverage is provided under his facilities contract and/or lease. In the absence of a facilities contract or lease, the property may be covered by the supply or service contract only in accordance with § 13.402 of this title.

PART 1014—INSPECTION AND ACCEPTANCE

Sec.

1014.001 General policy.

Subpart A—Inspection

1014.100 Definitions.
1014.101 General.
1014.102 Responsibility for inspection.
1014.102-1 Inspection interchange agreements.
1014.102-2 Inspection for other Government agencies.
1014.103 Inspection requirements.
1014.103-1 Points of inspection.
1014.103-2 Inspection at source.
1014.103-3 Inspection at destination.
1014.104 Rejection of nonconforming supplies or services.
1014.105 Inspection under subcontracts.
1014.106 Contract clauses.

Subpart B—Acceptance

1014.203 Responsibility for acceptance.
1014.204 Supplies or services not conforming with contract requirements.
1014.250 Procurement inspection markings.

AUTHORITY: §§ 1014.001 to 1014.250 issued under sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U. S. C. 2301-2314.

§ 1014.001 *General policy.* (a) All supplies and services procured by the Air Force, including supplies which are pro-

cured according to provisions of Subpart A, Part 4, Chapter I, of this title, "Single Department Procurement," will be inspected and accepted according to the provisions of this part. Inspection will be conducted only when a bona fide contract exists, or when there is reasonable assurance that the supplies inspected will be reserved for delivery on Air Force or other military contracts.

(b) Conformance with contractual requirements of supplies presented to the Air Force will be determined on the basis of objective quality evidence. Such evidence will be obtained by the contractor and will be evaluated and verified by the AF quality control representative exercising surveillance over the contractor's facility. Evidence may also be obtained independently by AF quality control personnel. Product inspection by AF quality control personnel will be used to the extent necessary to verify evidence of quality submitted by the contractor, or it may be used to determine acceptability of supplies on an individual or lot basis. The amount of evidence obtained or verified through product inspection by AF quality control personnel will depend upon the nature and intended use of the product and the effectiveness of the contractor's control over quality.

SUBPART A—INSPECTION

§ 1014.100 *Definitions.* The terms used in the AF quality control program have specific meanings which must be understood to properly implement the quality control policy.

(a) "Production identification:" A determination of the products which are to be inspected and an identification of the processes involved in order that AF quality control operation can be planned.

(b) "Product inspection:" The visual or physical inspection tests or examinations of the physical and functional characteristics of parts, assemblies, and completed products.

(c) "Product inspection surveillance:" The determination by the Air Force that the contractor's procedures and operations for examination of the dimensional, physical, and functional characteristics of the product conform to AF requirements. Surveillance consists of evaluation and verification of evidence furnished by the contractor, and analysis of all the information derived therefrom.

(d) "Evidence:" Any information by which a statement or an observation may be proved to be true. When information regarding the quality of a products is of a kind that can be fully checked such information is said to be objective.

§ 1014.101 *General.* Most military contracts contain a standard inspection clause which requires that the contractor provide and maintain an inspection (quality control) system acceptable to the Government. To provide a uniform standard for an acceptable quality control system, the Air Force has issued specification MIL–Q–5923 (USAF) (Quality Control Requirements, General) (MIL–Q–7640 for chemicals), which specifies the general requirements for an acceptable contractor's quality control system. Specification MIL–Q–5923 will normally apply to AF contracts for items or procurements other than those classes exempted by the specification. Any change to the requirements within the specification or deletions desired but not covered by paragraph 1.2 of the specification will be submitted for coordination and approval by Quality Control, Hq AMC. When another military service is performing inspection and acceptance functions for the Air Force, the quality control procedures of the performing service are acceptable to the Air Force. In such cases compliance with specification MIL–Q–5923 is at the discretion of the inspecting service.

(a) *AF quality control program.* (1) The Air Force practices quality control, which includes but is more comprehensive than inspection, in assuring that supplies accepted from contractors conform to contract and specification requirements. This is appropriate since AF quality control is concerned with the many functions which govern the overall quality of supplies such as the control of raw materials, tools, gages, and those aspects of manufacturing processes that have a bearing on quality.

(2) In the interest of efficiency and economy the Air Force uses a surveillance system in performing its quality control functions. AF surveillance over a contractor's quality control system is exercised to determine the effectiveness of the contractor's quality control system as an aid in determining that supplies accepted by the Air Force conform to contractual requirements. When objective quality evidence obtained by the contractor is evaluated and verified by AF quality control personnel, the inspector is assured that the contractor's quality control system and the supplies he presents for acceptance meet the terms of the contract.

(b) *AF quality control plan.* (1) Plans and records are two key factors in the concept of AF surveillance over a contractor's quality control system. The contractor must plan his quality control system to assure that it covers all functions that affect quality as well as provide for systematic inspection and testing. Likewise, the AF inspector must have a plan of the way in which he will exercise surveillance over the contractor's system. The contractor must maintain records of inspections and tests performed to provide objective quality evidence that the supplies he produces are of the desired quality. The Air Force must also maintain records of inspections and tests accomplished by AF personnel in verifying quality evidence submitted by the contractor.

(2) Hq AMC has designed a plan to realize two objectives: (i) complete, accurate, and objective surveillance inspection at contractor's facilities and (ii) reliable and comparable inspection records for local, APD, AMA, or Hq AMC analysis. Three basic features are incorporated in this plan to insure simplicity, completeness, and adaptability:

(*a*) Only essential quality control functions are included. Simplified techniques and forms have been used throughout.

(*b*) Standard record forms and guide lists are provided for most types and phases of surveillance inspection.

(c) The selection of AF inspection stations, checklists, and samplying quantities is the responsibility of the local AF quality control representative. This makes the plan adaptable to the different circumstances found in each facility.

§ 1014.102 *Responsibility for inspection.*

§1014.102–1 *Inspection interchange agreements.* (a) All military procurement quality control at suppliers' plants will be conducted by a single military activity, except that the following types of contracts may be exempt from inspection interchange: (1) research and development, and (2) production contracts which involve the maintenance or development of highly technical or unusual skills that, for mobilization purposes, must be preserved by a cadre of the inspection activity. Inspection by a single inspection activity will be achieved by interchange of inspection services among the Departments of the Army, Navy, and Air Force. AMC will take positive action to eliminate all cases of quality control duplications. AF quality control procedures will be used when inspection is performed by the Air Force on supplies procured by or for another department or agency.

(b) AMC-BuAer agreement (see § 1004.255–3 (h) of this chapter), covers not only inspection, testing, and acceptance, but provides for exchange of other field service functions such as contract administration, engineering changes, data, GFAE, progressing, expediting, and shipments. When inspection functions are exchanged on Bureau of Aeronautics and Aviation Supply Office contracts, subcontracts, and purchase orders, progressing and expediting functions will also be exchanged. Quality Control, Hq AMC, maintains and issues a list of such assignments between AMC and BuAer.

(c) Interchange agreements may be extended to foreign government agencies where procurements are being made by the Air Force in countries where suitable quality control practices have been established.

(d) AMC is assigned responsibility for procurement inspection and associated administrative functions for all petroleum products procured by the military departments within the geographical area designated as the Midcontinent-Gulf Coast Area. This area is composed of the States of Montana, North Dakota, South Dakota, Minnesota, Wisconsin, Michigan, Ohio, Indiana, Illinois, Iowa, Nebraska, Wyoming, Colorado, Kansas, Missouri, Kentucky, West Virginia, Tennessee, Mississippi, Alabama, Florida, Louisiana, Arkansas, Oklahoma, Texas, and New Mexico. This responsibility includes the conduct of all quality control and inspection operations incident to tanker or barge movement of petroleum products by the Military Sea Transport Service or commercial transportation, and surveillance inspection and quality control of leased storage at refiners' plants within the assigned area. Surveillance inspection and quality control of petroleum products in depots, terminals, and installation storage remains the responsibility of the owning department. The Department of the Army

(Quartermaster Corps) has been assigned identical responsibilities for petroleum procurement inspection within the New England area composed of the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, and the New Jersey counties of Monmouth, Middlesex, Somerset, Hunterdon, Warren, Sussex, Morris, Passaic, Union, Hudson, Bergen, and Essex. The Department of the Navy (Chief of Naval Material) has been assigned identical responsibilities for petroleum procurement inspection within the east coast and west coast areas composed of the New Jersey counties of Mercer, Burlington, Ocean, Camden, Gloucester, Salem, Cumberland, Atlantic, and Cape May, and the States of Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Washington, Oregon, Idaho, Utah, Nevada, California, and Arizona.

§ 1014.102–2 *Inspection for other Government agencies.* "Other Government agencies" are construed to mean United States agencies other than military. Air Force inspection may be performed for other Government agencies when such inspection would not unduly affect military inspection operations.

§ 1014.103 *Inspection requirements.*

§ 1014.103–1 *Points of inspection.* (a) Each AF contract will specify the place or places at which inspection and/or acceptance of supplies and services are to be made by the Government according to the criteria hereinafter specified. To aid in determining the point of inspection, the procuring and quality control activities of AMC will collaborate in establishing categories of items which are subject to either source or destination inspection and acceptance. The procuring organization will also coordinate with quality control on procurements needing special consideration in determining the proper place of inspection and acceptance. Inspection facilities of AF laboratories will be used to the extent practicable in accomplishing inspections and tests which cannot otherwise be properly accomplished.

(b) Changes in point of final inspection will be made by appropriate contract amendment in advance and prior to the time any such order becomes effective.

§ 1014.103–2 *Inspection at source.* The criteria furnished in § 14.103–2 of this title will be used as a guide in determining whether inspection at source should be specified.

§ 1014.103–3 *Inspection at destination.* The criteria furnished in § 14.103–3 of this title will be used in determining whether inspection will be accomplished at destination. Small purchases which do not require special inspection techniques or equipment for inspection or off-the-shelf purchases made from suppliers other than manufacturers will generally specify inspection at destination.

§ 1014.104 *Rejection of nonconforming supplies or services.* Whenever rejection is intended and it appears that the contractor will not be able to correct or replace nonconforming supplies or services within the required delivery schedule or the contractor persists in offering nonconforming supplies or services for acceptance, full particulars will be furnished the administrative contracting officer for further action.

§ 1014.105 *Inspection under subcontracts*—(a) *Policy.* It is Department of Defense policy to perform under certain conditions Government quality control and inspection functions at plants having subcontracts or purchase orders to furnish articles for use on Government prime contracts. The primary purpose of such inspection is to asist the Government inspector at the receiving contractor's plant in determining the conformance of purchased parts, components, and assemblies with contractual requirements. It is merely a preliminary Government inspection and does not guarantee final acceptance. This inspection does not relieve the prime contractor of his responsibility to furnish an acceptable end article.

(b) *Applicability.* Normally, Government inspection under subcontracts is conducted on supplies which affect the safety, performance, or interchangeability of the end item and which are of such a nature that adequate inspection cannot be satisfactorily or economically conducted upon receipt at the receiving contractor's facility. These are referred to as "policy" items. The inspector at the prime contractor's plant informs the contractor of the types of supplies on which Government inspection under subcontracts is required and the procedures for processing requests for such inspection.

(c) *Automatic source inspection.* At certain facilities and on certain commodities, Government inspection of subcontracted materials is conducted without requiring formal processing of Government inspection requests. Under this procedure, rather than processing requests through military channels, the contractor originating the purchase order provides the source plant with an additional copy of the purchase order for use of the Government inspector. All military departments will honor on an automatic basis requests for Government inspection of material listed on an "Automatic Source Inspection Commodity List" approved by the Department of Defense. In addition to the commodity list, the Air Force has established a list of facilities which will honor inspection requests on an automatic basis. The mere listing of an item on the commodity list or the fact that the item is being procured from a facility on the facility list does not justify a request for Government inspection. These requests should be made only on the basis that Government inspection is required. (See paragraph (b) of this section.)

(d) *Mill run source inspection.* Mill run inspection is a procedure established primarily for reducing Government inspection by checking continuous production at point of manufacture as opposed to inspection of numerous quantities at various receiving points. To participate in this plan, the contractor must comply with the requirements of the plan. A list of manufacturers, distributors, and approved items is prepared and published by Quality Control, Hq AMC, for the information and guidance of those concerned with the program.

§ 1014.106 *Contract clauses.* See Part 7, Chapter I, of this title and Part 1007 of this chapter.

SUBPART B—ACCEPTANCE

§ 1014.203 *Responsibility for acceptance*—(a) *Certificate acceptance.* (1) Certificates or other statements of quality or quantity may be considered, at the discretion of the procuring activity, a proper element in determining whether supplies or services are in conformance with the contract, but such certificates or other statements, except as provided in this subpart, will not be considered as eliminating the necessity for inspection of supplies or services for the Government. An exception to the foregoing exists, however, for supplies of a simple, noncritical standard or commercial nature which may be accepted without physical inspection by the Government at the discretion of the procuring activity upon the receipt of a properly executed certificate. This is known as "Certificate Acceptance." The phrase applies to the technique of accepting supplies for the Government without performing any prior physical inspection on the items being procured and without conducting AF surveillance over the facility. The standard contract clause to permit use of certificate acceptance, when appropriate is contained in § 1007.4014 of this chapter.

(2) Occasionally it may be necessary for the administrative contracting officer to request contractors to make expedited shipments of supplies. If such articles are delivered to the Government without prior physical inspection, and if they are the type of supplies referred to in paragraph (1) of this section, the chief of the quality control activity may accept them on a certificate basis and request the contractor to furnish him the necessary certificate and other data.

§ 1014.204 *Supplies or services not conforming with contract requirements.* AF contracts provide that the Government has the right to reject materiel (the term "materiel" includes items, services, and materials) not conforming to contract requirements. AF contracts also recognize that changes in specifications may be necessary during performance on the contract and give the Government the right to order changes which are to the Government's interest. Reasonable judgment is to be exercised in authorizing changes and in determining whether nonconforming materiel is to be rejected or can be accepted without adversely affecting quality.

(a) The following definitions apply to this section:

(1) "Variations" are minor departures from or changes to contract provisions which do not: (i) adversely affect safety, performance, or durability, (ii) materially affect weight, (iii) adversely affect interchangeability of either parts or assemblies, or (iv) depart from the basic objectives of the specifications. Any departure or change within this definition which results in increased or decreased costs requiring an adjustment

will be considered a "deviation," as defined in subparagraph (2) of this paragraph, and handled accordingly.

(2) "Deviations" are departures from or changes to contract requirements which: (i) are in excess of "variations," but which do not adversely affect safety, or (ii) require an adjustment because of increased or decreased costs.

(b) The following subparagraphs set forth the procedures for accepting nonconforming materiel and for authorizing changes to contract requirements.

(1) *Authorization.* "Variations" may be accepted or authorized locally without requiring formal changes to the contract provisions. "Deviations," however, must be authorized under the Changes clause of the contract and processed according to established procedures for contractual coverage by issuance of appropriate amendment (change order, supplemental agreement, or CCN) pursuant to Subpart C, Part 54, of this chapter.

(2) *Materials review.* The inspection procedure for determining whether nonconforming articles and parts are within the limits of a "variation" or "deviation" is covered by AMCM 74–1.

(3) *Engineering changes.* (i) "Engineering changes" are design changes, including material substitutions of the type outlined in this instruction. Other changes such as tooling changes which may be made by contractors are not included in this definition or procedure.

(ii) The chief, APD or AFPR will establish an AF Engineering Change Review program to assure that contractors properly classify all proposed engineering changes, and will designate personnel with engineering qualifications to supervise the program. Such personnel may redelegate this review to selected inspectors, but they will, through surveillance over the program, be responsible that changes are reviewed as soon as practicable, and in any event prior to acceptance of the end article. This review may be on a surveillance basis; if conducted on this basis, it will be accomplished according to quality control surveillance procedures. Engineering Change Proposals (ECP's) or other design changes which the contractor indicates are "deviations" (Class I Changes) and which, therefore, require submission to the procuring activity for approval need not be screened by plant or area personnel. All proposed engineering changes determined by the contractor to be "variations" (Class II Changes) may be released for production without Government approval. The contractor will forward to the chief, APD, AFPR, or their designees, a copy of the change concurrent with the release to production. This authorization to release the "variation" for production does not constitute acceptance of the change. The contractor will be notified as early as practicable of any doubtful cases of acceptability of the change prior to completion of the end product. When proper classification is in question, the designated inspector will immediately bring the case to the attention of the chief, APD, AFPR, or their designee. If any of the changes classified by the contractor as Class II changes are determined to be "deviations," they will be forwarded to the procuring activity for appropriate action.

(4) *Departures or substitutions in materials.* When there is a departure in the physical properties of a part from those required by the specifications and drawings, the part may be accepted as a "variation" provided its quality and utility are unaffected. A material substitution is considered a "variation" provided the substituted material is equal to or better than the original material.

(5) *Handbooks and parts catalogs.* When there is a variation in the technical content or format of a technical order handbook or parts catalog, the publication may be accepted, provided the "variation" does not depart from the basic objectives of the specifications and its quality and utility are not adversely affected.

(6) *Packaging departures.* Packaging specifications are so drawn that the minimum requirements are established. Departures from strict conformance to packaging specifications may be accepted as "variations" only if such departures are equal to or a definite improvement to the minimum requirements of the specifications.

(7) *Effect on costs.* The administrative contracting officer will be informed of any instance where articles are to be accepted within the "variation" limits, when the articles were produced at less cost. "Variations" resulting in increased costs will be considered "deviations" and will be forwarded to the administrative contracting officer for further action.

(8) *Variation vs. deviation.* Where doubt exists as to proper identity, either "variation" or "deviation," the matter will be referred to the administrative contracting officer. Upon notification from the administrative contracting officer that the proper identity is a "variation," acceptance may be accomplished without contractual amendment. Upon notification that the proper identity is a "deviation," the contractor will be requested to submit a request for "deviation" and if approved, contractual amendment will be necessary.

(c) General basis for deviations: "Deviations" may be prepared for any of the following reasons:

(1) To authorize the immediate adoption of approved specification changes without awaiting re-issuance of the specification.

(2) To authorize changes to facilitate production to meet emergency needs.

(3) To authorize use of nonspecified material.

(4) To authorize acceptance of articles fabricated by a new process resulting in parts which depart from the specifications but are interchangeable with those made in strict compliance with specifications.

(5) To authorize departures from specification requirements as to inspections and tests.

(6) To authorize changes in packaging and marking.

(7) To allow manufacturers a limited period of time in emergencies to develop facilities to produce to new or revised specifications.

No implementation.

§ 1014.250 *Procurement inspection markings.* Stamps used by quality control activities to indicate inspection status of materiel will be approved Department of Defense designs. AMC will prescribe the conditions under which inspection stamps will be used.

(a) Partial (Circle) Inspection Approval Stamp will be used to identify materiel which has successfully met only some portion of the inspection requirements applicable to the materiel at the time and place of inspection.

(b) Complete (Square) Inspection Approval Stamps will be used to identify materiel which is in complete conformance with all inspection requirements applicable to the materiel at the time and place of inspection. One imprint of the square stamp will serve to void multiple partial approvals.

PART 1015—CONTRACT COST PRINCIPLES

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AUTHORITY: §§ 1015.150 to 1015.502 issued under sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314.

SUBPART A—APPLICABILITY

§ 1015.150 *Costs suspended and/or disallowed under cost-reimbursement type contracts*—(a) *General policy.* As a general rule, it is AF policy that contractors will be notified promptly in writing when costs claimed for reimbursement are either tentatively suspended or finally disapproved as not being properly supported, not allowable according to the terms of the contract, or not reasonably incident or allocable to the performance of AF cost-reimbursement-type contracts.

§ 1015.152 *Coordination of indirect cost problems where other services are involved.* Certain Air Force contracts are being performed in plants where other departments or agencies of the Government also have contracts. Occasionally, differences in policies or operating procedures of the activities involved may cause failure to promptly resolve a problem at the local level and prevent approval of costs by the administrative contracting officer. To resolve cost problems, consideration will be given to such various factors as total dollar amount and the cost principles and precedents or policies involved. When settlement of a problem by the involved agencies

cannot be accomplished at the local level, the problem will be referred for resolution to the next higher level and, if necessary, to Hq AMC.

§ 1015.153 *Contractors' cost accounting systems.* (a) It is AF policy that the Auditor General, USAF, will determine the adequacy of the cost accounting system of a contractor or potential contractor for the Air Force.

(b) This evaluation of a contractor's or potential contractor's cost accounting system will be performed upon request of the responsible contracting officer.

(c) In determining the reliability of any contractor or potential contractor, the responsible contracting officer will give due consideration to the findings of the Auditor General, USAF.

SUBPART B—SUPPLY AND RESEARCH CONTRACTS WITH COMMERCIAL ORGANIZATIONS

§ 1015.204 *Examples of items of allowable costs.* The following lettered paragraphs implement the corresponding lettered paragraph of § 15.204 of this title.

(a) Advertising in trade and technical journals, provided such advertising does not offer specific products for sale but is placed for the purpose of offering financial support to journals which are valuable for the dissemination of technical information within the contractor's industry.

(b) Bonds and insurance, including self-insurance. No implementation.

(c) Compensation of corporate officers, executives, and department heads. No implementation.

(d) Depreciation and depletion, based on cost of acquisition.

(1) Depreciation expense in a given period is the result of the allocation of the entire cost of depreciable assets over a series of fiscal periods comprising its service life. Generally accepted accounting principles recognize several methods of computations such as straight-line, composite rate, machine-hour, declining balance, and sum-of-the-years-digits methods. In general, the contractors' depreciation methods and rates will be accepted if consistently applied and acceptable for Federal income tax purposes, except that this statement will not be interpreted to apply to tax amortization of certificate of necessity facilities in excess of normal depreciation. Acceptable "true depreciation" rates for such facilities are determined by the cognizant Emergency Facilities Depreciation Board.

(2) Depreciation is acceptable only on facilities actively in use plus a reasonable amount of standby equipment. In this instance, one measure of reasonableness may be the terms of the contract with respect to standby equipment.

(3) In many cases, a contractor's approved accounting system permits charging the cost of equipment to expense if the cost of individual pieces is relatively small. If, however, a substantial quantity of equipment is acquired during a period of expansion or in equipping a new plant or department, the total cost of such equipment should be considered as a capital outlay and should be capitalized.

(4) If a substantial amount of equipment is Government-furnished and this action releases all or a major portion of contractor-owned equipment for commercial business, special consideration should be given in arriving at the proportionate amount of depreciation properly chargeable to Government contracts.

(5) An additional allowance for depreciation based on multishift operation may be considered on the basis of increased wear on equipment, provided the normal depreciation factor was predicated on a substantially lower level of usage. Use of a machine-hour or output method would automatically provide for increased depreciation based on increased usage. When depreciation method is based on a calendar time factor, some equitable adjustment for multishift operation may be made. In considering an adjustment for multishift operation, it should be recognized that the incidence of obsolescence, one of the prime factors of depreciation, is not increased by accelerated usage.

(6) In determining the reasonableness of depreciation rates, due consideration must be given to contractor's maintenance program.

(e) Directors and executive committee fees and expenses; the expenses of stockholders' meetings, annual reports, and reports and returns prepared for governmental authorities; and registry and transfer charges resulting from changes in ownership of securities issued by the contractor. No implementation.

(f) Freight, transportation, and material handling. No implementation.

(g) Improvement of working conditions, employer-employee relations, and standards of performance. No implementation.

(h) Jigs, dies, fixtures, patterns, drawings, and special tools. No implementation.

(i) Legal, accounting, and consulting services and related expenses.

(1) Legal and accounting expenses should be indirect and the following factors considered: (i) the services are necessary to conduct the business or represent the recurring services normally required; (ii) the charges are reasonable and commensurate with the services rendered; (iii) whether the services are rendered in connection with matters in which conflict of interest between contractor and Government exists; and (iv) the charges are not specifically disallowed by Part 15, chapter 1 of this title.

(2) If the administrative contracting officer deems it advisable, he may take the following action prior to approving vouchers for fees of attorneys or accountants who are not full-time employees of the contractor:

(i) Direct a memorandum to the staff judge advocate of the office having administrative cognizance requesting an opinion as to whether the cost of attorney's services is reasonable and clarification of specific questions as to legality of the proposed charge. Similarly in the case of accountants' fees, a memorandum may be directed to the appropriate Auditor General district chief requesting review and recommendations in respect to proposed charges. In order for the office of the staff judge advocate or Auditor General district chief as the case may be, to consider all relevant data upon which to base an opinion, the memorandum will provide all pertinent information.

(ii) Any recommendations submitted by office of the staff judge advocate or Auditor General district chief, as the case may be, are not binding on the contracting officer but are advisory only.

(3) Where reimbursement of attorneys' fees is sought in connection with representation of a contractor in suits asserted under the Fair Labor Standards Act (52 Stat. 1060; 29 U. S. C. 201), the procedures set forth in subparagraph (2) of this paragraph will be mandatory rather than permissive and the memorandum concerning such fees will be referred directly to the staff judge advocate of the office having administrative cognizance as heretofore indicated. Although such submission is mandatory, the recommendation of the staff judge advocate concerning such legal fees is not binding but advisory only.

(4) In the case of charges for attorneys' and accountants' fees incurred by a cost-reimbursement-type subcontractor under a cost-reimbursement-type prime contract, the principles and procedures above are equally applicable. In addition, requests for advice should be accompanied by a copy of the subcontract.

(5) In general, retainer fees are not allowable items of cost as such, but may be allowed upon compliance with the requirements, principles, and procedures set forth in this part.

(j) Manufacturing and production engineering, that is, engineering related immediately to manufacturing and production as distinguished from research experimentation, and development. No implementation.

(k) Materials and supplies. No implementation.

(l) Membership in trade, business, and professional organizations. No implementation.

(m) Miscellaneous office and administrative services and supplies, including communication expenses. No implementation.

(n) Overtime compensation for direct or indirect labor, to the extent expressly provided for elsewhere in the contract or otherwise authorized by the Government.

(o) Patent, purchased designs, and royalty payments, to the extent expressly provided for elsewhere in the contract or otherwise authorized by the Government.

(p) Pension and retirement plans and group health, accident, and life insurance plans. No implementation.

(q) Plant maintenance and protection. No implementation.

(r) Recruiting (including "help wanted" advertising) and training of personnel. Help wanted advertising is allowable to the extent that such costs are reasonable in relation to total recruitment costs.

(s) Research and development specifically applicable to the supplies or services covered by the contract. No implementation.

(t) Salaries and wages, direct and indirect. No implementation.

(u) Subcontracts and purchase orders.

(v) Taxes. No implementation.

(w) Traveling expenses:

(1) Traveling expenses directly attributable to the performance of the contract may be charged directly to the contract (preferably covered by a contract provision), provided like expenses incurred on other work are charged to the other work.

(2) Travel expenses incurred in the normal course of administration of the business and applicable to the entire business are acceptable charges to overhead. Traveling expenses incurred in sales effort should be charged to selling expense and considered under the general heading of selling and distribution expense.

(3) Travel expenses as related to subsistence and lodging may be reimbursed either on an actual or per diem basis.

(4) Public transportation costs will be reimbursed at actual cost unless the cost of public accommodations used is considered unreasonable under the circumstances. Mileage or other allowances granted for the use of private conveyance should be the subject of special agreement and preferably covered by contract.

(5) Travel expenses may cover cost incurred by employees incidental to the travel but will not include normal personal expenses or entertainment.

(6) Per diem. Establishment of a schedule of per diem rates is recommended as economical of audit and administrative effort and as affording control over expenditure. The schedule of rates should be consistent with the contractor's experience, provided this experience is not unreasonable by comparison with contractors in comparable industries or areas, and provided further that the rates are not in excess of those specified herein. Consideration should be given to duration of travel time. Where the employee travels to one location and remains for an extended period, per diem allowance should be lower than the per diem allowed for trips of short duration. It may be further recognized that expenses of nonexecutive employees should be less than the expenses of executives. Present conditions indicate that the general range of such daily expenditures varies; in the case of chief executives and chief research scientists, from $12 to $15 for all types of trips; in the case of lesser executives, from $11 to $12 for all types of trips; in the case of other employees, from $10 to $12 for brief trips and from $8 to $10 for definite trips (over 30 days). Per diem rate schedules submitted to contracting officers for approval will be consistent with these general ranges. All approvals will be in writing and will specify, either by reference to a written schedule of the contractor or otherwise, the per diem approved as reasonable. The general ranges listed above will be reviewed at periodic intervals by the Director of Procurement and Production, Hq AMC, and will be subject to upward or downward revisions. In computing per diem:

(i) For continuous travel of more than 24 hours:

(a) The calendar day (midnight to midnight) will be the unit.

(b) For fractional parts of a day at the commencement or ending of such continuous travel constituting a travel period, one-fourth of the rate for a calendar day will be allowed for each period of 6 hours or fraction thereof.

(ii) For continuous travel of less than 24 hours constituting a travel period, such period will be regarded as commencing with the beginning of the trip and ending with the completion thereof, and for each 6-hour portion of the period or fraction thereof, one-fourth of the rate for a calendar day will be allowed: *Provided*, That no per diem will be allowed when the departure is after 0800 hours and the return on the same day is prior to 1800 hours.

(iii) No per diem will be paid for periods devoted to vacation or sick leave.

(7) Unless and until a flat per diem rate schedule is adopted by the contractor and approved by the contracting officer, or when per diem rates are not applicable, the contractor will be reimbursed the actual traveling expenses properly incurred in the performance of the contract, provided such costs are reasonable in amount. Whenever it is customary to issue receipts for the expenditure, they should be attached to the invoice.

(8) Premium transportation such as airline, excess for rail or by chartered car or plane may be allowed as reimbursable when it is shown to be necessary for the performance of the contract.

(9) In the case of trips of 90 days or longer, reimbursement in each case should be considered separately by the contracting officer. Per diem rates which are considered reasonable in amount for short trips may be excessive when applied to long trips which involve temporary assignments at a particular locality for a considerable length of time.

(10) When trips are made pursuant to the performance of more than one contract and which may involve a combination of Air Force and other procurements, the expenses incident to such trips should be distributed to the pertinent contracts involved according to contractor's approved accounting methods.

(11) When per diem is sought as an allowable item of cost incident to work at AF test centers no per diem will be allowed for employees hired locally at such test site. Per diem costs in connection with new employees likewise will not be allowable when it has been ascertained that any such new employee has, within the previous 3-month period, been employed by another contractor at the same test center.

(x) Vacation, holiday and severance pay, sick leave and military leave, to the extent required by law, by employer-employee agreement or by the contractor's established policy. No implementation.

§ 1015.205 *Examples of items of unallowable costs.* The following letter paragraphs implement the corresponding lettered paragraphs of § 15.205 of this title.

(a) Advertising, except "help wanted" advertising, and advertising in trade and technical journals. See § 1015.204 (r).

(b) Amortization or depreciation of unrealized appreciation of values of assets, or assets fully amortized or depreciated on the contractor's books of account. No implementation.

(c) Bad debts (including expenses of collection) and reserves for such debts. No implementation.

(d) Commissions and bonuses (under whatever name) in connection with obtaining or negotiating for a Government contract. No implementation.

(e) Contingency reserves. No implementation.

(f) Contributions and donations. No implementation.

(g) Dividend payments. No implementation.

(h) Entertainment. No implementation.

(i) Federal taxes on income and excess profits. No implementation.

(j) General research, unless specifically provided for elsewhere in the contract. No implementation.

(k) Interest on borrowings (however represented), bond discount and expenses, and financing charges. Interest on advance payments will not be allowed as a cost under any cost-reimbursement-type contract nor cost-reimbursement-type subcontract thereunder. No such contract or subcontract may provide or be amended to provide for allowance of such interest as an item of cost.

(l) Legal, accounting, and consulting services and related expenses incurred in connection with organization or reorganization, prosecution of patent infringement litigation, defense of antitrust suits, and the prosecution of claims against the United States. No implementation.

(m) Losses from sales or exchanges of capital assets, including investments. No implementation.

(n) Losses on other contracts. No implementation.

(o) Maintenance, depreciation, and other costs incidental to excess facilities (including machinery and equipment) other than reasonable standby facilities. No implementation.

(p) Premiums for insurance on the lives of directors, officers, proprietors, or other persons, where the contractor is the beneficiary directly or indirectly. No implementation.

(q) Selling and distribution activities not related to the contract products. No implementation.

(r) Taxes and expenses in connection with financing, refinancing, or refunding operations, including the listing of securities on exchanges. No implementation.

SUBPART E—SUBJECTS AFFECTING COST WHICH MAY REQUIRE SPECIAL CONSIDERATION

§ 1015.502 *Examples of subjects requiring special consideration*—(a) *Liability to third persons.* Contract clauses containing idemnity or hold harmless provisions which do not conform with

standard provisions set forth in ASPR or AFPI will not be used in prime contracts without submitting such clauses for prior approval of Hq AMC.

(b) *Personnel movements of a special or mass nature.* (1) Where personnel movement is made at the convenience of the Air Force or is necessary to the performance of a contract, costs incident thereto are acceptable when such provision is included in the contract. In such cases allowability of costs should be considered in the light of any benefits that may inure to the contractor as a result of such moves. When allowable, reasonable patterns, including per diem rates, should be established by agreement with the contractor. Subject to the limitations of paying only actual costs or per diem rates approved by the administrative contracting officer, the following schedule is set forth for the guidance of contracting officers. Reimbursement for relocation of executive, technical, and key personnel should be limited to:

(i) Actual cost of moving the employee and his family residing at his domicile.

(ii) Actual cost of moving household goods, not to exceed 8,000 pounds.

(iii) Per diem allowance for married employees, or single employees maintaining a household, of $10 per day for actual number of days taken to relocate in new quarters and not to exceed a maximum of 30 days, including travel time. In the case of employees assigned to AF test centers, per diem allowance will not exceed a maximum of 60 days, including travel time. When the employee has been at the test center in excess of 60 days as of 31 December 1956, administrative contracting officers will not accept any further costs as a result of such per diem.

(iv) Per diem allowance of $6 per day for employee's wife or one adult dependent for a transfer not to exceed 30 days, including travel time.

(v) Per diem allowance for single employees (single employees not maintaining a household) of $10 per day for actual number of days taken to relocate in new quarters and not to exceed 15 days, including travel time.

(vi) Per diem allowance for newly hired employees of $10 per day for actual number of days taken to relocate in new quarters and not to exceed 15 days, including travel time.

(vii) Per diem allowance of $2.50 per day for employee's minor dependents residing with the employee, for actual number of days taken to locate in new quarters and not to exceed 30 days, including travel time.

(2) The pattern shown in subparagraph (1) of this paragraph is limited to executive, technical, and key personnel of the contractor and does not apply to employees who do not possess those qualifications. The pattern is not to be considered as an incentive for moving, as such matters should be included in the wage rates established for each particular employee being relocated. It is suggested that any plan approved should include certification by the contractor that the total amount of reimbursement sought by each employee has been expended in the relocation of such employee and is evidenced by receipts for such expenditures or per diem allowance. The question of reimbursement of regular salaried or hourly rated employees for "time off" spent in relocation by the employee will ordinarily be considered at the time of approval of wage and salary rates.

(c) *Rearrangement or relocation of facilities or plant sites.* Reconversion costs are those incurred in the restoration of facilities to approximately the same physical arrangement and condition they were in immediately prior to the beginning of defense work and includes the cost of removal of Government property. Reconversion costs, except for the removal of Government property, are incurred for the benefit of future production and as such are properly chargeable against such production. Except for the costs of removing Government property and the restoration and rehabilitation costs caused by such removal and specifically provided for in the contract, reconversion costs are not allowable.

(a) *Wages or salaries of partners or sole proprietors.* (1) Wages and salaries of partners or sole proprietors are amounts relating to actual services rendered to an unincorporated business by the partners or sole proprietor. Partners' salaries may be essentially a device intended to provide equitable treatment of partners who are furnishing capital and services to the firm to a varying degree. In no event should compensation to a partner or sole proprietor, which is determined to be an allowable item of cost, include any amount representing profit or interest on invested capital.

(2) The charge for services to the enterprise as a whole must be reasonable after taking into consideration:

(i) The nature and extent of the services rendered.

(ii) The general level of compensation of persons performing similar duties in organizations of similar size and nature.

(iii) The amount of such charges during the periods prior to the assumption of Government contracts.

(3) Partners' and sole proprietors' salaries are usually charged through overhead. Charges made directly to the contract should be acceptable only when the services rendered are of a direct labor nature and are specifically authorized as such by the terms of the contract. When such charges are considered to be direct, overhead usually will not be applied thereto.

(4) When personal services of partners and sole proprietors are essential features of performance under contracts, the reasonableness of the overall compensation, including fee, must be considered.

PART 1016—PROCUREMENT FORMS

Sec.

1016.000 Scope of part.

Subpart B—Forms for Negotiated Procurement

1016.201 Request for Quotation (DD Form 747).

1016.201-50 Binding contractors on purchase orders against requests for quotations.

AUTHORITY: §§ 1016.000 to 1016.201-50 issued under sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U. S. C. 2301-2314.

§ 1016.000 *Scope of part.* This part implements Part 16, chapter I, of this title and prescribes the use of additional forms which are used within the Air Force in the procurement of supplies and services.

SUBPART B—FORMS FOR NEGOTIATED PROCUREMENT

§ 1016.201 *Request for quotation (DD Form 747).*

§ 1016.201-50 *Binding contractors on purchase orders against requests for quotations.* When it is considered desirable to ensure that a contractor will be bound by issuance of a purchase order in response to a Request for Quotation, the following statement will be typed or stamped on the DD Form 747 sent to him for signature:

The contractor by his signature below certifies that he understands that the quotations contained herein constitute an offer to the Government which may be accepted by issuance to the contractor of an order for purchase of supplies and services, DD Form 702 or 738. This offer incorporates by reference all terms and conditions appearing on the DD Forms 702 and 738. These forms are available for inspection in the FEDERAL REGISTER or may be obtained from the contracting officer.

When the contractor submits the DD Form 747, having signed the form containing the above statement, then timely issuance of a purchase order against the Request for Quotation constitutes acceptance by the Government which will bind the contractor to perform the purchase order. This procedure is subject to the $5,000 limitation on use of purchase order forms.

PART 1030—APPENDIXES TO AIR FORCE PROCUREMENT INSTRUCTION

Sec.

1030.2 Appendix B—Manual for control of Government property in possession of contractors.

1030.3 Appendix C—Manual for control of Government property in possession of non-profit research and development contractors.

AUTHORITY: §§ 1030.2 and 1030.3 issued under sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U. S. C. 2301-2314.

§ 1030.2 *Appendix B—Manual for control of Government property in possession of contractors.*

Part I—Introduction

B-102 *Applicability of manual.*

(a) Contracts which provide that records of Government property be maintained may be amended to provide that Government property will be controlled according to the provisions of the Manual.

(b) Compliance with the provisions of the Manual is mandatory on the part of the contractors, in connection with contracts which specifically provide for the application of the provisions of the Manual.

(c) The policy of the Department of the Air Force is that maximum efficiency and economy of operation will be obtained by the utilization of the contractor's property

records as the official Government records in connection with those contracts executed prior to the effective date of Part 13, Chapter I, of this title, "Government Property," which required the Government to maintain property control records.

(d) Government property shipped to a contractor for repair and return, according to contracts or purchase orders executed by AF depots, AMA's, or Hq AMC, will be controlled according to the provisions of the Manual, except as set forth in paragraph B–102.50.

(e) The prime contractor is responsible for insuring, in all subcontracts, that Government property provided to such subcontractors will be protected, preserved, and maintained according to sound industrial practice.

B–102.50 *Exceptions.* The provisions of the Manual, and this section, are not applicable in the following instances:

(a) Contractor-furnished property for which a contractor may be reimbursed as result of redetermination of price, unless transfer of title is specifically agreed to in the redetermination.

(b) Government property furnished, or acquired, under the terms of research and development contracts with educational or other nonprofit organizations, provided such contracts are executed on a nonprofit basis. Such property will be controlled according to the provisions of § 30.3 of this title "Manual for Control of Government Property in Possession of Nonprofit Research and Development Contractors."

(c) Government property furnished under local purchase contracts for repair and return to the shipping organization which are administered by the local purchase activity awarding the contract.

B–103 *Definitions.*

(d) "Industrial facility" is further defined for contracting and costing purposes as including all property acquired for the performance of a contract, and not incorporated in the contract end items, of a type which would normally be capitalized for contractor's Federal income tax purposes if the contractor retained title thereto. For this purpose the term "property" includes improvements and attachments and any other items the cost of which would be so capitalized.

(r) The "property account" will be assigned the same number as the prime contract. Subcontract property accounts will be assigned a number consisting of the prime contract number plus a suffix which will be the number of the subcontractor or purchase order, as assigned by the prime contractor.

B–103.50 *Custodial records.* "Custodial records" are written memoranda of any description or type, used to control items issued to plant employees from tool cribs, tool rooms, stockrooms, etc., such as requisitions, issue slip receipts, tool checks, stock record books, and the like.

B–103.51 *Appointing authority.* The term "appointing authority" refers to the authority empowered by delegation to appoint contracting officers, property administrators, and representatives of contracting officers.

B–103.52 *Contract administration.* The term "contract administration" means the performance of any and all acts, other than the execution of contractual documents, authorized to be performed by a contracting officer or his duly authorized representative(s), either under the terms of any particular contract or according to the provisions of public laws, Executive orders, and/or applicable regulations and instructions of the department assigned administrative responsibility for a contract.

B–103.53 *Secondary responsibility.* The term "secondary responsibility" means the responsibility for subordinate phases of contract administration to be performed by a procurement activity other than that designated as the office of administration.

B–103.54 *Individual item records.* The term "individual item records," as used in the Manual and this Appendix B, are interpreted as such records upon which are recorded one unit of an item per record form, as differentiated from record upon which an accumulation of items having identical nomenclature are recorded on one card or form.

B–103.55 *Property records.* "Property records," as used in the Manual and this AFPI Appendix B, are interpreted to be all-inclusive of records affecting the status of Government property, and are not restricted to stock records or other forms of an inventory record.

B–103.56 *AF representative.* See AFPI § 1013.101–65 of this chapter.

B–103.57 *Special nuclear material.* See § 1013.101–66 of this chapter.

Part II—General Provisions

B–204 *Duties and responsibilities of the contractor.*

B–204.50 *Duties and responsibilities of prime contractors as to Government property in the possession of subcontractors.*

(a) Government property in the possession of subcontractors will be protected, preserved, and maintained according to sound industrial practice. The prime contractor is responsible for including in any subcontract under which Government property is delivered to the subcontractor, a provision requiring at least this degree of care. The requirement established by this section is considered a minimum, and in no way relieves the prime contractor of the responsibility for compliance with the requirements established by the contract and the Manual with respect to accounting and control of Government property, even though it be in the possession of a subcontractor. The responsibility for maintenance of adequate property controls vested in a prime contractor by the provisions of a contract is all-inclusive with respect to Government property provided thereunder.

(b) Where the quantities of property involved are such that a more complete and accurate control can be accomplished by the designation and utilization of the subcontractor's property control system, the subcontractors' records may be utilized as the official contract records for the property in the possession or custody of that subcontractor, provided concurrence of the prime contractor is secured.

B–205 *Sources from which Government property may be furnished or acquired.*

B–205.1 *Military installations or other contractors' plants.*

(a) According to the policy contained in Part 13, Chapter I, of this title, and the Manual, Government property will be furnished to a contractor only when specifically provided for by the terms of a written contract. Any deviation from this policy will be granted only by the prior written approval of Hq USAF. When the fact is disclosed that Government property is in the possession of the contractor without contractual coverage, the property administrator will take immediate action to return the property to the shipping organization, or obtain appropriate contractual coverage.

(b) Exception to the policy cited in paragraph (a) of this section has been authorized when it is determined that the shipment of any item of Government property to a contractor, when not specifically provided for in a contract, is in the best interests of the Air Force. Shipments anticipated under such authority are for the purpose of inspection, test, calibration, modification, replacement, and/or repair, at no cost to the Government.

B–206 *Segregation or commingling of Government property and contractor's property.*

(a) Where a contractor is engaged in both CPFF and fixed-price Government contracts in one plant, such contractor, for the purposes of this paragraph, is not considered to be engaged solely in Government work.

(b) No implementation.

(c) In connection with research and development contracts involving profit or fee, the administrative contracting officer may permit commingling, when determined not to be to the disadvantage of the Government, provided the contractor acknowledges, in writing, liability for any losses occurring during the period the property is commingled.

(d) Any other commingling, when determined not to be to the disadvantage of the Government, may be permitted by the administrative contracting officer, provided the contractor acknowledges, in writing, liability for any losses occurring during the period the property is commingled.

B–207 *Physical inventories.*

B–207.1 *Before termination or completion.* The property administrator will assure on a continuing basis that the approved inventory procedures are effectively applied. Where it is considered that the approved procedures relative to method and frequency of physical inventory are inadequate for any reason, the property administrator will direct the deficiency to the attention of the contractor for appropriate action. If the property administrator and the contractor fail to reach an agreement, the property administrator will report the facts to the administrative contracting officer for appropriate action.

B–207.3 *Joint physical inventories or selective checks under paragraphs 207.1 and 207.2*

(a) The administrative contracting officer will use, to the extent possible, the services of other technical AF personnel, such as plant clearance (property disposal) personnel, in connection with the physical inventories.

(b) As a minimum, the contractor will prepare and deliver to the contracting officer: A listing which properly identifies all discrepancies including overages, shortages, and damages which have been disclosed as a result of the physical inventory; and a written statement certifying to the fact that physical inventory of all or certain classes of Government property was completed on a given date and that the official stock records are in agreement with the physical inventory aside from the reported discrepancies.

B–207.5 *Discrepancies.* In the event of discrepancies, investigations will be made to determine as far as possible whether such discrepancies represent actual losses of Government property, and if so, the causes of such losses. Differences caused by record error, or offsetting overages and shortages of similar items are not considered actual losses.

(a) If adjustment is necessitated by posting or record error, each correction should include identification of the error on the official contract records.

(b) The offset of shortage by overage is considered proper only to the extent that similar items are involved. The offset adjustment of dissimilar items which may appear comparable in quantity or dollar value will not be approved.

Part III—Records To Be Maintained

B–301 *General.*

(a) The contractor is obligated by virtue of the provisions of the contract to maintain adequate property control records, which are designated and used as the official contract records. When Government property is disclosed to be in the custody or control of a contractor but not contractually covered, the contractor will record such

property according to the established property control system, and furnish the property administrator with all known circumstances and factual data pertaining to its receipt.

(b) Generally, contractors have established procedures, methods, and controls which may be described and set forth in various manuals, documents, memorandums, etc., or which may be in the form of a written statement prepared by the contractor, all of which serve to prescribe the techniques of property control. These procedures, methods, controls, and techniques comprise the contractor's property control system. If such property control system fulfills the basic requirements of the Manual, it will be approved according to the provisions of the Manual, and the contractor will not be required to prepare an additional composite manual solely to obtain the requisite approval. When a contractor has an established property audit unit, whose operations are considered to be adequate for safeguarding the interest of the Government the property administrator will reduce his selective examination program of the property control system to a minimum consistent with the need for establishing the accuracy and adequacy of the property audit unit's operations.

(c) Through (g) no implementation.

(h) The establishment of monetary levels below which individual item records of plant equipment will not be required will be consistent with the contractor's established policies and procedures, provided that individual item records are established and maintained for every item of the AF Industrial Equipment Central Inventory Management Program.

B-302 *Pricing.*

(a) Separate unit prices will be applied to items of special tooling fabricated by the contractor; provided when the costs of establishing or maintaining detailed records for individual items of special tooling are considered to be excessive and not practicable in the light of all the circumstances, then it may be permissible to use "group pricing" for special tooling. Group pricing may be used for "work-in-process."

(1) If Government property is shipped from an AF contractor, or subcontractor, to a second contractor, another subcontractor, or second location of operation, and the transaction involves a transfer from one property account to another, the shipping activity will furnish unit prices of the Government property shipped. Whenever the records of Government property, consisting of special tooling or work-in-process, are maintained on the basis of "group pricing," and the property is transferred by individual units rather than an entire group, the shipping activity will establish a unit price for such units, based upon a reasonable estimate thereof, and transmit such information to the receiving activity.

(2) It is a recognized practice of many contractors to record the unit price of property on other than the quantitative inventory record, thus requiring the use of supplementary cost records to ascertain unit prices. Under such circumstances, the property administrator may rely upon the supplementary records which contain such information.

(b) Normally, the unit price of Government-furnished property will be provided on the shipping document prepared by the AF activity accomplishing the shipment to the contractor's facility. Such unit prices will be recorded according to the contractor's approved property control system. The property administrator will assure that the unit price is properly recorded on the appropriate records and, when such information is not furnished on the shipping document, he will initiate action through the property class supervisor of the shipping activity to obtain the unit price. When definite information as to unit price cannot be obtained, reasonable estimates will be used.

B-304 *Records to be maintained by the contractor.* The quantities of property or the nature of property transactions at a contractor's secondary site or a subcontractor's location may be such that a more complete and accurate control can be accomplished by the utilization of the property control system existing at the secondary site or subcontractor's location. Where the circumstances necessitate revision of the prime contractor's control system to permit utilization of records and controls at the secondary site or subcontractor's location, the property administrator will advise the prime contractor with respect to the inadequacy of property controls established at the prime contractor's facility and will request that the prime contractor establish separate property accounts at the secondary site or subcontractor's plant.

B-304.1 *Records of material.* No implementation.

(a) through (c) No implementation.

(d) The Government invoices, contractor's purchase or receiving documents, or other documents which establish evidence of receipt, issue, and use may be accepted as adequate property control records for material, whether Government-furnished or contractor-acquired, which is issued for immediate consumption upon receipt and not entered in the costed-inventory account as a matter of sound business practice. This method of control may be authorized, through approval of the contractor's property control system, in the following instances:

(1) Property charged through overhead, included but not limited to items used in manufacturing, maintenance, or office supplies, etc.

(2) Property under research and development contracts.

(3) Subcontract or outside production items.

(4) Nonstock of special items. These items are considered to be those whose procurement cycle is irregular and infrequent.

(5) Items (such as maintenance and repair parts to plant equipment) which are procured for direct charge to a contract, procured and issued for installation upon receipt, and involve no spoilage.

(6) Items used from contractor's inventory directly to production, maintenance, etc.

B-304.3 *Records of plant equipment.* The form of property records maintained for plant equipment is optional on the part of the contractor provided the minimum information and data required by the Manual is contained therein. Location records of plant equipment will be maintained within the contractor's property control system in sufficient detail to permit the finding of any item or group of like items, without undue delay. The amount of description detail required is dependent upon such factors as the nature and size of the operation and the nature and use of the equipment. Normally, the location of plant equipment of a stationary nature such as installed equipment or equipment placed in fixed locations for production purposes will be recorded on the official plant equipment records. Supplementary records may be used for items which are subject to frequent movement such as portable equipment or other items that are used at various locations during the manufacturing process.

B-304.4 *Records of real property.* Certain contracts provide that the contractor will be reimbursed by the Government for the cost of specified modification, or rearrangement of contractor-owned plant or facilities necessary for commencement of work under the contract, and also for the cost of installing Government-furnished facilities. To provide information in a form necessary to effect satisfactory settlement under the contract, the property administrator and the administrative contracting officer will, within a reasonable time after completion of such work, make a joint review of the Government property involved to determine so far as possible those items which may have a salable or utility value and only descriptive summary records will be prepared for items of no apparent salable or utility value. Where actual cost cannot be obtained, estimated costs may be used. Under projects or contracts which have provided the Government with only a lien or other nontitle interest, descriptive summary records of the property will be prepared. Such property is not required to be marked for identification purposes.

B-304.6 *Records of related data and information.* Unless unusual circumstances make it necessary to exercise special controls, the requirements of chapter I of this title as pertains to formal accounting records will not be applicable to such data as paperbound volumes, manuals, bulletins, circulars, pamphlets, blueprints, magazines, periodicals, serial publications, and similar compositions which are furnished to a contractor for use in the performance of a contract, provided the contractor's control system, in conformance with sound industrial practices, assures proper use thereof under the contract. A literary composition permanently bound in a durable cover and magazine or periodicals permanently bound as volumes are considered as books and, as such, are subject to the formal accounting procedures of the Manual.

B-304.7 *Financial control accounts.* The form and content of financial control accounts established and maintained according to the Manual is optional on the part of contractors, provided such accounts are adequate to provide the information required and are susceptible to local reconciliation.

Part IV—Miscellaneous Provisions

B-401 *Identification and commodity classification—Marking.*

B-401.1 *Identification.*

(a) Extent of Identification.

(i) No implementation.

(ii) The method of marking and identifying Government-owned special tooling will be agreed to by the contractor and the administrative contracting officer. The contractor will be responsible for determining whether or not the marking will damage the tooling or is otherwise impracticable. The contractor will advise the administrative contracting officer, in writing, of any such determination.

(iii) Plant equipment, other than that included within the Departmental industrial equipment reserve program, will be assigned an identification number and marked according to a system of identification and marking as agreed to by the contractor and administrative contracting officer, provided the system conforms to the requirements of the Manual. Numbers and tags will be permanent and will not be changed as long as the equipment remains under the control of the Air Force. When plant equipment is provided to contractors, and is marked and identified in substantial compliance with the requirements of the Manual, it will not be required that such markings be changed or altered.

B-402 *Contractor's responsibility and liability.*

B-402.1 *Contractor's responsibility.* No implementation.

(a) Consumption of Property in the Performance of the Contract. No clear-cut or concise individual document will be obtainable for property consumed in performance of the contract. Evidence of determinations of reasonable usage will be contained in the property administrator's working papers, and the administrative contracting officer will be

currently advised as to results of the usage analysis program by the property administrator.

(b) Retention by the Contractor. No implementation.

(c) Sale of Property. No implementation.

(d) Shipment of Government Property From a Contractor's Plant. No implementation.

(e) Written Advice of Administrative Contracting Officer. The findings and determination of an administrative contracting officer with respect to a contractor's liability for loss, damage, destruction, or unreasonable use/consumption of Government property, are referred to as a "written advice." A letter of advice constitutes a valid credit to the industrial property account when properly supported and appropriately cross referenced. It is not required to contain a statement of the amount of loss involved where it is determined that no liability exists on the part of the contractor. If the administrative contracting officer has determined that the contractor is liable, the written advice will contain statement of the amount of liability, statement to the effect that investigation has been made of the facts surrounding the particular case, and the method and details of settlement of the liability.

(1) The written advice need not restate the items lost, damaged, destroyed, or consumed in excess of requirements, provided a copy of the listing is attached and appropriately referenced.

(2) One copy of the written advice will be furnished to the contractor.

B–402.2 *Contractors liability.* Provisions of the contract relieving the contractor from liability for Government property under certain circumstances are not intended to lower the standard of care to be exercised by the contractor in respect to such property and do not relieve the contractor from the obligations of maintaining a system of property control and accounting as prescribed by the Manual.

(a) Whenever damage to Government property is considered to be inconsequential, the contractor need not submit a report of damage as soon as the fact becomes known; however, at such time as the property involved becomes excess to the requirements of the contract, damage of this type in evidence will be reported.

(b) Approval of inventory adjustments by the property administrator will be dependent upon the reasonableness of the adjustment based upon the experience factor under a particular contract. If the adjustments appear to be excessive, the administrative contracting officer must be advised for appropriate determination.

(c) No implementation.

(d) The letter of advice, originated by the administrative contracting officer, will state that on a specified date he will determine the contractor liable for the specified amount unless the contractor advises him prior to the specified date that he is not liable, or if liable, is not liable in the amount indicated. The letter will further inform the contractor that, if he does not question his liability in the amount specified, the claim may be settled according to stated procedures. If the contractor advises the administrative contracting officer prior to the date specified in the letter that in his opinion he is not liable (or, if liable, is not liable in the amount specified), the administrative contracting officer will consider any new evidence that may be produced by the contractor. If no response is received from the contractor prior to the date specified, as provided above, the administrative contracting officer will prepare and sign written findings of facts and a statement of his decision determining the contractor liable and the amount of his liability. The findings will be promptly forwarded to the contractor, the property administrator, and the appropriate accounting office.

B–402.3 *Shipment and receipt of government-furnished property.*

(a) When responsibility and accountability for Government property in an unserviceable condition is to be transferred from a contractor to another contractor or to an AF installation, appropriate determination as to responsibility for its condition must be accomplished. In instances of transfer of Government property in an unserviceable condition, the property will be listed on a separate shipping document, which will contain the following certification:

The property listed hereon is in an unserviceable condition. Appropriate inspection by those concerned with determination of responsibility for its condition has been made.

(Property Administrator)

(b) Certain contracts under which Government property is provided for incorporation into the end item specify that the acceptance of the end item will be accomplished at destination rather than at the contractor's facility. In such instances the Government property will be transferred via shipping document or DD Form 250, "Materiel Inspection and Receiving Report (Domestic)," to the property account of the receiving facility designated to accept the end item for the Government.

(1) The shipping document will list only the items of Government-furnished property incorporated into the end items and a notation will be placed on the face of the shipping document setting forth the fact that the property being transferred is incorporated into the end item which was forwarded according to the terms of contract (No.) to (destination) for test and final acceptance. If the shipping document does not accompany the actual shipment, the notation will indicate that the shipping document confirms shipment made previously and will show the date, method of shipment, bill of lading number, and any pertinent information which may assist the individual exercising surveillance over the receiving property account to verify the receipt of the property.

(2) All end items which are shipped for acceptance at destination other than specified in the contract will be reported to the administrative contracting officer for appropriate action.

B–403 *Control of scrap and salvage.* The provisions of § 30.2 B–403 of this title are not applicable when: the contracts involved are fixed price and the terms thereof provide for retention by the contractor of the scrap generated or produced from Government property with due allowance for its value in the prices to be billed, or the value of the scrap resulting from operations under the contract is "Insignificant" in consideration of the cost of instituting and maintaining accounting controls and the cost of handling such insignificant quantities of scrap exceed the sale value of the scrap.

B–403.3 *Approval of scrap procedure by the administrative contractual officer.* Where it is recognized that the recording of scrap data is impracticable, the requirement may be waived by the administrative contracting officer.

B–404 *Auditing property accounts.* Audit of the property administrator's records, procedures, and controls will be performed by the Auditor General, USAF. If the contractor's plant is under Army or Navy audit cognizance, the audit of the contractor's records relating to the property administrator's records will be performed by the cognizant audit agency as an assist audit to the overall audit of the property account. In the event of revocation of the property administrator's assignment for reason that no Government property was furnished or acquired under the contract, the related contract records established under the provisions of this general paragraph may be retired without requirement for final audit by the Auditor General.

B–450 *Reusable containers.* The contractor's property control system will provide for adequate control of reusable containers which, for the purpose of this section, are those Government-owned containers considered to be economically reusable subsequent to removal of original contents.

B–451 *Returnable containers.* Returnable containers are those containers title to which remains with the vendor necessitating return to the vendor by the Government within a specified time limit, or title is transferred to the Government under the terms of a contract and such containers may be returned to the vendor within a specified time, with reimbursement to the Government by the vendor. Returnable containers received at a contractor's facility as a result of procurement initiated by the contractor are the responsibility of the contractor.

Part XX—Adjustment of Discrepancies Incident to the Shipment of Government Property

B–2001 *Definition.* "Discrepancies incident to shipment" include all deficiencies incident to the shipment of Government property to or from a contractor's facility whereby differences exist between the property purported to have been shipped and the property actually received. Such deficiencies include, but are not limited to loss, damage, destruction, improper status and condition coding, error in identity or classification, and improper consignment.

B–2002 *General.*

(a) Government property shipped to a contractor for use in the performance of a contract may be subject to loss, damage, or destruction while in transit from a military installation or another contractor's facility, or may be found upon receipt to differ from that property indicated to have been shipped. Since a contractor is responsible and accountable for only that property delivered to his control or custody, procedures are hereinafter set forth to explain and record the circumstances surrounding a discrepancy and to resolve questions of responsibility including determinations of liability where applicable.

(b) A contractor's approved material receiving and inspection procedures provide for verifying the condition and count or weight of property received and for prompt processing of reports, claims, or adjustments required by discrepancies discovered.

(1) In the event of discrepancy incident to shipment of contractor-acquired property, the contractor is responsible for processing the claims and/or adjustments in either of the following instances:

(i) When the shipment has been made via commercial bill of lading not for conversion to Government bill of lading and the discrepancy is determined to be carrier responsibility.

(ii) Whenever the discrepancy is determined to be the vendor's responsibility.

(2) On the other hand, Government personnel are responsible, as set forth herein, for processing claims and possibly effecting adjustments:

(i) In all instances of discrepancy incident to shipment of Government-furnished property.

(ii) In those instances of discrepancy incident to shipment of contractor-acquired property moving on Government bill of lading, or for conversion thereto, when the discrepancy is determined to be carrier responsibility.

(3) Under either subparagraph (1) or (2) of this paragraph, Government personnel are responsible for assuring: (i) protection of the Government's interests in connection with any shortage, incorrect representation, damage, or destruction of Government property, (ii) correction of practices which con-

tribute to or result in general conditions of discrepancy, and (iii) adjustment of related problems or conditions resulting from a discrepancy between consignee, consignor, and/or carrier.

(c) A deficiency incident to shipment of Government-furnished property not exceeding $10 in value, or a damage which does not impair the usefulness of the property or render it unsuitable for use, may be determined to be inconsequential by the property administrator and need not be reported under the procedures of this section.

(d) When the quantity or description of property received by a contractor differs from the quantity or description denoted as shipped on the shipping document, and after inspection of the shipment has established the disagreement to be a fact, only that quantity, or property, received will be recorded on the official property records of the contractor.

(e) The method of adjusting discrepancies incident to shipment will vary according to circumstances surrounding a particular case, as determined by Government personnel involved. The procedures in this section will be used in the reporting and adjustment of discrepancies as appropriate to the nature of each deficiency.

§ 1030.3 *Appendix C—Manual for control of Government property in possession of non-profit research and development contractors.*

Part I—Introduction

C-102 *Applicability of manual.*

(a) AF policy is that maximum efficiency and economy of operation will be obtained by the utilization of the contractor's property records as the official Government records in connection with those contracts executed prior to the effective date of Part 13 chapter 1 of this title, "Government Property," which required the Government to maintain property control records according to WD Memo 35-6520-1. With respect to those contracts requiring compliance with WD Memo 35-6520-1 in the control of Government property, Government personnel are not required to comply with such provisions above and beyond the requirement of the Manual, although the contractor has a continuing obligation to comply with the directive required and specified by its contract.

(b) The prime contractor is responsible for insuring in all subcontracts that Government property provided to such subcontractors will be protected, preserved, and maintained according to sound industrial practice.

C-103 *Definitions.*

C-103.6 *Property account.* The property account will be assigned the same number as the prime contract. Subcontract property accounts will be assigned a number consisting of the prime contract number plus a suffix which will be the number of the subcontract or purchase order, assigned by the prime contractor.

C-103.50 *Appointing authority.* "Appointing authority" refers to the authority empowered by delegation to designate contracting officers, property administrators, and representatives of contracting officers.

C-103.51 *Contract administration.* "Contract administration" means the performance of any and all acts, other than the execution of contractual documents, authorized to be performed by a contracting officer or his duly authorized representative(s), either under the terms of any particular contract or according to the provisions of public laws, Executive orders, and/or applicable regulations and instructions of the department assigned administrative responsibility for a contract.

C-103.52 *Secondary responsibility.* "Secondary responsibility" means the responsibility for subordinate phases of contract administration to be performed by a procurement activity other than that designated as the office of administration.

C-103.53 *Custodial records.* "Custodial records" are written memorandums of any description or type, used to control items issued to plant employees from tool cribs, tool rooms, stockrooms, etc., such as requisitions, issue slip receipts, tool checks, and stock record books.

C-103.54 *Property records.* "Property records," as used in this section are interpreted to be all-inclusive of records affecting the status of Government property, and are not restricted to stock records or other forms of an inventory record.

C-103.55 *AF representative.* See § 1013.101-65 of this chapter.

C-103.56 *Special nuclear material.* See § 1013.101-66 of this chapter.

Part II—Government Administrative Provisions

C-204 *Shipment and receipt of Government-furnished property.*

(a) When responsibility and accountability for Government property in an unserviceable condition are to be transferred from a contractor to another contractor or to an AF installation, responsibility for its condition must be appropriately determined. In instances of transfer of Government property in an unserviceable condition, the property will be listed on a separate shipping document, containing the following certification:

The property listed hereon is in an unserviceable condition. Appropriate inspection by those concerned with determination of responsibility for its condition has been made.

(Property Administrator)

(b) Certain contracts under which Government property is provided for incorporation into the end item specify that the end item will be accepted at destination rather than at the contractor's facility. The Government property will be transferred via shipping document or DD Form 250, "materiel Inspection and Receiving Report (Domestic)," to the property account of the receiving facility designated to accept the end item for the Government. Normally, two copies of the shipping document will accompany the shipment of the end item; however, if that is not the case, a confirming transfer will be accomplished.

(1) The shipping document will list only the items of Government-furnished property incorporated into the end item and a notation will be placed on the face of the shipping document setting forth the fact that the property being transferred is incorporated into the end item which was forwarded according to the terms of the contract (No.) to (destination) for test and final acceptance. If the shipping document does not accompany the actual shipment, the notation will indicate that the shipping document confirms shipment made previously and will show the date, method of shipment, bill of lading number, and any pertinent information which may assist the individual exercising surveillance over the receiving property account to verify the receipt of the property.

(2) All end items which are shipped for acceptance at a destination other than that specified in the contract will be reported to the administrative contracting officer for appropriate action.

C-205 *Sources from which Government property may be furnished or acquired.*

C-205.1 *Military installations or other contractors' plants.*

(a) Government property will be furnished to a contractor only when specifically provided for by the terms of a written contract. When the fact is disclosed that Government property is in the possession of the contractor without contractual coverage, the property administrator will take immediate action to return the property to the shipping organization, or obtain appropriate contractual coverage.

(b) Exception to the policy cited in subparagraph (a) of this paragraph has been authorized when it is determined that the shipment of any item of Government property to a contractor, when not specifically provided for in a contract, is in the best interests of the Air Force. Shipments anticipated under such authority are for the purpose of inspection, test, calibration, modification, replacement, and/or repair at no cost to the Government.

C-205.3 *Withdrawal from contractor-owned stores.* Property withdrawn from contractor-owned stores, for direct charge to a contract, is considered Government property at the time of: issuance for use under the contract, allocation for use under the contract, or approval of the claim for reimbursement—whichever is earlier.

C-207 *Contractor's records.*

C-207.1 *General policy.* The contractor is obligated by virtue of the provisions of the contract to maintain adequate property control records, which are designated and used as the official contract records.

(a) The authority to grant exceptions to the policy that the contractor's records will be designated and used as the official contract records has been delegated as set forth in § 1013.103 (b) of this chapter.

(b) When Government property is disclosed to be in the custody or control of a contractor but not contractually covered, the contractor will: record such property according to the established property control system, and furnish the property administrator with all known circumstances and factual data pertaining to its receipt. When the anticipated use of the property can be associated with the performance of a particular contract, the property will be recorded in the official property records of that contract.

C-207.2 *The contractor's property control system.* Generally, contractors have established procedures, methods and controls which may be described and set forth in various manuals, documents, memorandums, etc., or which may be in the form of written statements prepared by the contractors, all of which serve to prescribe the techniques of property control. These procedures, methods, controls, and techniques comprise the contractor's property control system. If the property control system fulfills the basic requirements of the Manual, it will be approved according to the provisions of the Manual and the contractor will not be required to prepare an additional composite manual solely to obtain the requisite approval.

(a) When a contractor has an established property audit unit, whose operations are considered adequate for safeguarding the interests of the Government, the property administrator will reduce his selective examination program of the property control system to a minimum consistent with the need for establishing the accuracy and adequacy of the property audit unit's operations.

C-207.10 *Pricing.* Normally, the unit price of Government-furnished property will be shown on the shipping document prepared by the AF activity making the shipment to the contractor's facility. Such unit prices will be recorded according to the contractor's approved property control system. The property administrator will assure that the unit price is properly recorded on the appropriate records. When such information is not furnished on the shipping document he will initiate action through the property class supervisor of the shipping activity to obtain the unit price. When definite information as to unit price cannot be obtained, reasonable estimates will be used.

C-209 *Identification and commodity classification—Marking.*

C-209.1 *Identification.* Plant equipment, other than that included within the Departmental industrial equipment reserve program, will be assigned an identification number and marked according to a system of identification and marking as agreed to by the contractor and administrative contracting officer provided the system conforms to the requirements of the Manual. Numbers and tags will be permanent and will not be changed so long as the equipment remains under the control of the Air Force. When plant equipment is provided to contractors and is marked and identified in substantial compliance with the requirements of the Manual, it will not be required that such markings be changed or altered.

C-211 *Physical inventories.*

C-211.1 *Before termination or completion.* The property administrator will assure on a continuing basis that the approved inventory procedures are effectively applied. Where it is considered that the approved procedures relative to method and frequency of physical inventory are inadequate for any reason, the property administrator will direct the deficiency to the attention of the contractor for appropriate action.

C-211.5 *Discrepancies.* In the event of discrepancies, investigations will be made to determine as far as possible whether such discrepancies represent actual losses of Government property, and if so, the causes of such losses. Differences caused by record error, or offsetting overages and shortages of similar items are not considered actual losses.

(a) If adjustment is necessitated by posting or record error, each correction should include identification of the error on the official contract record.

(b) The offset of shortage by overage is considered proper only to the extent that similar items are involved. The offset adjustment of dissimilar items which may appear comparable in quantity or dollar value will not be approved.

Part III—Contractor's Obligations

C-301 *General.* Government property in the possession of subcontractors will be protected, preserved, and maintained according to sound industrial practice. The prime contractor is responsible for including in any subcontract under which Government property is delivered to the subcontractor a provision requiring at least this degree of care. The requirement established by this part III is considered a minimum, and in no way relieves the prime contractor of responsibility for complying with the requirements established by the contract and the Manual with respect to accounting and control of Government property, even though it is in the possession of a subcontractor. The responsibility for maintenance of adequate property controls vested in a prime contractor by the provisions of a contract is all-inclusive with respect to Government property provided thereunder.

(a) Where the quantities of property involved are such that a more complete and accurate control can be accomplished by the designation and utilization of the subcontractor's property control system, the subcontractor's records may be used as the official contract records for the property in the possession or custody of that subcontractor, provided concurrence of the prime contractor is secured. In such instances, a separate property administrator may be designated for the subcontract.

C-303 *Contractor's responsibility.* No implementation.

(a) Consumption of Property in the Performance of the Contract. No clearcut or concise individual document will be obtainable for property consumed in performance of the contract. Evidence of determinations of reasonable usage will be contained in the property administrator's working papers, and the administrative contracting officer will be currently informed of results of the usage analysis program by the property administrator.

(b) Retention by the Contractor. No implementation.

C-304 *Contractor's liability.* Provisions of the contract relieving the contractor from liability for Government property under certain circumstances are not intended to lower the standard of care to be exercised by the contractor in respect to such property and do not relieve the contractor from the obligation to maintain a system of property control and accounting as prescribed by this section.

C-306 *Property control records.*

(a) Real Property. Certain contracts provide that the contractor will be reimbursed by the Government for the cost of specified modification or rearrangement of contractor-owned plant or facilities necessary for commencement of work under the contract, and also for the cost of installing Government-furnished facilities. To provide information in a form necessary to effect satisfactory settlement under the contract, the property administrator and the administrative contracting officer will, within a reasonable time after completion of such work, make a joint review of the Government property involved to determine so far as possible those items which may have a salable or utility value, and only descriptive summary records will be prepared for items of no apparent salable or utility value. When actual cost cannot be obtained, estimated costs may be used. Under projects or contracts which have provided the Government with only a lien or other nontitle interest, descriptive summary records of the property will be prepared. Such property is not required to be marked for identification purposes.

(b) Records of Related Data and Information. Unless it is deemed necessary to exercise special controls, accounting records will not be required for such data as paperbound volumes, manuals, bulletins, circulars, pamphlets, magazines, periodicals, serial publications, and similar compositions which are furnished to a contractor for use in the administration of a contract, provided the contractor's control system otherwise assures proper use thereof under the contract. A literary composition permanently bound as volumes is considered books and as such is subject to formal inventory control procedures.

Part XX—Adjustment of Discrepancies Incident to the Shipment of Government Property

C-2002 *General.*

(a) Government property shipped to a contractor for use in the performance of a contract may be subject to loss, damage, or destruction while in transit from a military installation or another contractor's facility, or may be found upon receipt to differ from that property indicated to have been shipped. Since a contractor is responsible and accountable for only that property delivered to his control or custody, procedures are hereinafter set forth to explain and record the circumstances surrounding a discrepancy and to resolve questions of responsibility including determinations of liability where applicable.

(b) A contractor's approved material receiving and inspection procedures provide for verifying the condition and count or weight of property received and for prompt processing of reports, claims, or adjustments required by discrepancies discovered.

(1) In the event of discrepancy incident to shipment of contractor-acquired property, the contractor is responsible for processing the claims and/or adjustments in either of the following instances:

(i) When the shipment has been made via commercial bill of lading not for conversion to Government bill of lading and the discrepancy is determined to be carrier responsibility.

(ii) Whenever the discrepancy is determined to be the vendor's responsibility.

(2) On the other hand, Government personnel are responsible, as set forth herein, for processing claims and possibly effecting adjustments:

(i) In all instances of discrepancy incident to shipment of Government-furnished property.

(ii) In those instances of discrepancy incident to shipment of contractor-acquired property moving on Government bill of lading, or for conversion thereto, when the discrepancy is determined to be carrier responsibility.

(3) Under either subparagraph (1) or (2) of this paragraph, Government personnel are responsible for assuring: (i) protection of the Government's interests in connection with any shortage, incorrect representation, damage, or destruction of Government property, (ii) correction of practices which contribute to or result in general conditions of discrepancy, and (iii) adjustment of related problems or conditions resulting from a discrepancy between consignee, consignor, and/or carrier.

(c) A deficiency incident to shipment of Government-furnished property, not exceeding $10 in value, or a damage which does not impair the usefulness of the property or render it unsuitable for use, may be determined to be inconsequential by the property administrator and need not be reported under the procedures of this section.

(d) When the quantity or description of property received by a contractor differs from the quantity or description denoted as shipped on the shipping document, and after inspection of the shipment has established the disagreement to be a fact, only that quantity, or property, received will be recorded on the official property records of the contractor.

(e) The method of adjusting discrepancies incident to shipment will vary according to circumstances surrounding a particular case, as determined by Government personnel involved. The procedures in this part will be used in the reporting and adjustment of discrepancies as appropriate to the nature of each deficiency.

PART 1050—LABOR SUPPLY CONSIDERATIONS TO BE MADE IN THE PLACEMENT OF CONTRACTS

Sec.

1050.000 Scope of part.
1050.001 Applicability of part.
1050.002 Responsibilities.
1050.004 Subcontracts.
1050.006 Defense manpower policy (DMP) No. 4.

AUTHORITY: §§ 1050.000 to 1050.006 issued under sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314.

§ 1050.000 *Scope of part.* This part sets forth the implementation of Defense Department policies with reference to labor supply considerations to be made in the placement of contracts. This part implements §§ 1.302–4, 2.205, 3.105, and 3.219 of this title.

§ 1050.001 *Applicability of part.* This part applies to Directorate of Procurement and Production, Hq AMC, AMC field procurement activities, ARDC, and AF local purchase activities in the continental United States.

§ 1050.002 *Responsibilities.* (a) The Executive for Small Business, Hq AMC, will monitor the placement of contracts

in labor surplus areas by maintaining staff surveillance on the functioning of the policies and procedures in this part.

(b) Small business specialists will:

(1) Make determinations concerning the applicability of this part to particular procurements.

(2) Maintain files of labor market information for the reference of procurement personnel.

(c) Where no small business specialist has been appointed, the responsibilities in paragraph (b) of this section will be performed by the AMA or depot director of procurement and production or his designee or by a comparable officer of a local purchase activity.

(d) AMA and AF depot commanders and directors of procurement and production are authorized to settle disputes on whether a contractor's facility is located within an area of substantial labor surplus, as set forth in the Directory of Important Labor Market Areas issued by the Department of Labor.

(e) For other responsibilities, see subsequent sections dealing with particular department policies.

§ 1050.004 *Subcontracts.* Administrative and local purchase contracting officers will encourage prime contractors to award subcontracts to firms located in areas of substantial labor surplus.

§ 1050.006 *Defense manpower policy (DMP) No. 4.* This section implements § 1.302–4 of this title regarding the revised DMP No. 4.

(a) Notwithstanding the determination of the small business specialist regarding the applicability of DMP No. 4 to the procurement, the producing contracting officer is responsible for:

(1) Determining whether the use of "set-asides" is appropriate (§ 1.302–4 (b) (ii) of this title) and, if appropriate, determining the optimum quantity in connection with "set-asides" (§ 2.205–2 of this title).

(2) Documenting the contract file according to § 1.302–4 (d) (iv) of this title.

(3) Reporting according to Subpart A, Part 1057, of this chapter.

(b) (Sections 2.305–3 and 3.105 of this title.) When "set-asides" are deemed appropriate, the following provision will be included in the IFB or RFP covering procurement of the items not set aside:

Pursuant to Defense Manpower Policy No. 4, an additional quantity of the items covered by this IFB (or RFP) has been "set aside" for subsequent negotiation exclusively with firms who: (i) are located in areas classified by the Department of Labor as areas of substantial labor surplus; or are located in areas not so classified by the Department of Labor but submit with their bids or proposals a certification from the Local State Employment Office that the firm is located in an area of substantial labor surplus; (ii) will perform not less than 60 percent of the dollar value of any resulting contract in an area of substantial labor surplus, and (iii) have submitted a bid or proposal upon the items covered by this IFB (or RFP) at a unit price within 120 percent of the highest award made with respect to the items covered by this IFB (or RFP).

(c) When a "set-aside" is to be used, synopses of proposed procurements of the items not set aside will include the statement: "Set-asides under Defense Manpower Policy No. 4 may be utilized."

(d) Each contract for a "set-aside" quantity that is awarded due to preferential treatment under DMP No. 4 will contain the following clause:

It is understood that award of this contract was due to a "set-aside" under Defense Manpower Policy No. 4 whereby the contractor was given the opportunity of meeting the contract price for quantities not set aside. The contractor warrants that it will perform at least 60 percent of the dollar value of this contract in an area of substantial labor surplus.

PART 1051—SMALL BUSINESS

Subpart A—Small Business Concerns and Air Force Small Business Program

Sec.
1051.103 General policy.
1051.105 Assistance to small business in contract placement and mobilization planning.
1051.105–1 General.

Subpart B—Defense Production Pools

1051.202 Statement of principles of contracting with defense pools.
1051.203 Execution of contracts with pools.
1051.203–1 Warranty clause.
1051.203–2 Warranty and certification instrument.
1051.203–3 Exempted contracts.
1051.203–4 Performance bonds.

AUTHORITY: §§ 1051.103 to 1051.203–4 issued under sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314.

SUBPART A—SMALL BUSINESS CONCERNS AND AIR FORCE SMALL BUSINESS PROGRAM

§ 1051.103 *General policy.* (a) It is AF policy that a fair proportion of the total purchases and contracts for supplies and services for the Department of the Air Force will be placed with small business concerns whether as prime contractors, subcontractors, or suppliers.

(b) In its own direct purchases from industry, the Air Force will carry on a continuing program to afford small business concerns an equitable opportunity to compete in the procurement of items and services they are capable of producing or performing.

(c) In the placement and administration of contracts with large, as well as small concerns, which in the opinion of the Air Force offer substantial subcontracting possibilities, the contracting officer and the appropriate administrative office will bring this AF policy to the attention of prime contractors and urge prime contractors to take appropriate measures to assure that small business concerns are afforded an equitable opportunity to compete for defense subcontracts within their capabilities.

(d) The general principles of the AF small business policy providing for giving small business firms an equitable opportunity to produce a fair share of the AF requirements of supplies and services, will be extended to mobilization planning. To the maximum extent possible consistent with considerations of efficient production, geographic dispersion of facilities and other military factors, planning will be conducted with small business firms with respect to items, the bidders' mailing list for which include the names of established or potential small business concerns.

(e) It is general AF policy to cooperate with the SBA in assisting small business concerns to participate in AF procurement.

§ 1051.105 *Assistance to small business in contract placement and mobilization planning.*

§ 1051.105–1 *General*—(a) *Set-asides, general.* The Department of the Air Force and the SBA have established a joint program of set-asides for small business, the provisions of which apply to classified as well as unclassified procurements if otherwise applicable. The purpose of this program is to increase the participation of small business in AF production to the maximum extent possible by the set-aside device, consistent with the primary procurement responsibility of the Air Force. A bid or proposal on a procurement or a portion of a procurement that has been set aside for small business will be considered as nonresponsive if it is received from a concern which does not meet the Department of Defense definition of a small business concern. Contracting officers and other appropriate AF personnel engaged in carrying out this program will be guided by the following considerations:

(1) Shortness of time from date of issue of IFB's or RFP's to opening or closing date will not be a valid reason for not making a set-aside.

(2) The fact that, historically, a large percentage of similar procurements have gone to small business concerns will not constitute a valid and complete reason for not making a set-aside.

(3) With respect to qualified products, the set-aside procedure will not be rejected solely on the grounds that the item being procured is a qualified product; it may be proper to make a partial set-aside if both large and small concerns in adequate numbers are on the qualified products list.

(4) Applicability of the set-aside provisions of Defense Manpower Policy (IMP) No. 4, as set forth in Part 1050 of this chapter, does not prevent a contracting officer from making a total or partial small business set-aside; however, the sufficiency of small business qualified sources in areas of substantial labor surplus (Group D, E, or F) will be considered by the contracting officer.

(5) The definition of a "fair proportion of the total purchases and contracts for supplies and services" will not be used as a reason for not making small business set-asides.

(6) Set-asides will not be entered into:

(i) Which would exclude planned producers involuntarily from the opportunity to submit proposals on procurement of items on which they hold planned producer status. This does not preclude the making of a partial set-aside where appropriate.

(ii) Which would preclude a concern which had satisfactorily performed a development contract for the same or similar item from being considered. This does not preclude the making of a partial set-aside where appropriate.

(iii) On a procurement which must be placed with a justifiable "sole source."

(7) In cases where the set-aside for small business of either the total amount or a portion of a procurement is appropriate and the set-aside could be based on either a determination in which a SBA representative participated or on the separate decision of the contracting officer, preference will uniformly be given to the joint action with the SBA representative, but inability to take the action on this basis, as for example, in the absence of any SBA representative, will not operate to obstruct the making of a set-aside by unilateral action in cases that are otherwise appropriate.

(8) A procurement publicized in the Department of Commerce "Synopsis of Proposed Procurement, Sales and Contract Awards" which has been set-aside for small business will be so labelled in the Synopsis. In synopsizing the unreserved portion of a procurement on which a partial small business set-aside has been made, the statements appearing in the IFB or RFP notice set forth in paragraph (e) (2) of this section will be published along with the description appearing in the Synopsis.

(b) *Total small business set-asides.* The entire amount of the procurement will be set-aside for exclusive participation of small business concerns when such action is determined by the SBA representative and the contracting officer (or, in the event of the nonavailability of a SBA representative, by the contracting officer alone) to be in the interest of maintaining or mobilizing the Nation's full productive capacity or in the interest of war or national defense programs.

(1) When a total small business set-aside has been made as a result of a determination by a SBA representative and the contracting officer as provided in this section, the procurement may be entered into by means of negotiation or by "small business restricted advertising." Small business restricted advertising, including awards thereunder, will be conducted in the same way as prescribed for formal advertising, except that bids and awards will be restricted to small business concerns and the contract will be awarded pursuant to section 214 of the Small Business Act of 1953, as amended. (67 Stat. 238; 15 U. S. C. 643.)

(2) All other total small business set-asides will be entered into by means of negotiation and the contract will be negotiated pursuant to section 2 (c) (1) of the Armed Services Procurement Act of 1947 (62 Stat. 21; 41 U. S. C. 151).

(3) Each IFB or RFP issued in connection with a proposed procurement which has been totally set-aside for small business will contain the following notice:

NOTICE TO PROSPECTIVE BIDDERS OR OFFERORS

This procurement will be awarded to one or more small business concerns. This action is the result of a determination by the contracting officer, alone, or in conjunction with a duly authorized Small Business Administration representative, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, or in the interest of war or national defense programs. Therefore, bids or proposals under this procurement are restricted to small business concerns and awards will be made to a small business concern or concerns. (The Department of Defense defines a small business as any concern which, including affiliates, employs in the aggregate fewer than 500 employees.) The right is reserved to reject any bid or proposal when it is in the interest of the Government to do so. Bids or proposals received from firms not classified as small business will be considered as non-responsive.

(c) *Partial small business set-asides.* When the entire amount of a procurement cannot be set aside for small business under paragraph (b) of this section, a portion of the procurement will be set aside for the exclusive participation of small business when such action is determined jointly by a SBA representative and the contracting officer (or in the event of the nonavailability of a SBA representative, by the contracting officer alone) to be: in the interest of maintaining or mobilizing the Nation's full productive capacity; or in the interest of war or national defense programs, and when the quantities can be divided into two or more economical production runs, and when two or more small business sources are known or believed to have the technical competency and the productive capacity to supply the portion of the procurement being set aside. To the extent possible, consistent with the provisions of this part, the portion set aside for small business will be such as to make maximum use of small business capacity.

(1) IFB's and RFP's for the unreserved portion and for the portion set aside will both be for not less than an economical production run. After award of the unreserved portion, procurement of the portion set aside will be effected by negotiation pursuant to subparagraph (3) of this paragraph.

(2) Each IFB or RFP issued in connection with a proposed procurement where less than 100 percent thereof has been set aside for small business concerns will contain substantially the following clause:

NOTICE TO PROSPECTIVE BIDDERS OR OFFERORS

An additional quantity of [*insert quantity of each item*] has been set aside for negotiation exclusively with small business concerns. The right to participate in subsequent negotiation for any quantity thus set aside shall be conditioned upon the submission of a bid (proposal) upon the similar item in this procurement at unit prices within 120 percent of the highest award made.

(3) Negotiation for the procurement of quantities set aside will be conducted only with responsible bidders or offerors which have previously submitted bids or proposals on the unreserved quantities offering a unit price not greater than 120 percent of the highest award made. Such negotiation will begin with the bidder or offeror which submitted the lowest responsive bid or proposal in connection with the unreserved procurement when the procurement of the unreserved quantity has resulted in one contract only, or in multiple awards all at the same price, awards for quantities set-aside will be at a unit price not in excess of the unit price of the unreserved quantities. When the procurement of the unreserved quantities has resulted in multiple awards at different unit prices, awards for quantities set aside will be at the highest price awarded in connection with the unreserved quantities. If the procurement of the entire set-aside quantity cannot be effected by the method set forth in this section, the unplaced portion of the set-aside will be procured in the most appropriate manner.

(d) *Certificates of competency.* (1) The SBA has legislative authority to certify as to the competency of any small business concern as to capacity and credit. Prior to making certifications, the SBA will obtain and consider such technical and financial information concerning any firm as may be available from the purchasing activity. Certifications as to competency reflect the judgment of the SBA that the firm is capable of performing and that the Government will not be taking an unreasonable risk of an unsatisfied judgment in the event of default, although they do not imply that all possible future claims by the Government will be fully satisfied. Contracting officers will accept Certificates of Competency from the SBA as conclusive and will not require that any other requirement with respect to capacity or credit be met. However, in case of grave doubt on the part of the contracting officer as to the firm's ability to perform, he will refer the case, with all pertinent available information and an indication of the degree of urgency to the Commander, AMC, attn: MCP–2 for review prior to award. If Hq AMC doubts the ability of the certified firm to perform in strict accordance with the particular procurement requirements, the case and all pertinent information will be forwarded to USAF.

(2) If a small business concern, in spite of having submitted an otherwise acceptable bid or proposal which would normally place it in a position to receive an award, has been found deficient in capacity or in credit, and if, for this reason, a contemplated award to such a small business concern is being or may be withheld:

(i) The SBA will be notified and will be furnished with information upon which the negative FCR was based, and any other information available which may be necessary in order for the SBA to make a decision as to the issuance of a Certificate of Competency.

(ii) The SBA will be allowed 10 working days from the date upon which the SBA receives notification, or more at the option of the contracting officer, in which to issue a Certificate of Competency, unless the contracting officer certifies that such time interval will seriously affect the required expeditious award of the contract. The small business specialist in the APD will advise the procuring contracting officer of the date on which notification was given to the SBA. This procedure will not apply to proposed awards of less than $1,000; it may be used at the request of the procuring contracting officer on proposed awards of $1,000 and over and less than $10,000; and will be followed on proposed awards of $10,000 and over.

(e) *SBA certification that the administration is competent to perform the*

contract. In any case in which the SBA certifies, according to section 208 of the Small Business Act of 1953, as amended, (67 Stat. 237; 15 U. S. C. 637) that the SBA is itself competent to perform any specific Government contract, such certification will be made by the Administrator or Deputy Administrator of the SBA to the Secretary of the Air Force.

(f) *Defense subcontracting small business program.*

(1) The contracting officer will insert the clause set forth in § 7.104–14 of this title in all cost-reimbursement-type and fixed-price-type supply and service contracts (other than personal services contracts) and in all construction contracts in amounts exceeding $5,000 (except those contracts entered into with foreign contractors which are to be performed outside of the continental United States, its Territories and possessions).

(2) A procuring contracting officer, when placing a prime contract (except contracts to be performed substantially outside of the continental United States, its Territories and possessions) which in his opinion offer substantial subcontracting possibilities, will, when the contract exceeds $1,000,000 (or may, if the contract is of lesser amount), urge the contractor to establish and conduct as a part of his purchasing system a Defense Subcontracting Small Business Program as a means of carrying out the policy stated in § 1051.103 (c) and as a means of implementing the clause in § 7.104–14 of this title. The Defense Subcontracting Small Business Program will include but not be limited to the following provisions:

(i) The designation of an executive of the company or plant as its small business liaison officer:

(a) To be the contact man with the procuring activity and with officials of the SBA on matters relating to small business participation.

(b) To assure that the company or plant carries out the small business subcontracting clause in its contracts.

(c) To be responsible for the establishment of an effective Defense Subcontracting Small Business Program within the company or plant.

(ii) The publication within the company or plant of the Defense Subcontracting Small Business Program of the company, including the policies and procedures appropriate to accomplish its objectives.

(iii) The adoption by the company of procurement policies designed to assure that small concerns will have an equitable opportunity to secure defense subcontracts, including, but not necessarily limited to:

(a) Requiring, to the extent practicable, widespread solicitation of qualified small concerns prior to award of subcontracts.

(b) Allowing sufficient time for competent small concerns to submit bids.

(c) Permitting small firms, to the extent practicable, to submit bids for quantities less than the total requirement.

(d) Making specifications and drawings readily available to interested small concerns.

(e) Establishing realistic delivery schedules, consistent with prime contractual requirements, that do not preclude submission of bids from competent small firms.

(iv) The maintaining of records showing for each prospective subcontractor on the bidder's mailing list whether it meets the Department of Defense definition of a small business concern.

(v) The placing in subcontracts with major subcontractors of the small business subcontracting clause already appearing in its own contract.

(vi) The requesting of each such major subcontractor to establish and conduct a Defense Subcontracting Small Business Program, meeting these requirements.

(vii) The utilization of such information related to potential small business sources as furnished by the appropriate offices of the Military Departments and the SBA.

(3) Responsibility for reviewing the adequacy of a prime contractor's Defense Subcontracting Small Business Program will be assumed by the Air Force when the Air Force has mobilization planning cognizance for the plant; or when no military department has mobilization planning cognizance, such responsibility will be assumed by the Air Force when the Air Force has plant cognizance procurement (as defined in § 4.101–2 (b) of this title). If no military department has either mobilization planning cognizance or plant cognizance procurement, the chief of the Office of Small Business, Hq USAF, will be responsible within the Air Force for coordination with the other military departments and the Department of Defense concerning assignment of responsibility.

(4) The small business specialist in the APD will be responsible for making reporting arrangements with contractors located within the geographical boundaries of the APD except where such arrangements have been made by Hq AMC with certain designated companies' headquarters offices.

SUBPART B—DEFENSE PRODUCTION POOLS

§ 1051.202 *Statement of principles of contracting with defense pools*—(a) *Definition.* A Defense Production Pool consists primarily of a group of manufacturing concerns having among themselves production facilities, whose owners have associated together to obtain and perform jointly, or in conjunction with each other, contracts for the production of articles, equipment, supplies, and materials, and the furnishing of services for defense use, and who have agreed among themselves concerning their organization, relationship, and procedure, and which has been approved as a Defense Production Pool according to the Defense Production Act of 1950, as amended (64 Stat. 798; 50 App. U. S. C. 2061).

(b) *Exemption from Walsh-Healey Act.* Approved production pools and members thereof are not required to conform to the definition of "regular dealer or manufacturer" as set forth in § 1.201–9 of this title by reason of an exemption granted by the Secretary of Labor by order dated June 14, 1951, with respect to section 1 (a) of the Walsh-Healey Act (49 Stat. 2036; 41 U. S. C. 35). In all other respects, financial responsibility and performance capability of the production pool will be determined as for any contractor according to AF procedures.

(c) *General policy.* The general policy of the Department of Defense and the Air Force is to conduct business with Defense Production Pools on the same basis as with all other bidders and contractors. Pools will neither be discriminated against nor favored over other bidders and contractors solely by reason of the form of their organization.

(d) *Solicitation of bids and quotations from pools.* On request, duly authorized Defense Production Pools will be placed on appropriate bidders' mailing lists when the request is accompanied by a photostatic copy of the pool's Notification of Approval. IFB's or RFP's will be furnished to the Defense Production Pools on the appropriate bidders' mailing list for a specified item or group of items. Each pool normally will be considered as one source of supply irrespective of the number of its membership, and generally will be furnished one set of bid or proposal forms. Membership in a pool will not preclude individual members from bidding on procurements for which they are qualified.

(e) *Award of contracts.* (1) Bids and quotations submitted by Defense Production Pools will be analyzed pursuant to the same procedures and principles that pertain to all other prospective contractors.

(2) When the Administrator of the SBA designates a particular pool "small business," the pool will be granted the preference and privileges according to small business concerns.

(3) Where the pool will substantially perform a contract in plants located in areas of labor surplus, the preferences granted to contractors performing work in such areas will be applied to the award of the contract.

§ 1051.203 *Execution of contracts with pools.*

§ 1051.203–1 *Warranty clause.* Except as provided in § 1051.203–3, the clause set forth in this section will be included in every contract with a Defense Production Pool:

WARRANTY (DEFENSE PRODUCTION POOL)

The contractor unconditionally warrants that (i) it has been duly approved as a Defense Production Pool under the Defense Production Act of 1950, as amended; (ii) each of the individual signators listed in the instrument entitled "Warranty and Certification (Participating Members)" attached hereto and hereby made a part hereof is a member participating in such Pool; (iii) such signators are all of the participating members in the Pool; and, (iv) the respective dollar amounts set forth in such attached instrument under the caption "Financial Liability" indicate the extent of financial liability for performance of the allotted portion of the aforementioned contract by each respective participating member.

§ 1051.203–2 *Warranty and certification instrument.*

(a) Except as provided in § 1051.203–3, the Warranty and Certification instrument set forth in this section will be signed and executed by every participating member and will be attached to each contract with a Defense Production Pool after the contract has been duly executed in the name of the pool and the signature in the name of the pool has been duly certified by the Secretary or other official of the pool.

WARRANTY AND CERTIFICATION (PARTICIPATING MEMBERS)

In consideration of the award of the contract to which this instrument is attached, each of the undersigned hereby executes the following warranties and grants in favor of the Government. Each of the undersigned unconditionally warrants that (i) it is a member of the Defense Production Pool designated as the Contractor in the contract with the Government to which this instrument is attached; (ii) it will perform its allotted portion of such contract in accordance with the terms of that contract; (iii) it will be fully and directly responsible to the Government for such performance; and, (iv) it will be individually liable for performance of the contracts to an extent not greater than the amount of financial liability stated below. Each of the undersigned grants to the Government the right to proceed directly against it under the clause in the aforementioned Government contract entitled "Default," or otherwise, in the event of any failure on its part to perform the contract in accordance with the terms thereof; provided, however, that no participating member shall be directly liable to the Government in an amount greater than the amount of its financial liability stated herein below.

Financial Liability.

Members

By ----------

(When the participating member is a corporation, insert at this point the form for certification of corporate authority to execute the above instrument. The signature of each corporate member will be formally certified by the corporate official authorized to affix the corporate seal.)

(b) The above Warranty and Certification instrument will be incorporated by appropriate language into the Government contract with the Defense Production Pool.

§ 1051.203–3 *Exempted contracts.* Neither the Warranty clause nor the Warranty and Certification instrument will be used when a member of the Defense Production Pool:

(a) Executes the Government contract in his own name as provided by the terms of the Pool Agreement.

(b) Executes a Government contract in his own name independently of a pool.

§ 1051.203–4 *Performance bonds.* The extent to which performance bonds may be required in connection with contracts with pools will be according to the requirements of Part 10 of this title and Part 1010 of this chapter.

PART 1052—FACILITY CAPABILITY REPORTS

Subpart A—Requirements and Procedures for Facility Capability Reports

Sec.

1052.102 Financial and technical ability clause.
1052.103 General requirements for obtaining an FCR.
1052.104 Description of FCR.
1052.105 Exemptions and waivers.

Subpart F—Production Procedural Guide for FCR's

1052.602 Monitoring FCR's.
1052.603 Production survey.
1052.603–1 Presurvey analysis.

AUTHORITY: §§ 1052.102 to 1052.603–1 issued under sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314.

SUBPART A—REQUIREMENTS AND PROCEDURES FOR FACILITY CAPABILITY REPORTS

§ 1052.102 *Financial and technical ability clause.* The following clause will be included in all invitations for bids or requests for proposal:

If the Bid or Proposal outlined hereby is favorably considered, a survey team may contact your facility for the purpose of determining your financial and technical ability to perform. Current financial statements and other data pertinent to this purpose should be available at that time if not already on file with the Air Materiel Command.

§ 1052.103 *General requirements for obtaining an FCR.* An FCR will be requested for procurements exempted in § 1052.105 if (a) The contractor's name appears on the AMC Experience List, (b) progress or advance payments are requested, or (c) there is any doubt as to the contractor's ability to perform. In such instances, the request for FCR will include the reason.

§ 1052.104 *Description of FCR.* An FCR will consist of answers to the following questions with regard to a contemplated award. Answers will always be arranged in the same order as questions listed in this section and will be identified with appropriate question number to eliminate repeating the question.

One: Is the firm considered capable of performing the proposed contract, taking into consideration:

(a) Present facilities. The required quality and quantity of machine tools, production equipment, manufacturing and warehouse areas, and material handling devices necessary to complete the work.

(b) Production and engineering capabilities. Present and projected production and engineering load and past performance. Delinquencies in Government contracts should be evaluated as to causes. The contractor should not be held responsible for delinquencies caused by factors beyond his control.

(c) The delivery schedule.

(d) Availability of contractor-furnished material and contractor-furnished component parts. The contractor's ability to obtain and maintain the necessary inventory of supplies and parts.

(e) Quantitative and qualitative labor requirements and availability within the productive lead time.

(f) Ability to provide and maintain adequate systems for control of quality for manufacturing, supplying, or overhauling the items. It is essential that manufacturers understand thoroughly the specifications and contract requirements for inspection, test, and control of quality throughout purchasing, subcontracting, production, storage, and shipment. This includes the manufacturer's quality responsibilities for GFAE and GFP.

Two: Does the firm possess sufficient financial stability to perform the contract being considered for award?

Three: Are the business practices of the firm considered satisfactory insofar as is known or can be determined without benefit of a complete investigation? If the contract is for supplies, consideration will be given, but not limited to, whether the firm is a manufacturer of, or regular dealer in, such supplies. See §§ 1.201–9 and 1.307 of this title.

Four: What percent of subcontracting is contemplated? What is the plan for subcontract work in support of the proposed procurement?

Five: Is the contractor's accounting system determined adequate to permit administration of the type contract proposed; i. e., fixed-price redetermination, time-and-material or cost-reimbursement; or if progress or advance payments are requested.

NOTE: This question will be answered only when the request for FCR indicates that question "five" is applicable.

§ 1052.105 *Exemptions*—(a) *Exemptions.* Except as required in § 1052.103, an FCR is not mandatory for the following contracts or purchases:

(1) Purchases of technician services.

(2) Purchases of continued research and development work when the proposed contract is an extension of work heretofore satisfactorily performed, if the dollar value of the proposed contract does not exceed that of the previous procurement for a comparable period of time.

(3) Purchases from Schedule of Blind-Made Products, Federal Supply Schedules, other Government departments, and Federal prisons.

(4) Purchases of standard commercial articles or basic materials, such as sheet aluminum, bar steel, etc., from manufacturers of, or regular dealers in, the articles to be purchased, where the delivery schedule provides for delivery within 90 days after award of the contract.

(5) Purchases of books, periodicals, and subscriptions to magazines, except class 30B procurements.

(6) Foreign purchases made by procuring activities within the continental United States, including contracts with Canadian Commercial Corporation.

(7) Personal service or professional service contracts negotiated under authority of Public Law 600 (79th Congress) (60 Stat. 806) (5 U. S. C. 73b–1).

(8) Contracts written under authority of Public Law 921 (81st Congress) as amended and extended (64 Stat. 1257; 50 App. U. S. C. 611), which finalize informal commitments, amend without consideration, and correct mistakes.

(9) Contracts for the purchase of air transport service.

(10) Open and call contracts.

(11) Procurements from the surplus market where the vendor has authority to dispose of the merchandise.

(12) Construction contracts.

(13) Utilities contracts.

(14) Aircraft fuels and lubricants.

(15) Civil Reserve Air Fleet (CRAF) contracts.

SUBPART F—PRODUCTION PROCEDURAL GUIDE FOR FCR'S

§ 1052.602 *Monitoring FCR's*—(a) *Plant survey arrangements.* (1) When an FCR is to be accomplished by a team visit to a manufacturer's plant, the mon-

itor will normally make the necessary arrangements. He will inform the manufacturer of the purpose of the visit to have the proper company personnel in attendance at the time of the meeting.

(2) Any visit arrangements with member plants or subsidiaries or any initial contacts with other military services in conjunction with FCR plant visits will be made by the monitor.

(3) When an FCR plant survey is to be made by an individual (usually a production specialist) or separately by specialized personnel, the visit arrangements may be made by the individuals concerned. It is desired, however, to coordinate FCR plant visit arrangements among the participating offices and reduce the number of individual contacts to a minimum consistent with the work to be done.

(b) *Assembly and review or report data and recommendations.* (1) The monitor will receive the completed FCR recommendations of the individual offices and will:

(i) Examine the data for completeness and technical sufficiency in support of the recommendations.

(ii) Resolve questions arising from technical details with the offices submitting the reports.

(2) When all data has been received and reviewed, it will be assembled in case files for distribution to Facility Advisory Board (FAB) members. This will enable board members to review the material and weigh each recommendation with respect to the product or services and capabilities of the contractor involved.

§ 1052.603 *Production survey.*

§ 1052.603-1 *Presurvey analysis.* The production specialist assigned to the FCR is responsible for a thorough analysis of requirements, the collection of available production data, and the plan for accomplishing the production survey part of the FCR. The presurvey analysis is of a research and preparatory nature and is used to assemble data and to guide accomplishment of the physical survey. All available information in the APD or AFPRO concerning the proposed contractor's background and operations will be reviewed by the production specialist. Considerable time at the contractor's facility will be saved by the thoroughness of the "in office" investigation.

PART 1053—CONTRACTS; GENERAL

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1053.1802 Contracts for care of remains of deceased Government personnel.

AUTHORITY: §§ 1053.101 to 1053.1802 issued under sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U. S. C. 2301-2314.

SUBPART A—MISCELLANEOUS REQUIREMENTS

§ 1053.101 *Maintenance of the mobilization base.*

§ 1053.101-2 *Policy.* The policy is to establish and maintain a production structure capable of orderly and rapid acceleration to mobilization production rates of AF equipment. This will be accomplished by:

(a) Integration of current procurement programs with planned mobilization sources.

(b) Retention of qualified production sources including critical subcontractors.

(c) Planned orderly retention of industrial facilities becoming idle due to completion and/or phase out of current procurement contracts.

§ 1053.101-3 *General.* (a) Buying divisions will integrate current procurement with the planned industrial mobilization producers to the greatest possible extent with the objective of supporting the mobilization base within the authorities and funds available.

(b) Data assembled on essential mobilization supplies by the Industrial Resources Division, Directorate of Procurement and Production, Hq AMC, will be used in planning current procurement. The policy of using contractors and facilities essential to the mobilization base is considered to be in the best interest of the Government. Suppliers that are deemed to be part of the mobilization base normally will be invited to participate in appropriate current procurement.

(c) In accomplishing paragraphs (a) and (b) of this section every effort will be made, as capacity of planned producers becomes idle through reduction of existing programs, to utilize them by such means as subcontractors or for maintenance or modification of the same or related end items where practicable.

(d) Upon expiration of current procurement contracts in a facility, action will be taken to provide for the storage of Government-owned facilities in one of the following manners, in the order of preference listed:

(1) Negotiate for the retention of machinery and equipment in place, preserved and maintained in a state of constant readiness.

(2) Remove idle machinery and equipment, store in minimum area on-site or adjacent to point of last use, preserve, and maintain.

(3) Remove idle machinery and equipment to central Government warehouses earmarked for a specific contractor, preserve and maintain.

(e) Provide for periodic examination of industrial equipment and other facility requirements in line with changing mobilization production requirements and make necessary adjustments in the quantitative and qualitative industrial equipment to be retained.

(f) When procurement of any item is to be made by formal advertising, the contract may be placed without regard to schedules developed under industrial mobilization planning. However, inclusion of planned firms in bidders' list is mandatory for planned items.

(g) When any contract, regardless of duration, is placed in a facility for which production planning has been initiated, the Armed Services Procurement Planning Officer (ASPPO) will be informed and will, in turn, keep all affected claimant agencies informed so that they may take, or in the event of an M-day be prepared to take, appropriate action. He will also notify them when, in his opinion, current procurement is of such nature or volume as to require a revision of mobilization production schedules.

(h) For planned items, a production allocation will be requested or a revision to an existing allocation will be initiated as appropriate, in the following circumstances:

(1) When contracts are placed with facilities not operated by a planned producer.

(2) When contracts are placed with facilities previously scheduled for other items.

(3) Where contracts are placed with a planned producer but the rate of production substantially exceeds the planned rate of production.

(i) New negotiated procurements of planned items will not be placed until a review of the industrial structure has been made and a plan for conformance to the objectives of this chapter have been established.

(j) At the time procurements are negotiated, prime contractors will be encouraged to employ broad subcontract structures, including the utilization of small business concerns, to the greatest practicable extent, consistent with the efficient performance of the contract. Further, prime contractors will be discouraged from entering the field of production of GFAE and CFE type of items, which in themselves are foreign to the character of production normally accomplished in the prime contractor's plant.

(k) Actions taken pursuant to maintenance of the mobilization base according to the policies and procedures set forth in this subpart will be reported.

§ 1053.101–4 *Definitions.* (a) "Planned item:" An item meeting the criteria of DOD Directive 4005.6, January 26, 1954 as amended December 16, 1954, and listed in the current publication of the DOD Preferential Planning List of End Items published by Office of Secretary of Defense (Supply and Logistics) and/or the Air Force Departmental List of Items published by Hq AMC.

(b) "Planned producer:" A company or firm listed in the latest issue of the "Register of Planned Mobilization Producers." The Register of Planned Mobilization Producers (formerly the Alphabetical Register of Planned Wartime Material Suppliers) is published periodically by the Assistant Secretary of Defense (Supply and Logistics). Any company or firm listed is in the planned producer category.

(c) "Tentative mobilization production schedule:" DD Form 406, "Tentative Schedule of Production and Request for Allocation," or other document setting forth a tentative mobilization delivery schedule for a manufacturer beginning with M-Day and continuing for 3 years thereafter.

(d) "Allocation:" Tentative assignment of manufacturing capacity to a military department for utilization in the event of mobilization.

(e) "Subcontractor:" A subcontractor, for purposes of this section, is a producer making parts and/or assemblies to the prime contractor's drawings and bearing the prime part numbers, the production of which entails sufficient manufacturing difficulty or application of extensive direct man-hours which, in the prime contractor's judgment, may be limiting to continuity and/or expansibility of production.

(f) "Department of Defense Preferential Planning List:" A list of end items for which mobilization production planning with industry under the Production Allocation Program is deemed to be most urgently needed.

(g) "Air Force Departmental List:" A list used internally by the Air Force which identifies known critical GFAE and CFE components of those end items listed in the DOD preferential Planning List and includes ground support and personnel equipment.

(h) "MCP Form 190:" Authority for initiation of procurement.

(i) "Geographic dispersal:" Adequate geographic dispersal is defined as the location of a facility:

(1) 10 miles or more from a densely populated area of 120,000 or more.

(2) 10 miles or more from a highly industrialized area.

(3) 10 miles or more from a major military installation.

(j) "Mobilization base:" Is that minimum industrial structure which is necessary to meet phased requirements for a period not to exceed that required to bring new or converted private facilities into production after M–Day.

(k) "Industrial facilities:" Property, other than material and special tooling, of use for the performance of a contract or subcontract for supplies or services. It includes, but is not limited to, real property and rights therein, including buildings, structures and improvements, and machinery, equipment, furniture, vehicles, and machine tools and other production equipment.

(l) "Standby reserve:" Is that portion of capital equipment surplus to current production requirements which has been identified as being necessary to support the minimum base.

§ 1053.101–5 *Criteria.* (a) The Air Force will select, for its mobilization base, those facilities which produce or are capable of producing critically important weapon systems, components thereof, and/or supporting equipment which meet one or more of the following criteria:

(1) Items requiring a long lead time or long manufacturing cycle.

(2) Items not currently in production or which are required in quantities far in excess of peacetime production.

(3) Items requiring the conversion of an industry or number of plants with an industry.

(4) Items requiring materials or manufacturing processes essentially different from those in current use.

(5) Items for which industry does not have production experience.

(b) Each proposed procurement of planned items will be reviewed by MCPB or appropriate AMA industrial planning section, at supervisory level, to assure consideration of the following factors:

(1) Maintaining multiple sources of supply.

(2) Geographic dispersal.

(3) Avoidance of undue concentration of contracts in a few leading suppliers.

(4) Multiple awards.

(5) Preservation of essential skilled labor forces.

(6) Utilization of existing open industrial capacity.

(7) Preservation of essential management organization and "know-how."

(8) Maximum subcontracting.

(9) Any other factors relevant to maintaining a sound mobilization base, including the utilization of small business concerns to the maximum extent practicable.

In this connection comparative price experience will be used to negotiate the best possible price for the Government. The authority for approving price differentials to attain the objectives of the policies stated in this subpart is delegated to the Director and Deputy Director of Procurement and Production, Hq AMC, and to the Deputy Director/Procurement, Hq AMC.

§ 1053.101–6 *Responsibilities and procedures.* (a) Buying Divisions will:

(1) Solicit quotations from all appropriate planned producers of a planned item when procurement of that item is to be by negotiation. The quotations will be evaluated on the basis of normal business considerations, giving proper weight to such factors as price, quality, delivery, etc., as prescribed in Chapter I, of this title. The extent to which production allocation planning has progressed and the investment by the Government and the firm in such planning will be factors for consideration.

(2) Issue request for proposals which will contain the following provisions:

Subcontracting structure. The materiel being procured is a planned item under the Mobilization Base Policy, which policy is designed to maintain a proper industrial base in the aeronautical production industry in order to provide for rapid expansion in the event of mobilization. It is the desire of the Department of the Air Force that subcontracting, including the maximum utilization of small business, be accomplished to the fullest extent consistent with the efficient performance of the contract, therefore, it is requested that the proposal include the following:

(i) A proposed list of the major items to be subcontracted and the names and locations of potential subcontractors for each such item. For this purpose, a subcontractor is a producer making part and/or assemblies to the prime contractor's drawings and bearing the prime part numbers, the production of which entails sufficient

manufacturing difficulty or application of extensive direct man-hours which, in the prime contractor's judgment, may be limiting to continuity and/or expansibility or production.

(ii) Percentage of subcontracting by effort (direct man-hour expenditure) under the foregoing definition and the percentage of all other anticipated subcontracting not covered by the foregoing definition but excluding vendor and supplier items.

NOTE. Buyers will not consider proposals (quotations) complete until the above required information has been obtained.

(b) The buyer will include the following clause in the contract.

MAINTENANCE OF MOBILIZATION BASE POLICY

The material being procured under the Contract is a planned item under the Mobilization Base Policy, which policy is designed to maintain a proper industrial base in order to provide for rapid expansion in the event of mobilization. It is the desire of the Department of the Air Force that the subcontract structure established during the negotiation of this contract be maintained to the greatest practical extent. The contractor shall inform the administrative contracting officer of any proposed deviation therefrom. In the event the contractor deems it advisable to withdraw work from an established subcontractor during the production program, advance notification shall be given to the administrative contracting officer, together with complete information as to the basis for the withdrawal.

§ 1053.102 *Delivery schedules in supply contracts.*

§ 1053.102–2 *Policy.* Delivery schedules in supply contracts will be considered in the following categories only:

(a) "Desired" delivery schedule will be specified when delay in delivery is unlikely to cause inconvenience to the Government or to impede progress on other contracts.

(b) "Required" delivery schedule will be specified when delay in delivery will cause inconvenience to the Government, impede progress on other contracts, or when necessary to receive delivery within a short period of time makes delivery a significant consideration in the award of the contract.

§ 1053.102–3 *Procedure.* Buyers will determine the proper delivery schedule (with the assistance of the initiator of the purchase request).

(a) When delivery is specified as "Desired," invitations for bids (IFB's) will contain the following:

DELIVERY

The Government desires delivery of the articles listed herein as follows ------ days after receipt of written notice of award. If bidder is unable to meet the above delivery schedule, he may, without prejudice to the valuation of his bid, set forth below the delivery schedule he is prepared to meet provided, in no event shall the bidder's delivery schedule extend beyond ------ days after receipt of written notice of award, as bid proposing delivery after that period will be considered nonresponsive to the invitation and will be rejected. If bidder does not state a different delivery schedule, the Government's desired delivery schedule stated above will apply.

Bidder's Proposed Delivery Schedule: ------ days after receipt of a written notice of award.

(b) When delivery is specified as "Desired," requests for proposals (RFP's) will contain the following:

DELIVERY

The Government desires delivery of the articles listed herein as follows ------ days after receipt by the contractor either of written notice of award or of a fully executed and binding contract. If the offeror is unable to meet the above delivery schedule, it may, without prejudice to the evaluation of its offer, set forth below the delivery schedule it is prepared to meet, however, should the offeror's delivery schedule exceed ------ days after either receipt of written notice of award or of a fully executed and binding contract, the offer may be considered nonresponsive and the offer may be rejected. If the offeror does not state a different delivery schdeule, the Government's desired delivery schedule will apply.

Offeror's Proposed Delivery Schedule: ------ days after receipt either of written notice of award or of a fully executed and binding contract.

(c) When delivery is specified as "Required," IFB's will contain the following:

DELIVERY

Delivery of the articles listed herein is *required* on or before expiration of the time specified immediately below:

------ days after receipt of written notice of award.

Bidders are cautioned to consider carefully the Government's required delivery, as bids specifying delivery after the time specified above will be rejected.

Bidders Proposed Delivery Schedule: ------ days after receipt of written notice of award.

If the bidder does not state a different delivery schedule, the Government's required delivery schedule, stated above, will apply.

(d) When delivery is specified as "Required," RFP's will contain the following:

DELIVERY

Delivery of the articles listed herein is *required* on or before the date specified immediately below: ------ days after receipt either of written notice of award or of a fully executed and binding contract.

Offerors are cautioned to consider the Government's required delivery carefully as offers specifying delivery in excess of that time will probably be rejected. If the offeror does not state a different delivery schedule, the Government's required delivery schedule stated above will apply.

Offeror's Proposed Delivery Schedule: ---- days after receipt either of written notice of award or of a fully executed and binding contract.

(e) If the buyers desire to specify a rate of delivery as well as a date for completion of delivery, they may, at their option, specify the delivery schedule in the Delivery provision as follows: "at the rate of ------ per month to be completed ------ days after receipt of [*insert "written notice of award" or "written notice of award or a fully executed and binding contract", as appropriate*]."

(f) In contracts covering MIPR requirements, buyers will include each claimant's portion of like items as a separate contract line item and include a separate delivery schedule, by month, for each claimant. The delivery schedule will normally be that set forth in the MIPR or as agreed to between the buying activity and the initiator of the MIPR. (Existing contracts will not be amended for this purpose.) Example of the delivery schedule contemplated by this subparagraph follows:

Item	Department	Total quantity	1955 July	August	September	October	November
1A	USAF	850	200	200	150	150	150
1B	Navy	500	100	100	100	100	100
1C	Army	300	100	50	50	50	50

(g) When the "desired" delivery provision is inserted in an IFB or RFP, the resulting written notice of award or fully executed and binding contract will be forwarded to the contractor.

(h) When the "required" delivery provision is inserted in an IFB or RFP, the resulting written notice of award or fully executed and binding contract will be forwarded to the contractor by certified mail, return receipt requested.

§ 1053.102–6 *Amendment of active contract delivery schedules.* (a) Whenever changes of spare parts lists necessitate new procurements, a new delivery schedule will be established and will include any contractual changes when concurrent delivery is not to be made according to applicable spare parts provisioning documents.

(b) Contracts having delivery schedules which cannot be met as a result of causes outlined in the Default clauses (§ 7.103–11 (b) of this title) may be amended. The document amending the contract in this case will state the specific reason(s) for which the delivery schedule cannot be met and will also state that the contractor cannot perform his obligation within the originally stated time.

(c) Contracts having unrealistic delivery schedules may be amended after a determination has been made that a consideration exists for a contract change. Such considerations may not necessarily be monetary in nature but may consist of other benefits to the Government. An amendment may be accomplished without consideration in situations covered by Public Law 921 (55 Stat. 839; 50 App. U. S. C. 611).

(d) Following are instances (not limiting factors) for which the administrative contracting officer will recommend extensions of delivery schedules for delinquent contracts which the procuring contracting officer (buyer) may effect without approval from higher headquarters.

(1) *Amendments supported by legal consideration.* In these cases it must be determined whether legal consideration exists for an amendment. The determination will be made by the appropriate staff judge advocate on the basis of facts

submitted. Included in the cases that may be eligible for amendments under this subparagraph are:

(i) Where the contractor offers a substantial price reduction in consideration for, and the Air Force's interest will not be prejudiced by, an extension of the delivery schedule.

(ii) Where extension of the delivery schedule is dictated by an authenticated revised requirement of the Air Force.

(2) *Specific contract provisions; delinquency in performance due to causes beyond the control and without the fault or negligence of the contractor.* Such causes include but are not restricted to acts of God or of the public enemy, acts of the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and defaults of subcontractors due to any such causes unless the procuring contracting officer, acting upon the recommendations of the administrative contracting officer, determines that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the contractor to meet the required delivery schedule. When a contractor alleges an excusable delay, the administrative contracting officer must investigate the allegations and make a finding of fact as to the conditions found to exist. He will send the procuring contracting officer a copy of his findings and his recommendations regarding a revised delivery schedule.

§ 1053.103 *Data price to be included in contracts.*

§ 1053.103–2 *General.* (a) Whenever technical data and/or engineering data specifically prepared for the requiring agency are required, the buyer will request the bidder to furnish prices for such data. When the data is priced by the bidder, it will be so indicated on the contract. If separate prices cannot be obtained due to the contractor's accounting system or some other cogent reason, the data item(s) will be listed separately in the contract and a notation made as follows: "Data price included in the cost of the end item(s)." Under no circumstances will the statement "No charge for data" be used.

(b) Existing contracts which specify delivery of data in which the price is included in the end item(s) and existing or future contracts which stipulate "Data price included in the cost of end item(s)" will not be deemed to be fulfilled until delivery and acceptance of the data.

(c) Under contracts which stipulate "Data price included in the cost of end item(s)," the finance office withholds final payment until official notification has been received that data has been delivered and accepted.

Item No.	Description	Quantity	Unit	Unit price	Amount
	Blueline prints.				
	Total 250A, Par 3a, requirements	10	sets		
	Table 250A, Par 3b, requirements	(1)	(1)		

NOTE: The bidder is required to insert price(s) as requested for the applicable data items. If no price is inserted as requested, the data price will be considered to be included in the cost of the end item(s) and the contract end item will reflect such inclusion.

[1] The number of sets of direct reading paper Vandyke negatives and blueline prints will be determined from the shipping instructions attached to the PR and MIPR and will be inserted here. (*Note:* Shipping instructions are revised monthly by the Technical and Procurement Data Branch, Hq AMC, and the number of sets of data required will vary according to these shipping instructions.)

(b) Procuring contracting officers will reflect the data prices, where received, in each contract separate from other components of the procurement as prescribed in § 1053.103–2.

(c) Tables 250 and 250A provide for shipping instructions to be attached to the PR for the data required under Table 250 and paragraph 3b, Table 250A. Shipping instructions are not attached to the PR for data required under paragraph 3a, Table 250A since it is impossible to forecast future requirements prior to issuance of the contract. Therefore, shipping instructions for data required under paragraph 3a, Table 250A will be furnished by the Technical and Procurement Data Branch (MCSIF), Hq AMC, according to paragraph 5b (2), Table 250A.

(d) Changes, including deletions, in Tables 250 and 250A, when attached by Hq AMC, AMA's, or depots will be made only by or with the approval of MCSIF. Such changes will be typed or written in ink and will be initialed by the individual making the changes. All deviations or changes will be confirmed by appropriate MCSIF correspondence.

§ 1053.103–4 *Descriptive identification data to be furnished by Government suppliers.* (a) Whenever the purchase request or the military interdepartmental purchase request requires descriptive identification data to be furnished by Government suppliers according to specifications MIL–D–26715 (USAF) the following procedures will be followed:

(1) *End items.* In addition to the contract item for the end item, a separate contract item for descriptive identification data will be established substantially as follows: "Item ------ descriptive identification data for item(s) ------[1] above in accordance with MIL–D–26715 at a total price of ------."

(2) *Spare parts.* The contractor will be required also to furnish descriptive identification data for spare parts according to MIL–D–26715. Since the exact quantity and price of such data cannot be determined prior to the selection of the spare parts, the price thereof will be included in the price of the spare parts to be furnished under the contract and will be negotiated at the time and in the manner provided for the pricing of the respective parts.

(b) See § 1007.4041 of this chapter for applicable contract clause.

(c) The assignment of appropriate stock numbers is a prerequisite to permit shipment of property from Government suppliers into AF stock.

§ 1053.104 *Consideration of transportation data in placement of contracts.*

§ 1053.104–2 *Policy.* In connection with bids or proposals submitted on an f. o. b. carrier's equipment basis, transportation costs between the source of supply and the designated destination point or points will be considered in determining the lowest estimated cost to the Government.

§ 1053.104–3 *Procedures*—(a) *AMC Form 354, "transportation data (PR or MIPR)."* Each purchase request will have attached thereto AMC Form 354 which will set forth transportation data to be considered by procurement personnel prior to issuance of an IFB or RFP. The data set forth on the form will be carefully analyzed and, based thereon, the determination made as to which of the following will be included in the schedule of the IFB or RFP.

(1) Whenever the supplies are to be delivered f. o. b. specified destinations, the following will appear in the schedule:

F. o. b. point: Supplies shall be shipped direct by the Contractor to the specified destinations on commercial bill of lading at the expense of the Contractor.

(2) Whenever the supplies are to be delivered f. o. b. the plant or plants at which such supplies are to be finally inspected and accepted, or if the facilities for shipment by carrier's equipment are not available at the contractor's plant, f. o. b. the point or points thereto that carrier service is available, the following will appear in the schedule:

F. o. b. point: Supplies shall be delivered to the Government f. o. b. carrier's equipment at the plant or plants at which such supplies are to be finally inspected and accepted, or if the facilities for shipment by carrier's equipment are not available at the Contractor's plant, f. o. b. the point or points nearest thereto that carrier service is available. Bidder to specify which of the following is applicable and designate the city and state of the f. o. b. point:

(i) f. o. b. carrier's equipment at the plant or plants at ---------- ------- (City, State), at which such supplies are to be finally inspected and accepted.

(ii) f. o .b. ---------- ---------- (City, State), which is the point or points nearest the plant or plants at which final inspection and acceptance are to be accomplished that carrier service is available.

(3) Whenever the supplies are to be delivered f. o. b. other than specified in subparagraph (2) (i) and (ii) of this paragraph, a special provision patterned along those specified above will be written, using the transportation data furnished.

[1] Insert contract item number for the appropriate end item.

(4) Whenever it is desired to obtain prices f. o. b. destination and f. o. b. carrier's equipment, the IFB or RFP will be set up as follows and include the two f. o. b. provisions as indicated in bid "A" and bid "B" below:

ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number of Units)	UNIT	UNIT PRICE	AMOUNT
1.	Gadget, etc.				
	Bid "A", F.O.B. DESTINATION	500	ea.		
	Bid "B", F.O.B. CARRIER'S EQUIPMENT	500	ea.		

F.O.B. Point:

Bid "A": Bids are requested under bid "A" of this Invitation or Request for Proposal based on delivery f.o.b. destination to specified destination(s) all transportation charges paid by the Contractor.

Bid "B": Bids are requested under bid "B" of this Invitation or Request for Proposal based on delivery:

(i) f.o.b. carrier's equipment at the plant or plants at _____ (city), _____ (state), at which such supplies are to be finally inspected and accepted, or

(ii) f.o.b. the point or points, nearest to the plant or plants at which final inspection and acceptance are to be accomplished that carrier service is available, located at _____ (city), _____ (state).

(b) *AFPI Form 28A, "transportation data (IFB or RFP)."* To enable the evaluation of competitive bids and to assist in the routing of shipments, each IFB or RFP which provides for delivery other than f. o. b. specified destinations will insert therein AFPI Form 28A and the following clause which may be reproduced locally.

WEIGHT OF SHIPMENTS

(1) Freight rates used in evaluating bids or quotations will be based on the shipping weight specified by the bidder. If a shipping weight is not specified by the bidder, the Government will evaluate the bid on the basis of carload or truckload transportation rates (unless total quantity or delivery schedule does not permit). If an f. o. b. carrier's equipment contract results, the contractor will be required to ship in quantities at least as large as those upon which evaluation was made. If excess cost to the Government results from Contractor's failure to do so, the Contracting Officer will issue a supplemental agreement evidencing a corresponding reduction in the contract price (unless specific delivery schedules called for lesser quantities than the minimum shipping weight, or final shipment on a specific order is for a lesser quantity than the minimum shipping weight, or non-compliance with the minimum shipping weight is due to an act or order of the Contracting Officer).

(2) In cases where the weight specified by the bidder is less than the minimum carload or truckload quantity, the Contractor will exert every reasonable effort to ship in carload or truckload quantities, subject to the provisions of delivery schedules.

(3) The Contractor, in any event, will consolidate all less-than-carload or -truckload shipments on the same day to a single consignee. The Contractor may be held responsible for any excess costs incurred if he fails to consolidate such shipments unless due to an act or order of the Contracting Officer.

§ 1053.105 *Limitation on purchase and maintenance of motor vehicles or aircraft.* Section 16 of the act approved 2 August 1946 (60 Stat. 810; 5 U. S. C. 78) includes definite restrictions on the purchase of passenger motor vehicles (exclusive of busses, ambulances, and station wagons) or aircraft, and their maintenance, operation, and repair.

SUBPART B—NUMBERING OF CONTRACTS

§ 1053.201 *Numbering of contracts.*

§ 1053.201–1 *General.* Contracts are numbered with approved letter symbols and serial numbers primarily for use of the General Accounting Office for identification and filing. Documents coming within the purview of this subpart will include purchase contracts, letter orders, letters of intent, sales contracts, leases, easements, proposal and acceptance documents, or other documents evidencing in whole or in part an agreement between the parties which involves the payment of appropriated funds or collection of funds for credit to the Treasurer of the United States and hereinafter referred to as contracts.

§ 1053.201–3 *When not required.* Contracts not required to be numbered include:

(a) Contracts where it is determined at the time of making that the amount involved is less than $20,000 and only one payment or collection will be made.

(b) Delivery orders evidencing interdepartmental purchases and purchases made against call or requirement type of contracts.

§ 1053.201–4 *System of numbering—*(a) *Supplemental agreements and change orders.* Supplemental agreements (except Termination Supplemental Agreements) and change orders will bear the same identification as the contract which is modified or amended thereby. In addition, supplemental agreements and change orders will be numbered in the order in which the modifications or amendments to the contract are issued. One continuous series of numbers will be used for each contract, even though it is modified or amended by both supplemental agreements and change orders.

(b) *Subcontracts.* Contracting officers will urge contractors holding prime contracts with the Air Force to include in their subcontracts a reference to the number of the prime contracts involved. Prime contractors will also be asked to urge their subcontractors to include a reference to the number of the applicable prime contract in subcontracts and so on down the line. This practice will materially assist in accounting and auditing and particularly in the settlement of terminated contracts of all tiers.

§ 1053.202 *Accounting for contract and contract modification numbers and control of distribution of contractual documents by the use of these numbers.*

§ 1053.202–3 *Policy.* Personnel will be guided by the following policies:

(a) *Letter contracts.* The same contract number assigned to a letter contract will also be assigned to the superseding definitive contract. No other contract number will be assigned to the superseding definitive contract, except with the written approval of the chief of the buying section.

(b) *Notices of award or TWX's of award.* The same contract number assigned to or cited in preliminary contractual instruments (Notices of Award or TWX's of Award) will also be assigned to the superseding definitive contract.

(c) *Contract modifications.* Contract modifications will not be distributed prior to distribution of the prime contract to which they apply.

SUBPART D—ADMINISTRATIVE REQUIREMENTS

§ 1053.404 *Assignment of Office of Administration and designation of finance officer.*

§ 1053.404–2 *Definitions.* For the purpose of this section the following definitions will apply:

(a) "Office of Administration:" The AF activity having overall responsibility for the administration of a contract as therein stipulated.

(b) "Home office:" The contractor's office which has the authority to negotiate, submit bids or proposals, execute and administer AF contracts, and perform the purchasing, billing, subcontracting, expending, and recording under AF contracts.

(c) "Secondary administration:" The performance of certain administrative responsibilities which have been delegated from the office of administration to another AF office of administration.

(d) "Finance officer:" The individual having the overall responsibility for paying or receiving all funds and moneys passing between the Government and the contractor according to the terms of the contract.

§ 1053.404–3 *Responsibility.* The procuring contracting officer will determine, according to procedures herein, the finance officer and the office of administration for a contract. The designated

office of administration will assign secondary administrative responsibility where necessary.

§ 1053.404–5 *Geographical areas of AMA's and APD's.*

(a) *AMA's.*

(1) *Middletown (MAAMA).* The States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Maryland, Delaware, Pennsylvania, and District of Columbia.

(2) *Mobile (MOAMA).* The States of Indiana, Ohio, West Virginia, Kentucky, Tennessee, Mississippi, Alabama, Michigan (less the upper peninsula); that part of Florida west of the Apalachicola River; that part of Louisiana east of the Mississippi River; the Dominion of Canada; and the Caribbean area.

(3) *Ogden (OOAMA).* The States of Washington, Idaho, Utah, Montana, Wyoming, Colorado, North Dakota, and South Dakota, and Alaska.

(4) *Oklahoma City (OCAMA).* The States of Oklahoma, Kansas, Nebraska, Arkansas, Missouri, Iowa, Minnesota, Illinois, Wisconsin, and the upper peninsula of Michigan.

(5) *Sacramento (SMAMA).* The States of Oregon, Nevada (less Clark County), all of California north of the northern boundaries of San Luis Obispo, Kern, and San Bernardino Counties, and Hawaii.

(6) *San Antonio (SAAMA).* The States of New Mexico, Texas, and that part of Louisiana west of the Mississippi River.

(7) *San Bernardino (SBAMA).* The States of Arizona, Clark County, Nevada; and California south of the northern boundaries of San Luis Obispo, Kern, and San Bernardino Counties.

(8) *Warner Robins (WRAMA).* The States of Virginia, North Carolina, South Carolina, Georgia, and that part of Florida east of the Apalachicola River.

(b) *APD's.*

(1) *Arizona Air Procurement District (San Bernardino AMA).* Arizona.

(2) *Atlanta Air Procurement District (Warner Robins AMA).* Virginia, North Carolina, South Carolina, Georgia, and that part of Florida east of the Apalachicola River.

(3) *Boston Air Procurement District (Middletown AMA).* Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut, exclusive of Fairfield County, Connecticut.

(4) *Chicago Air Procurement District (Oklahoma City AMA).* Iowa, and that portion of Illinois above the northern boundaries of the following counties: Adams, Brown, Cass, Douglas, Edgar, Macon, Menard, Moultrie, and Sangamon.

(5) *Cleveland Air Procurement District (Mobile AMA).* Marshall, Ohio, Brooke, and Hancock Counties in West Virginia; and beginning at western boundary of the Ohio State Line, that portion of Ohio north of highways 30 and 30S and the cities located thereon (excluding the city of Lima, Ohio) to the western boundary of Marion County and that portion of Ohio north of the southern boundaries of the following counties: Marion, Morrow, Knox, Muskingum, Noble, and Monroe.

(6) *Dallas Air Procurement District (San Antonio AMA).* New Mexico, Texas, and that portion of Louisiana west of the Mississippi River.

(7) *Dayton Air Procurement District (Mobile AMA).* Kentucky, Alabama, Tennessee, Mississippi, West Virginia exclusive of Marshall, Ohio, Brooke, Hancock Counties; and beginning at the western boundary of the Ohio State Line, that portion of Ohio south of Highways 30 and 30S exclusive of cities on said highway lines (but including Lima, Ohio to the western boundary of Marion County and that portion of Ohio south of the southern boundaries of the following counties: Marion, Morrow, Knox, Muskingum, Noble, and Monroe, that portion of Louisiana east of the Mississippi River; that portion of Florida west of the Apalachicola River; and the Caribbean area.

(8) *Detroit Air Procurement District (Mobile AMA).* Lower peninsula of Michigan and Dominion of Canada.

(9) *Indianapolis Air Procurement District (Mobile AMA).* Indiana.

(10) *Los Angeles Air Procurement District (San Bernardino AMA).* Kern, San Luis Obispo, San Bernardino, Los Angeles, Orange, Riverside, Santa Barbara, Ventura Counties in California, and Clark County, Nevada.

(11) *Milwaukee Air Procurement District (Oklahoma City AMA).* Wisconsin, Minnesota, and the upper peninsula of Michigan.

(12) *Newark Air Procurement District (Middletown AMA).* Richmond County in New York State and following counties in New Jersey: Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren.

(13) *New York Air Procurement District (Middletown AMA).* Fairfield County in Connecticut; and the following counties in New York State: Bronx, Columbia, Dutchess, Greene, Kings, Nassau, New York, Orange, Putnam, Queens, Rockland, Suffolk, Ulster, and Westchester.

(14) *Philadelphia Air Procurement District (Middletown AMA).* Pennsylvania, Delaware, Maryland, District of Columbia, and the following counties in New Jersey: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, and Salem.

(15) *Rochester Air Procurement District (Middletown AMA).* That portion of New York State north and west of, but not including, Ulster, Orange, Greene, and Columbia Counties.

(16) *San Diego Procurement District (San Bernardino AMA).* Imperial and San Diego Counties, California.

(17) *San Francisco Air Procurement District (Sacramento AMA).* Oregon, Nevada less Clark County, all of California north of the northern boundaries of San Luis Obispo, Kern, and San Bernardino Counties, and Hawaii.

(18) *St. Louis Air Procurement District (Oklahoma City AMA).* Missouri, Nebraska, Oklahoma, Kansas, Arkansas, and that portion of Illinois below the northern boundaries of the following counties: Cass, Adams, Brown, Douglas, Edgar, Macon, Menard, Moultrie, and Sangamon.

(19) *Headquarters OOAMA.* Since Ogden Air Materiel Area does not have an APD within its geographical area, the headquarters activity performs the functions assigned to the APD's in the other AMA's.

§ 1053.405 *Certificate to be used by contractors and vendors on invoices or bills.*

§ 1053.405–1 *General.* The Comptroller General has ruled in Decisions A–51607 and A–49009, May 1, 1950, that in the interest of uniformity and to simplify certifications required of contractors and vendors when submitting invoices or bills to the Government for payment, the following certificate on such documents will be sufficient:

I certify that the above bill is correct and just and that payment therefor has not been received.

§ 1053.405–2 *Procedure.* (a) The prescribed certificate will be either printed, stamped, typed, or written on the face or reverse of the page listing the total amount of each vendor's bill of sale, invoice, or other document submitted to the Government for payment. The original only will be signed in ink or indelible pencil by the vendor or his duly authorized representative, and will show his title or official capacity.

(b) The certificate on Government vouchers, or on invoice forms to be attached to such vouchers, will be signed only after delivery or performance by the claimant and will not be signed in blank or at any time before submission of the voucher or invoice. To do so may result in the submission of a false claim against the Government for which the person signing the certificate may be held liable under the law.

§ 1053.406 *Variations in quantities covered by contracts.*

§ 1053.406–3 *Definitions.* For the purpose of this section the following definitions will apply:

(a) "Overrun:" A quantity of supplies, produced by a contractor and tendered to the Government, which exceeds the quantity specified in the contract.

(b) "Underrun:" A quantity of supplies, produced by a contractor and tendered to the Government, which falls short of the quantity specified in the contract.

§ 1053.406–4 *Preparation of contracts.* (a) The Variation in Quantity clause is set forth in § 7.103–4 of this title. The clause is applicable only if and to the extent specified in the contract, and does not in itself authorize overruns or underruns. When it is considered appropriate to allow variations, a separate additional provision listing variation(s) will be inserted in the schedule of the contract.

(b) It will be the responsibility of the procuring contracting officer to determine the permissible percentage of variation, if any, for each item in the contract. Fairness to contractors requires that, in certain cases, overruns and underruns within reasonable limits be made allowable. On the other hand, there are many classes of items to which application of such a provision is obviously improper. Contracts for aircraft, engines, instruments, major accessories, and orders for small test quantities purchased for experimental purposes are examples where provision for variation in the contract schedule would be improper. Examples where the use of a percentage variation might be proper are contracts for standard items or for machine-made products, such as cloth, lumber, bolts, rivets, fuel, chemicals, and metals, where variation is customarily caused by allowances in manufacturing processes, conditions of loading, shipping, or packing.

(c) There should be no standard or usual percentage or variation. Each procurement for which an overrun or underrun is permissible should be based upon the normal commercial practices of the particular industry for particular items, and the permitted percentage should be no larger than is necessary to afford a contractor reasonable protection. In no case will the permissible variation exceed 10 percent of the quantity ordered per article. The permissible quantity variation must have the approval of this unit initiating the procurement.

§ 1053.406–5 *Processing variations permitted by the contract.* Whenever the quantity delivered by a contractor contains an overrun or underrun within the limits and for the causes permitted by the contract, the delivery may be accepted by the appropriate AF personnel usually responsible for accepting deliveries. Action by the procuring contracting officer or the administrative contracting officer is not required. The appropriate accounting component will increase or decrease obligated funds to reflect the price of the quantities delivered and accepted.

§ 1053.406–6 *Processing variations not permitted by the contract*—(a) *Overruns.* If the contractor produces an overrun under a contract which does not provide for any variation in quantity or if the overrun exceeds the percentage permitted by the contract or is caused by conditions other than those specified in the contract clause, the Government is under no obligation to accept the unanticipated excess. The contractor will be notified by the administrative contracting officer that the Government does not consider itself obligated to, and does not desire to accept the extra quantity. The unanticipated excess will then be returned or tendered to the contractor for disposition by the contractor at his expense, including all transportation and handling charges.

(b) *Underruns.* Instances might occur where the Air Force will be called upon to accept: Underruns in excess of the Variation in Quantity clause, and underruns whereby no variation clause is set forth in the contract. In such cases, the contracting officer administering the contract will submit the facts to the cognizant buyer who will advise the contracting officer administering the contract of the decision and action to be taken. Contract requirements cannot be changed by unilateral action except as specifically provided for in the contract. Until the contract requirements are amended to delete the quantities constituting the so-called underrun or until the right of the contractor to deliver has been terminated by statute or under the default or some other provision of the contract, insofar as such quantities are concerned the obligation of the contractor to deliver and the Air Force to accept the quantities called for by the contract is not changed.

§ 1053.407 *Execution of contracts; requirements.*

§ 1503.407–1 *Citation of funds chargeable.* A citation of the funds chargeable will be made on all contracts.

§ 1053.407–2 *Citation of finance officer.* A citation of the finance officer designated to make payment will be made on all contracts.

§ 1053.407–3 *Contracting officer's signature.* The contracting officer will sign on behalf of the United States in the space provided for his signature, and his official title will be added.

§ 1053.407–4 *Contracts with individuals.* A contract with an individual will be signed by the individual in his own name.

§ 1053.407–5 *Contracts with an individual trading as a firm.* Such a contract will be signed by the individual in question. The following example shows the form that such an execution ordinarily will take:

JOHN DOE COMPANY,
By _____
John Doe (Owner),
Contractor.

§ 1053.407–6 *Contracts with partnerships.* (a) The contract may be signed in the name of the partnership by one or more of the partners. Each partner who signs will sign as one of the firm.

(b) A contract with a partnership doing business through a local representative or agent may be executed in the name of the firm by such local representative or agent.

(c) If the contract is executed in the manner specified in paragraph (b) of this section, there will be filed with the contract a properly certified copy of the power of attorney or other writing showing the authority of the representative or agent executing the contract.

§ 1053.407–7 *Contracts with corporations.* (a) A contract with a corporation will have the name of the corporation written in the blank space provided therefor at the end of the contract form, followed by the word "by," after which the officer or person who has been authorized to contract on behalf of the corporation will sign his name, with the designation of his official capacity.

(b) If the contract form being used contains a blank certificate as to the authority of the individual who executed the contract on behalf of the contractor, the completion of this certificate will be obtained, except as provided in paragraphs (c) and (d) of this section. The contracting officer will in all cases endeavor to satisfy himself that the signer has authority to bind the corporation.

(c) If the execution of the certificate mentioned in paragraph (b) of this section is impracticable, and if the contracting officer is able truthfully to do so, he may affix and sign the following statement on the contract:

I hereby certify that to the best of my knowledge and belief, based upon observation and inquiry, _____(Name), who signed this contract for _____ (Contractor) had authority to execute the same and is the individual who signs similar contracts on behalf of this corporation with the public generally.

_____
(Contracting Officer)

(d) In lieu of complying with paragraph (b) or (c) of this section, the contracting officer may obtain satisfactory evidence of the authority of the signer to bind the corporation and file the evidence with the contract. Such evidence will consist of extracts from the records of the corporation showing either:

(1) The election or appointment of the officer executing the contract on behalf of the corporation and the grant of authority to such officer to execute the contract.

(2) If the contract is signed by someone other than an officer of the corporation, the grant of authority to such person to execute the contract.

(e) If the contract form being used does not contain a certificate, no certificate need be executed, nor will the evidence specified in paragraph (d) of this section be required. This will not relieve the contracting officer from assuring himself that the person signing has authority to bind the corporation and, when necessary, establish the basis for his action if a question arises involving such authority.

§ 1053.407–8 *Contracts with joint venturers.* Contracts are sometimes entered into with joint venturers, consisting of a corporation and a partnership, or a partnership and an individual, etc. In such cases the contract will be signed by each participant in the joint venture. When a corporation is participating, a certificate should be obtained from the custodian of the records stating that the corporation is authorized to participate in the joint venture.

§ 1053.407–9 *Certification on food contracts.* Contracts for foods of animal origin that are entered into direct with processing establishments for dairy products, meats, etc., will contain the following certificates, unless such establishment has been approved as a source of supply.

CERTIFICATION ON FOOD CONTRACTS

I certify that the contractor's establishment supplying the items being procured by this contract has been inspected and found to be an approved source of supply; that I have reviewed the analysis of samples of all supplies the contractor proposes to furnish under this contract and find them in accordance with the specifications attached hereto or referenced herein.

_____
Title: Surgeon

I certify that I have inspected and investigated the contractor's establishment, facilities, business reputation and other qualifications and consider him to be properly qualified, and his facilities adequate to carry out this contract to a satisfactory conclusion; that the surgeon has certified that the contractor's establishment has been inspected and found to be an approved source of supply for the items being procured by this contract.

_____
Title: Contracting Officer

SUBPART G—CONTRACTOR ACKNOWLEDGMENT OF RECEIPT OF CONTRACTUAL DOCUMENTS

§ 1053.702 *Policy.* All written notices of award, fully executed and binding contracts, modifications, administrative notices, exhibits, or other contractual documents forwarded to AF contractors will be forwarded by certified mail, return receipt requested, or will be accompanied by AFPI Form 29, "Contractual Document Transmittal—Receipt Card," as appropriate. This procedure will establish a specific date for the delivery of supplies or services.

SUBPART K—USE OF NEW CONTRACTS FOR FOLLOW-ON PROCUREMENTS

§ 1053.1102 *General.* When procuring additional or similar items to those already on contract, it has been the practice to use supplemental agreements to the existing contract. This is economical when funds of the same fiscal year are being used. However, the practice

of adding funds of a later fiscal year to a contract presents problems of accounting since it is impossible to close out the previous year's account as long as the contract itself is active.

§ 1053.1103 *Policy.* All follow-on procurements (adding additional articles in the prosecution of subsequent fiscal year programs) will be accomplished on a separate and distinct contractual instrument as opposed to a supplement to an existing contract.

§ 1053.1104 *Exceptions.* Exceptions to this policy are as follows:

(a) Contractual coverage for preproduction expenses, such as engineering changes, facility expansion, and tools relating to initial release of production quantities.

(b) Follow-on procurements for pilotless aircraft when requirement is released on a partial basis, such as purchase of materials, fabrication of materials, and assembly.

(c) Supplemental agreements for additional quantities within the same fiscal year.

(d) CPFF contracts: In CPFF contracts for research and development, exception is permissible only when the period of performance is not in excess of 3 years from the date of the initial contract.

(e) Open and call contracts.

(f) Research and development contracts where the period of performance will not exceed 3 years from the date of the initial contract.

(g) Instances where the Government exercises its rights under the option clause of a contract.

SUBPART L—BILLS OF MATERIALS

§ 1053.1202 *Definitions*—(a) *"Bill of Materials."* A Bill of Materials is a listing of the materials and parts required to produce a given product, assembly, subassembly, or part. There are four standard Bills of Materials approved by the Department of Defense:

(1) A Detail Bill of Materials, which lists all materials required for each individual part of the end item actually fabricated by the prime contractor or his subcontractors. Name of material, form, size, and description, specification and quantity of each material are furnished (separate listings being made for materials for each part). Lead time is given unless excluded by the procuring agency. A listing of all subcontracted, purchased, and Government-furnished parts is provided on DD Form 347. The procuring agency may specify that certain standard parts or minor subassemblies need not be listed.

(2) A Modified Bill of Materials, which lists all materials required for each significant part and for consolidations of insignificant parts of an end item actually fabricated by the prime contractor or his subcontractors. It provides: name of part or consolidations, materials, form, size, description, specification, lead time, quantities, and a listing of significant subcontracted, purchased, and Government-furnished parts.

(3) An Expanded Summary Bill of Materials, which lists the total quantities of each material required for parts actually fabricated by the prime contractor or his subcontractors. In addition, this Bill may list all the purchased, subcontracted, or Government-furnished parts. Name of material, form, size, and description, quantity, specification, and lead time for each material are furnished but will not be broken down by parts. When deemed necessary by the procuring agency, materials for parts may be reported individually.

(4) An Abbreviated Summary Bill of Materials, which summarizes the total gross quantities of each material (exclusive of purchased parts) required for fabrication by the prime contractor and his subcontractors. Only name, form, lead time, and quantity of material are normally required. Other materials data are given only if specifically requested by the procuring agency. The procuring agency may specify the materials to be reported or may limit reporting to controlled materials only. Materials are not broken down by parts, and a parts listing is not provided.

(b) *"Lead time."* Lead time is the elapsed time in months from the required date of shipment of the material from the supplier to the date of completion (not delivery) of the production item. An "average material lead time" or "in process time" is called for unless more complete information is needed, in which case the individual material lead time may be specified. With respect to subcontracted or purchased parts and Government-furnished property, lead time is the elapsed time from the required date of shipment of the listed part from supplier to the date of completion of the procurement item.

§ 1053.1203 *Policy.* (a) A Bill of Materials, with respect to all or part of the supplies to be furnished pursuant to a contract, will be required only if Hq AMC, determines that such Bill of Materials is necessary to develop materials or components requirements for production and maintenance programs or to develop:

(1) Industrial materials data for determining the raw and semifabricated materials required to support the industrial materials demands of the aircraft and allied industries in producing current or mobilization aircraft programs. These determinations are used as a basis for allocating "military set-aside" of materials to assure availability of these materials to support production of military items.

(2) A guide for screening and evaluating allocations requests and justifying materials allocations to contractors.

(3) Industry and company productive patterns for determining the production feasibility of specific production programs.

(4) Specific materials and component requirements reports to be used as a basis for expanding industrial capacity on an industry or individual company basis, establishing second production sources, industrial planning, and mobilization studies.

(5) Criteria to be used as a basis for recommending to other Government agencies the necessity for stockpiling certain critical materials, or as a basis for materials conservation actions, with a view to assuring materials availability in periods of emergency.

(b) A Detail Bill of Materials will not be purchased unless its procurement can be justified for uses other than materials requirements computations. For uses other than materials estimating, Detail Bills may be purchased if an item is in production, or if not in production, if made to military specifications.

(c) An Expanded Summary or an Abbreviated Summary Bill of Materials may be purchased for items in production, or for mobilization planning purposes for any items not in production that are made to military specification, or for "B" products for which it is anticipated that the procuring agency will allot materials during mobilization.

(d) The type of Bill of Materials procured will depend upon the use for which the Bill is intended. The most simplified type of Bill of Materials will be procured in all instances unless, in the opinion of Hq AMC, a more detailed type of Bill of Materials is required. The amount of detailed information required in a Bill of Materials procured solely for materials or components estimating purposes will be limited, where feasible, to significant elements of the end item.

(e) In connection with Government-purchased Bills of Materials, prime contractors should limit their request for data from their subcontractors to the detail specified in the procurement order. This limitation is not intended to affect the normal flow of information between prime contractors and subcontractors.

(f) Materials necessary to fabricate "B" products are not to be included in a Bill of Materials for an "A" product, even though a Bill of Materials may call for a listing of parts. Bills of Materials for "B" products will be purchased only from the manufacturers of those "B" products, and will exclude materials data on parts purchased by the manufacturer. Materials data on purchased parts are to be procured only from the manufacturer of such parts.

(g) A Bill of Materials procured in conjunction with a procurement contract is chargeable to the contract and may be included in the price of the procurement item. A Bill procured solely for mobilization planning needs is chargeable to industrial mobilization planning funds. A Bill required for an item in production may be furnished by the contractor, at his option, at no extra cost, but the amount of detail requested of him is not to exceed that needed by him for his own operation.

SUBPART O—PRIOR GOVERNMENT OWNERSHIP OF ITEMS BEING PROCURED

§ 1053.1502 *General.* It is desirable for the contracting officer to know whether materials, components, or end products offered for sale to the Government have been previously Government-owned or have been acquired by the bidder or by intermediate purchasers at sales of Government surplus property.

§ 1053.1502–1 *Procurement by formal advertising.* When a contracting officer has reason to believe that a particular item being considered for procurement

has been formerly owned by the Government (retained by a contractor pursuant to the terms of settlement of a terminated contract or acquired through sale of Government surplus property), the contracting officer will insert the following statement in the invitation for bid:

In the event that the end products or component parts thereof to be furnished under this bid have been previously Government-owned, have been retained on contract termination inventory or have been acquired by the bidder at any sale of Government surplus property, such fact will be stated by the offering bidder. In addition, if any value has been added to such property by modification, overhaul or improvement such fact will be stated by the offering bidder.

§ 1053.1502–2 *Procurement by negotiation.* (a) When a procurement is to be placed by negotiation and the contracting officer has reason to believe that end items or components thereof, which were previously owned by the Government, are or may be incorporated in the end product for which procurement is being made, the contracting officer will obtain the bidders' certification of the following statement:

In the event that the contractor has information or knowledge that any material or components of the end product to be supplied under this procurement consist of former Government-owned property retained by the bidder on contract termination, or acquired by bidder at any sale of Government surplus property, or that the end product itself consists of such formerly Government-owned surplus property, a statement of all known facts of such sale or retention (including selling cost) of items offered in this procurement will be made by the contractor.

(b) Where the contractor makes known he will use materials or components that were previously Government-owned or acquired at sales of Government surplus property, the contracting officers will give particular attention to the proposed contractor's method of costing such inventory. For this purpose, the contracting officer should determine the method used by the contractor and where the proposed method of costing the inventory is inadequate (inequitable and not susceptible to verification), an agreed upon practicable method will be substituted. If any uncertainty exists as to whether the proposed inventory costing method is equitable to the Government and practicable in the light of the contractor's established accounting procedures, the contracting officer may seek advice through the cognizant representative of the Auditor General, USAF.

SUBPART P—CONTRACTS BETWEEN THE GOVERNMENT AND ITS EMPLOYEES, PROPOSED SUBCONTRACTS BETWEEN PRIME CONTRACTORS AND GOVERNMENT EMPLOYEES

§ 1053.1602 *Policy*—(a) *Procurement contracts.* Procurement contracts between the Government and its employees or business organizations substantially owned or controlled by Government employees will not be entered into except for the most cogent reasons because such contracts are open to criticism on the grounds of favoritism or preferential treatment. Similarly, proposed subcontracts or purchase orders between prime contractors and Government employees will not be approved except for the most cogent reasons inasmuch as they are open to the same criticism.

(b) *Sales contracts.* Sales contracts will not be approved for sale of property to persons known to be officers or enlisted personnel of the Armed Forces on active duty, civilian employees of the Federal Government (to include the Department of Defense), and the immediate families, dependents, and agents of such military and civilian personnel except as may be provided for in AF regulations and directives.

§ 1053.1603 *Administrative approval of AF contracts.* When a contracting officer has reason to believe that the award of a contract would violate the policy expressed in § 1053.1602 (a), an administrative approval of such contract will be obtained prior to award.

§ 1053.1604 *Administrative approval of subcontracts.* When an administrative contracting officer of an AMA has reason to believe that the approval of a proposed subcontract or purchase order would violate the policy expressed in § 1053.1602, an administrative approval of such proposed subcontract or purchase order will be obtained as required by the commander of the appropriate air materiel area prior to any other required approval of such subcontract or purchase order.

§ 1053.1605 *Attempted circumvention.* No comprehensive definition of a Government employee within the meaning of this subpart is attempted; however, contracting officers will remain alert to detect attempts to circumvent the provisions of this subpart by artifice and subterfuge.

SUBPART Q—AIR FORCE POLICY; FUR PROCUREMENT

§ 1053.1703 *Policy.* The following policy is hereby established with respect to AF procurement of natural and synthetic fur for use in connection with cold weather operational protective clothing:

(a) Except where required by applicable specifications, it is AF policy that neither synthetic nor natural fur will be procured to the exclusion of the other.

(b) Where specifications permit the use of either natural or synthetic fur, the Air Force will continue to procure appropriate quantities of natural fur to the extent it is competitive with synthetic fur and otherwise meets specifications.

(c) In cases where the use of either natural or synthetic fur is permitted, future solicitations will provide that bids and quotations may be submitted on both types of fur. In evaluating bids or quotations from the synthetic and natural fur industries, consideration will be given to price, quality, and delivery factors.

SUBPART R—PREPARATION AND USE OF CERTAIN KINDS OF LOCAL PURCHASE CONTRACTS

§ 1053.1802 *Contracts for care of remains of deceased Government personnel*—(a) *General.* (1) When computing contractual requirements for care of remains, consideration will be given to all types of emergencies such as multiple deaths, care of remains for other services, etc. Other military activities in the area should be requested to use the contract when such services are required.

(2) Due to the nature of the services, the invitation for bids will not be posted in public places. Care will be taken to insure that all potential bidders within the area are given an opportunity to bid.

(3) When cremation is requested, cremation services will be procured on an individual basis. A suitable casket (cloth-covered suggested) and an urn may be provided.

(4) In the case of all nonviewable remains, a sealer type casket with an all-metal innerseal will be called for. When death is due to a communicable disease and the remains are viewable, a sealer type casket with a viewing panel of glass or acrylic and metal innerseal will be called for.

PART 1054—CONTRACT ADMINISTRATION

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SUBPART A—ADMINISTRATION OF AF CONTRACTS BY CONTRACTING OFFICERS

§ 1054.103 *Definitions.* The following definitions will apply throughout this subpart:

(a) "Administrative contracting officer:" A contracting officer to whom is assigned the responsibility for administration of AF contracts or contracts of other Government departments for which the Air Force has assumed administrative cognizance.

(b) "Contract." See definition in § 1.201–6 of this title.

§ 1054.104 *Matters of contract administration to be handled by Administrative contracting officers.* As a representative of the Government, the administrative contracting officer administers any AF contract as written (including all amendments). Some of the more important duties of contract administration are to:

(a) Review and approve wage and salary schedules within limitations established by any Federal wage or salary stabilization board in connection with cost-reimbursement-type contracts.

(b) Determine allowability of costs under Part 15, Chapter I, of this title.

(c) Approve contractor's invoices for payment, including those for progress payments where authorized.

(d) Administer advance payment bank accounts when so authorized by Hq AMC.

(e) In connection with provisioning of spare parts:

(1) Review and approve pricing of spare parts.

(2) Negotiate, prepare, execute, and issue supplemental agreements.

(3) Issue DD Form 702, "Order for Purchase of Supplies or Services," to obligate committed funds.

(f) Approve insurance costs under approved insurance plan.

(g) Approve subcontracts and purchase orders to vendors according to the provisions of the contract being administered.

(h) Determine whether variations in quantities are allowable where the contract includes a variation clause with a percentage limitation.

(i) Analyze and make recommendations on contractors' quotations upon request of procuring contracting officers.

(j) When requested, participate in price redeterminations at Hq AMC or at AMC field procurement activities.

(l) When price redetermination is to be accomplished by AMA's, review contractor's quotations and, to the extent authorized, negotiate the revision in price and accomplish necessary contractual changes according to the agreements reached.

(2) Approve contractor's accounting system for cost-reimbursement contracts and fixed-price contracts having redetermination clauses according to existing directives.

(k) Issue and approve issuance of tax-exemption certificates when permissible under the contract and where authorized by AMA commanders.

(l) Take action to approve sale or disposition of Government property according to existing directives.

(m) Relative to Government property:

(1) In cases of loss, destruction, or damage thereto, determine liability of the contractor, if any.

(2) In cases involving discrepancies incident to shipment to or from the contractor's facility, determine the adjusting action required.

(n) Report all litigation involving a CPFF contractor.

(o) Determine that bailed property is used for the purposes intended.

(p) Be responsible for obtaining approval of all bailee's crews designated to crew and maintain aircraft.

(q) Prepare findings of fact and issue decisions on nonallowable items of cost under the Disputes clause.

(r) Be responsible for determining whether the contractor has complied with applicable labor clauses, such as Davis-Bacon Act, Walsh-Healey Public Contracts Act, Convict Labor, etc., insofar as the Air Force is charged with such responsibility.

(s) With respect to facilities contracts, approve items for acquisition or performance.

(t) With respect to facilities contracts, authorize the use of the facilities according to the terms of the contract and collect rent when necessary, including the negotiation of amounts as necessary.

(u) Establish and/or recommend negotiated overhead rates for use in facilities contracts.

(v) Negotiate overhead rates for cost-reimbursement type supply contracts.

(w) Enforce the proper maintenance and protection of Government-owned facilities covered by facilities contracts and leases.

(x) In connection with open and call contracts, subject to their terms, perform the following:

(1) Issue call orders authorized by Hq AMC or the procuring office.

(2) Negotiate and approve priced exhibits covering calls against open contracts; however any priced exhibit exceeding $100,000 will be subject to the review and administrative approval prior to distribution.

(3) Send copies of approved exhibits to the buying activity.

(4) Obtain printing and distribution of approved exhibits as required.

(5) Negotiate and approve delivery schedules.

(y) Generally, make determinations and give approvals which are required by the provisions of the contract or subcontract and perform such other duties as are required by the contract or by applicable directives.

(z) Notify the contractor and other interested parties of the acceptance or rejection of first articles where the contract contains a provision for first article approval. When the First Article Approval clause is incorporated in the contract, the term "Government" as used in subparagraph (d) of the clause wherein it is stated "* * * the contractor will be notified, in writing, by the Government * * *" will be construed to mean "Administrative Contracting Officer." The Government laboratory or commercial testing firm responsible for conducting the required tests will notify the administrative contracting officer of the acceptance or rejection of the first article. Upon receiving such information, the administrative contracting officer will immediately notify the contractor, the production specialist, and the procuring contracting officer or other interested persons.

(aa) When closing out cost-reimbursement contracts, obtain releases from contractors according to appropriate contract clause. See § 16.812 of this title for release form.

§ 1054.105 *Administrative duties reserved for procuring contracting officers of Hq AMC, AMC field procurement activities, or ARDC.* Some of the principal duties of contract administration performed by procuring contracting officers are to:

(a) Specify consignees and issue instructions on packaging, marking, tagging, labeling, and forwarding of preservation and packaging lists.

(b) Amend contracts to change the price or other terms, including changes necessary because of price redetermination or CCN procedures, except for Form FPR–E price redetermination.

(c) Authorize the acceptance of materials that deviate from specifications and make determinations whether the Government will exercise its rights under the Latent-Defect clause.

(d) Under the authority of contract clauses, determine the facilities which are to be included initially or by amendment in the schedules of facility contracts.

(e) Authorize the loan of property to AF contractors and approve such loans under bailment agreements.

(f) Make changes in contract provisions which cannot be done by AFPI Form 35, "Contract Change Notification."

(g) Designate additional places of final inspection and acceptance under AF contracts.

(h) Originate requests for CCN's and amend the contract when CCN procedures have been accomplished by administrative contracting officers.

(i) Initiate action for contract termination authority.

(j) Change the place of administration and place of payment of any AF contract according to existing directives.

§ 1054.111 *Legal power of contracting officer.* The division of duties and authorities among contracting officers provided for in this subpart is administrative only and does not limit the legal powers of any contracting officer to act; however, contracting officers will comply with this subpart.

SUBPART B—APPROVAL OF SUBCONTRACTS

§ 1054.202 *Definition.* As used in this subpart, "subcontract" means any purchase order or other contractual instrument or commitment entered into by a prime contractor or subcontractor with parties other than the Government.

§ 1054.203 *Approvals.* Provisions in AF contracts outline and limit the extent of approvals required for subcontracts.

When general approval of the subcontract is required, it includes, but is not limited to, such matters as: (a) Source approval, (b) reasonableness and fairness of price, (c) quantities, and (d) adequacy of inclusion of statutory clauses or other provisions determined to be necessary. When approvals are given by administrative contracting officers, they should be qualified or limited to the extent desired by the contracting officer so that under all circumstances they fully protect the interest of the Government. Contingent approvals of this nature may be made by use of the following qualifying clause when appropriate to limit the approval.

> This purchase order or subcontract is approved under the subject contract, but this approval shall not relieve the prime contractor of any obligation under the prime contract and shall be without prejudice to any right or claim of the Government thereunder, and shall not create any obligation of the Government to the vendor under this contract.

In any event, it is important that the approval be carefully worded to portray the exact extent of the approval desired to be given by the administrative contracting officer.

§ 1054.204 *Approval of contractor's purchasing system.* (a) Reliance upon the contractor's purchasing system where it has been determined efficient is preferred to checking and approving individual subcontracts. Since the manner in which the approval of a subcontract is given is the prerogative of the Government, it will be considered proper for administrative contracting officers to substitute approval of the contractor's purchasing system for individual approvals, even though the prime contract does not contain a contract clause specifically providing for elimination of individual approval requirements based on approval of the contractor's purchasing system. The contracting officer may approve all or any part of the contractor's purchasing system and from time to time rescind or reinstate such approval. However, any approval granted should exclude cost-reimbursement, time-and-materials, and labor-hour subcontracts. These types of subcontracts will be approved individually according to §§ 1054.213 or 1054.214.

(b) Approval of a contractor's purchasing system must be based upon knowledge that the operation measures up to sound industrial procurement standards as well as to AF requirements, and upon reasonable assurance that efficient procurements will continue after the subcontract approval requirement is eliminated. Where justified by the dollar amount and type of contracts involved, the administrative contracting officer will make or cause to have made a survey of the contractor's purchasing system to serve as the basis for approval of the system. Any deficiencies in the purchasing system disclosed by the survey will be referred to the contractor for correction. Followup action will be taken to insure proper consideration of the suggestions offered. Until satisfactory corrective action is taken by the contractor, the administrative contracting officer will continue reviewing individual subcontracts as deemed necessary.

(c) The administrative contracting officer will consider the reasonableness of costs resulting from unapproved purchasing practices in price redetermination proceedings under fixed-price contracts providing for the redetermination of the price and in the reimbursement of costs under cost-reimbursement type contracts.

(d) Where the purchasing system is judged to be sound and acceptable by AF standards, approval of the purchasing system will be made and the subcontract approval requirement modified. Thereafter, spot checking will be con-

ducted to insure that the efficient purchasing operations as indicated by the system survey are being maintained.

(e) If substantial personnel or procedural changes occur or a considerable period has elapsed since the previous survey, a resurvey will be conducted. Purchasing system approval and the correlative subcontract approval requirement will be modified as warranted by the efficiency of the contractor's purchasing operation.

§ 1054.205 *Approving subcontracts under cost-reimbursement, time-and-material, and labor-hour prime contracts.* Because of different subcontracting clauses in these prime contracts, approval procedures vary. The contracting officer will review each particular contract to ascertain all necessary approval requirements thereunder. Various changes have been authorized in the form of such clauses. Administrative contracting officers will accordingly make a detailed examination of each particular contract clause in connection with which subcontracting approvals are given. Source approvals normally will be limited to first-tier subcontracts. Approval of subcontracts, in the form of settlement agreements compromising Government liabilities to third parties, will be accomplished by the procedures set forth in § 1015.502 (f) of this chapter.

§ 1054.206 *Approving subcontracts under fixed-price prime contracts.* Generally all AF fixed-price contracts over $5,000, except personal service contracts, include a clause providing for subcontract approval by the contracting officer.

(a) Firm fixed-price (FP) and fixed-price with escalation (FPE) prime contracts. FP and FPE prime contracts generally provide for approval of subcontracts "as to source."

(b) Fixed-price providing for redetermination of price (FPR), and fixed-price incentive (FPI) prime contracts. FPR and FPI prime contracts generally require the following:

(1) Source approval by the contracting officer of all first-tier subcontracts.

(2) Individual approval by the the contracting officer of all cost-reimbursement type, time-and-materials, and labor-hour subcontracts.

(3) Approval of any fixed-price subcontract in the amount of $25,000 or 5 percent of the contract amount (whichever is less).

(4) Approval of any subcontract providing for the fabrication, purchase, rental, installation, or other acquisition, of any item of industrial facilities, or of special tooling having a value in excess of $1,000.

§ 1054.207 *Evaluation of prices of proposed subcontracts.* (a) The basic responsibility for control of prices of subcontracts rests with the prime contractor making the subcontract. Where a prime contract requires the individual approval of purchases, the administrative contracting officer will require a showing by the prime contractor for the reasonableness of subcontract prices. It will include information for:

(1) Degree of competition prevailing.

(2) Appropriate price analysis or price comparison.

(3) Possibility of pyramiding of profits through interdivisional, intercompany purchases or by other methods of purchasing which prevent the acquisition at the best possible prices. If substantial contingencies, lack of experienced costs, lack of available or effective competition, or other uncertainties of the price are present, in the showing for reasonableness of price, the administrative contracting officer will seriously consider requiring the inclusion of some type of price redetermination in the subcontract.

(b) Where the administrative contracting officer believes that the proposed subcontractor may be furnishing a similar procurement to various customers, and in order to protect the Government's interest, the prime contractor should be requested to require the subcontractor to certify that the prices quoted on the Government proposed subcontract are no higher than those charged the other customers where quantities are comparable.

(c) When a price redetermination clause is included in the subcontract, it should provide for redetermination of prices of the subcontract at fixed time periods or stated quantities or percentages of production, the time or completion of which should occur before redetermination of the prime contract. The prime contractor's organization will be used to the maximum extent in effecting administration of subcontract repricing provisions if the prime contractor's procedures and controls do not vary substantially from those prescribed by the Air Force for the use and administration of price redetermination clauses in prime contracts.

§ 1054.208 *Utilization of cost analyst personnel.* AF cost analysts' responsibilities in connection with subcontracting are also important. Administrative contracting officers will make full use of cost analysts in reviewing subcontracts. Wherever necessary, cost analysts experienced in production costs and in good purchasing practices will examine prime contractor's purchases to ascertain that prices paid are reasonable. Where the contractor's purchasing system has been approved, detailed, selected investigation of individual subcontracts should be made on the basis specified by the contracting officer. This review should be continuous to assure that there are no current deviations from contractors' approved purchasing systems. Where subcontracts involve considerable sums, or where the subcontracts are for items for which there is no previous cost experience, they should normally be included in the review.

§ 1054.209 *Utilization of audit personnel.* (a) In particular situations as exemplified in this section, it may be advantageous to request Government audit personnel to audit certain subcontracts:

(1) Where a subcontractor objects to the audit of its cost records by a prime contractor for competitive reasons.

(2) Where the Armed Services (Auditor General, Army Audit Agency, or Navy Cost Inspection Service) has an audit residency established at the subcontractor's plant.

(3) Where the "subcontractor" holds both AF prime contracts and subcontracts from other AF prime contractors, or contractors of other military departments, and one of the Armed Services is currently auditing prime and/or subcontracts at the same plant or location.

(4) Where the subcontractor holds subcontracts from two or more Armed Services prime contractors and it would be more economical and in the interests of orderly audit administration for the Armed Services to assume the audit responsibility.

(5) Where the prime contractor has a substantial or controlling financial interest in the subcontractor.

(6) Where the prime contractor has subcontracted a substantial portion of the prime contract to one subcontractor, or the major portion of the prime contract is subcontracted to a very limited number of subcontractors.

§ 1054.210 *Maintenance of debarred, ineligible, and suspended contractor's list and supplemental lists.* Commanders of each field administration activity will organize the administration procedures of the activity for giving approval "as to source" so the administrative contracting officer will be able to give prompt and accurate consideration of every request of this nature by prime contractors or subcontractors at any level. The current "List of Debarred, Ineligible, and Suspended Contractors" and supplemental lists and revisions thereto will be made readily available to all administrative contracting officers who approve subcontracts as to source. Under no circumstances will bidders, contractors, or subcontractors be furnished with copies or any portion of either of these lists. To expedite source approval, it is recommended that the names appearing on the list be incorporated in a card index file, maintained on a current basis and according to established security procedures.

§ 1054.211 *Cost-plus-a-percentage-of-cost subcontracts.* Administrative contracting officers will not approve subcontracts based upon the cost-plus-a-percentage-of-cost system of contracting.

§ 1054.212 *Employment agency or engineering service subcontracts.* Certain so-called engineering service companies are in reality no more than employment agencies whose services may not be reasonable or necessary in the performance of AF contracts. Subcontracts of this nature will be carefully reviewed prior to approval by administrative contracting officers.

§ 1054.213 *Time-and-material and labor-hour orders.* Time-and-material and labor-hour subcontracts should be used only where such procurements are an accepted trade practice and it is not possible at the time of placement to estimate accurately the amount or duration of the work or anticipated costs. The placement of time-and-material and labor-hour subcontracts will be discour-

aged by the administrative contracting officer and restricted to situations where no practical alternative exists. In any event, time-and-material and labor-hour subcontracts will not be approved unless the prime contractor provides adequate controls to insure proper pricing and prevent wasteful operations.

§ 1054.214 *Inclusion of approval clauses in cost-reimbursement type subcontracts.* Administrative contracting officers approving subcontracts of cost-reimbursement type prime contracts will require the inclusion in all cost-reimbursement type subcontracts of clauses providing for prior approval of subcontracts thereunder, without a reservation as to lower tier cost-reimbursement type subcontracts.

§ 1054.215 *Excessive subcontracting under CPFF prime contracts.* It is recognized that the buyer has the responsibility for negotiating adjustments of fixed fee when required by excessive subcontracting. However, the administrative contracting officer will in many instances be the only one to know when subcontracting exceeds the percentages established at the time of negotiation of the fee. Where excessive subcontracting is indicated, the matter will be reviewed with the auditor or cost analyst and then brought to the attention of the buyer.

§ 1054.216 *Inclusion of statutory provisions.* Subcontracts will contain all clauses required both by law and, expressly or by implication, by the terms of the prime contract. In addition, the administrative contracting officer should require the inclusion in subcontracts of any and all provisions requiring that title to tools, dies, jigs, etc., and capital items fully paid for under the subcontracts and remaining in the hands of subcontractors will pass to the Government when the prime contract contains a clause which provides for title of such items to vest in the Government.

§ 1054.221 *Security requirements under classified subcontracts.* (a) This section applies to the Directorate of Procurement and Production, Hq AMC, AMC field procurement activities, AMFPA, and AMFEA.

(b) No classified subcontract will be approved under a classified prime contract or subcontract, nor classified information be released in connection therewith, until the proposed subcontractor has been cleared to perform work or services on classified contracts.

(c) Facility clearance will be required only when the proposed subcontract is for a classified portion or portions of a classified prime contract or when it is necessary to furnish information of a classified nature to the subcontractor.

(d) Requests for facility security clearance of subcontractors are initiated by the prime contractor and submitted to the contracting officer administering the prime contract.

§ 1054.222 *Affiliations between Air Force contractors and their subcontractors or suppliers*—(a) *General.* Contracting officers engaged in the administration of cost-reimbursement, time-and-material, fixed-price-with-price-redetermination, or fixed-price-incentive prime contracts and cost-reimbursement subcontracts should recognize the importance of knowing, so far as possible, of any affiliations between such contractors or subcontractors and their suppliers. Arm's-length bargaining between contractors or subcontractors and their suppliers provides, in itself, a measure of protection to Government interests. When the parties to the bargain are affiliated or have a common interest in the transaction, arm's-length bargaining is impossible and more than the usual precautions may be necessary to protect the Government's interest, even though there may be no impropriety in the particular affiliation or community of interest involved.

(b) *Request for information of affiliation.* It is proper for contracting officers to request contractors and subcontractors (who have contracts of the type mentioned in paragraph (a) of this section) to furnish information as to the existence of such relationship between them, their officers, and their executives having to do with purchasing, and their existing or proposed suppliers.

(c) *Duty of contracting officer when there is an affiliation.* If the contracting officer learns of the existence of a relationship with a supplier of the kind precluding arm's-length bargaining, he will take special precautions to insure that the Government's interest is protected before approving a subcontract or purchase order with the supplier or an adjustment in the price thereof.

§ 1054.223 *Approval of interplant invoices*—(a) *Definitions.* (1) "Originating plant:" The plant or division of a contractor at which costs applicable to a cost-reinmbursement or time-and-material contract are incurred and billed to another plant of the contractor for ultimate submission for reimbursement.

(2) "Receiving plant:" The plant or division of a contractor to which costs incurred at an originating plant of the contractor are billed, and which submits such costs for reimbursement.

(3) "Intermediate plant:" A plant or division of the contractor to which costs incurred at an originating plant or other intermediate plant are billed and which in turn bills such costs to another intermediate or receiving plant of the prime contractor.

SUBPART C—CONTRACT CHANGE NOTIFICATIONS

§ 1054.302 *Definitions.* The following definitions apply throughout this subpart:

(a) "Master serial number:" A number assigned for keeping a record of CCN's in consecutive order as issued.

(b) "Master change record:" A system whereby the contractor assigns a number and a title for convenience in identifying an engineering or design change in an aircraft or item of equipment.

§ 1054.303 *Method of effecting contract changes.* The method of effecting changes to contracts, except as provided in this subpart, will be by amending the contracts with appropriate supplemental agreements or change orders prior to the times any such changes become effective.

§ 1054.305 *Use of CCN's.* (a) CCN's may be issued to effect changes to contracts only when the urgency of the situation precludes negotiating and executing an appropriate change order or supplemental agreement, and then only in instances, authorized pursuant to the Changes clause of the contract or other contractual provision authorizing the use of the CCN, where the change:

(1) Involves safety to life and/or property.

(2) Has been directed by Hq USAF.

(3) Is of an emergency nature, essential to proper operation or maintenance, or necessary to further an experimental or developmental program.

(4) Is to authorize acceptance of aircraft or equipment with shortages.

(5) Involves no additional cost to the Government and does not affect performance guarantee, time of delivery, or time of performance.

(b) In no event will CCN's be issued to effect changes in the following instances:

(1) Where the contract does not contain a Changes clause or other contractual provision authorizing the use of the CCN.

(2) To effect any partial or total termination.

(3) To add or delete items from spare parts lists.

(4) To effect special price increases or reductions, either voluntary or resulting from a price redetermination provision of the contract.

(5) To add or delete contract clauses.

§ 1054.306 *Procedure for issuance of CCN.* Before a CCN is issued as authorized in § 1054.305 (a), a statement will be obtained from the contractor regarding estimated change in contract price or estimated cost and the effect such change will have on time of performance or delivery schedule. If an estimate has not been obtained from the contractor, the buyer will make an estimate when the urgency of the situation requires such action.

§ 1054.310 *Quotations.* Within 60 days after the issuance of a CCN, the contractor will be required to submit a quotation covering the work directed by the CCN. The quotation will be submitted to the administrative contracting officer. Whenever a cost is involved in a CCN, negotiations must commence as soon as possible after the issuance of the CCN to supersede the CCN by a definitive contractual instrument in the shortest possible time.

(a) The administrative contracting officer is responsible for follow-up with the contractor so that quotations are promptly submitted. He is authorized to approve extensions of time, but this authority will be exercised sparingly and only upon a strong showing by the contractor that prompt submission of the quotation is impossible or would have a demonstrable adverse effect on production.

(b) Each quotation will incorporate substantiating cost data for each change for which an adjustment is indicated. Upon demand of the administra-

tive contracting officer, the contractor will submit substantiating cost data even though no adjustment is indicated.

(c) The administrative contracting officer will analyze each quotation and, if any of the adjustments proposed by the contractor appear unsatisfactory, will attempt to secure a satisfactory proposal.

§ 1054.311 *Supplemental agreements with respect to changes ordered by CCN's.* (a) The buyer is responsible for negotiating an agreement regarding the changes covered by all CCN's issued against any given contract. Any increase or decrease decided upon as a result of such negotiation will be incorporated into the contract by means of a supplemental agreement. If it is established, either as a result of negotiation or by reason of waiver thereof by contractor, that no change is required in contract price, or in the estimated cost and fixed fee, or in the delivery schedule, or time of performance, a supplemental agreement nevertheless will be issued to show for record purposes that the changes specified by CCN's listed in the supplemental agreement necessitate no change in contract price, or in estimated cost and fixed fee, or in delivery schedule, or time of performance.

(b) Within 30 days after receipt of a satisfactory cost quotation or notification that no costs are involved, the buyer will definitize all CCN's covered by the quotation in a contractual document. However, in cases of cost quotations received for CCN's issued under contracts containing FPR C or D clauses prior to price redetermination or under incentive type contracts prior to the establishment of a firm target price, the buyer may withhold these cost quotations but must definitize them at the time of price redetermination or when a firm target price is established. Notwithstanding the foregoing, quotations should not be withheld if it is apparent that the price of the end items will be increased or decreased substantially. When CCN's have been issued under a letter contract, the buyer, whenever possible, will formalize such CCN's at the same time the letter contract is definitized.

SUBPART D—REIMBURSEMENT OF COSTS IN EXCESS OF ESTIMATED COSTS INCURRED UNDER COST-REIMBURSEMENT-TYPE PRIME CONTRACTS AND SUBCONTRACTS

§ 1054.402 *General.* The contractor will not be reimbursed under a cost-reimbursement-type contract for expenditures incurred in excess of the estimated costs of the work set forth in the contract, until funds sufficient to cover such additional expenditures are allotted to the contract. When the administrative contracting officer is notified or ascertains independently from contractor that the actual cost may exceed the estimated costs of performing the contract, he will inform the contractor, in writing, of the necessity for requesting an additional allotment of funds for the performance of the contract.

§ 1054.403 *Action by the administrative contracting officer on contractor's request.* The contractor's request for an additional allotment will be made to the administrative contracting officer. The contractor's request will show what additional funds are required and what elements of costs, i. e., labor, material overhead, etc., have increased over the original estimate of performing the contract and will state the reasons why the estimated cost has been or will be exceeded. This information will be sufficiently detailed to permit the appropriate contracting officer at the procurement activity to determine what additional funds are required, the nature of the additional cost estimated to be incurred, and, in general, the factors contributing to the increase in costs, such as error in original estimate, changed conditions, inefficiency, or wasteful expenditures. The administrative contracting officer after examination of the contractor's request will forward it, together with his recommendations, to the contracting officer at the appropriate procurement activity.

§ 1054.405 *Effect of change order by which additional funds are allotted.* A change order evidencing the allotment of additional funds to a cost-reimbursement-type contract does not necessarily increase the estimated cost of the contract or the fee specified therein. Changes in estimated costs and fee will only be made to reflect changes in the scope of work under the contract which would justify an increase or decrease in the fixed fee specified in the contract.

§ 1054.406 *Subcontracts.* Cost-reimbursement-type prime contractors normally are entitled to reimbursement from the Government under the prime contract for any payments to subcontractors for allowable costs, regardless of whether such payments to subcontractors exceed the estimated costs stated in the subcontract, but not in excess of the aggregate funds allotted to the prime contract. When it appears that the actual cost incurred by a cost-reimbursement-type subcontractor is going to exceed the estimated cost stated in the subcontract, the administrative contracting officer will review the subcontract and consult with the prime contractor to arrive at an agreement which will adequately protect the interests of the Government. In the event of a disagreement between the prime contractor and the administrative contracting officer, the matter should be referred to the chief of the contract division of the cognizant air procurement district or AF plant representative office.

SUBPART E—DECISIONS AND APPEALS UNDER DISPUTES CLAUSE

§ 1054.502 *Exception.* When the Disputes clause in § 1007.4205–8 of this chapter is used, appeals are initially heard by an oversea command board of contract appeals.

§ 1054.503 *Decisions.*

§ 1054.503–1 *Decisions in accordance with disputes clause.* Whenever a dispute arises during the course of administration or termination of a contract, the contracting officer will make every effort to dispose of the dispute by mutual agreement. Where settlement by mutual agreement proves impossible, and by reason of the Disputes clause of the subsisting contract the contracting officer is required to prepare written findings and decisions thereon, the findings and decision so rendered, wherever possible, will be set forth in a single document as outlined in §§ 1054.505 or 1054.506.

§ 1054.503–2 *Legal advice by Staff Judge Advocate, Hq AMC.* Whenever an appeal is likely, all written findings and decisions will, prior to transmittal to the contractor, be referred for comment to the Staff Judge Advocate, Hq AMC, together with pertinent documents and summaries of all Government witnesses.

§ 1054.503–3 *Transmittal to contractor.* After the referral described in § 1054.503–2 has been accomplished, the findings and decision will be reexamined by the contracting officer in the light of the advice and comments proffered by the Staff Judge Advocate, Hq AMC. If, in the judgment of the contracting officer, reexamination reveals the propriety of modifications or additions, he will make the appropriate changes. After such reexamination, and changes if appropriate, he will transmit the findings and decision to the contractor in person, obtaining a receipt therefor, or by registered mail, return receipt requested.

§ 1054.503–4 *Amendment after transmittal to contractor.*—(a) *Prior to appeal.* Prior to the taking of a timely appeal by the contractor, or the expiration of the time during which an appeal might be taken, the contracting officer who has rendered findings and a decision, or his successor, may for good cause correct or amend such findings and decision. Good cause for this action would be discovery of fraud, or the correction of omissions or errors in the original findings and decision, or the addition of newly discovered evidence. Where correction or amendment of findings and decision is desired, the contracting officer will prepare amended findings and decision and, prior to transmittal to the contractor, will refer such findings and decision to the Staff Judge Advocate, Hq AMC, as provided in § 1054.503–2. After review of the amended findings and decision by the Staff Judge Advocate, the contracting officer will process the findings and decision according to § 1054.503–3.

(b) *After timely appeal.* After a timely appeal has been taken to the Armed Services Board of Contract Appeals, the contracting officer who has rendered findings and a decision, or his successor, may for good cause recommend to the Board that the findings and decision be corrected or amended.

§ 1054.504 *Appeals.*

§ 1054.504–2 *Contractor's compliance and withdrawal after appeal is filed.* Whenever the contractor, subsequent to filing an appeal with the Armed Services Board of Contract Appeals, elects nevertheless to accept fully the findings and decision from which appeal was taken and gives written notification of such full acceptance to the contracting officer concerned, the contracting officer will be responsible for promptly sending the

contractor's notice of acceptance to the Staff Judge Advocate, Hq AMC. Upon receipt of the notice the Staff Judge Advocate in collaboration with the contractor will prepare and submit a joint motion of withdrawal to the Board.

§ 1054.505 *Suggested format; decision in accordance with disputes clause.*

Date _____
(Date of findings and decision)
Subject: Decision Disallowing Request of _____
(Name of Contractor)
Under Contract No. _____, Dated _____
To: (Name and Address of Contractor)

1. In accordance with the provisions of the above-numbered contract, the undersigned contracting officer has duly considered your request for (insert factual description of the request to identify clearly its nature and scope)

2. The undersigned contracting officer has decided that your request, as set forth above, is disallowed (in whole or in part, according to the fact) for the following reasons: (Insert the findings of fact upon which the disallowance is based)

3. The "Disputes" clause of the contract provides that within 30 days from the date of receipt hereof the contractor may appeal from this decision by mailing or otherwise furnishing to the contracting officer a written appeal addressed to the Secretary of the Air Force. Two copies should accompany the original notice of appeal. The notice of appeal should identify the contract (by number), the decision from which the appeal is taken and be signed by appellant or an officer of appellant organization or by a duly authorized representative or attorney. Within thirty days after receipt of notice of docketing of the appeal by the Board, the appellant shall file with the Board a complaint setting forth simple, concise and direct statements of each claim showing entitlement to relief.

§ 1054.506 *Alternative suggested format; to be used when a termination dispute is involved.*

Subject: Findings Pertaining to Termination Claim of _____
(Name of Contractor)
Under Contract No. _____, Dated _____
To: (Name and Address of Contractor)

1. Your claim for (insert factual description of the claim to identify clearly its nature and scope) in connection with the above-cited contract has been duly considered by the undersigned contracting officer.

2. In accordance with the provisions of Clause _____ (insert the title of the pertinent termination clause) of the contract, the undersigned contracting officer finds as follows: (Insert all pertinent factual data, such as, date of termination of contract, date of submission of settlement proposal, items and amounts allowed and disallowed, together with reasons therefor.)

3. The "Disputes" clause of the contract provides that within 30 days from the date of receipt hereof the contractor may appeal from this decision by mailing or otherwise furnishing to the contracting officer a written appeal addressed to the Secretary of the Air Force. Two copies should accompany the original notice of appeal. The notice of appeal should identify the contract (by number), the decision from which the appeal is taken and be signed by appellant or an officer of appellant organization or by a duly authorized representative or attorney. Within thirty days after receipt of notice of docketing of the appeal by the Board, the appellant shall file with the Board a complaint setting forth simple, concise and direct statements of each claim showing entitlement to relief.

SUBPART F—AUTHORIZATION AND ADMINISTRATION OF PROGRESS PAYMENTS UNDER FIXED-PRICE CONTRACTS

§ 1054.602 *Definition.* Progress payments are defined as payments prior to acceptance on work in progress for the Government or as otherwise defined in the contract. Progress payments do not include payments for partial deliveries accepted by the Government under a contract, partial payments on contract termination claims, or payments made to reimburse prime contractors for deposits or advances made to their subcontractors prior to performance. Such deposits or advances can only be recognized as advance payments and must be expressly provided for as such in the prime contract.

§ 1054.603 *Application.* This subpart has equal application to production contracts and to contracts for research and development. It applies to new contracts involving progress payments based on costs, to new supplements or amendments increasing quantities under existing contracts, and to any amendments or supplements providing for progress payments based on costs under any contracts not presently providing for progress payments. Section 1054.607 also applies to existing contracts whenever consistent therewith.

§ 1054.604 *Policy relating to authorization of contract provisions for progress payments.* Policy set forth by the Department of Defense Directive No. 7840.1, April 22, 1954, provides in part:

(a) It is not and has not been the policy of the Department of Defense that the proper use of progress payments should be stopped or unreasonably curtailed. Progress payments are sometimes necessary and useful to supplement the working funds available to defense contractors of all sizes. It should seldom be necessary for progress payments based on costs to exceed 90 percent of direct labor and material costs, or 75 percent of total costs, of the work done under the undelivered portion of the contract.

(b) Certain types of production contracts involve a long "lead time" or preparatory period, normally approximating 6 months or more between the beginning of work and the first delivery, and may require contractor's predelivery expenditures that will have a material impact on the contractor's working funds. Familiar examples include, among others, contracts for aircraft, engines, complex items of electrical or electronics equipment, heavy handling equipment, production machines and equipment.

(c) Progress payments have been traditional and customary on this class of contracts, on the basis of not more than 75 percent of total costs or 90 percent of direct labor and material costs, of the work done under the undelivered portion of the contract. Higher percentages have been provided in recent years. Such higher percentages, for future procurement, will be regarded as unusual, and not within the category of customary progress payments.

(d) When requested by contractors who are known (from experience or adequate preaward investigation) to be reliable, competent, and capable of satisfactory performance, to have an adequate accounting system and controls and to be in satisfactory financial condition, provision for such customary progress payments up to but not exceeding the percentages and bases specified above, in the class of contracts described above, if regarded as reasonably necessary within the meaning of DODD 7800.1, dated October 30, 1953. In such cases it is not necessary to require projections of cash receipts and expenditures or other demonstration of actual reasonable need for progress payments. To this extent, for this class of contracts, the general preference for private financing, including guaranteed loans does not apply.

(e) This directive is applicable to all contracts of the class described above, whether such contracts are large or small, and to all contractors regardless of the size of the contractor. However, in order to minimize administrative effort and expense, progress payments will be discouraged on relatively small contracts of the stronger and larger contractors, e. g., contracts for less than $1,000,000 unless the circumstances of a group of such contracts, for contemporaneous performance, make such contracts the approximate equivalent of a larger contract that would have a material impact on the contractor's working funds.

(f) Progress payments based on costs, other than progress payments of the class and within the limits set forth in paragraphs (a) and (b) of this section, will be regarded as unusual, and will require special approval. This is deemed necessary for the purpose of minimizing risks, and in order to establish and maintain the greatest practicable uniformity with regard to such progress payments within and among the military departments. Any contractor seeking provision for progress payments that is "unusual," within the meaning of this directive, will be required to demonstrate fully his actual need therefor, with due regard to the preference for private financing, including guaranteed loans. Requests for "unusual" progress payments shall be approved only under exceptional circumstances and must have the specific approval of the head of a procuring activity or of a general or flag officer designated for that purpose.

(g) Such cases must involve a preparatory period requiring contractor's predelivery expenditures that are large in relation to the contract price and in relation to the contractor's working capital and credit. Contract provisions for progress payments in this category will be only supplementary to private financing, including guaranteed loans, in amounts necessary for contract performance. The percentage rates and cost bases for progress payments on new procurement in this category will be determined on a minimum basis commensurate with the contractor's production schedule requirements and minimum inventory lead time, with due regard to the contractor's projected cash needs, cash resources and their planned application.

(h) For the time being, all requests involving progress payments at rates exceeding 90 percent of direct labor and material costs or exceeding 75 percent of total costs, if regarded favorably by the head of a procuring activity or by a specially designated general or flag officer within a procuring activity, will be forwarded, with supporting information, for approval of a designated office or person at departmental headquarters of the military department directly concerned. Such office or person may be the contract financing office at departmental headquarters or such person or persons, located at departmental headquarters and responsible to the Under or Assistant Secretary responsible for the comptroller function, as may be designated for this purpose by such Under or Assistant Secretary. Such requests, before approval, will be coordinated speedily with representatives of the other military departments and of the Assistant Secretary of Defense (Comptroller). When approval is given by the contract financing office, or other designated representative of the Under or Assistant Secretary above mentioned, such approval will ordinarily extend to fu-

ture contracts with the same contractor, so that resubmission of future similar requests for unusual progress payments to that contractor need not be required unless so indicated on the initial approval or thereafter required by the approving authority afer review of the contractor's current conditions and circumstances.

(i) The standards set forth and referred to in this directive are equally applicable to situations where it is contemplated that contracts will provide for progress payments based on progress payments made by a prime contractor to a subcontractor. However, when progress payments have been made by a prime contractor to a subcontractor pursuant to the provisions of the applicable prime contract and subcontract, the progress payment to the prime contractor to reimburse him for such progress payment to the subcontractor may include the full amount of his progress payment made to the subcontractor when so provided by the prime contract.

(j) Cost reimbursement contracts will not be used as a means or for the purpose of avoiding the standards applicable to progress payments.

(k) Progress payments measured by a percentage of physical completion will not be used as a substitute for progress payments based on costs, in situations where progress payments are ordinarily based on costs.

§ 1054.606 *Contract provisions for progress payments.* (a) Any fixed-price supply or service contract, under which it is desired to make progress payments in an amount not to exceed 75 percent of the cost of the property, may include the following clause:

PROGRESS PAYMENTS

(a) Progress payments, which are hereby defined as payments prior to acceptance, on work in progress for the Government under this contract, may be made upon the following terms and conditions.

(b) The Contracting Officer may, from time to time, authorize progress payments to the Contractor upon property acquired or produced and service performed by it for the performance of this contract: *Provided*, That such progress payments shall not exceed 75 percent of the cost to the Contractor of the property and services upon which payment is made, which costs shall be determined from evidence submitted by the Contractor and which must be such as is satisfactory to the Contracting Officer as being representative of the value of the work already performed: *Provided further*, That in no event shall the total of unliquidated progress payments (see (e) below) and of unliquidated advance payments, if any, made under this contract, exceed 80 percent of the total contract price of supplies or services still to be delivered.

(c) Upon the making of any progress payments under this contract, title to all parts, materials, inventories, work in process, and nondurable tools theretofore acquired or produced by the Contractor for the performance of this contract, and properly chargeable thereto under sound accounting practice, shall forthwith vest in the Government; and title to all like property thereafter acquired or produced by the Contractor for the performance of this contract and properly chargeable thereto as aforesaid shall vest in the Government forthwith upon said acquisition or production: *Provided*, That nothing herein shall deprive the Contractor of any further progress or final payments due or to become due hereunder; or relieve the Contractor or the Government of any of their respective rights or obligations under this contract.

(d) The Contractor represents and warrants that the property, upon which any progress payment is made hereunder, shall be cleared of all liens and encumbrances of any kind whatsoever upon receipt of any progress payment.

(e) In making payment for the supplies furnished hereunder, there shall be deducted from the contract price therefor a proportionate amount of the progress payments theretofore made to the Contractor, under the authority herein contained.

(f) It is recognized that property (including, without limitation, completed supplies, spare parts, drawings, information, partially completed supplies, work in process, materials, fabricated parts and other things called for herein) title to which is or may hereafter become vested in the Government pursuant to this clause will from time to time be used by or put in the care, custody or possession of the Contractor in connection with the performance of this contract. The Contractor, either before or after receipt of Notice of Termination at the option of the Government, may acquire or dispose of property to which title is vested in the Government under this clause, upon terms approved by the Contracting Officer; *Provided*, That after receipt of Notice of Termination, any such property that is a part of termination inventory may be acquired or disposed of only in accordance with the provisions of the termination clause of this contract and applicable laws and regulations. The agreed price (in case of acquisition by the Contractor) or the proceeds received by the Contractor (in case of any other disposition), shall, to the extent that such price and proceeds do not exceed the unliquidated balance of progress payments hereunder, be paid or credited to the Government as the Contracting Officer shall direct; and such unliquidated balance shall be reduced accordingly. Current production scrap may be sold by the Contractor without approval of the Contracting Officer but the proceeds will be applied as provided in this paragraph (f), provided that any such scrap which is a part of termination inventory may be sold only in accordance with the provisions of the termination clause of this contract and applicable laws and regulations. Upon liquidation of all progress payments hereunder or upon completion of deliveries called for by this contract, title to all property (or the proceeds thereof) which had not been delivered to and accepted by the Government under this contract or which has not been incorporated in supplies delivered to and accepted by the Government under this contract and to which title has vested in the Government under this clause shall vest in the Contractor.

(g) The provisions of this contract referring to "Liability for Government-Furnished Property" and any other provision of this contract defining liability for Government-furnished property shall be inapplicable to property to which the Government shall have acquired title solely by virtue of the provisions of this clause. The provisions of this clause shall not relieve the Contractor from risk of loss or destruction of or damage to property to which title vests in the Government under the provisions hereof.

(h) If this contract (as heretofore or hereafter supplemented or amended) contains provisions for advance payments, and in addition if at the time any progress payment is to be made to the Contractor under the provisions of this progress payments clause any unliquidated balance of advance payments is outstanding, then notwithstanding any other provision of the Advance Payments clause of this contract the net amount, after appropriate deduction for liquidation of the advance payment, of such progress payment shall be deposited in the special bank account or accounts maintained as required by the provisions of the Advance Payments clause, and shall thereafter be withdrawn only pursuant to such provisions.

(b) Any fixed-price supply or service contract, under which it is desired to make progress payments in an amount not to exceed 90 percent of direct labor and material costs to the Contractor of the property, may include the clause set forth in paragraph (a) of this section, except that in this paragraph the words "75 percent of the cost" shall be replaced by the words "90 percent of the direct labor and direct material costs."

§ 1054.607 *Policy for administration of progress payments under AF contracts by administrative contracting officers.* Policy set forth by the Department of Defense Directive 7840.1, dated April 22, 1954, is as follows:

(a) Progress payments require careful administration to insure against overpayments and losses. In all cases the physical progress of the work should be evaluated periodically to assure that the progress payments are fairly supported by the value of the work actually accomplished on the undelivered portion of the contract in conformity with the contract requirements. Also, the unliquidated progress payments should not be permitted to exceed the percentage specified in the contract, of the costs forming the base for progress payments, applicable only to the partially finished undelivered portion of the contract.

(b) The extent of supervision required, whether for loss prevention or for avoidance of overpayments, should vary inversely with the experience, performance record, reliability, quality of management, and financial strength of contractors, and with the adequacy of their accounting system and controls. Review should be of a kind and degree that will be sufficient, consistent with the circumstances of individual cases, to provide timely knowledge of circumstances that would adversely affect contract performance and the liquidation of progress payments, and timely opportunity for any action that may be appropriate for the protection of the Government. Particular care must be taken to assure that the unpaid balance of the contract price will be adequate to cover the anticipated cost of completion, or that the contractor has adequate resources to complete the contract if the unpaid balance of the contract price is inadequate to cover costs of completion.

(c) In the process of reviewing individual progress payments already existing or hereafter established, action to reduce or slow down progress payments or to increase liquidation rates (unless justified on other grounds, such as overpayments or unsatisfactory performance) should be consistent with contract provisions, and never taken precipitately or arbitrarily. Any such reduction of progress payments on active contracts (other than normal liquidation pursuant to the contract) should be effected only after notice to and discussion with the contractor, and after full exploration of the contractor's financial condition, existing or available credit arrangements, projected cash requirements, effect of progress payment reduction on the contractor's operations, and generally on the equities of the particular situation. Where contract performance is satisfactory, and there is neither overpayment nor anticipated loss, proper progress payments, adequately verified, will be paid promptly when earned and billed in accordance with contract provisions, even though the terms of the particular contract may make the payment discretionary rather than mandatory, and such proper payments will not be held up or denied because of the contractor's lack of need for the payment.

§ 1054.609 *Method of recoupment for liquidation.* Department of Defense Di-

rective 7840.1, April 22, 1954, provides in part:

(a) When costs other than for direct labor and material are in the base for progress payments, the percentage of the contract price of delivered items to be applied for liquidation of progress payments will be not less than the percentage of costs upon which progress payments are based, e. g., when progress payments are based on 75 percent of all costs, liquidation will be at a rate not less than 75 percent of the contract price of separate items as they are delivered and invoiced. When progress payments are based on 90 percent (or specified lesser percentage) of the costs of direct labor and material, the rate of liquidation of progress payments will be not less than 90 percent (or the specified lesser percentage) of the percentage of estimated total costs represented by the estimated costs of direct labor and material. Thus, for example, if the base for progress payments is 90 percent of the costs of direct labor and material, and if estimated costs of direct labor and material are 70 percent of total estimated costs, liquidation will be at a rate not less than 63 percent (90×70) of the contract price of separate items as they are delivered and invoiced.

§ 1054.610 *Statements of costs in support of progress payment invoices submitted by the contractor.* (a) As part of the contractor's progress payment invoice, the contractor will be required to include, as evidence, a statement of cumulative costs incurred from the inception of the contract, up to and including the period (usually 1 month) covered by the invoice.

(b) A statement of costs incurred will be secured from the contractor to support progress payment requests not in excess of 75 percent or of any other percentage indicated in the contract on the basis of the cost of the property acquired. The data will be substantially in the form shown in § 1054.612 and will be submitted in triplicate, or in such number of copies as may be required. The contractor will make the certification on all the required copies. The data will include the name of the contractor, his address, contract number, dollar amount of the contract, date, progress payment request number, and the period of cumulative costs of the work under the contract. Sample Form I § 1054.612 is explained as follows, the numbered items below corresponding to those used on the sample:

(1) *Direct material.* The cost of direct material should include the costs of all items purchased or supplied which enter directly into the end product and which are used or consumed directly in connection with the fabrication of the articles called for under the contract (exclusive of progress payments to subcontractors).

(2) *Progress payments to subcontractors.* The total amount of progress payments to subcontractors should be shown in line 2 of those cases where the contract provides for reimbursement of progress payments made to subcontractors by prime contractors.

(3) *Direct labor.* The direct labor cost should consist of salaries and wages incurred by the prime contractor and properly chargeable directly to performance of the contract (exclusive of progress payments to subcontractors).

(4) *Indirect manufacturing and production expenses.* The allocable amount of the allowable indirect costs incurred in the operation of the production departments of the prime contractors should be shown in line 4.

(5) and (6) *Other direct costs.* There are numerous items of cost which are generally classified as indirect costs, but which may, in particular cases, properly be chargeable directly to the contract, where the contractor demonstrates that such costs are specifically related to the contract.

(7) (Self-explanatory.)

(8) *General and administrative expenses.* These are costs incurred in the general management, supervision, and conduct of the prime contractor's business as a whole. Show rate used in computing this amount and period used in determining this rate.

(9) *Total costs.* If the total accumulated costs (sum of amounts in lines 1 through 8) exceed the contract price, indicating a loss contract, the amount shown in line 9 should be reduced to the contract price or contract target price, as applicable.

(10) *Cost, or negotiated cost or contract price of items delivered and invoiced.* The amount entered on line 10 should be one of the following alternatives stated in order of preference: (i) The actual cost or the average or standard cost with appropriate adjustment for variances of items delivered and invoiced, giving proper consideration to the deferment of the starting load costs; (ii) in those cases where the contractor maintains cost data which will clearly establish reliability of his estimates, the cost of the items delivered and invoiced may be based on the average unit costs determined by adding total experience costs to date to total estimated costs to complete the contract, and dividing the total cost for the contract so computed by the total number of units to be supplied; (iii) the aggregate of the negotiated unit cost of items delivered and invoiced representing contract price less negotiated profit allowances; (iv) if the contractor is unable to establish the cost of the items delivered and invoiced by one of the above methods, the aggregate of the contract unit price of the articles delivered and invoiced to the Government under the contract may be substituted for the cost of the items delivered and invoiced. However, if it has been established that the contractor is operating at a loss under the contract, the negotiated cost used under alternative (iii) of this subparagraph, or the contract price used under alternative (iv) of this subparagraph, will be appropriately adjusted upward by a percentage equivalent to the indicated loss.

(11) (Self-explanatory.)

(12) *Progress payments to subcontractor(s).* Line 12 should be used only when the prime contract provides for 100 percent reimbursement of progress payments to subcontractors, and the payments under line 12 meet the requirements of the progress payment clause. It should be understood that line 12 will be used only in those cases where progress payments made by the prime contractor to subcontractors are included in the total shown in line 7.

(13) (Self-explanatory.)

(14) *Complement of percentage figure provided by the progress payment clause.* Insert complement of whatever percentage figure is provided by the progress payment provision of the contract; i. e., if contract reads 75 percent, use 25 percent; if contract reads 90 percent, use 10 percent, etc.

(15) through (17) (Self-explanatory.)

(18) *Recoupments to date.* This information may be obtained from an examination of the contractor's invoices on items delivered and paid by the finance officer. These invoices should indicate the amount of the recoupment as applied against previous progress payments.

(19) through (27) (Self-explanatory.)

(c) A statement of cumulative costs incurred will be secured from the contractor to support progress payment request not in excess of 90 percent or of any other percentage indicated in the contract on the basis of the costs of the direct labor and direct material costs to the contractor. The data will be substantially in the form shown as Sample Form II § 1054.613 and will be submitted in triplicate, or in such number of copies as may be required. The contractor will make the certification on all the required copies. The data will include the name of the contractor, his address, contract number, dollar amount of the contract, date, progress payment request number, and the period of cumulative costs of the work under the contract. Sample Form II is explained as follows, the numbered items corresponding to those used on the sample:

(1) *Direct material.* See subparagraph (1) of this paragraph.

(2) *Progress payments to subcontractors.* See paragraph (b) (2).

(3) *Direct labor.* See paragraph (b) (3).

(4) *Total costs.* If the total accumulated costs (sum of amount shown in lines 1 through 3) exceed the contract price, indicating a loss contract, the amount shown in line 4 should be reduced to the contract price or contract target price, as applicable.

(5) *Direct material and direct labor costs of items delivered and invoiced.* The costs applicable are the alternatives listed in paragraph (b) (10) except that the data should be limited to the cost of labor and material. The negotiated cost or the contract price of labor and material, if used, should be readily determinable from the accepted bid data.

(6) (Self-explanatory.)

(7) *Progress payment(s) to subcontractor(s).* Line 7 should be used only when the prime contract provides for 100 percent reimbursement of progress payments to subcontractors, and the payments under line 7 meet the requirements of the progress payment clause. It should be understood that line 7 will be used in those cases where progress payments made by the contractor to subcontractors are included in the total shown in line 4.

(8) (Self-explanatory.)

(9) *Complement of percentage figure provided by the progress payment clause.* Insert complement of whatever percent-

age figure is provided by the progress payment provision of the contract; i. e., if contract reads 90 percent, use 10 percent, etc.

(10) through (12) (Self-explanatory.)

(13) *Recoupments to date.* The information may be obtained from an examination of the contractor's invoices on items delivered and paid by the finance officer. These paid invoices should indicate the amount of the recoupment as applied against previous progress payments.

(14) through (22) (Self-explanatory.)

§ 1054.612 *Schedule supporting progress payment invoice; total cost basis.*

SAMPLE FORM I—SCHEDULE SUPPORTING PROGRESS PAYMENT INVOICE—TOTAL COST BASIS

Contractor's Name _____
Address _____
Contract No. _____ Date _____
Amount of Contract _____ P. P. Invoice No. _____
Statement of total costs incurred from _____ to _____ (costs must be cumulative to date).

1. Direct material (exclusive of progress payments to subcontractors)		$_____
2. Progress payments to subcontractors (if provided in the contract)		_____
3. Direct labor (of prime contractor only)		_____
4. Indirect manufacturing and production expense (specify rate _____ percent)[1]		_____
5. Other direct costs (if any, specify)		_____
6. _____		_____
7. Subtotal		_____
8. General and administrative expenses (specify rate _____ percent)[1]		_____
9. Total costs (7 plus 8)		_____
10. Cost, or negotiated cost or contract price of items delivered and invoiced		_____
11. Total costs subject to progress payment (9 less 10)		_____
12. Deduct progress payment(s) to subcontractor(s)[2]		_____
13. Balance (11 less 12)		_____
14. _____ percent of line 13[3]		_____
15. Contractor's own costs eligible for progress payments (13 less 14)		_____
16. Gross amount eligible for progress payment (12 plus 15)		_____ $_____
17. Total amount of progress payments to date	$_____	
18. Recoupments to date as made by AF finance officer	_____	
19. Unrecouped progress payments (17 less 18)		_____
20. Balance (16 less 19)		_____
21. Amount in line 16 above	$_____	
22. Total contract price	$_____	
23. Contract price of items delivered and invoiced to date	_____	
24. Contract price of items to be delivered and invoiced (22 less 23)	_____	
25. 80 percent (or other limitation percentage if provided by the contract) of line 24	_____	
26. Positive balance, if any (21 less 25)		_____
27. Net amount available for progress payment (20 less 26)		_____

[1] Show rate used in computing this amount and period used in determining this rate.

[2] Line 12 should be used only when the prime contract provides for 100 percent reimbursement of progress payments to subcontracts, and the payments under line 12 meet the requirements of the progress payment clause. It should be understood that line 12 will be used only in those cases where progress payments made by the contractor to subcontractors are included in the total shown in line 7.

[3] Insert complement of whatever percentage figure is provided by the progress payment provision of the contract; i. e., if contract reads 75 percent, use 25 percent.

CONTRACTOR'S CERTIFICATION WHEN REQUEST FOR FIRST PROGRESS PAYMENT ON CONTRACT IS MADE

I certify that the above statement of cost is just and correct to the best of my knowledge and belief, that payment therefor has not been received, that it has been prepared from the books of account and records of _____ (Insert the name of Contractor) and further that unencumbered title to the material and work in process represented herein rests in the invoicing agency at the time of billing. Upon payment of this invoice, title to this property will be vested in the Government in accordance with progress payment provisions of the contract.

Signature _____
Title _____

CONTRACTOR'S CERTIFICATION ON ALL REQUESTS FOR PROGRESS PAYMENTS ON CONTRACT SUBSEQUENT TO THE FIRST

I certify that the above statement of costs is just and correct to the best of my knowledge and belief, that payment therefor has not been received, that it has been prepared from the books of account and records _____ (Insert the name of Contractor) and that unencumbered title to the material and work in process represented herein rests in the Government pursuant to the progress payment provisions of the contract.

Signature _____
Title _____

§ 1054.613 *Schedule supporting progress payment invoice—Labor and material basis.*

SAMPLE FORM II—SCHEDULE SUPPORTING PROGRESS PAYMENT INVOICE—LABOR AND MATERIAL BASIS

Contractor's Name _____
Address _____
Contract No. _____ Date _____
Contract Amount _____ P. P. Invoice No. _____
Statement of total costs incurred from _____ to _____ (cost must be cumulative to date).

1. Direct material (exclusive of progress payments to subcontractors)		$_____	
2. Progress payments to subcontractors (if provided in the contract)		_____	
3. Direct labor (of prime contractor only)		_____	_____
4. Total (1 plus 2 plus 3)		_____	
5. Direct material and labor costs of items delivered and invoiced		_____	
6. Costs subject to progress payment (4 less 5)		_____	
7. Deduct progress payment(s) to subcontractor(s)[1]		_____	_____
8. Balance (6 less 7)		_____	
9. _____ percent of line 8[2]		_____	
10. Contractor's own cost eligible for progress payments		_____	
11. Gross amount eligible for progress payments (7 plus 10)		_____	$_____
12. Total amount of progress payments to date		_____	
13. Recoupments to date as made by AF finance officer		_____	
14. Unrecouped progress payments (12 less 13)		_____	_____
15. Balance (11 less 14)		_____	_____
16. Amount in line 11 above		_____	
17. Total contract price	$_____		
18. Contract price of items delivered and invoiced to date	_____		
19. Contract price of items to be delivered (17 less 18)	_____		
20. 80 percent (or other limitation percentage if provided by the contract) of line 19		_____	
21. Positive balance; if any (16 less 20) (if negative insert 0)		_____	_____
22. Net amount available for progress payment (15 less 21)		_____	_____

[1] Line 7 should be used only when the prime contract provides for 100 percent reimbursement of progress payments to subcontractors and the payments under line 7 meet the requirements of the progress payment clause. It should be understood that line 7 will be used only in those cases where progress payments made by the contractor to subcontractors are included in the total shown in line 4.

[2] Insert complement of whatever percentage figure is provided by the progress payment provision of the contract; i. e., if contract reads 90 percent, use 10 percent, etc.

CONTRACTOR'S CERTIFICATION WHEN REQUEST FOR FIRST PROGRESS PAYMENT ON CONTRACT IS MADE

I certify that the above statement of cost is just and correct to the best of my knowledge and belief, that payment therefor has not been received, that it has been prepared from the books of account and records of _____ (Insert the name of Contractor) and further that unencumbered title to the material and work in process represented herein rests in the invoicing agency at the time of billing. Upon payment of this invoice, title to this property will be vested in the Government in accordance with progress payment provisions of the contract.

Signature _____
Title _____

CONTRACTOR'S CERTIFICATE ON ALL REQUESTS FOR PROGRESS PAYMENTS ON CONTRACT SUBSEQUENT TO THE FIRST

I certify that the above statement of costs is just and correct to the best of my knowledge and belief, that payment therefor has not been received, that it has been prepared from the books of account and records of _____ (Insert the name of Contractor) and that unencumbered title to the material and work in process represented herein rests in the Government pursuant to the progress payment provisions of the contract.

Signature _____
Title _____

SUBPART G—CONTRACT CHANGE RELEASES

§ 1054.702 *Definitions*—(a) *Change release (CCR)*. AFPI Form 47 (formerly AMC Form 207), a document issued to correct inaccuracies and omissions of stock or part numbers and item descriptions in active production contracts.

(b) *End article prime depot (EAPD)*. As used in this subpart, the depot or AMA having prime property class responsibility for the end article under procurement. In the case of complete aircraft or engines, this will be the depot or AMA having prime responsibility for the applicable 01 or 02 property class.

§ 1054.703 *Use of change releases.* (a) Types of inaccuracies that may be corrected by CCR's are:

(1) Incorrect or missing part or stock number on a complete article or a spare part item.

(2) Error in transcribing a stock or part number on an item; that is, transposition of digits, omission of digits, improper decimals or prefixes.

(3) Improper nomenclature of an item.

(b) CCR's will not be issued to authorize:

(1) Changes in design or fabrication methods.

(2) Contract corrections, the execution of which would result in price changes or changes in delivery schedules or time of performance in the contract involved.

(3) Shifting of articles from one contract item number to another.

(4) Assignment of a new contract item number or subdivision of an existing item number.

(5) Increases or decreases in quantities.

(6) Correction of inaccuracies in quantities.

(7) Changes to approved spare parts exhibits which have not been formally executed by supplemental agreements.

SUBPART I—WAGE AND SALARY ACCEPTANCE

§ 1054.900 *Scope of subpart.* This subpart prescribes the procedure for the acceptance by administrative contracting officers of costs resulting from wages and salaries paid by AF contractors to their employees and allocable to applicable contracts. Any acceptance of wage and salary schedules made by the administrative contracting officer should not be considered as approving wages and salaries as such, but should be considered as a determination of acceptance of costs resulting from such schedules for allocation to Air Force contracts.

§ 1054.901 *Application.* This subpart applies to cost-reimbursement-type prime contracts, and cost-reimbursement-type subcontracts which are approved by the administrative contracting officer (ACO). To the extent that the costs of wages and salaries which have been accepted by the ACO are involved in cost analysis for redeterminable or incentive type contracts, the amounts used in such analysis will not exceed those accepted by the ACO.

§ 1054.902 *Definition.* "Wages and salaries" as used in this subpart includes all amounts paid or set aside, such as pension or retirement benefits, salaries, royalties, license fees, bonuses, and deferred compensation benefits.

§ 1054.903 *Accepting authority.* On contracts to which this part applies, the administrative contracting officer is designed as the authority for accepting costs resulting from wages and salaries initially established and from increases thereto. His acceptance will be based on: (a) his judgment that costs resulting from wage and salaries are fair and reasonable after first obtaining adequate justification when deemed necessary, (b) review of the contractor's rate system, and (c) review of the contractor's policy for wage and salary increases, in relation to that of the industry and area concerned. Costs resulting from salaries of $25,000 and over, and any increases thereto, will be acted on by the administrative contracting officer according to the procedure in § 1054.905 (b).

§ 1054.904 *Wage and salary rates requiring special consideration.* (a) Except as otherwise provided below, costs of wages and salaries included in a final negotiated overhead rate, set forth in the contract according to an approved negotiated overhead rates clause, will be subject to the review and acceptance procedures specified in § 1054.903.

(b) Where the total cost reimbursement and price redeterminable Government business amounts to only a small proportion of the contractor's over-all business, the ACO should, generally, accept the contractor's pay plan. In determining the applicability of this section, each division of a corporation will be considered individually.

(c) Where the total cost reimbursement and price redeterminable Government business of a corporation, including all of its divisions, amounts to a small proportion of its over-all business, wages and salaries of members of the corporate home office included in the overhead chargeable to AF contracts will not ordinarily be subject to the action required in § 1054.905 (a) and (b) as applicable. (But see paragraph (d) of this section.)

(d) Where the total AF business represents a small proportion of applicable Government business with any specific contractor either at division or corporate level, the ACO should ordinarily accept the position taken by the service that has the largest amount of business with the contractor and compliance with § 1054.905 (a) and (b) will ordinarily not be necessary.

(e) Where a contractor submits a salary schedule containing ranges for specific positions, and a plan for changes within the range, the administrative contracting officer may accept such schedule and plan. Once the range and plan are accepted by the ACO, any changes in salaries which are within the flexibility of the accepted plan and range(s) for the position(s) under consideration would not require further action by the ACO. This is not applicable to salary schedules submitted in compliance with § 1054.905 (b).

§ 1054.905 *Costs resulting from salary and wage rates and adjustments subject to acceptance.* The costs resulting from all salary and wage rates and adjustments thereto within the applicability of this subpart may be made effective on cost-reimbursement-type contracts after acceptance by the ACO. Costs on which acceptance is required will apply to:

(a) *Basic wage and salary schedules and adjustments or additions thereto.* The ACO in determining the acceptability of such costs will consider all remunerations, including bonuses and payments in any form, in computing the total compensation of an employee. When it appears that the compensation paid to an individual or a group of individuals may be unreasonable, a detailed examination of the case will be made. Consideration will be given to the size and type of Government contracts held by the contractor, the nature of the services rendered by the employee, former rates of compensation, the frequency and amounts of increases, changes in scope and extent of services rendered by the employee, and any other pertinent facts.

(b) *Salaries of $25,000 and over.* This paragraph applies to those cases in which the salary element alone amounts to $25,000 or over, or any increases thereto. These will be examined on an individual basis.

(1) The ACO will examine each such salary following the criteria prescribed in paragraph (a) of this section. Before acting on such salaries, the ACO will con-

sult with Hq AMC. The advice of Hq AMC is not required when: (i) action of acceptance of costs resulting from such salaries was completed by the ACO prior to January 4, 1956, or (ii) current or future submissions by the contractor are not in excess of amount(s) previously accepted for position(s) established. In the event the ACO determines that a reduction in the amount(s) previously accepted is in order, and the salary elements would be over $25,000, the matter will be referred to Hq AMC prior to making a final determination.

(2) To obtain the advice of Hq AMC, the ACO will submit to the Commander, AMC, the following information:

(i) The ACO's recommendations based on the changes in the scope and extent of service rendered by the employee, length of service of the employee, or any other reasonable circumstances.

(ii) Position description in justification of the salary increase.

(iii) Employee's former rates of compensation and dates.

NOTE. It is not the intent that such information will necessarily reveal individual employee identification. Such identification normally will be confined to position classification only.

(iv) Fringe benefits, e. g., bonuses (immediate or deferred) and whether or not plan has Government approval, pension and retirement plan benefits, other annuities, life insurance, etc. (itemized). Specify:

(*a*) The amount paid to or set aside for the individual or the current cost to the contractor of funding the benefit if it is of the deferred type. In reporting the current cost of funding a deferred benefit, the amount reported will be a cost for the individual based on an actuarial or similar type estimate.

(*b*) Amount of (*a*) of this subdivision that has been disapproved by the Government, if any. In addition, specify whether the plan providing these benefits has been approved by the Air Force and, if so, by whom.

(v) Based on figures for the past year, the following:

(*a*) Gross sales of the contractor.

(*b*) Proportion of total Government business to the gross business.

(*c*) Proportion of total AF business to the gross business.

(*d*) Increase or decrease of AF procurement with the contractor versus the previous year.

(vi) Organizational charts, if available.

(vii) Types of items manufactured.

(3) After evaluation by Hq AMC, advice will be submitted to the ACO.

§ 1054.906 *Establishment of rates for new jobs or adjustments in rates for existing jobs.* The contractor will submit:

(a) A list of all wage and salary jobs for which acceptance is requested.

(b) The actual rate or rate range for each job and the approximate number of persons employed within the range.

(c) In the case of adjustments to existing rates, the proposed rates or rate range for each job, stating the approximate number of employees to receive each rate within the range.

(d) A statement of any extrinsic factors supporting the proposal, such as housing, transportation, etc.

(e) Copies of any collective bargaining agreements affecting the employees involved.

(f) Profit-sharing plans.

§ 1054.907 *Responsibility of the administrative contracting officer.* An ACO, upon receipt of a submission, will carefully examine the data submitted and take any steps deemed necessary to verify the accuracy of the facts stated before making a decision; his written acceptance to the contractor will include a statement substantially as follows:

The rates of compensation listed hereon are accepted as being fair and reasonable. This acceptance is without prejudice to the Government's right to disallow any payment made in accordance with any rate upon any ground except that the rate is unreasonable for the type of service indicated. This acceptance may be withdrawn in whole or in part at any time.

§ 1054.910 *Union activities and labor-management disputes.* (a) Salaries and wages of employees of the contractor engaged in union activities during regular working hours may properly be considered to be a part of the cost of performance of the cost-reimbursement-type contract for purposes of reimbursement, provided there is an obligation upon the contractor to pay them. Such obligation may arise out of the following:

(1) The provisions of a labor contract between the contractor and a labor union.

(2) An established practice or policy of the contractor existing at the plant or plants involved.

(3) An existing trade custom or practice in the locality of the contractor's plant.

(4) An existing custom or practice in the industry.

Each case will be decided on its own merits. While decision in each case is the responsibility of the ACO in the light of all facts, the foregoing circumstances will normally support reimbursement in the absence of any special conditions indicating that, in the particular case, payment of the salaries and wages is not necessary for the performance of the contract.

(b) ACO's will not, under any circumstances, participate directly or indirectly in labor-management disputes or controversies.

§ 1054.911 *Policy regarding elimination of incentive pay and excessive per diem for work or services at AF test bases.* (a) Where existing contracts provide for additional compensation to contractors' personnel to be paid as incentive or per diem over an extended period, active steps will be taken to eliminate such pay structures as soon as possible. Contracting officers will review existing wage and salary structures of AF contractors having contracts which fall within the scope of this chapter and, according to contract provisions, will withdraw authorization where incentive or excessive per diem is authorized in excess of time duration stated in this section for elimination of such pay. The gradual program for elimination will conform to contract provisions, but will adhere as closely as possible to the following schedule of reduction of personnel having such structures: (1) at least ⅓ reduction in 90 days, (2) at least ⅔ reduction in 150 days, and (3) complete reduction in 270 days, from starting date.

(b) Contractors' wage and salary structures should adequately reflect total compensation for services without addition of per diem or incentive pay. Per diem will be limited to travel and relocation circumstances set forth in §§ 1015.204 and 1015.502 (j) of this chapter. Contracting officers will carefully screen contractors' wage and salary schedules to assure that former incentive or per diem rates are not merely included as a means of elimination of prohibited pay structures. Such inclusion merely causes the basic rates to become unreasonable and the former inequalities in pay to continue.

(c) Unless otherwise stated in contract provisions, contracting officers will not accept wage and salary structures which include incentive pay or excessive per diem, except for key technical and supervisory personnel identified to the particular project. It must be emphasized that before acting on such exceptions, the ACO must carefully scrutinize each application for incentive pay or per diem granting such pay or per diem only where justified by all the circumstances and in such amounts as may be the minimum necessary for obtaining qualified, professional, or specially skilled personnel. It must be further emphasized that a frequent review of such acceptances must be made with prompt termination and modification as changing conditions warrant.

SUBPART K—REIMBURSEMENT TO CONTRACTORS FOR POSTAGE PAID ON CONTRACTS CALLING FOR DELIVERY AT POINT OF ORIGIN

§ 1054.1102 *General*—(a) *Postal charges.* Where a purchase document provides for payment by the Government of transportation charges and the vendor is directed by proper authority, either in the purchase document or by separate instructions, to ship via parcel post, postal charges are reimbursable and will be included in the vendor's invoice as a separate item. The vendor's certificate on the invoice will be accepted as sufficient evidence of the correctness of such charges and an additional certificate or other supporting evidences will not be required, such as verification by weight or postal zone.

(b) *Insurance.* Where articles are purchased f. o. b. contractor's shipping point and contractor is instructed to make delivery via parcel post, it is proper to advise the contractor that the parcel post package should not be insured, but where no notice is given and the contractor, in good faith, pays the postal insurance charges, reimbursement therefor is authorized. However, the insurance of shipments of "valuables" will be determined by the Government Losses in Shipment Act of July 8, 1937, 50 Stat. 479 as amended by 53 Stat. 1358 (5 U. S. C. 134b–1).

SUBPART L—REGISTRATION UNDER SECURITIES ACT OF AF CONTRACTORS HOLDING CLASSIFIED CONTRACTS

§ 1054.1202 *General.* (a) Under the terms of AF contracts, contractors may not disclose classified matter to unauthorized persons. Rule 486 of the Securities and Exchange Commission provides, in effect, that a contractor applying for registration under the Securities Act of 1933 (48 Stat. 74, 15 U. S. C. 77a–77aa) need not submit copies of classified contracts or information related thereto if the contractor's application for registration includes a statement (as described below) from the contracting officer administering the contract.

(b) The administrative contracting officer or the local purchase contracting officer is authorized to furnish applicable contractors with a written statement containing the following determinations:

(1) The contents of the contractor's AF contract relates to and affects the national defense.

(2) Disclosure of contents of the contract would be contrary to public interest. (There is no objection to the disclosure in a registration statement of the total dollar amount of the face value of the AF contract(s) held by the contractor.)

(c) Upon request, contracting officers located at Hq AMC, at AMC field procurement activities or ARDC purchase activities, may also furnish such statements with regard to contracts over which they have cognizance.

SUBPART M—POLICY WITH RESPECT TO PAYMENT OF PREMIUM COMPENSATION FOR EXTRAHAZARDOUS FLIGHT TESTING

§ 1054.1302 *Policy.* It is the policy of the Air Force that the AF plant representative or the chief of the air procurement district will determine whether a flight is considered an extrahazardous flight. The AF plant representative or the chief of the appropriate air procurement district will notify the administrative contracting officer in writing of all determinations made with respect to extrahazardous flight test approval. The administrative contracting officer will determine the reasonableness of extra compensation to be paid, taking into consideration such factors as degree of risk involved, wage scale of flight personnel, and provision for insurance protection. Administrative contracting officers have authority to negotiate and approve extrahazardous flight compensation and may solicit from the procuring contracting officer and/or project officer any additional facts required in order to arrive at a decision.

SUBPART N—PAYMENT OF FIXED FEE UNDER CPFF CONTRACTS

§ 1054.1402 *General.* The fixed fee payable to contractors under CPFF contracts is limited by law, and is fixed when the other terms of the contract are negotiated and agreed upon. Most CPFF contracts provide that the Government will currently reimburse the contractor for expenditures that are made in accordance with the contract as may be approved or ratified by the contracting officer. A specified percentage of the fixed fee due under the contract is also to be paid, as it accrues, in monthly installments based upon the percentage of completion of work as determined from estimates made and approved by the contracting officer. CPFF contracts also provide that upon completion of all the work, its final acceptance, and the execution and delivery of a release by the contractor, any unpaid balance of the fee to which the contractor may be entitled will be paid to him.

§ 1054.1403 *Formulas for estimating percentage of completion of work and fixed fee due*—(a) *Supply contracts.* Upon request of a contractor, but not more often than once a month, the administrative contracting officer assigned to administer the CPFF supply contract will make an estimate of the percentage of completion of work accomplished by the contractor using one of the formulas set forth in this section.

(1) *Formula No. 1.* The formula set forth in this subparagraph will be used in those cases where the prime unit and subsidiary items completed and accepted for delivery will result in equitable determination of percentage of completion of work on the contract to date.

(i) A unit fee will be established for the prime units contracted for, by dividing total units into the total fixed fee included in the contract for the prime units. The fee earned on prime units is determined by multiplying the unit fee by the number of units completed and accepted for delivery.

(ii) The fee for subsidiary items on the contract, such as spare parts, tool kits, ground handling equipment, etc., will be established in proportion to the current estimated costs of shipments of such items compared with the total current estimated costs shown in the contract for the same items. It should be recognized that exhibits for spare parts, tool kits, ground handling equipment, etc., may be priced by the contractor before he has gained reliable cost knowledge through actual manufacturing experience and, consequently, his actual costs may vary substantially from his estimated costs. Therefore, in order to prevent overpayment of fixed fee for subsidiary items the administrative contracting officer will establish the accrued amount of fee payment due to date for subsidiary items by using 1 of the 2 methods indicated, whichever totals the lesser.

(iii) Formula No. 1 is expressed as follows:

(*a*) Prime Fee Earned.

$$\frac{\text{Total prime unit fee}}{\text{Total prime units}} \times \text{Acceptable units completed} = \text{Prime fee earned to date.}$$

(*b*) (*1*) Subsidiary Item Fee Earned ((*1*) or (2) whichever is lower).

$$\frac{\text{Contract cost of acceptable subsidiary items completed}}{\text{Total cost estimated in contract of subsidiary items}} \times \text{Total fee for subsidiary items} = \text{Subsidiary items fee earned to date.}$$

(2).

$$\frac{\text{Elapsed months from start of work}}{\text{Contract months from delivery schedule}} \times \text{Total fee for subsidiary items} = \text{Subsidiary items fee earned to date.}$$

(*c*) Total Fee Earned for Period.

(*a*) plus (*b*) (*1*) or (*2*) (whichever is smaller) = Total fee earned to date.

NOTE: Total fee earned to date less fee previously paid equals fee payable to date.

(*d*) Percentage of Completion of Work.

$$\frac{\text{Total fee earned to date}}{\text{Total fee}} = \text{Percentage of completion of work to date.}$$

(2) *Formula No. 2.* This formula should be used in those cases where work in process is substantial on prime units and should be considered in determining the percentage of completion of work on the contract for the period concerned. This formula is adopted in those cases where contractor can furnish the administrative contracting officer reliable data showing: Total direct labor hours to produce one prime unit, total direct labor hours consumed (input) by work in process during the reporting period, and total direct labor hours consumed (input) during the reporting period in the production of subsidiary items.

(i) A prime unit fee will be established for the prime units contracted for by dividing the total prime units into the total fixed fee for prime units stated in the contract.

(ii) The total number of direct labor hours consumed during the reporting period (input) in the production of subsidiary items will be deducted from the total number of direct labor hours consumed during the period (input) in the production of all units (prime and subsidiary); thus, the net would represent the number of direct labor hours consumed in the production of prime units during the reporting period. The figure thus arrived at will be divided by the total number of direct labor hours estimated to be required to produce one prime unit. The total number of units thus developed will be multiplied by the prime unit fee to establish earned fixed fee for prime units. To this dollar fee for prime units will be added the dollar fee for the production of subsidiary items, computed in the same manner as Formula No. 1. The total dollar fee earned for both prime units and subsidiary items will be divided by the total fee fixed in the contract for all items, and the resulting figure will be determined to be the percentage of comple-

tion of work for the period requested.

(iii) In order to take advantage of any reduction in the number of direct labor hours required to produce one prime unit brought about by improved manufacturing processes or more efficient operation, the administrative contracting officer will require the contractor to furnish, at the end of each calendar month, a new statement of the number of direct labor hours needed to produce one prime unit, and of the total number of direct labor hours represented by work in process at all work stations in the contractor's plant, for both prime units and subsidiary items.

(iv) Formula No. 2 may be expressed as follows:

(*a*) Prime Fee Earned for Reporting Period.

$$\frac{\text{Total prime unit fee}}{\text{Total prime units}} = \text{Prime unit fee.}$$

$$\frac{\text{Total direct labor hours (input) for period} - \text{Subsidiary items direct labor hours}}{\text{Direct labor hours per prime unit}} = \text{Prime units in production.}$$

Number of units in production × prime unit fee = Prime fee earned.

(*b*) Subsidiary items. See subparagraph (1) (iii) (*b*) of this paragraph Formula 1 for computation of subsidiary item fee earned. Note that subsidiary item fee earned for period is fee at end of current period less fee at end of previous period.

(*c*) Total Fee Earned for Period.

(*a*) plus (*b*) = Total fee earned for period.

(*d*) Percentage of Completion of Work for Period.

$$\frac{\text{Total fee earned for period}}{\text{Total fee}} = \text{Percentage of completion of work for period.}$$

(3) *Formula No. 3.* This formula is to be used in those cases where work in process for both prime units and subsidiary items is substantial and should be considered in order to determine a reasonably accurate cumulative percentage of completion of work under the contract. The administrative contracting officer will obtain a monthly report from the contractor showing:

(i) An estimate of the total number of direct labor hours required to accomplish all work called for by the contract. (This estimate may be the same, higher, or lower than the original or previous estimates submitted.) Separate estimates will be for any element of work for which separate fees are established. The administrative contracting officer will determine that the estimate(s) are reasonable, by consulting his production assistants to the extent necessary.

(ii) The total accumulated direct labor hours which have been expended in the performance of the contract. Direct labor hours will be interpreted to include direct labor manufacturing hours expended on prime items but also direct labor hours expended on engineering, tooling, and subsidiary items on the contract, such as spare parts, tool kits, ground handling equipment, etc., unless separate fee(s) are established for such elements of work (subsidiary items) in which event separate estimate(s) will be established for such items.

(*a*) To arrive at the percentage of completion, the administrative contracting officer will divide the indicated total accumulated direct hours expended, by the total number of hours estimated to be required to accomplish all work called for by the contract.

$$\frac{\text{Total accumulative direct labor hours expended}}{\text{Total direct labor hours required to accomplish all work under the contract}} = \text{Cumulative percentage of completion.}$$

(*b*) In the event separate fees are established for subsidiary items by the contract, the same formula will apply. In such cases, however, separate estimates will be established for total direct labor hours required to accomplish such separate element(s) of work and for total accumulated direct labor hours expended in the accomplishment thereof. Percentage of completion will be determined by dividing the accumulated number of direct labor hours by the total number of hours estimated as being required to accomplish the element(s) of work involved.

(*l*) The amount of fee payable will be that which is represented by the fee(s) times the percentage(s) of completion established by the application of procedures outlined above, with the current amount payable being the total amount due minus the amount(s) previously paid.

(4) *Formula No. 4.* (i) This formula should be used in lieu of Formula No. 3 in those cases where work in process is substantial, but where direct labor hours expended cannot be readily obtained from contractor's records. The administrative contracting officer will determine by inquiry to the cognizant procuring office the total amount of estimated costs stated by the contractor in his bid and upon which the contract was awarded and the fee was based, for items of direct labor as follows: direct manufacturing labor, direct engineering labor, direct tooling, and any other direct labor items which may have been agreed upon and included in the contract as total estimated costs. At the same time, the administrative contracting officer will establish, as a safeguard against the possibility of the contractor's actual costs overrunning his estimated costs, a maximum fee to be paid monthly, based upon the number of months the contract has to run from the time it is signed to the end of the last month in which deliveries are scheduled in the contract. Recognition and consideration will also be given to any delay in deliveries by the contractor which have resulted in an extension of time by the Government. The administrative contracting officer will thereafter limit his certification of percentage of completion of work to a maximum arrived at by multiplying the number of months which the contract has run by the rate of fee payable in any one month.

(ii) The administrative contracting officer will require the contractor to submit a statement showing actual costs expended for direct labor at the end of the calendar month and, after audit and approval of such figures by the Government auditor, will certify to a percentage of completion of work in the ratio that the total actual direct labor costs bear to total estimated labor costs. For example: a CPFF contract calls for 100 prime units with spare parts, special tools, and ground handling equipment. The total fee for the entire contract, at 6 percent, has been fixed at $6,630,000. The contract was signed January 1, 1947, and the final delivery under the contract is scheduled for June 30, 1949, 30 months later. The administrative contracting officer will divide the total fixed fee by the total number of months as above, to determine a pro rata maximum monthly fee of $221,000. He determines by inquiry to procuring office that the contractor's original estimate for direct labor is $50,000,000. At the end of 3 months, the contractor submits actual direct labor costs of $10,000,000, or 20 percent of the total direct labor estimated costs. The administrative contracting officer applies his previously established limitation of fee payable in any one month and finds that the total 3 months is $663,000, or 10 percent of the total fee. He thereupon certifies to percentage of completion of work as 10 percent.

(b) *Research and development contracts.* Upon request of a contractor, but not oftener than once a month, the administrative contracting officer assigned to administer the CPFF research and development contract will estimate the percentage of completion of work accomplished by the contractor during that calendar month, using the formula set forth in this paragraph:

(1) The contracting officer will determine the maximum fee to be paid to the contractor for 1 month by dividing the total amount of the fixed fee shown in the contract by the total number of months which will elapse from the signing of the contract to the end of the last month shown on the contract delivery schedule.

(2) The monthly fee payment may be approved by the contracting officer if he is reasonably assured that satisfactory progress has been made. This can be determined by a combination of two or more of the following factors:

(i) A review of the appropriate statements or substantiating documents supporting claims for reimbursement of costs which may indicate the extent of the contractor's activity.

(ii) Personal observation by AF field personnel of the contractor's progress.

(iii) A certification signed by an individual authorized to represent the contractor and supported by documents substantiating that the requested payment is proportionate to the progress or completion of the contract. This certification may be substantially in the following form:

I certify that the fixed fee claimed is correct and just, and that it is proportionate to the progress made on the contract.

Signed _____
Official Title _____

§ 1054.1404 *Optional formula.* If the administrative contracting officer is convinced that some formula other than any of the ones outlined in § 1054.1403 will be more fitting under the circumstances of his particular contract, he will submit the formula to the Commander, AMC, for review and approval before he adopts it in certifying percentage of completion of work.

§ 1054.1405 *Contract formulas.* If a particular CPFF contract sets forth a specific method of compilation and payment of fixed fee, the terms of the contract and not this subpart will govern.

§ 1054.1407 *Prohibition against using total cost versus estimated cost formula.* In no instance will an administrative contracting officer certify to percentage of completion of work based upon the relationship that the contractor's actual expenditures bear to the total estimated cost appearing in the contract.

§ 1054.1408 *Consistency in use of formula adopted for individual contracts.* Once an administrative contracting officer has elected to use a definite formula for estimating percentage of completion of work on a contract, he will adhere to that formula throughout the life of the contract except that he may at any time elect to use the formula set forth as Formula No. 1 (see § 1054.1403 (a) (11)) even though he has previously used another prescribed formula. In no event will a successor to a contracting officer change the formula adopted by a prior administrative contracting officer except as set forth in this section.

§ 1054.1409 *Certificate of completion of work.* Upon making his estimate of percentage of work, the administrative contracting officer will prepare and deliver to the contractor a certificate of percentage of completion of work which will be in the following form, without deviation:

Date _____

I hereby certify that as of the date hereof the percentage of completion of work called for in Contract Nr _____, as determined by estimates made and approved by me, is no less than _____ percent.

_____
(Contracting officer)

§ 1054.1410 *Submission of vouchers covering fixed fee.* (a) The administrative contracting officer's certificate of percentage of completion of work in the form set forth in § 1054.1409 will be attached by the contractor to his voucher for payment of the accrued unpaid portion of the fixed fee before submitting his voucher to the Government auditor for approval.

(b) Both the accrued unpaid portion of the fixed fee and costs incurred under the contract may be submitted on the same voucher, unless separate vouchering of the fixed fee is more convenient for the contractor or would result in more expeditious reimbursement.

SUBPART P—ADMINISTRATION OF FLIGHT TEST OR OTHER R&D PROGRAMS AT TEST FACILITIES

§ 1054.1603 *Definition.* For the purpose of this subpart, a "test facility" is a government-owned and operated facility, or where other projects are conducted, by a contractor under the provisions of an AF contract.

§ 1054.1604 *Responsibilities.* The chief, air procurement district, or AF plant representative having cognizance over the prime contract under which the test is being conducted will insure that all contractual data are made available to the test facility for guidance during the test, and that an administrative contracting officer is assigned through transfer of secondary administration or a project officer is appointed and delegated specific responsibilities.

SUBPART R—RENEGOTIATION BOARD INQUIRIES

§ 1054.1803 *Procedure.* (a) Procurement and contract performance information will be obtained by the renegotiation Board directly from the applicable AMA headquarters, Hq ARDC, or other major commands.

(b) Information requested concerning a contractor should not be obtained from the representatives or personnel of that contractor. Information requested concerning subcontractors should be collected from sources within the Air Force to the extent available. When appropriate information may be obtained from the subcontractor's customers.

§ 1054.1805 *Checklist of questions.* (a) Applicable to Contracts Other than Construction or Architect-Engineer Contracts.

CHECKLIST

I. CHARACTER OF BUSINESS

A. Were the manufacturing techniques in connection with renegotiable business complex or relatively simple? Discuss. What degree of skill and precisions was required? Discuss.

B. To what extent were manufacturing processes or renegotiable business integrated (i. e., to what extent did the operations consist of actual processing or fabrication, as distinguished from mere assembly)? Discuss.

II. EFFICIENCY OF THE CONTRACTOR

A. Quantity of Production.

1. Did the contractor do a good job of quantity production in relation to available physical facilities? Discuss.

2. Did the contractor expand facilities to handle renegotiable business? If so, was the expansion in excess of requirements?

3. What was the contractor's record on meeting delivery schedules? If delivery schedules were not met, who and what were responsible for the failure? (i. e., specification changes, delays in delivery of Government-furnished material, labor troubles, etc.) if delivery schedulues were bettered, was it due to good management?

B. Quality of Product.

1. Was the quality of the contractor's renegotiable products or services outstanding, above average, average, below average, or poor? Discuss causes (such as skill, testing standards, substitution of materials, etc.).

2. What was the contractor's record of spoilage within the plant and rejection by Government inspectors? If abnormally excessive, discuss causes, effect on production and costs, and corrective measures.

3. Do you know of any significant mechanical or other difficulties in the installation or use of the contractor's renegotiable products? If so, discuss causes, corrective action, if any, and results.

C. Reduction of Costs. (Covered in sec. III below.)

D. Use of Materials, Facilities, and Manpower.

1. Was the contractor economical or wasteful in its use of materials, facilities, or manpower? Explain.

2. Was the contractor effective in controlling the quantity of materials and the amount of labor in relation to production?

3. Were labor relations harmonious or troublesome? Discuss strikes, stoppages, or other important difficulties.

III. REASONABLENESS OF COSTS AND PROFITS

A. Was the contractor high, above average, average, below average, or a low-cost producer? Discuss causes (such as efficiency, quality standards, specification change, difficulties in material supply, or labor troubles).

B. Were the contractor's pricing and profit policies reasonable? Was the contractor unusually difficult in price negotiations? If so, give any important details. Were any important contracts negotiated as subnormal profit rates or on a "no-profit" basis? List and explain.

C. To what extent did the contractor obtain business subject to renegotiation in the face of active competition? Was he the "sole source" on any products or services procured?

D. How did the contractor's prices on renegotiable business compare with those of companies furnishing the same or similar products or services? Specify competitors and furnish available price comparisons.

E. Did the contractor accompliah significant reductions of controllable costs? If production volume increased, did the contractor give the Government the benefit of savings?

IV. CAPITAL EMPLOYED

NOTE. Information needed by The Renegotiation Board with respect to capital employed normally will be developed from sources other than the procuring departments.

V. EXTENT OF RISK ASSUMED

A. Taking into consideration contracting techniques and pricing policies employed, were unusual risks borne by the contractor? (i. e., possibility of loss due to tight pricing policies, increases in material and labor costs, inability to obtain materials, cutbacks or contract termination, inventory spoilage, obsolescence, or in connection with guarantees of quality or performance). If so, explain.

B. To what extent were risks of the contractor reduced or minimized in contracting with the Government? (i. e., by use of price redetermination or price escalation contract clauses providing for upward price adjustment). Discuss types of price revision clauses, etc.

C. Did the acceptance of renegotiable contracts jeopardize the contractor's commercial market? If so, explain briefly.

D. Did the contractor bear any other important risks? If so, explain.

VI. CONTRIBUTION TO THE DEFENSE EFFORT

A. Did the contractor make any exceptional contributions to the defense effort? (Such as research, development, engineering, invention, or cooperation with the Government or other contractors in supplying technical assistance.) Explain in detail. To what extent were the contributions paid for by the Government? To what extent will the contractor benefit therefrom?

B. If the contractor is a broker, manufacturer's agent, or a dealer, did he, to your knowledge, make any substantial contributions to the defense effort by—

1. Making sources of materials and services available to defense contractors;
2. Correlating the productive capacity of a manufacturer with procurement needs;
3. Expediting the purchase and flow of materials to contractors;
4. Servicing sales contracts during performance; or
5. Rendering expert engineering or other technical assistance? If so, explain briefly.

(b) Applicable to Construction Contracts.

CHECKLIST

I. CHARACTER OF BUSINESS

NOTE. Information needed by The Renegotiation Board with respect to character of business normally will be developed from sources other than the procuring departments.

II. EFFICIENCY OF THE CONTRACTOR

A. Quality of Management

1. Was there adequate supervision?
2. Were there satisfactory scheduling of labor, material and equipment requirements to accomplish work items in orderly sequence? Discuss.
3. Were construction methods satisfactory? Above average? Below average?

B. Quantity of Production

1. Was work completed on time?
2. Were there unusual delays? If so, were they within or beyond control of the contractor and what corrective action was taken?

C. Quality of Production

1. Was Government inspection normal or was an unusual amount of inspection required to assure compliance with specifications?
2. What was record of rejected work, if any, and causes?

D. Reduction of Costs (Covered in sec. III below.)

E. Use of Materials, Facilities, and Manpower

1. Was equipment suitable for the work and what was its condition? Were there frequent breakdowns?
2. Was equipment fully used, where economical, to reduce labor costs?
3. Was contractor economical or wasteful in the use of materials, facilities or manpower? Discuss.
4. Was labor available locally or was it necessary to provide transportation, housing or subsistence?

III. REASONABLENESS OF COSTS AND PROFITS

A. Was the contract let as a result of negotiation or competitive bid? If the contract was let as the result of competitive bidding, give number of bids and tabulation of four lowest bids based on award items.

B. If cost type contract, was contractor effective in controlling or reducing costs?

C. Was the work confined to one area or to widely separated areas? What was the effect on pricing?

IV. CAPITAL EMPLOYED

NOTE. Information needed by The Renegotiation Board with respect to capital employed normally will be developed from sources other than the procuring departments.

V. EXTENT OF RISK ASSUMED

A. If contract was let as a result of competitive bids, what was the time allowed for bidding?

B. To what extent did unforeseen site conditions affect contractor's risk? Were there unusual or unanticipated subsurface or weather conditions? Discuss.

C. To what extent did the adequacy of plans and specifications affect risk? For example, were all items of work fully and clearly detailed; were there numerous changes required subsequent to award? Discuss.

D. Were there any contract provisions such as guarantees or escalation, etc., which increased or decreased the risk assumed?

E. Did the contractor bear any other important risks? Discuss.

VI. CONTRIBUTION TO THE DEFENSE EFFORT

A. Was facility of a high priority and was completion in advance of contract time requested?

B. Was work completed before contract requirement at no additional cost to the Government? If so, was early completion attributable to unanticipated favorable conditions or to outstanding efficiency?

(c) Applicable to Architect-Engineer Contracts

CHECKLIST

I. CHARACTER OF BUSINESS

NOTE. Information needed by The Renegotiation Board with respect to character of business normally will be developed from sources other than the procuring Departments.

II. EFFICIENCY OF THE CONTRACTOR

A. Quantity of Production

1. This factor is not particularly applicable to this type of business, however, appropriate comment should be made as to the speed of completion of the work.

B. Quality of Product

Discuss the following, as appropriate:

1. Quality of survey
2. Quality of investigation
3. Quality of management
4. Quality of design

(a) Was the design economical and suitable for intended purpose?

(b) Was it adaptable to practical construction methods?

(c) Did the design lend itself to conservation of critical materials?

(d) Were the drawings clear and sufficiently detailed?

(e) Were there many revisions?

5. Quality of specifications.

C. Reduction in Costs (covered in sec. III below).

D. Use of Materials, Facilities and Manpower

1. This factor is not usually applicable to this type of business, however, any unusual utilization of manpower or equipment should be commented on.

III. REASONABLENESS OF COSTS AND PROFITS

A. Were pricing and profit policies reasonable? If available, furnish cost and profit estimates which were used in negotiation of contract.

B. What is the contractor's reputation with respect to prices?

C. What was the estimated cost of construction for which plans and specifications were prepared under this contract?

D. If cost-type contract, was contractor effective in controlling or reducing costs?

IV. CAPITAL EMPLOYED

NOTE: Information needed by The Renegotiation Board with respect to capital employed normally will be developed from sources other than the procuring Departments.

V. EXTENT OF RISK ASSUMED

A. Were preliminary plans (Schematic data) available?

B. Was there any delay in approval of schematics?

C. Were there unusual design problems? (Discuss in general terms if necessary to avoid high Security classification.)

D. Was adequate time allowed for completion or was project of a high priority and early completion required? If the latter is true, did the original pricing take speedy completion into consideration?

VI. CONTRIBUTION TO THE DEFENSE EFFORT

A. Were any unusual contributions made in the way of unique or unusual design?

B. Was priority of project such that early completion constituted a disinct contribution?

SUBPART S—PERFORMANCE DATA ON ASPPA CONTRACTORS

§ 1054.1902 *General.* The Renegotiation Board administers the Renegotiation Act of 1951 as it pertains to contractors subject to the act. In order to compile a complete performance report, it is necessary to supplement information available to the ASPPA with that available to personnel having quality-control jurisdiction over the contractor's plant.

§ 1054.1903 *Source and routing of requests.* Requests for performance information will be received by the cognizant AMA directorate of procurement and production from the Renegotiation Board through its regional boards.

§ 1054.1904 *Use of checklist.* The performance checklist as set forth in § 1054.1911 will be used by the air procurement district as a guide in determining performance data factors. The checklist is derived from that published in appendix A of "A Guide Book for Reporting Performance Information" issued by the Renegotiation Board in July 1952.

§ 1054.1905 *Source of data.* (a) Prime-contractor performance data pertaining to the items listed in the checklist will be compiled from Air Force records. In no instance should information concerning the prime contractor be obtained from prime contractor personnel.

(b) Subcontractor performance data should be obtained from readily available Air Force records. When necessary, these data may be expanded by supplemental information requested from the prime contractor.

§ 1054.1911 *Performance checklist.*

PERFORMANCE CHECKLIST

I. CHARACTER OF BUSINESS

A. Were the manufacturing techniques in connection with renegotiable business complex or relatively simple? Discuss. What degree of skill and precision was required? Discuss.

B. To what extent did the operations consist of actual manufacturing as distinguished from blending or storage and handling? Discuss.

II. EFFICIENCY OF THE CONTRACTOR

A. *Quality of Production.*

1. Did the contractor do a good job of quantity production in relation to available physical facilities? Discuss.

2. Did the contractor expand facilities solely to handle Government business? If so, what was the extent of the expansion?

3. What was the contractor's record on meeting delivery schedules? If delivery schedules were not met, who and what were responsible for the failure? (For example, specification changes, delays in delivery of Government-furnished material, labor troubles, etc.) If delivery schedules were bettered, was it due to good management?

B. *Quality of Product.*

1. Was the quality of the contractor's renegotiable products or services outstanding, above average, below average, or poor? Discuss causes (such as skill, testing standards, substitution of materials, etc.).

2. What was the contractor's record of spoilage within the plant and rejection by Government inspectors? If abnormally excessive, discuss causes, effect on production and costs, and corrective measures.

3. Do you know of any significant technical or mechanical difficulties in the manufacture or handling of the products? If so, discuss causes, corrective action if any, and results.

SUBPART T—SUPERVISION OF FACTORY TRAINING COURSES

§ 1054.2002 *General.* Factory training programs under AF prime contracts are supervised by a representative of the Air Training Command except when the size and duration of the student load at a factory does not warrant assignment of such representative. The Air Training Command makes the determination, but it has been found impracticable for that command to advise the air materiel areas in advance as to whether an Air Training Command representative will be assigned. It is necessary, therefore, that the air materiel area not only find out whether an Air Training Command representative will be assigned, but also assume certain other responsibilities in connection with factory training.

SUBPART U—PLANT SEIZURE PROGRAM

§ 1054.2103 *General.* To effect Government seizure of a plant or facility where a work stoppage or other event is seriously delaying military production, the President of the United States issues an Executive order which authorizes and directs the Secretary of Defense to take possession and operate the facility involved. The Secretary of Defense then delegates this responsibility to the appropriate service (Army, Navy, or Air Force). The Secretary of the Air Force then relies upon Hq AMC to have ready at all times a list of qualified personnel within AMC from which seizure teams and Department of Defense representatives could be selected.

SUBPART W—SCRAP CONTROL

§ 1054.2303 *General.* The purpose of scrap controls is to eliminate waste and resulting costs and to provide for the optimum use of critical and strategic materials. Excessive generation of scrap results in the loss of the basic material, nullifies labor expended, wastes machine time and plant space, creates an accrual of overhead costs, and reduces the orderly production of acceptable items. The unproductive use of materials, labor, and production capacity increases costs and reduces quantity produced to the extent that it is imperative that all personnel concerned make a continuing study of all problems resulting thereby.

§ 1054.2304 *Responsibilities.* The administrative contracting officer will:

(a) Review the scrap control procedures of the AF contractor. The intent of the review is to establish that the contractor is practicing scrap control to insure that recurring scrap is being kept at a minimum and to provide information that will facilitate an immediate correction.

(b) Determine that the contractor's scrap controls, including procedures and records, are according to the generally accepted objectives of scrap control within the segment of the industry concerned and are adequate to protect the Government's interest. Advise the contractor and local cognizant AF personnel, in writing, of the determination. If corrective measures are necessary, advise the contractor so he may accomplish them.

SUBPART Y—LOSSES, DAMAGES, OR DESTRUCTION OF GOVERNMENT PROPERTY IN POSSESSION OF CONTRACTORS UNDER MILITARY SUSPENSE ACCOUNTING

§ 1054.2500 *Scope of subpart.* This subpart establishes procedure to be followed whenever Government property is lost, damaged, or destroyed while in the possession of a contractor performing under a service contract for such services as laundering, housing, stevedoring, employment of longshoremen, repair and return of property to the shipping organization; and may include other type contracts administered locally, wherein the Government property involved is controlled as a suspense item in the military account from which shipped.

§ 1054.2503 *Responsibilities and procedures.* (a) In each instance of loss, damage, or destruction of Government property while in the possession of a contractor under service type contracts, AF Form 447, "Turn-In Slip," will be initiated and prepared by the officer responsible for the property, or such other individual having a primary interest in the property involved. The contractor's name, address, and pertinent contract number will be set forth in the statement of circumstances on the face of the form.

(b) The contracting officer will consider the factual data contained on the AF Form 447 in determining the contractor's liability for loss, damage, or destruction of the property involved.

(c) If the contracting officer determines that the contractor is liable for the loss, damage, or destruction of the property involved, he will issue a letter to the contractor stating: that investigation has been made of the facts surrounding the particular case, and the amount of liability. The letter will further inform the contractor that, if he does not question his liability in the amount specified, the claim may be settled according to stated procedures.

(d) If the contractor advises the contracting officer that he is not liable (or, if liable, is not liable in the amount specified), the contracting officer will consider any new evidence that may be produced by the contractor, and will prepare and sign written findings of fact and a determination of whether the contractor is liable, and of the amount of his liability, if any. The findings and decisions will be promptly sent to the contractor and the accountable property officer in whose account suspense control has been maintained. After the decision has become final (because the contractor fails to make a timely appeal, or a timely appeal has been decided), the procedures of Subpart F, Part 1058, of this chapter will be followed.

SUBPART Z—INTERIM BILLING PRICES AND REFUNDS FOR INCENTIVE AND PRICE REDETERMINATION CONTRACTS

§ 1054.2600 *Scope of subpart.* This subpart defines the policy and establishes contract administration responsibilities and procedures necessary to: assure payment of amounts fairly due for items delivered and accepted under incentive-type and price-redetermination-type contracts, reduce the need for refunds by contractors under such contracts, facilitate timely adjustment of provisional billing prices and prompt completion of final pricing under these types of contracts.

§ 1054.2602 *General.* (a) There will be included in all new contracts of the incentive-type and price-redetermination-type, all definitive contracts of the incentive or price redetermination type replacing or superseding letter contracts, all amendments providing an incentive or price-redetermination clause in contracts not previously containing such a clause, and all amendments to contracts of the incentive-type or price-redetermination type providing for new or additional procurements, which limits payments to be made to the contractor and provides for quarterly refund to the Government of amounts found to exceed such limitations.

(b) Where, in the case of existing contracts of the incentive type or price redetermination type, payments cannot be limited within a reasonable time, as provided above, the administrative contracting officer will take prompt action by reporting such cases to the procuring contracting officer for the purpose of obtaining by mutual consent, contractual provisions similar to the new authorized clauses.

(c) Administrative contracting officers who adjust prices downward pursuant to voluntary refunds not required by any contractual provision and refunds incident to quarterly or other statements furnished under contractual provisions providing for adjustment of billing prices will accomplish a supplemental agreement after negotiation with the contractor. Prompt action is necessary to prevent overpayment and facilitate adjustment of billing prices.

(1) The following clause for the supplemental agreement may be used and, if necessary, modified to suit the circumstances:

Pursuant to authority of clause_____ of this contract the parties hereto agree to effect the following revised billing prices for items enumerated.

The adjusted billing prices agreed upon by the parties hereto are to be considered as interim prices for billing purposes and this revision is made without prejudice to the rights of either party in the negotiation of final prices of this contract.

(2) Where there is a voluntary refund without contractual provision therefor, the above clause will be modified by revising the first sentence to read:

By mutual agreement the parties hereto agree to effect the following revised billing prices for items enumerated.

§ 1054.2603 *Refunds and adjustments.* (a) It is essential in all cases that the amount of an indebtedness of contracts to the Government be ascertained promptly, and collected expeditiously according to Subpart F, Part 1058, of this chapter. Government personnel will take prompt action so that amendments and supplemental agreements, when appropriate, will be executed without delay.

(b) For use in expediting and controlling adjustments and refunds, current inventory and control lists will be established and maintained with regard to all incentive-type and price-redetermination-type contracts being administered.

(c) All incentive-type and price-redetermination-type contracts will be systematically reviewed at least every 3 months to obtain voluntary downward interim billing price adjustments and prompt refunds, as appropriate. The making of voluntary refunds in anticipation of retroactive price reductions will be encouraged. Contractors' proposals for any voluntary refund in connection with final pricing will be accepted without prejudice to final pricing. In connection with voluntary refunds, minimum refunds proposed by contractors in connection with final pricing proposals, and refunds incident to quarterly statements furnished under contractual requirements, contractors will not be required to furnish concurrent itemization of adjustments to be made on past billings, nor to furnish adjusted bills concurrently. Such adjustments as may be essential in connection with refunds will be accomplished by appropriate Government personnel, with such information as may be essential obtained from contractors after refunds are made. The making, acceptance, and deposit of refunds will not be delayed pending the making of any necessary accounting adjustments. When reduction in billing prices are proposed by contractors, they will be made effective immediately without prejudice to further adjustment. Billings voluntarily reduced by contractors will, if otherwise proper, be paid at the reduced amounts without awaiting contract amendments. The reduced price invoice or the credit memorandum should bear the following wording:

This voluntary price reduction is tendered by the contractor and accepted by the Government without prejudice to the rights of any of the parties in negotiation of final price of subject contract.

§ 1054.2604 *Contract administration.* The appropriate contracting officer will exercise every effort to bring about prompt redetermination of prices and the setting of firm target prices and final settlement of incentive-contract prices by vigilant and timely attention to the contract administration aspects of each contract, and nothing contained herein will diminish his responsibilities.

PART 1055—SPARE PARTS

Subpart A—Policy for Procurement and Delivery of Spare Parts

Sec.
1055.102 Policy.

Subpart B—Contractual Provisioning Documents

1055.202 Definitions.
1055.206 List of contractual provisioning documents.

Subpart C—Statement of Provisioning Policy (AMC Form 263) and Programing Checklist AMC Form 321 Series)

1055.302 Procedures.

Subpart D—Approval of Spare Parts or Ground Support Equipment Exhibits and Issuance of Supplemental Agreements

1055.402 Procedures and responsibilities.

Subpart E—Interim Spare Parts Kits To Maintain Experimental and Development Equipment

1055.503 Definition.
1055.504 Responsibilities.

Subpart F—Review of Documents Establishing Prices for Support Items

1055.602 Review board membership and functions.
1055.603 Procedures and responsibilities.

AUTHORITY: §§ 1055.102 to 1055.603 issued under sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314.

SUBPART A—POLICY FOR PROCUREMENT AND DELIVERY OF SPARE PARTS

§ 1055.102 *Policy*—(a) *Procurement.* (1) An initial supply of spare parts will normally be procured from the prime contractor under the provisions of authorized spare parts provisioning documents.

(2) Replacement spare parts will be procured directly from manufacturers who actually fabricate the parts whenever possible under the provisions of Public Law 413, except in the following instances:

(i) Where doubt exists that the parts will be entirely satisfactory due to lack of adequate engineering data for manufacture, anticipated design changes in the end item, standardization, etc.

(ii) When it is determined by the contracting officer to be in the best interest of the Government to procure the parts from the end item contractor; i. e., the contractor for an airframe, engine, radar set, etc.

(b) *Delivery.* The same kind of expediting action and followup will be maintained on spare parts as on the end item to insure concurrent delivery or delivery according to an approved negotiated delivery schedule. Priorities established for the end item will apply to the delivery of all spare parts of the end item.

SUBPART B—CONTRACTUAL PROVISIONING DOCUMENTS

§ 1055.202 *Definitions.* (a) "Contractual provisioning document" is an authorized specific document incorporated in AF contracts, by reference or otherwise, to prescribe the procedures, terms, and conditions governing the selection and furnishing of initial support requirements to maintain an end article for its initial phase of prescribed service.

(b) "Amendment" is an authorized document for changing existing requirements in, or adding new requirements to, contractual provisioning documents.

(c) "Addendum" is an authorized document outlining deviations from contractual provisioning documents, which apply to a specific service of the Armed Force or to specific major commodity areas.

§ 1055.206 *List of contractual provisioning documents.* The following sections list the contractual provisioning documents authorized for use.

Spare parts provisioning document for USAF aeronautical and supporting equipment contracts.

Ground support equipment and spare parts therefor provisioning document.

Short form spare parts selection procedure.

Short form spare parts selection procedure—Follow-on contract application only.

Training parts document for USAF service test or production equipment contracts.

Spare parts selection for the support of kits.

Spare parts procedure for support of kits for Department of the Army aircraft, aircraft engines, and GFAE therefor.

Amended provisioning document for USAF production contracts covering Navy requirements and equities.

Spare parts repair kit provisioning document for USAF contracts.

SUBPART C—STATEMENT OF PROVISIONING POLICY (AMC FORM 263) AND PROGRAMING CHECKLIST (AMC FORM 321 SERIES)

§ 1055.302 *Procedures.* (a) Contract Provision MCP 71-649, "Spare Parts Provisioning Document for USAF Aeronautical and Supporting Equipment Contracts" provides that AMC Form 263, "Statement of Policy To Provide Data Governing Initial Provisioning of Spare Parts," and AMC Form 321, "Programing Checklist," or AMC Form 321A "Programing Checklist—Electronics and Armament," will be furnished by the Government to the contractor.

(b) Contracting officers will furnish the contractor (or prospective contractors) AMC Form 263 and AMC Form 321 or AMC Form 321A, whichever is applicable, as follows:

(1) For sole source procurements the subject forms will be furnished to the contractor concurrently with the award of contract.

(2) For multiple source procurements (competitive) AMC Form 263 will be included in each Invitation for Bid or Request for Proposal forwarded to prospective contractors. Upon award of contract, the contractor will be concurrently furnished AMC Form 321 or AMC Form 321A, whichever is applicable.

(c) Contract Provision MCP 71-666, "Short-Form Spare Parts Selection Procedure", provides that the Government will furnish the contractor AMC Form 321 or AMC Form 321A, whichever is applicable, concurrently with the award of contract.

(d) Contract Provision MCP 71-666A, "Short-Form Spare Parts Selection Procedure—Follow-on Contract Application Only" provides that the Government will furnish the contractor AMC Form 321 or AMC Form 321A, whichever is applicable, concurrently with the award of contract.

SUBPART D—APPROVAL OF SPARE PARTS OR GROUND SUPPORT EQUIPMENT EXHIBITS AND ISSUANCE OF SUPPLEMENTAL AGREEMENTS

§ 1055.402 *Procedures and responsibilities.* (a) Spart parts and ground support equipment lists will be furnished by the contractor to the administrative contracting officer according to the authorized contractual provisioning documents appended to or referenced in the contracts.

(b) Following the submission of priced spare parts and ground support equipment lists, the administrative contracting officer will review the prices contained therein. When it has been determined that the prices are considered fair and reasonable, the administrative contracting officer will issue and sign a supplemental agreement adding the exhibit to the contract, provided that supply approval of items and quantities has been previously furnished and that it is within the fund limitations set forth in the contract.

(c) If excess funds for spare parts and ground support equipment remain after processing of the final priced spare parts and ground support equipment lists, the funds will be released according to existing procedures. The final priced spare parts of ground support equipment lists are lists published by the contractor which meet both of the following conditions:

(1) The contractor has assured the administrative contracting officer that no further engineering change proposals affecting the end item(s) under contract will be published.

(2) No additional orders for items and quantities are to be processed according to the contractual provisioning documents appended to or referenced in the contracts.

(d) If the contract involved contains a price revision clause and the ceiling price is specified in dollars (for example, a Form E), the final supplemental agreement incorporating spare parts and ground support equipment will make an appropriate change in the ceiling-price figure specified in the contract.

SUBPART E—INTERIM SPARE PARTS KITS TO MAINTAIN EXPERIMENTAL AND DEVELOPMENTAL EQUIPMENT

§ 1055.503 *Definition.* "Research and development interim spare parts kits" means those peculiar spare parts, components, and testing or handling equipment which in the estimation of the contractor would normally be required for support during the testing period only.

§ 1055.504 *Responsibilities.* (a) ARDC will provide for interim spare parts kits to maintain experimental and development equipment for test and evaluation.

(b) The procuring contracting officer will provide for a spare parts list in the contract as a separate line item.

(c) The administrative contracting officer will:

(1) Obtain from the contractor a list of recommended spare parts for interim spare parts kits.

(2) Obtain project officer's approval of the contractor's list through the procuring contracting officer.

(3) Negotiate with the contractor prices of spare parts lists which have been approved by the project officer.

(4) Make contractual adjustment when the spare parts list is definitized.

SUBPART F—REVIEW OF DOCUMENTS ESTABLISHING PRICES FOR SUPPORT ITEMS

§ 1055.602 *Review board membership and functions.* (a) A review board will be established at each air procurement district or AF plant representative office, as appropriate.

(b) The review board will consist of at least two members having technical or cost knowledge of items which they will review. The board will review documents which establish prices for articles procured under open contracts or under the terms of a contractual provisioning document when the total value (or in the case of spare parts change requests and supplemental agreements, the gross debit dollar value) of such documents exceeds $100,000.

§ 1055.603 *Procedures and responsibilities.* (a) Documents which establish prices will be furnished by the contractor to the administrative contracting officer according to the applicable contractual provisioning document appended to or referenced in the contract, or according to the applicable open contract. The administrative contracting officer will review the documents. If he considers the prices fair and reasonable, the administrative contracting officer will forward each document whose total price exceeds $100,000 to the review board by DD Form 96 "Disposition Form," stating reasons why prices are considered fair and reasonable.

(b) The review board will review the documents, and recommend approval or disapproval, giving reasons. In considering the acceptability of the negotiated prices, the board should consider (1) the overall reliability of the contractor's pricing system, (2) the degree to which individual prices were checked against accounting records, (3) the extent to which value can be placed on individual items by comparison with similar items or by use of the judgment of AF personnel familiar with production methods and costs. The board will then attach its recommendations to papers submitted by the administrative contracting officer and forward them to the AF plant representative or chief, air procurement district, for administrative approval. If the review board is unable to reach a unanimous decision, all dissenting comments will be forwarded with the majority recommendation.

(c) After administrative approval or disapproval by the AF plant representative or chief, air procurement district, the documents will be returned to the administrative contracting officer. If disapproved, reasons for disapproval will be furnished.

(d) In cases of disapproval, the administrative contracting officer will take corrective action and resubmit the documents to the review board.

(e) If the documents are approved, the administrative contracting officer will take action to incorporate these documents into the proper contract.

PART 1056—CONTRACTS ENTERED INTO UNDER AUTHORITY OF TITLE II, FIRST WAR POWERS ACT, 1941, AS AMENDED

Sec.

1056.002 Authority.
1056.003 Air Force contract adjustment board.
1056.004 Cases within jurisdiction of organizations at level lower than Air Force contract adjustment board.
1056.005 Preparation of cases.
1056.008 Power of denial.
1056.010 Required statements.
1056.011 Required warranty.
1056.012 Conflicting instructions.
1056.014 Regulations approved by the Secretary of Defense.
1056.014-1 Regulations of February 21, 1951, as amended.
1056.014-2 Regulations of July 17, 1951.
1056.015 Delegations of authority.
1056.015-1 Delegations with respect to regulations of February 21, 1951.
1056.015-2 Delegations with respect to regulations of July 17, 1951.

AUTHORITY: §§ 1056.002 to 1056.015-2 issued under sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U. S. C. 2301-2314.

§ 1056.002 *Authority.* (a) Title II of the First War Powers Act, 1941 (50 U. S. Code, App. sec. 611) as amended by Public Law 921, 81st Congress, is quoted as follows:

SEC. 201. The President may authorize any department or agency of the Government exercising functions in connection with the national defense, in accordance with regulations prescribed by the President for the protection of the interest of the Government, to enter into contracts and into amendments or modifications of contracts and into amendments or modifications of contracts heretofore or hereafter made and to make advance, progress, and other payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts whenever he deems that such action would facilitate the national defense: *Provided*, That nothing herein shall be construed to authorize the use of the cost-plus-a-percentage-of-cost system of contracting: *Provided, further*, That nothing herein shall be construed to authorize any contracts in violation of existing law relating to limitation of profits: *Provided further*, That all acts under the authority of this section shall be made a matter of public record under regulations prescribed by the President and when deemed by him not to be incompatible with the public interests: *Provided further*, That all contracts entered into, amended, or modified pursuant to authority contained in this section shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall have access to and the right to examine any pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the per-

formance of and involving transactions related to such contracts or subcontracts.

(b) Excerpt from Public Law 921, 81st Congress, as amended, is quoted as follows:

SEC. 2. Title II of such Act, as amended, shall remain in force during the national emergency proclaimed by the President December 16, 1950, or until such earlier time as the Congress by concurrent resolution or the President may designate, but in no event beyond June 30, 1957.

SEC. 3. Nothing in this Act shall prejudice anything heretofore done under the said Title II of the First War Powers Act, 1941, or the continuance in force of any action heretofore taken thereunder.

§ 1056.003 *Air Force Contract Adjustment Board.* The Air Force Contract Adjustment Board has been created by the Secretary of the Air Force to review and approve or disapprove most requests by AF contractors for relief under the regulations of February 21, 1951, as amended.

§ 1056.004 *Cases within jurisdiction of organizations at level lower than Air Force Contract Adjustment Board.* Authority to approve requests for relief has been delegated below the level of the Air Force Contract Adjustment Board in the following cases only (see § 1056.015 for level of delegation):

(a) *Correction of mutual mistakes.* Subject to the following limitations:

(1) The approval of relief, whether by way of release from performance or adjustment of the contract price or terms, will not, in the opinion of the approving authority, result in an actual or potential increase in cost to the Government in excess of $50,000, provided, however, that where the potential increase in cost to the Government cannot be estimated with reasonable accuracy, no further approval will be required if it is determined by the approving authority that such potential increase in cost will probably not exceed $50,000.

(2) The correction of the mistake must not deal with or directly affect any matter under the contract which has been referred to the General Accounting Office.

(3) The notice of mistake must be given by the contractor to the contracting officer before completion of performance or before the giving of notice of termination of the contract, as the case may be.

(4) The authority granted will not be exercised after approval of the final voucher under the contract.

(5) Where the contract was entered into by means of formal advertising, the change must not result in the payment to the contractor of a sum in excess of the next lowest responsive bid of a responsible bidder. Where the contract was entered into by means of negotiation, the change must not result in payment to the contractor of a sum in excess of the amount of any other proposal considered in the negotiations, provided that, where the contract was not placed on the basis of competition as to price, but primarily on the basis of other considerations, this limitation will not be applicable.

(6) The authority granted will not be exercised to grant relief in any form to a contractor under a contract for the sale of Government-owned surplus property. When a contractor requests relief under such a contract, the request will be processed to the Comptroller General of the United States for resolution.

(b) *Formalization of commitments.* Subject to the following limitations:

(1) The amount to be paid, resulting from the formalization of the commitment does not exceed $50,000.

(2) No claim relating to the furnishing of materials, services, or facilities has been referred to the General Accounting Office.

(3) Where the instructions or request to proceed are of the type which, when given, could properly have been embodied in a change order, supplemental agreement, or other amendment under a then existing contract, approval of the final voucher must not have occurred under the contract as theretofore formally amended in writing.

(c) *Revision of contract delivery schedules.* Subject to the following limitations.

(1) The delinquency has caused no substantial damage to the Government.

(2) The delinquency was not occasioned by willful action or gross negligence of the contractor.

(3) The revision of the delivery schedule does not deal with or directly affect any matter which has been referred to the General Accounting Office.

(4) The delivery schedule will not be revised when the effect thereof will be to waive accrued liquidated damages.

(5) The authority will not be exercised with respect to contracts for aircraft, engines, or propellers.

§ 1056.005 *Preparation of cases.* Air Force Contract Adjustment Board Procedure No. 1 (reprinted in full in this section) will be followed item by item by contractors when submitting requests for relief. Contractors will be furnished copies of Air Force Contract Adjustment Board Procedure No. 1 by contracting officers and will answer each item except item 1c of Part I.

DEPARTMENT OF THE AIR FORCE
WASHINGTON

Office of the Secretary *April 23, 1951*

AIR FORCE CONTRACT ADJUSTMENT BOARD PROCEDURE NO. 1

Reference is made to the memorandum from the Acting Under Secretary of the Air Force to Chief of Staff, Vice Chief of Staff, and Deputy Chief of Staff, Materiel, dated March 7, 1951, subject: "Amendments of Contracts without Consideration, Correction of Mistakes in Contracts, and Formalization of Informal Commitments under Title II of the First War Powers Act, as amended, and and Executive Order No. 10210 issued thereunder," establishing the Air Force Contract Adjustment Board and vesting in the Board certain authority and duties under the Act and the Executive Order. Such memorandum provides:

The Board shall (i) have all powers necessary and incident to the proper performance of its duties as set forth herein, (ii) adopt its own method of procedure and rules and regulations for its conduct, (iii) prescribe the type of information and proof to be submitted to it and to the approving authorities referred to in paragraph 2b hereof in connection with requests referred to it or to such approving authorities, as the case may be, and (iv) make provision for the maintaining of complete data as to all contracts and amendments to contracts made pursuant to the Regulations and in aid thereof establish such reporting procedures as it may consider necessary.

Pursuant to this authority, the procedure herein set forth shall be followed in processing to this Board requests by contractors for (i) amendments without consideration, (ii) correction of mistakes in contracts, and (iii) formalization of informal commitments. Such procedure shall apply equally to requests by contractors for correction of mistakes in contracts and formalization of informal commitments submitted for approval to approving authorities other than the Board pursuant to paragraph 2b of the memorandum of March 7, 1951, referred to above.

In forwarding to the Board requests for authority to (i) amend contracts without consideration, (ii) correct mistakes in contracts, and (iii) formalize informal commitments, there shall be included:

a. Specific finding by the [Deputy Director/Procurement or Assistant Deputy Director/Procurement, Directorate of Procurement and Production, Hq AMC] or higher authority at AMC, that taking the action requested will facilitate the national defense, together with a recommendation for approval of the request.

b. Concurrence in such finding and recommendation by the Deputy Chief of Staff, Materiel, or, while he is so acting, by the person acting for the time being as Deputy Chief of Staff, Materiel.

Part I

Requests for Amendments Without Consideration

Amendments without consideration require approval of the Board. Requests therefor, which are favorably recommended, shall be submitted to the Board for decision. Requests which are unfavorably considered by contracting officers or higher authority concerned may be denied by such persons and in such event need not be submitted to the Board.

1. Each request forwarded to the Board for action will be accompanied by a full statement of the circumstances surrounding the relief requested, including, but not limited to, the following information. Affidavits of parties concerned should be obtained where deemed necessary or advisable.

a. *Provisions and status of contract.*

(1) A copy of the contract, as amended, will be furnished.

(2) Brief description of contract indicating date executed, items being procured, price, delivery schedule, and special clauses, such as price adjustment, progress payment and advance payment clauses.

(3) Extent of completion of performance and amounts paid (including advance payments and progress payments), indicating whether final payment has been made on the contract as theretofore amended.

(4) A statement showing whether a claim or dispute with respect to the subject matter of the request has been referred to the General Accounting Office or other Government agency, and the status thereof.

b. *Factors creating need for relief.*

(1) Nature of items being procured (standard, new or experimental).

(2) Previous experience of contractor with similar production.

(3) Changes in conditions or Government action affecting contractor's costs.

(4) Cost experience of the contractor under the contract, and relation to original estimates.

(5) Reserves or allowances included in original price for the particular contingency out of which the request for relief arises. Nature and amount of reserves or allowances for other contingencies included in original price and an analysis of the extent, if any, to which such other reserves or allowances have been exhausted or utilized.

(6) An explanation should be given as to why the matter cannot be, or has not been, handled under the terms of the contract itself.

c. *Importance of contract or contractor to national defense.*

(1) Size of contract and need for item.

(2) Available sources of supply other than the contractor.

(3) Quality of performance by contractor (rate of production, delays, rejections).

(4) Probable future orders to contractor for such item, or for other national defense work.

d. *Extent of relief needed.*

(1) Analysis of financial position of contractor, with certified balance sheets and certified profit and loss statements, together with such supporting schedules, to the extent practicable, as are necessary to a full understanding of the financial condition of the contractor immediately prior to the execution of the subject contract, throughout the contract period, and as near the date the request is forwarded to the Board as may be practicable.

(2) Estimates of future costs under the contract accompanied by an analysis of all variances from costs as originally estimated by the contractor, together with an explanation of the cause or causes for any such variances.

(3) Other defense contracts and brief summary of other Government and non-Government business of contractor, indicating to the extent possible the estimated profits anticipated under such contracts.

(4) Statement of responsible officer of contractor setting forth the exact relief needed.

(5) Effect of granting relief on profits before Federal income taxes.

(6) Comparison with prices of other contractors within the same industry.

(7) Effect of refusing relief.

(8) There should be indicated whether the costs involved, if any, which would be reimbursed to the contractor, were considered as part of the contractor's gross costs in statutory renegotiation proceedings, the amount of refund of excessive profits, and to what extent, if any, the probability of obtaining the relief now proposed was considered.

(9) The exact relief recommended.

2. There shall be furnished the name, address, and telephone number of the individuals within the Air Force and in the employ of the contractor having detailed knowledge of the facts.

Part II

Requests for Correction of Mistakes in Contracts

1. Each request forwarded to the Board for action will be accompanied by a full statement of the circumstances surrounding the relief requested, including, but not limited to, the following information. Affidavits of parties concerned should be obtained where deemed necessary or advisable.

a. The information set forth in paragraph 1a, 1b (6), 1d (4), (6), (7), (8), (9), and paragraph 2 of Part I hereof, and any other information set forth in Part I hereof to the extent relevant to the particular case.

b. That an error or mistake was made or that a misunderstanding or ambiguity exists, of what it consists and how it occurred, and the true intention of the part or parties.

c. Whether notice of the mistake was given by the contractor to the contracting officer before completion of performance by the contractor or before notice of termination of the contract, and whether such notice was communicated formally or informally.

d. The amount of actual or potential increase in cost to the Government resulting from the adjustment involved in the correction of the mistake, indicating whether such adjustment will be $50,000 or more.

e. Where the contract was entered into by means of formal advertising, that such correction will not result in payment to the contractor of a sum in excess of the next lowest responsive bid of a responsible bidder.

f. Where the contract was entered into by negotiation, that either such correction will not result in payment to the contractor of a sum in excess of the amount of any other proposal considered in the negotiations, or that the contract was not placed on the basis of competition in which case there shall be included a brief summary of such other considerations.

Part III

Requests for Formalization of Informal Commitments

1. Each request forwarded to the Board for action will be accompanied by a full statement of the circumstances surrounding the relief requested, including, but not limited to, the following information. Affidavits of parties concerned should be obtained where deemed necessary or advisable.

a. The original or photostatic copies of any written instructions and a full statement of any oral instructions, relied upon by the claimant.

b. Identification of any officer or agent upon whose authority to bind the Government the claimant relied, together with a statement by the claimant that he, in fact, relied upon such authority.

c. A statement of when and to whom such materials, services, or facilities were furnished or were arranged to be furnished, and of the arrangements made for furnishing them, showing whether or not at the time of furnishing or arranging to furnish such materials, services or facilities the claimant intended to be directly compensated for the same by the Government.

d. A finding that the amount claimed constitutes fair compensation for the materials, services or facilities furnished or arranged to be furnished such finding shall be supported by (i) substantiating evidence, (ii) statement of profit allowance, if any, and (iii) an explanation of the scope of the investigation of the costs incurred.

e. A statement of the reasons why the proposed action was not timely embodied in an appropriate supplemental agreement, change order or contract.

f. A brief description of the contract, if any, to which the request is related, including a copy of such contract, as amended.

g. A statement showing whether a claim or dispute with respect to the subject matter of the request has been, or is being, submitted to the General Accounting Office and, if so, of the status thereof.

h. Where the instructions or request to proceed are of the type which, when given, could properly have been embodied in a change order, supplemental agreement, or other amendment under a then existing contract, a statement will be submitted indicating whether final payment or the approval of the final voucher under the contract as theretofore formally amended in writing has occurred.

i. There should be indicated whether the costs involved, if any, which would be reimbursed to the contractor, were considered as part of the contractor's gross costs in statutory renegotiation proceedings, the amount of refund of excessive profits, and to what extent, if any, the probability of obtaining the relief now proposed was considered.

2. There shall be furnished the name, address, and telephone number of the individuals within the Air Force and in the employ of the contractor having detailed knowledge of the facts.

Part IV

Reporting

The Board shall be furnished promptly with a written report of each request approved pursuant to the authority delegated in paragraph 2b of the memorandum of March 7, 1951, which involves in excess of $1,000. Such report will contain the following:

1. A copy of the contract or amendment which accomplishes the correction of the mistake or the formalization of the informal commitment.

2. A summary of the facts and evidence upon which such action is based.

[S] J. S. Imbre,
Chairman,
Air Force Contract Adjustment Board.

§ 1056.008 *Power of denial.* All requests by contractors for amendment without consideration, correction of mistakes in contracts, or formalization of commitments and all applications for revision of delivery schedules may be denied by the authority referred to in § 1056.015 and in such event need not be submitted to the Air Force Contract Adjustment Board.

§ 1056.010 *Required statements.* All contracts and amendments made under authority of Public Law 921, 81st Congress; Executive Order 10210 (16 FR 1049), and the Regulations thereunder will—

(a) Make reference to the act and the Executive order.

(b) Contain a statement of the facts and circumstances which justify action.

(c) Include a finding that the national defense is facilitated thereby.

(d) Include the Examination of Records clause set forth in Part III, paragraph 1d, of the Regulations of February 21, 1951, as amended (see § 1056.014–1), notwithstanding the fact that the contract to be amended contains no Examination of Records clause or contains a different one than that set forth in the above-cited paragraph.

§ 1056.011 *Required warranty.* Every contract entered into, amended, or modified pursuant to this section will contain the Covenant Against Contingent Fees Clause set forth in § 7.103–20 of this title.

§ 1056.012 *Conflicting instructions.* To the extent that provisions of this section are in conflict with provisions of other directives, the provisions of this section apply.

§ 1056.014 *Regulations approvedy by the Secretary of Defense.*

§ 1056.014–1 *Regulations of February 21, 1951, as amended.* The regulations quoted in this section apply to amendment of contracts without consideration, correction of mistakes in contracts, and formalization of informal commitments.

REGULATIONS GOVERNING THE EXERCISE OF CERTAIN AUTHORITY GRANTED BY TITLE II OF THE FIRST WAR POWERS ACT, AS AMENDED, AND EXECUTIVE ORDER NO. 10210, ISSUED THEREUNDER

Part I

General Considerations

1. By Title II of the First War Powers Act, 1941, 50 U. S. Code App. Sec. 611, as amended by Public Law 921, 81st Congress (herein referred to as the "act"), and Executive Order No. 10210, dated February 2, 1951, set forth respectively in inclosures (1) and (2) hereto, the Secretaries of Defense, Army, Navy, and Air Force have authority, under such regulations as may be prescribed or approved by the Secretary of Defense, to enter into contracts and into amendments or modifications of contracts, heretofore or hereafter made, and to make advance, progress, and other payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts.

2. These regulations set forth the standards governing the exercise of certain of the authority made available by said act and Executive order. These regulations do not purport to cover all the authority conferred by the act and Executive order, but are confined to (a) amendments of contracts without consideration, (b) correction of mistakes in contracts, and (c) formalization of informal commitments. The exercise of other authority conferred by the act and Executive order will await the issuance of supplemental regulations.

3. The authority granted by the act and the Executive order as described herein is an extraordinary one and its exercise must be carefully administered. Carelessness and laxity on the part of contractors should not be encouraged by the practice of granting relief to such contractors even though denial of relief in a particular case may result in some lack of cooperation on the part of a contractor.

Part II

Standards Governing Exercise of Authority

1. Any action taken under this Part II must be based on a finding that the national defense will be facilitated thereby.

2. The determination of whether in a particular case a contract amendment to be entered into without consideration, or the correction of a mistake or ambiguity in a contract, or the formalization of an informal commitment will facilitate the national defense is a matter of sound judgment to be made on the basis of all the facts of such case. Although it is obviously impossible to predict or enumerate all the types of cases with respect to which relief may appropriately be granted, examples of certain cases or types of cases where relief may be proper are set forth below. Such enumeration is not intended to exclude other cases where the circumstances are such as to warrant the granting of relief, and even in the enumerated cases other factors may result in a denial of relief.

a. *Amendments without consideration.*

(1) Where an actual or threatened loss on a defense contract, however caused, will impair the productive ability of a Contractor whose continued operation as a source of supply is found to be essential to the national defense, the contract will generally be equitably adjusted to the extent necessary to avoid such impairment of the Contractor's productive ability.

(2) Where a contractor suffers a loss (not merely diminution of anticipated profits) on a defense contract as a result of Government action, the character of the Government action will generally determine whether any adjustment in the contract will be made and its extent.

(a) Where the Government action is directed primarily at the Contractor and is taken by the Government in its capacity as the other contracting party, the contract may be equitably adjusted if fairness so requries. Thus, where such Government action, although not creating any liability on its part, increases the cost of performance, considerations of fairness may make appropriate some equitable adjustment in the contract.

(b) When the action is not taken by the Government in its capacity as the other contracting party, but in its sovereign capacity, relief will generally not be granted. However, exceptional cases, depending on the nature of the action, the circumstances, and the effect on the Contractor, may require an equitable adjustment in the contract when necessary to insure maximum cooperation and production in the national defense effort.

b. *Correction of mistakes.*

(1) Effecting amendments of contracts with the least possible delay to correct mutual mistakes and ambiguities will facilitate the national defense by expediting the procurement program and by giving contractors proper assurance that such mistakes and ambiguities, unavoidable in an expanded defense program, will be corrected expeditiously and fairly. As used herein the term "mutual mistakes" shall include:

(a) A mistake which consists of the failure to express in a written contract the agreement as both parties understood it;

(b) A mistake on the part of the Contractor which is so obvious that it was or should have been apparent to the Contracting Officer; and

(c) A mutual mistake as to a material fact.

c. *Formalization of commitments.*

(1) Where any person has arranged to furnish or has furnished, on or after June 25, 1950, to a contracting agency of the Department of Defense or to a defense contractor any materials, services, or facilities relating to the national defense, without a formal contract, relying in good faith upon the apparent authority of an officer or agent of such contracting agency, written or oral instructions, or any other request to proceed from a contracting agency, such contracting agency may enter into an appropriate contract providing fair compensation therefor. Formalization of such commitments under such circumstances will facilitate the national defense by assuring contractors, who have taken action to expedite performance or delivery without a formal contract, that they will be treated fairly and paid expeditiously.

Part III

Contractual Provisions and Record Requirements

1. All contracts and amendments to contracts made under the authority of the foregoing regulations shall:

a. Make reference to the act and the Executive order;

b. Contain a statement of the facts and circumstances which justify action;

c. Include a finding that the national defense is facilitated thereby; and

d. Include the following clause:

EXAMINATION OF RECORDS

(a) The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

(b) The Contractor further agrees to include in all his subcontracts hereunder which may hereafter be made, a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (i) purchase orders not exceeding $1,000, and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public. [As amended 12 January 1954.]

2. Complete data shall be maintained by each Department as to all contracts and amendments to contracts made pursuant to the act, Executive order, and these regulations.

Part IV

Exercise of Authority

1. (a) The authority to approve any contractual amendment without consideration which increases the stated contract price or unit price may not be delegated below the level of a contract adjustment board established in each department, except in extraordinary cases or classes of cases as to which the Under or Assistant Secretary for Procurement of the department involved finds that there are special circumstances clearly justifying delegation to a lower level. Any such delegation, including the finding relation thereto, shall be reported promptly to the Secretary of Defense.

(b) The authority to approve all other types of contractual amendments without consideration may be delegated in whole or in part to such lower levels as the Under or Assistant Secretary for procurement shall deem appropriate without the necessity for the finding required of him in the case of the contractual amendments referred to in paragraph 1 (a) of this Part.

(c) Any delegation of authority with respect to contractual amendments without consideration may include the power of final determination, as amended on 12 January 1954.

2. The authority to approve requests for correction of mistakes and ambiguities in contracts and for formalization of informal commitments, as referred to in Part II of these regulations, will not be delegated below the level of the head of a procuring activity, as defined in paragraph 1-201.4 of the Armed Services Procurement Regulations, without specific approval of the Under or Assistant Secretary for procurement.

3. The exercise of authority under these regulations will be in accordance with detailed instructions or directives, which shall be uniform to the extent practicable, issued by each department concerned.

Part V—*Reports*

The Secretary of each Department shall submit quarterly a report of activities under these regulations in the form to be prescribed by the Chairman of the Munitions Board.

[S] JOHN T. KOEHLER,
Assistant Secretary of the Navy.
[S] ARCHIBALD S. ALEXANDER,
Under Secretary of the Army.
[S] EUGENE M. ZUCKERT,
Assistant Secretary of the Air Force.

Approved:
[S] ROBERT A. LOVETT.
February 21, 1951.

§ 1056.014–2 *Regulations of July 17, 1951.* The regulations quoted in this

section apply to revision of contract delivery schedules.

REGULATIONS GOVERNING THE AUTHORITY TO CONTRACT UNDER TITLE II OF THE FIRST WAR POWERS ACT, AS AMENDED, AND EXECUTIVE ORDERS NO. 10210, ISSUED THEREUNDER

1. By Title II of the First War Powers Act, 1941, 50 U. S. Code, App. Sec. 611, as amended by Public Law 921, 81st Congress (hereinafter referred to as the "act"), and Executive Order No. 10210, dated February 2, 1951, the Secretaries of Defense, Army, Navy, and Air Force have authority, under such regulations as may be prescribed or approved by the Secretary of Defense, to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made, and to make advance, progress, and other payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts.

2. Regulations, approved by the Deputy Secretary of Defense on February 21, 1951, dealt with the authority to amend contracts without consideration, correct mistakes in contracts, and formalize informal commitments pursuant to Title II of said act and said Executive order issued thereunder. Regulations promulgated by the Deputy Secretary of Defense on April 6, 1951, dealt with the authority to make advance payments pursuant to the above authority.

3. These regulations deal with the remaining authority under said act and Executive order, not covered by regulations heretofore promulgated, to enter into amendments or modifications of contracts, heretofore or hereafter made, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts.

4. It shall be the general policy of each department to continue to effect its procurement pursuant to the authority of the Armed Services Procurement Act of 1947, 41 U. S. Code 151–161, rather than pursuant to the authority of Title II of the First War Powers Act. Use of the authority granted by the act and the Executive order to enter into contracts and into amendments or modifications of contracts, heretofore or hereafter made, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts will be limited to specific situations (i) where the authority of the Armed Services Procurement Act of 1947 or other authority is considered to be inadequate, or (ii) where, under all the circumstances, use of such authority of the act and Executive order is considered necessary and appropriate.

5. All contracts entered into under the authority of these regulations shall (i) contain the following recitation:

"This contract is entered into under the authority of Title II of the First War Powers Act, 1941, as amended, and Executive Order 10210."

and (ii) contain the clause set forth in paragraph 1d of Part III of the Regulations approved by the Deputy Secretary of Defense on February 21, 1951, as amended.

6. All amendments or modifications of contract made under the authority of these regulations shall contain the requirements listed in paragraph 1 of Part III of the Regulations approved by the Deputy Secretary of Defense on February 21, 1951, as amended.

7. Complete data shall be maintained by each department as to all contracts and amendments or modifications of contracts made pursuant to these regulations.

8. The authority to approve entering into contracts and amendments or modifications of contracts as set forth above pursuant to the act and the Executive order, will not be delegated below the level of the head of a procuring activity, as defined in paragraph 1–201.4 of the Armed Services Procurement Regulation, without the specific approval of the Under or Assistant Secretary for procurement.

9. The exercise of authority under these regulations shall be in accordance with detailed instructions or directives, which shall be uniform to the extent practicable, issued by each Department concerned.

[S] JOHN T. KOEHLER,
Assistant Secretary of the Navy.
[S] ARCHIBALD S. ALEXANDER,
Under Secretary of the Army.
[S] ROSWELL I. GILPATRIC,
Assistant Secretary of the Air Force.

JUNE 12, 1951.

Approved: Robert A. Lovett,
Deputy Secretary of Defense.
July 17, 1951.

§ 1056.015 *Delegations of authority.*

§ 1056.015–1 *Delegations with respect to amendment of contracts without consideration, correction of mistakes in contracts, and formalization of informal commitments under Title II of the First War Powers Act.* (a) The Deputy Chief of Staff, Materiel, USAF, has delegated to the Commander, AMC, the authority to approve and deny requests for: correction of mistakes in contracts and formalization of informal commitments, and the authority to deny requests for amendments without consideration subject to the pertinent regulations and conditions set forth in this part. The foregoing authority has been redelegated to the Director of Procurement and Production, Hq AMC, with power of redelegation, and to the Deputy Director of Procurement and Production and the Deputy Director/Procurement, Hq AMC, without power of redelegation. The Director of Procurement and Production, Hq AMC, has further redelegated this authority to:

(1) Commanders and vice commanders of major oversea commands, without power of redelegation.

(2) Commander and Deputy Commander, Air Materiel Force, European Area (AMFEA), with power of redelegation to the Director and Deputy Director, Procurement and Production, AMFEA. A copy of each redelegation made hereunder will be sent to the Commander, AMC, attn: MCPAP.

(3) Commander and Deputy Commander, Air Materiel Force, Pacific Area (AMFPA), with power of redelegation to the Director and Deputy Director, Procurement and Production, AMFPA. A copy of each redelegation made hereunder will be sent to the Commander, AMC, attn: MCPAP.

(b) Any previous delegations of the authority described in this section were thereby superseded. Action taken under previous delegations were not affected, and all delegations of authority made thereunder were continued in full force and effect until amended or rescinded.

§ 1056.015–2 *Delegations with respect to revision of contract delivery schedules.* (a) The Deputy Chief of Staff, Materiel, USAF, has delegated to the Commander, AMC, the authority to approve, notwithstanding the absence of legal consideration, the amendment or modification of delivery schedules in AF contracts. The Commander, AMC has further redelegated this authority without power of redelegation to:

(1) Director of Procurement and Production, Hq AMC.

(2) Deputy Director/Procurement, Directorate of Procurement and Production, Hq AMC.

(b) The exercise of this authority is subject to: the Regulations of July 17, 1951, the limitations in § 1056.004 (c), and the requirements and conditions set forth in this section.

(1) The authority is not intended as a means of providing monetary relief to contractors, and in exercising such authority due consideration will be given to the effect of revision of the delivery schedule on the ultimate cost to the Government under the contract to be amended. Wherever the approving authority deems such action appropriate, the amendment which extends the contract delivery schedule should include a provision to protect the Government against increase in cost resulting from such extension.

(2) Where it is determined that it will facilitate the national defense to revise a contract delivery schedule, but the authority described above, or other authority, does not authorize such action, the matter may be submitted to the Deputy Chief of Staff, Materiel, USAF, for approval, with a full statement of the circumstances which justify extension of the contract delivery schedule.

(3) The authority is not to be construed as relaxing the requirement that contractors are expected to comply with the performance requirements of their contracts and, in appropriate cases, it may be necessary and desirable to cancel contracts for default.

PART 1057—REPORTS

Subpart A—Procurement Action Reports

Sec.
1057.102 Definitions.
1057.103 Authority.

Subpart C—Systems of Assigning and Reporting Aircraft Serial Numbers

1057.302 Requirements.

Subpart G—Report of Profit on Air Force Contracts Under Vinson-Trammell Act

1057.701 Scope of subpart.
1057.702 Responsibility.
1057.703 Requirement.
1057.705 Use of report.

Subpart T—Overtime Report

1057.2002 Objective of overtime report.
1057.2003 Definitions.

AUTHORITY: §§ 1057.102 to 1057.2003 issued under sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314.

SUBPART A—PROCUREMENT ACTION REPORTS

§ 1057.102 *Definitions.* (a) "Procurement action" is the term used in this report to refer to any net contractual

action to obtain supplies, services, or construction, which obligates or deobligates funds.

(1) The term includes: preliminary contractual instruments such as letter contracts; definitive contracts, both new and superseding; purchase orders; job orders; task orders; delivery orders; provisioning order obligating documents (POOD's); and any other orders against existing contracts, including debit and credit actions that modify a contract, such as amendments, change orders, supplemental agreements, cancellations and terminations.

(2) The term excludes: Requisitions and other means of transferring supplies or services within, or between, the military departments or the procurement agencies of the Department of Defense; and contracts which do not obligate a firm total dollar amount or do not name a fixed quantity, such as open-end, indefinite quantity, or running term contracts (orders placed against contracts of the latter type are to be reported as procurement actions).

(b) "Qualified product" is an item on a Qualified Products List or tested and approved for inclusion in a qualified products list as authorized by Subpart E, Part 2, of this title.

(c) "Intra-Governmental procurement actions" include interdepartmental actions and interservice actions, as defined in this section:

(1) "Interservice actions" include purchase orders or other procurement instruments placed by one Department of Defense activity against term contracts, open-end contracts, indefinite quantity contracts, or agreements executed by another Department of Defense activity. Examples are: (i) Orders placed by one military department against contracts entered into by another military department, (ii) orders placed by activities of one military department against contracts entered into by activities of the same military department, and (iii) orders placed by a military department or activity against contracts entered into by joint procuring agencies.

NOTE: This is to be interpreted as meaning orders placed between major commands.

EXCEPTION: Orders placed against petroleum contracts entered into by Armed Services Petroleum Purchasing Agency (ASPPA) will not be reported.

(2) "Interdepartmental actions" include procurement from or through departments, agencies, institutions, or corporations of U. S. Federal, State, or local governments, other than the Department of Defense, except State or local educational institutions and noncommercial or nonprofit organizations that are not governmental agencies. Examples are: (i) Orders placed by a military department or activity against contracts entered into by any U. S. Federal department, agency, institution, or corporation outside the Department of Defense, (ii) contracts placed by a military department or activity with any U. S. Federal Government agency, institution, or corporation outside the Department of Defense.

EXCEPTION: State-controlled educational institutions will not be reported as interdepartmental, and will be reported as large nonprofit institutions.

(d) "Advertised procurement actions" are new or modifying actions relating to procurement resulting from acceptance of a bid made by a supplier in response to formal advertising for bids.

EXCEPTION: Small business restricted advertising as provided in paragraph (f) of this section.

(e) "Negotiated procurement actions" are new or modifying actions relating to procurement resulting from negotiation procedures, as authorized by section 2 of Public Law 413 (80th Congress) (62 Stat. 21; 41 U. S. C. 151) and by Part 3, Chapter I, of this title.

(f) "Small business restricted advertising" is a form of negotiated procurement conducted in the same way as prescribed for formal advertising under Part 2, Chapter I, of this title, except that bids and awards will be restricted to small business concerns and the contract will be awarded pursuant to the authority of section 214 of the Small Business Act of 1953, as amended (67 Stat. 238; 15 U. S. C. 643).

(g) "Actions negotiated under PL 413 exception" are those authorized by section 2 of Public Law 413 (80th Congress) (62 Stat. 21; 41 U. S. C. 151), as explained in detail in Subpart B, Part 3, Chapter I, of this title, and include Small Business Restricted Advertising as provided in paragraph (f) of this section.

(h) "Labor surplus areas" are those classified as such by the Department of Labor and set forth in a list entitled "Areas of Substantial Labor Surplus" issued by that Department in conjunction with its publication, "Bi-Monthly Summary of Labor Market Developments in Major Areas," and areas which are not classified by the Department of Labor but which are individually certified as areas of substantial labor surplus by a Local State Employment Office at the request of any firm located in the areas, which is bidding for a procurement involving set-asides. "Labor Surplus Industries" are those industries which have been certified for preferential treatment by the Office of Defense Mobilization according to Defense Manpower Policy No. 4.

(i) "Major disaster area" is an area so designated by the President or Federal Civil Defense Administrator under the provisions of Public Law 875 (81st Congress) as amended.

(j) "Labor surplus set-aside" designates a method of procurement whereby a portion of the requirement, as determined by the procurement activity, is withheld from general solicitation (either formally advertised or negotiated), and is reserved for negotiation exclusively with firms in labor surplus areas, and is to be performed substantially within such labor areas (§ 1.302–4 (a) (ii) of this title).

(k) "Small business concern" is a concern which conforms to the definition of § 1.302–3 of this title, or has been certified to be a small business concern by the Small Business Administration.

(l) "Nonprofit institution" means any corporation, foundation, trust, or institution not organized for profit, no part of the net earnings of which inures to the profit of any private shareholder or individual. Included are educational and scientific institutions of a nonprofit nature.

(m) "Small business set-asides" designates a method of procurement whereby either the total amount or a portion of a requirement is withheld from general solicitation (either formally advertised or negotiated), and is reserved for negotiation exclusively with small business firms. The set-aside may be agreed to jointly by the Small Business Administration representative and the Department of Defense procuring officer, or may be determined unilaterally by the Department of Defense representative.

(n) "Type of contract" in terminology and in definition is the same as that in Subpart D, Part 3, Chapter I, of this title.

(o) "Planned producer" is a company or firm listed in the Register of Planned Mobilization Producers (formerly the Alphabetical Register of Planned Wartime Materiel Suppliers), which is published periodically by the Assistant Secretary of Defense (Supply and Logistics). The mere fact that a firm is listed in this publication puts it in the "Planned Producer" category.

(p) "Planned item" is an item meeting the criterial of DOD Directive 4005.6, January 26, 1954 as amended December 16, 1954, and listed in the current publication of the DOD Preferential Planning List of End Items published by Office of Secretary of Defense (Supply and Logistics) and/or the Air Force Departmental List of Items published by Hq AMC.

(q) "United States, Territories, and Possessions" includes Alaska, Hawaii, Puerto Rico, the Virgin Islands of the U. S., the Canal Zone, American Samoa, Guam, the Trust Territories which include the Mariana (less Guam), Caroline, and Marshall Islands, and other possessions including Baker, Howland, Jarvis, Canton, Enderbury, Johnson, Midway, and Wake Islands.

§ 1057.103 *Authority.* Procurement action reports are required by Congress as stipulated in section 2 of the Armed Services Procurement Act of 1947, Public Law 413 (80th Congress) 62 Stat. 21; (41 U. S. C. 151); by letter, February 19, 1948, from the President of the United States to the Secretary of Defense; and by the Office of Assistant Secretary of Defense (Supply and Logistics).

SUBPART C—SYSTEMS OF ASSIGNING AND REPORTING AIRCRAFT SERIAL NUMBERS

§ 1057.302 *Requirements.* All aircraft and guided missiles, including production and experimental models, procured from any source and assigned USAF model designations will be assigned AF serial numbers. This will include aircraft procured under the Mutual Defense Assistance Program, the Reimbursable Aid Program, Army and Navy programs, and any other aircraft not included in the above for which the Air Force has support responsibilities. Serial numbers will be assigned to flyable static test articles for convenience only and will be canceled upon arrival of the articles for static tests. For the purpose

of this subpart, guided missiles will be limited to those contained in the current WM USAF Guided Missile Production Schedule.

SUBPART G—REPORT OF PROFIT ON AIR FORCE CONTRACTS UNDER VINSON-TRAMMELL ACT

§ 1057.701 *Scope of subpart.* This subpart established the procedure for processing and disseminating information contained in reports of profit on Army, Navy, or Air Force contracts filed by Air Force contractors and subcontractors in accordance with the provisions of the Vinson-Trammell Act (34 U. S. C. 496 and 10 U. S. C. 311) and for notifying finance officers that such reports have been filed.

§ 1057.702 *Responsibility.* The report covering an Air Force prime contract which is subject to the terms of the Act must be filed by the prime contractor as a condition precedent to final payment under such contract. Since a finance officer is required to withhold final payment on a prime contract which is subject to the Vinson-Trammell Act, until advised that the report covering the contract has been filed, processing of reports will be expedited so that payment to prime contractors will not be unduly delayed.

§ 1057.703 *Requirement.* Prime contractors and subcontractors performing Air Force contracts which are subject to the provisions of the Vinson-Trammell Act are required to file a report of profit with the Secretary of the Air Force within 90 days after completion of the contract. The form prescribed for use is DD Form 147, "Report of Profit on Army, Navy, or Air Force Contract."

§ 1057.705 *Use of report.* Copies of the report retained by the Air Materiel Command will be made available to the appropriate buyers for internal use within the Air Force in connection with future procurements to insure the maintenance of reasonable profits. The data contained in these reports will not be disclosed to any unauthorized person. A prime contractor with whom negotiations are being conducted will not be furnished data obtained from a report previously filed by a subcontractor. However, where such a report indicates an unreasonable profit on a previous subcontract, the buyer may question the reasonableness of the subcontractor's prices in negotiations between the prime contractor and the Government, provided that the specific data contained in such subcontractor's report will not be revealed to the prime contractor.

SUBPART T—OVERTIME REPORT

§ 1057.2002 *Objective of overtime report.* AMC Form 200 is established to collect dollar and man-hour factory overtime data generated by AF prime airframe, engine, and propeller facilities. This report applies to all production contracts (except straight fixed-price contracts) at these facilities. This report will yield a monthly breakdown of dollar cost and man-hour input by direct and indirect factory labor, and by straight time, overtime, and total time. It will also provide a breakdown of direct and indirect factory man-hours by percentage of total overtime hours worked against major programs with supporting statements indicating what the time was required for and the reason(s) for overtime.

§ 1057.2003 *Definitions.* For the purpose of this subpart, the following definitions will apply:

(a) "Overtime" refers to man-hours worked in excess of the standard 8-hour day and/or 40-hour week. (This applies regardless of any contractual clause authorizing extended work periods beyond this standard.) It does not include premium for multishift operations.

(b) "Straight time" refers to a standard 8-hour day and/or 40-hour week. That is, the period of work time which is not compensated for by an "overtime premium."

(c) "Factory payroll direct man-hours" are those man-hours as defined in the Aeronautical Manufacturers Planning Report (AMPR) system, including the hours considered to be "idle time" by the AMPR system.

(d) "Factory payroll indirect man-hours" refers to all other man-hours not covered in paragraph (c) of this section except time over and above the standard work period not compensated for with "overtime premium."

(e) "Major programs" refers to contractor's most important projects from the standpoint of labor input magnitude which may be covered by one or more contract numbers. For example, a major program is the production of a basic model by the contractor or a relatively large subcontracting effort expended on a basic model produced by another prime contractor. Major programs are also intended to include models in the preproduction and pilot line production phases.

(f) "Reasons for overtime" refers to major bottlenecks responsible for inability of a contractor to utilize straight time only for the specific major program. The major bottleneck may be a specific tool, skill, or space shortage; subcontractor failure; unrealistic schedule; power failure; accident; etc. One or a few major bottlenecks set up a chain reaction creating minor bottlenecks resulting in general overtime throughout the plant.

PART 1058—CONTRACT FINANCING

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1058.1002 Reporting institution of bankruptcy receivership, insolvency, and probate proceedings.

AUTHORITY: §§ 1058.101 to 1058.1002 issued under sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314.

SUBPART A—ASSIGNMENT OF CLAIMS ARISING UNDER GOVERNMENT CONTRACTS

§ 1058.101 *General.* Pursuant to the Assignment of Claims Act of 1940 (Public Law 811, 76th Cong.), as amended (54 Stat. 1029; 31 U. S. C. 203), assignment of moneys due or to become due under Government contracts may be made, and the requirements under which such assignment can be made are outlined in § 57.103–8 of this title.

§ 1058.102 *Filing notices of assignment and instruments of assignment.* The assignee should file 4 signed copies of a written notice of assignment, and 1 copy of the instrument of assignment with each of the following:

(a) The contracting officer.

(b) The surety or sureties upon the bond or bonds, if any, in connection with the contract.

(c) The officer designated in the contract to make payments thereunder.

§ 1058.103 *Copies of notices for contracting officer and acknowledgement thereof.* (a) The copies of such notices of assignment and of instruments of assignment directed to the contracting officer will be sent by personnel receiving the same as follows:

(1) If the assignment relates to a local purchase contract, to the appropriate contracting officer at the local purchase activity.

(2) If the assignment relates to a contract written or administered in an area overseas, to the appropriate contracting officer at the overseas installation.

(3) If the assignment relates to a contract written at Hq AMC, to the contracting officer in Hq AMC.

(4) If the assignment relates to a contract written in an AMC field procurement activity, to the contracting officer appointed for the purpose of

acknowledging assignments at the AMC field procurement activity.

(b) The contracting officer specified above to whom the notices of assignment and instruments of assignment will be sent, will—

(1) Examine such notices of assignment and instruments of assignment and the contract involved.

(2) If satisfied that the assignment is in proper form, was properly executed, and that the contractor is empowered under the contract to assign the claim or claims involved, acknowledged receipt of the notice of assignment in the space provided. In acknowledging a "Notice of Assignment by a French contractor of moneys due from the United States," the following statement will be used.

Receipt is hereby acknowledged of the above notice and a copy of the above mentioned instrument of assignment. These were received at ------ a. m. ------ p. m. on ---------- 19--.

(Person authorized to acknowledge receipt on behalf of addressee contracting officer, disbursing officer or surety on bond)

For signature by a contracting officer only: The Government of the United States of America acting through the undersigned contracting officer recognizes the assignment of moneys due or to become due under the contract described above and undertaken to pay directly to the assignee, the ---------- bank, the amount due or to be due to the ---------- Company under the above-mentioned contract in accordance with and subject to the provisions of the Assignment of Claims Act of 1940, as amended. Nothing herein shall be construed to affect or change the rights or obligations of the United States under the Assignment of Claims Act.

(Contracting Officer)

(3) Return three copies of the notice thus acknowledged to the assignee.

(4) File the fourth copy of the notice thus acknowledged and the copy of the instrument of assignment with the contract.

(c) The Chief, Finance Division, Comptroller, Hq AMC, has advised that finance officers will not make payments to assignees unless the first invoice or voucher covering the amounts to be paid the assignee is accompanied by two copies of the notice of assignment duly acknowledged by the contracting officer.

§ 1058.104 *Procedure when acknowledgement is refused or delayed.* If, for any reason, the assignment involved is one which the contract does not authorize the contractor to make, or is not in proper form, or is not properly executed, the contracting officer will return the copies of the notice of assignment and the copy of the instrument of assignment to the assignee with an explanation of the objections to the proposed assignment, and the acknowledgment form on the notices of assignment will not be executed by the contracting officer. In addition if, upon receipt of notices of assignment and the copy of the instrument of assignment, it appears that a considerable delay may occur before the notices of assignment are acknowledged or returned unacknowledged as the case may be, the contracting officer will advise the assignee that such a delay is likely to occur and normally will furnish the assignee with a statement of the reasons for the delay.

§ 1058.105 *Further assignments and reassignments.* Contracts permitting the assignment of claims for moneys due or to become due hereunder also permit such claims to be further assigned and reassigned by the assignee to a bank, trust company, or other financing institution, including any Federal lending agencies. Copies of written notices of further assignment and reassignment and copies of instruments of such further assignment and reassignment will be processed in the same manner as copies of initial assignment and instruments of initial assignment. The three acknowledged copies of the notice of further assignment or reassignment will be sent to the assignee under the assignment thus acknowledged.

§ 1058.106 *Examination of assignment.* In ascertaining that an assignment is in proper form, is properly executed, and is one that the contractor is entitled under the contract to make, contracting officers will satisfy themselves that:

(a) The contract has been duly executed and approved where necessary. Contractors frequently make assignments of claims for moneys due or to become due under a contract, upon notice of award of the contract, even though the contract has neither been executed nor approved. Copies of notices of such assignment will be immediately returned to the assignee unacknowledged.

(b) The contract is one under which claims may be assigned under the provisions of the Assignment of Claims Act of 1940 (54 Stat. 1029; 31 U. S. C. 203). In rare cases, SECRET or CONFIDENTIAL contracts will contain provisions prohibiting assignments of claims arising thereunder, and therefore, under the Act of 1940 such claims thereunder cannot be assigned. Notices of attempted assignment of such contracts will be returned unacknowledged to the assignee. It should also be noted that assignment of claims under SECRET or CONFIDENTIAL contracts, permitting the assignment thereof, will not be acknowledged by contracting officers until adequate steps have been taken to protect the interests of the Government.

(c) The assignment covers all amounts payable under the contract, and not already paid, and is not made to more than one person, and the assignee is a bank, trust company, or other financing institution, including any Federal lending agency. In this connection the following will be noted:

(1) Most contracts provide that any assignment of claims thereunder will cover all amounts payable under the contract, and not already paid, and will not be made to more than one person except that assignments may be made to one person as agent or trustee for two or more persons participating in the financing of a contractor. Under the Assignment of Claims Act (54 Stat. 1029; 31 U. S. C. 203), however, contracts may provide for assignments of part of the contractor's claims for money due or to become due or for such assignments to more than one person. In the absence of contract provisions authorizing such assignments, the assignments are unlawful. Because of the administrative burden on finance officers, partial assignments or assignments to more than one person, if permitted under a contract, should be limited to cases where the contract is financially obligated to Government agencies and the assignment is made for the protection of such Government agencies.

(2) Where the contract provides for advance payments, whether or not advance payments have actually been made to the contractor, notice of assignment will not be acknowledged unless:

(i) The assignment expressly recites that the rights of the assignee are subordinate to the rights of the Government: to withhold from the contractor amounts required to liquidate advance payments and to have deposited in the contractor's special advance payment bank account all moneys payable to the contractor which the contract requires the contractor to deposit into that account.

(ii) The contracting officer obtains from the assignee an agreement that the assignee will pay to the contractor all amounts which may be received by the assignee and which the contractor is obligated by the contract to deposit in its special advance payment bank account. In special cases, additional documents signed by the contractor or the assignee or both, thought necessary by the contracting officer to protect the interests of the Government against the assignee, may be required by the contracting officer.

Assignments such as those referred to in this section are subordinate to the rights of the Government against the contractor under the contract involved; for that reason they are not assignments of less than all amounts payable under the contract nor assignments to more than one person.

(d) The assignment will cover only claims for moneys due or to become due under the contract involved. It must not cover any of the obligations or duties of the contractor under the contract. The contracting officer will be sure that the copy of the instrument of assignment which is submitted to him is a duplicate of the original instrument, or has been certified as a true copy, acknowledged as such before a notary public or other officer authorized by law to administer oaths. Care will also be taken to ascertain that the assignment has been properly executed.

(1) Assignments by corporations should be executed by an authorized representative, attested by the secretary or assistant secretary of the corporation, with the seal of the corporation impressed upon the assignments, or in lieu of such seal, accompanied by a certified copy of a resolution of the board of directors of the corporation authorizing the representative involved to execute the assignment.

(2) If the contractor is a partnership, the instrument of assignment may be signed by one partner, provided it is accompanied by a duly acknowledged certificate to the effect that the signer is a general partner of the partnership.

(3) If the contractor is an individual, the assignment must be signed by such individual and duly acknowledged by him before a notary public or other person authorized to administer oaths.

(e) If there have been previous assignments of claims under the contract, unless assignments to more than one person thereunder are permitted by the contract provisions, the previous assignments have been fully released. Attention is again invited to § 1058.105 which points out that contracts specifically authorize further assignments and reassignments of claims thereunder.

§ 1058.108 *Releases of assignments.* Releases of assignments require the same execution and acknowledgment by the assignee as required of an assignor in the case of an assignment. Releases are required only in cases of reassignment or where further payments are anticipated under the contract.

§ 1058.109 *Transfers of businesses and corporate mergers.* Transfers of an entire business, corporate mergers, and assignments by operation of law, each of which may effect the assignment of claims under a contract, are not prohibited by the Federal statutes and hence are not dependent upon the Assignment of Claims Act of 1940 (54 Stat. 1029; 31 U. S. C. 203) for their validity. However, in the case of transfers of a business or corporate mergers, notices of assignment of claims under the contract made by the transferee or successor corporation will not be acknowledged until a supplemental agreement has been executed, substituting the transferee or successor corporation as the contractor with the Government. Similarly, before acknowledging assignments made by transferees by operation of law, the contracting officer will require the submission to him of a certified copy of the document evidencing the transfer by operation of law.

SUBPART B—GUARANTEED (REGULATION V) LOAN FINANCING OF DEFENSE PRODUCTION AND SERVICES

§ 1058.202 *Nature of guaranteed loans.* Guaranteed loans (also called "V-Loans") are loans by public or private lending institutions to defense prime or subcontractors which are subject to a guarantee agreement under which the guaranteeing agency (such as Army, Navy, or Air Force) is obligated on demand of the lender to purchase a stated percentage of the loan and to share losses in the amount of guaranteed percentage.

§ 1058.203 *Authority to process an approve guaranteed loans.* (a) Section 301 of the Defense Production Act of 1950 (64 Stat. 800; 50 App. U. S. C. 2091) grants the President the power to authorize the Department of the Air Force, and other agencies, to guarantee any public or private financing institution against loss on any loan or commitment made for the purpose of financing any producer of goods or services when deemed by the guaranteeing agency to be necessary to expedite procurement under Government contracts for the national defense. "National Defense" is defined in section 702 of the act as "* * * operations and activities of the Armed Forces * * *," and of other Government agencies under certain conditions.

(b) Section 4 of the Defense Production Act Amendment of 1953 (64 Stat. 803; 50 App. U. S. C. 2102) authorizes the financing of any contractor, subcontractor, or other person in connection with termination of defense contracts and provides that no small business concern will be held ineligible for the issuance of a Guaranteed Loan by reason of alternative sources of supply.

(c) By Executive Order 10161, as amended (15 F. R. 6105), the Department of the Air Force, among others, is authorized to guarantee loans, and is directed to "Develop and promote measures for the expansion of * * * production and supply of materials * * * necessary for the national defense." The Federal Reserve Banks are authorized to act, under the supervision of the Board of Governors of the Federal Reserve System, as fiscal agents of the United States in executing agreements and for other purposes of section 301 of the act (64 Stat. 800; 50 App. U. S. C. 2091). All agencies of the Government are directed to furnish information relating to defense production or procurement deemed necessary by any officer delegated powers to act in this field.

§ 1058.203–1 *Delegation of authority.* (a) The Commander, AMC, has been authorized to act as Certifying Officer with respect to the issuance of Certificates of Eligibility in connection with Defense Contract Financing (Guaranteed Loans), subject to the provisions of the Defense Production Act of 1950, as amended (64 Stat. 798; 50 App. U. S. C. 2061), Executive Order 10161, 9 September 1950 (15 F. R. 6105), and Federal Reserve Regulation V, and pertinent regulations issued by the Department of Defense, the Air Force, and/or the Air Materiel Command. The authority may not be redelegated below the level of the Deputy Director/Procurement or the Assistant Deputy Director/Procurement, Hq AMC. A Certificate of Eligibility is obtained to establish that the contract or other operation of the prospective borrower to be financed by such loan is one which is deemed to be necessary to expedite production and deliveries or services under a Government contract.

(b) Authority vested in the Commander, AMC, to act as Certifying Officer with respect to executing Certificates of Eligibility in connection with Defense Contract Financing (Guaranteed Loans) has been redelegated, without power of redelegation, to:

(1) Director of Procurement and Production, Hq AMC.

(2) Deputy Director of Procurement and Production, Hq AMC.

(3) Deputy Director/Production, Hq AMC.

(4) Assistant Deputy Director/Production Hq AMC.

§ 1058.204 *Responsibilities.* Hq USAF has reserved all authority concerning financial consideration.

§ 1058.205 *Policies.* The following policies will be used as guides by activities processing inquiries for information regarding V-Loans.

(a) *Essentiality of products or services.* All items or services called for under a prime contract with the Air Force, or a subcontract of any degree under such prime contract, are to be considered essential to the national defense. The essentiality of other items or services must be established.

(b) *Alternate sources.* The existence of an alternate source for the procurement covered by any contract or subcontract will not in itself be grounds for denial of a Certificate of Eligibility. No distinction will be made in this respect between advertised and negotiated contracts. In the normal case, use of an alternate source may involve prejudice to the national defense because of such factors as delay in ultimate delivery, costs of terminating existing contracts, effort and cost to replace contracts, and significantly higher prices for the items. The existence of an alternate source will be an important consideration when material doubt exists as to ability to perform a defense contract according to its terms, e. g., when the proposed borrower does not have adequate experience, management, facilities, or technical ability, or when there is serious doubt that he can produce at the contract price.

(c) *Use of guaranteed loan (V-Loan) in new procurement.* When a bid or negotiation is conditioned on the granting of a V-Loan by the Air Force, the proposal must be considered on the basis of whether or not award of the contract to the particular firm will benefit the Government. If there will be benefit to the Government from dealing with a particular contractor, e. g., a material saving in price as compared with prices from other contractors, the need for a V-Loan (with reasonable percentage of guarantee) should not deter the making of the contract. In such instances, the applicable instructions on Facility Capability Reports and prior clearance of proposed commitments involving financing assistance will be followed. If there is no advantage to the Government in dealing with a particular contractor requiring a V-Loan, all other things being equal, contractors not requiring V-Loans should be preferred to those requiring V-Loans. This latter is in line with the established policy that the preference is for private financing without Government guarantee.

(d) *Use of V-Loan with existing contract.* When V-Loans are requested by AF contractors to finance an existing prime contract, it should be remembered that the contract was placed with a contractor presumed to be capable of performance according to a determined schedule related to Air Force needs. Financing of performance is as necessary an element of production as any other factor. The V-Loan system was authorized and designed to make that financing

possible where it would otherwise not be provided, and for that reason, the V-Loan is an aid to procurement. Unless there are apparent and valid reasons to believe that the contractor will fail, entailing loss of both his production and some of the money borrowed to accomplish it, financial considerations as such should not influence recommendations or comments requested in connection with a Certificate of Eligibility. It must be remembered that production in volume entails borrowing by most businesses, that lending agencies have had service guarantees made available to them and will ask for them when reason exists to limit their risk, and that the contractor owes every dollar borrowed and must fail in business before a loss is experienced by the lender and the guaranteeing service. Many of the same considerations apply to subcontracts, the principal difference being that the prime contractor does not undertake any direct financial risk. The placing of orders does, however, involve production risks which can seriously impair his own deliveries as well as his own financial requirements. Since the performance by subcontractors is so integral to deliveries under prime contracts, no distinction is drawn between the two classes of contractors as regards availability of guarantees to lending agencies on production loans. All actions on requests for loan guarantees, including those on the issues of Certificates of Eligibility and related matters, must be designed to support and aid, not impede, essential procurement.

§ 1058.206 *Procedure for authorizing a V-Loan.*

§ 1058.206–1 *General.* The need for a loan guarantee arises when a contractor or subcontractor finds it necessary to use bank credit to finance necessary defense production under his contracts, and his bank considers the amount involved to be in excess of normal lending risks or when the amount, if unguaranteed, is beyond its legal lending limit. If the bank desires to make the loan on condition that protection is afforded it against a portion of possible subsequent loss, it may prepare an application for guarantee of the credit. This application is submitted by the bank to the Federal Reserve Bank in its district which forwards it, through the Federal Reserve Board in Washington, D. C., to the military department having the predominant interest in the contractor's activities. Where the predominant interest is with the Air Force, one copy of such application listing prime contracts and/or subcontracts will be sent by the Federal Reserve bank directly to Commander, AMC, attn: MCPZF. The Federal Reserve bank then makes an investigation of the loan and borrower which includes financial responsibility, and forwards its report to accompany the original application. Before a guarantee can be approved, the procurement activity of the guaranteeing agency must issue a Certificate of Eligibility, which is a formal finding that the contracts listed on the application come within the purport of the statute and directives. If a Certificate of Eligibility is issued and financial requirements are satisfactory to the department which will be the guarantor, the Federal Reserve bank, as fiscal agent of the military department, is authorized to execute a guarantee contract with the lending bank. Funds are then made available to the borrower under terms of a loan agreement between the borrower and the lending bank. It may be observed that the borrower is not a party to the guarantee application or agreement.

SUBPART C—PRIOR CLEARANCE OF PROPOSED COMMITMENTS INVOLVING FINANCIAL ASSISTANCE

§ 1058.302 *General.* Sole authority for approving V-Loans, advance payments or progress payments exceeding 75 percent of total costs or 90 percent of direct labor and material costs to AF contractors rests at the secretarial level of the Department of the Air Force. No commitments, actual or implied, to furnish, to make available, or to assist in obtaining such financial assistance should be given by Air Force buyers or other Air Force personnel prior to the official authorization.

§ 1058.303 *Prior clearance.* (a) Whenever the existence of any one or more of the following situations becomes apparent in connection with contract negotiation, prior clearance with the Office of the Deputy for Contract Financing, Assistant Secretary of the Air Force (Management), must be obtained by the Directorate of Procurement, Hq, before completion of negotiations:

(1) Where the prospective contractor does not have the financial resources, credit capacity, or sources of private borrowing (with or without Government guarantee) sufficient to permit performance of the proposed contracts without the necessity of the Government making advance payments.

(2) Where the contemplated procurement would overextend the working capital and asset position of the contractor out of reasonable proportion to his financial condition.

(3) Where in relation to the capital investment or financial condition, extensive and disproportionately large Government financial assistance, loans, guarantees and/or facilities grants will be required in order that the contractor will be able to perform the proposed contract.

(b) With regard to paragraph (a) (1) of this section, the V-Loan procedure is a method of extending normal lending for working capital purposes, and the request of lending bank for a V-Loan guarantee in most cases does not reflect on the basic credit, ability, or character of the contractor. Therefore, if the possibility of a normal V-Loan request is the only element of question or doubt concerning the contractor's ability to finance the proposed contract, prior clearance of the proposed contract will not be needed before completion of contract negotiations. If other elements of doubt are present as to the propriety or sufficiency of the proposed financing and the contractor's financial status, or if in addition to the possibility of V-Loan financing, necessity is indicated for additional unusually large and out of the ordinary financing assistance or arrangements, then prior approval of the proposed contract will be required.

(c) When situations exist such as are described in paragraph (a) (2) and (3) of this section, and it has been determined by proper authority that no satisfactory alternative sources of supply are readily available on terms equally as favorable to the Government, the matter of adequate financing, utilizing the most desirable method or methods of financing the prospective contractor, and cleared with the Office of the Deputy for Contract Financing before the procurement is finalized and the contractor begins performance or makes commitments leading to such performance.

(d) When the above conditions exist with any contractor contemplated for award of an Air Force contract, prior clearance with the Office of the Deputy for Contract Financing will be obtained. The request will include the information normally submitted in a V-Loan or advance payment application together with the following 23 statements:

(1) Name and address of company.

(2) Type of contract (cost plus fixed fee, fixed price, letter, etc.).

(3) Purchase request or contract number.

(4) Amount of contract (if letter contract, this will include both letter contract price and estimated total definitive price).

(5) Amount of all prior clearances if the proposal covers an increase in a letter or other type contract.

(6) A brief description of the items to be procured.

(7) Type of procurement-production or research and devolpment item.

(8) Total number of items if procurement involves production.

(9) Unit prices.

(10) Delivery schedule (or estimated time required if research and development contract).

(11) Number of units and dollar amount per month should be shown if available.

(12) Percentage of subcontracting.

(13) Reason for giving contract to subject contractor (indicate if contractor is sole source).

(14) Availability and extent of progress payments.

(15) Effect on defense program if contract is not awarded.

(16) Information as to the general character and responsibility of the contractor as well as comments as to technical ability to perform under the contract.

(17) Statement that the buying organization will give favorable recommendation to any request for a Certificate of Eligibility for the proposed contract.

(18) Information as to the existence of the situations outlined in subparagraphs a, b, and c of the Zuckert-Gilpatric memorandum of August 10, 1951.

(19) Financial statements of the contractor including (i) recent comparative statements of operation and financial condition, (ii) operating projections,

financial and budgetary data such as forecast of cash income and outlay.

(20) Detailed information, if available, concerning the contractor's backlog and planned procurement, both broken down to show the amount of each military department and for all other customers as a group. When the contractor's backlog includes letter contracts, the additional dollar value of the planned procurement should also be shown.

(21) Present means used in financing Government contracts.

(22) If by V-Loan give guarantor agency, indicating amount and maturity date.

(23) How will proposed procurement be financed.

SUBPART D—FINANCIAL DATA

§ 1058.402 *Responsibilities.* (a) Each AMA will obtain the necessary financial information from those contractors doing business with the Air Force and on those companies being cleared for Facility Capability Reports (FCR) where adequate data is not already available from published sources.

(b) Buyers, price analysts, or others at Hq AMC will not make requests for financial data direct to contractors or prospective contractors.

§ 1058.403 *Obtaining financial data—*(a) *Normal cases.* To make analyses and to determine the financial position of contractors who have been awarded contracts or are being considered for contracts, the AMA's will normally require such contractors to submit the information set forth in this section. Where possible, arrangements will be made with contractors for automatically forwarding such information without the necessity of periodic requests. Normally, the AMA will request prospective contractors to furnish as much of the following information as is required in their own operation.

(1) Fiscal year-end financial statements, in duplicate, including at least a balance sheet (with auditor's notes, if available), operating statements, surplus reconciliation, and backlog of unbilled orders subdivided as to the Government (by agencies) and other. Certified financial reports should be furnished complete, since the certification does not apply if the notes or any part of the report is not included. Audited statements are preferred but if unaudited they should be authenticated by an officer of the company.

(2) Interim financial statements, in duplicate, including balance sheet, operating statement, surplus reconciliation, and backlog of unbilled orders, signed by a responsible officer of the company. The decision as to what interim statements should be obtained from a contractor is a matter of judgment depending upon the individual situation. Interim statements normally will not be required more often than every 90 days, and where the contractor regularly publishes interim statements on a quarterly basis, it usually is agreeable to accept statements as of the publication dates. In exceedingly weak cases, however, it may be necessary to obtain monthly financial statements. With unusually strong companies, semi-annual or annual statements may be sufficient.

(b) *Special cases.* Where contractors and prospective contractors either have limited working capital or show evidence of financial weakness, the following additional information will be requested in duplicate from such contractors by the AMA, incident to the accomplishment of a Facility Capability Report.

(1) An estimated cash budget flow sheet showing beginning working capital, disbursement and receipts for period during life of anticipated contract. The cash budget flow sheet should in all instances give effect to the recoupment of the progress payments when they have been requested.

(2) Statement of how this specific contract will be financed.

(3) If the contract will be financed by recapitalization, a balance sheet reflecting proof of additional capital being paid in.

(4) If the contract will be financed by borrowing or additional borrowing from a bank, a bank agreement or letter from the bank stating that they will loan a specific amount or that the bank will furnish working capital for the performance of this contract. (This letter is not to require a commitment fee.)

(5) If the contract will be financed by a financial guarantee from an individual or from a parent company, affiliated company, or any other company, a letter from the individual or from the company (signed by an officer of the company, stamped with the corporate seal, and notarized by a notary public), together with current balance sheet of company making the guarantee. If a guarantee is made by a corporation, a certified resolution of the board of directors authorizing the corporation to make such a guarantee and disclose the authority of the officer signing in behalf of the corporation to so obligate the corporation, should be furnished.

(6) If a newly organized company, a copy of the incorporation papers, also a balance sheet reflecting amount of paid-in capital stock.

(7) Name of parent company, if any, and list of subsidiaries or affiliates.

(8) In addition to furnishing the above information, the AMA, as a condition precedent to the granting of a financial clearance, may require a statement in writing from the proposed contractor that it will furnish fiscal and interim financial statements acceptable to the Air Force during the life of the contract. Fiscal year end statements in such cases will be furnished within 90 days after the close of the fiscal year and interim statements should be furnished within 30 days after the close of the interim period. The required frequency of interim statements will be determined according to paragraph (a) (2) of this section and will be made known to the proposed contractor for inclusion in its letter. The action authorized by this section normally will be taken by the AMA upon determination that close surveillance will be required while contracts are outstanding and where the proposed contractor does not publish financial statements in the frequency or completeness required for such surveillance.

(c) Any of the financial statements indicated in this section requested of a contractor will be specified by the requesting office by letter, whether or not oral discussions were held with the contractor, for the specific items needed.

§ 1058.404 *Financial guaranties.* Agreements in the nature of financial assistance, performance guaranties, and subordination agreements submitted in support of the financial condition of a contractor will be reviewed for financial adequacy and legal sufficiency before consideration as a factor in granting financial clearance. In all cases where a guaranty agreement has been obtained, it will be supported by a current financial statement of the guarantor.

§ 1058.405 *Records and forms.* Full utilization will be made of all financial data obtained which pertains to Government contractors. Minimum information common to all companies will include a continuous historical record of cash, current assets, current liabilities, working capital, net worth, sales, profit, and backlog. Additional information and analyses will be developed as individual cases require: ratio studies, trend studies, net worth analyses, "break-even" studies, and statements of source and application of funds frequently strengthen the basis for a decision on financial capability.

SUBPART F—DEBTS OWED BY CONTRACTORS; DEFERRED PAYMENTS

§ 1058.602 *Determination of debt.* (a) Debts referred to in this subpart will include but not be limited to:

(1) Damages or excess costs incident to defaults in performance.

(2) Breach of contract obligations concerning progress payments, advance payments, or Government-furnished property.

(3) Delinquency in rentals.

(4) Expense of correction of defects.

(5) Overpayments incident to errors in quantity, deficiencies in quality, or errors in billing.

(6) Retroactive price reductions resulting from contract provisions for price determination or for determination of prices under incentive-type contracts.

(7) Delinquencies in payment by charter and contract carriers for sales of aviation fuels and oil.

(b) The amount of any indebtedness of contractors to the Government must be ascertained promptly to minimize the possibility of loss from later inability to collect. Delays in determining amounts due, or in obtaining timely payment, are in effect extensions of credit to contractors.

(c) The amount of a debt due to the Government and the time it is established will vary according to type of contract involved.

(1) For example, in a price-redetermination-type contract, the amount due may be determined by negotiation or fixed by a unilateral determination by the contracting officer and the debt will be established when demand is made upon the contractor for payment.

(2) On the other hand, the amount due and the date the debt is established may be governed by the terms of the contract itself, as in the case of a lease contract providing for a fixed rental rate payable at stated intervals.

(3) In any situation full and fair consideration will be given to the merits of the Government's claims and the merits of all known claims of the contractor, for adjustment or otherwise, that may be allowable to the contractor under the contract, and that would serve to reduce the amount to which the Government is fairly entitled.

(d) When it is necessary to negotiate or otherwise determine the amount of a debt, the fixing of the amount due to the Government will not be held up or delayed because of uncertainties as to the allowability of other claims of the contractor, or uncertainty as to the amount of such claims. If there are such uncertainties, or if the contractor (1) is delinquent in furnishing pertinent information required to be furnished by him pursuant to the contract, (2) fails to negotiate expeditiously and in good faith according to any provision of the contract requiring such negotiations, or (3) fails to promptly execute a supplemental agreement reflecting the result of negotiations, the appropriate contracting officer will promptly make proper finding and determination, fixing the amount of the contractor's indebtedness, as permitted or not prohibited by the contract and supported by sufficient evidence.

(e) The contracting officer will promptly initiate the necessary action to process supplemental agreements when applicable. All contractual documents which provide for recoupment of moneys from the contractor will contain a clause providing for a specific method of payment by the contractor through a tender forthwith of check or offsetting credit, except to the extent deferral of payments is specifically authorized according to this part. In no case will an "either-or" clause providing for alternative methods of payment by the contractor be used. Whether by check in full, credit memoranda, or deferred payments, the contractual instrument will include a requirement that the contractor will send copies of the transmittal letter, giving full details of the transaction, to the administrative contracting officer and the designated finance office.

§ 1058.603 *Cash payment.* (a) As a general rule, amounts due from contractors to the United States are expected to be repaid in cash, in one sum upon receipt of demand or invoice. The demand for immediate payment will be made on the contractor by the contracting officer as soon as the amount owed to the Government under a contract has been determined, and will contain notice that such payment will be sent to the finance officer. Invoices for amounts owed to the Government for supplies and services furnished from AF resources to accommodate contractors in the performance of contracts or scheduled recurring payments due from contractors such as those normally due under lease agreements or under approved deferred payment plans will be submitted to the contractor by the designated accounting officer. The invoice will contain a request that remittance be sent to the finance officer. A copy of the invoice will be immediately furnished to the appropriate administrative contracting officer and finance officer.

(b) Upon determination and demand for payment of an indebtedness the appropriate contracting officer will promptly notify the responsible accounting officer, finance officer and, if appropriate, the administrative contracting officer. The notice will indicate the date the contracting officer made demand on the contractor and, except as stated in paragraph (c) of this section, will advise the finance officer to withhold payment from the contractor of any sums due the contractor pending receipt of such case payment.

(c) If the contracting officer is reasonably satisfied that full payment will be made in cash within 30 days after demand or if not paid in cash within the 30-day period that the full amount can be recovered by offset of payments expected to be made on the contract within the next 60-day period, he may defer the withholding of payments for the first period of 30 days following demand for payment by so advising the finance officer. If a debt arises automatically at stated intervals by terms of the contract, such a determination will be made only if the contractor defaults in payment.

(d) Appeals by contractors will not suspend or delay action for withholding.

§ 1058.604 *Offset.* (a) Whether instructions to withhold payments under the specific contract under which the debt arose were issued or not, if within 30 days after maturity of a debt or demand for its payment full collection has not been made or a supplemental agreement has not been executed to provide for deferred collection within not more than 90 days from the initial demand, the finance officer will automatically apply payments under the contract to reduce the indebtedness. The amount withheld from payment, if any, and all future amounts becoming due under the contract will be offset until the indebtedness is satisfied.

(b) If the contractor within 30 days after a debt is established makes a definite proposal for unusual deferred payments (over 90 days), pending decision of the Deputy for Contract Financing, Office of the Assistant Secretary of the Air Force, Hq AMC, can issue instructions to the finance office to withhold or off-set payments under the contract or waive such action to the extent considered prudent and in the best interests of the United States.

(c) If the contractor fails to satisfy fully the debt within 30 days from demand, or within that time fails to make arrangements for deferred payments, the finance office will immediately wire notice of such fact to the appropriate accounting office, the procuring contracting officer, and the administrative contracting officer. If the contractor fails to live up to the terms of an approved deferred arrangement, the finance officer will notify MCPZF in addition to the other interested officers. If any of these offices have information, or can readily obtain information that the delinquent contractor has other contracts with the same or other installations of the Air Force, or the company has contracts with other departments or agencies of the Government that may lead to payments, such information will be immediately relayed to the appropriate finance officer. If the finance officer is satisfied that the full amount of the debt cannot be recovered by offset of payments expected to be made on the contract, an immediate request will be made directly to such department or agency, or finance office of such agency, if known, to withhold any payments to effect collection of the debt on the contract under which the contractor's indebtedness arose.

(d) Government personnel are expected to cooperate and assist in the fulfillment of such requests, giving due regard, however, to the effect of abrupt cessation of payments on the operations of the contractor, performance of the contracts, and the interest of the United States in such contracts. In all such cases the rights of assignees under the Assignment of Claims Act of 1940, as amended (54 Stat. 1029; 31 U. S. C. 203), and under contract provisions pursuant thereto, will be scrupulously respected.

(e) In making these requests and in complying with such requests, care will be taken at all times to avoid overcollection or duplicate collection. Checks to liquidate indebtedness pursuant to such requests will be drawn payable to the "(contractor's name or Treasurer of the United States)" and sent to the finance officer on the contract under which the indebtedness arose, and will be accompanied by a statement sufficient to identify the indebtedness to which it is to be applied. The agency making the deduction will give appropriate notice of the accomplishment of the deduction to the contractor concerned and the finance officer. The finance officer, in turn, will give notice to the administrative contracting officer and the accounting officer.

§ 1058.606 *Deferred payments; 90 days or less.* Under certain circumstances deferred payments not to exceed 90 days from the date of maturity of the debt may be permitted upon proper application by the contractor.

(a) A contractor desiring to pay an indebtedness over an extended time not to exceed 90 days must submit a request for such deferral within 30 days from the date of maturity. The contractor's request, whether directed to the contracting officer who issued demand for payment or to the accounting officer who submitted invoice for payment, will be sent immediately to the Commander, AMC.

(b) Prior to approval of a deferred payment arrangement, the Financial Branch will request information which will support an analysis of the contractor's financial condition, existing or available credit arrangements, production and purchasing schedules, defense contract backlog, cash resources and

projected cash receipts and requirements, and the effect of full immediate payment on the contractor's operation.

(c) The information furnished by the contractor must be adequate to permit an evaluation of the above factors and to show that immediate payment in full or complete offset of all future payments would seriously impair the contractor's ability to continue operations or jeopardize performance of the contract or of other contracts or subcontracts for the national defense, and that orderly collection can be effected fully within not more than 90 days from the date of the demand for payment.

(d) Subject to the provisions in paragraph (c) of this section, AMC may authorize a supplemental agreement with the contractor setting forth the terms and conditions for such deferred payments.

§ 1058.607 *Deferred payments, unusual.* (a) Unusual situation may arise where the best interest of the Government may be served by deferring collection of contract indebtedness for a period longer than 90 days. A contractor will have up to 30 days after maturity of debt to make a definite proposal for payment over a period of more than 90 days from the due date of the debt, and to submit such information to support the proposal as Hq AMC may request.

(b) The information must demonstrate that:

(1) The contractor will be unable to pay the debt within 90 days from date of demand, or

(2) Full payment within such 90-day period, if enforced, would either (i) precipitate bankruptcy or insolvency of the contractor, with foreseeable loss of all or a part of the debt in question, or with other foreseeable loss on other claims of or interests of the United States, or (ii) prevent performance of contracts or subcontracts deemed necessary to the national defense, and

(3) Collection of the indebtedness in full is likely if the proposal for deferred payment is accepted.

(c) Hq AMC will make an examination and analysis and will submit through channels on a priority basis an evaluation of the contractor's proposal, with the necessary supporting information and a recommendation, to the Deputy for Contract Financing, Office of the Assistant Secretary of the Air Force.

(d) The Deputy for Contract Financing may deny the contractor's proposal, or approve it, or approve it upon prescribed conditions. Deferred payments for a period longer than 90 days which are approved by the Deputy for Contract Financing will be charged interest at the rate of 5 percent per annum unless a different rate is determined by the approving office.

(e) Agreements in this category will include such covenants and security as prudent and feasible under the circumstances of each case, will be limited to the shortest practicable maturities, and will be made only when found to meet the standards set forth in paragraph (b) of this section.

SUBPART J—REPORTING CONTRACTORS INVOLVED IN BANKRUPTY, RECEIVERSHIP, ASSIGNMENT FOR THE BENEFIT OF CREDITORS, OTHER TYPES OF INSOLVENCY PROCEEDINGS AND PROBATE PROCEEDINGS

§ 1058.1002 *Reporting institution of bankruptcy, receivership, insolvency, and probate proceedings.* Prompt notification is required of cases where a contractor doing business with the Air Force is involved in bankruptcy, receivership, assignment for the benefit of creditors, or any other type of insolvency proceedings or probate proceedings. Immediate transmission of information concerning the institution of such proceedings will insure that a proof of claim is filed by the Department of the Air Force against such a contractor within the statutory time limitations.

PART 1059—AIRCRAFT AND GFAE PROCUREMENT

Subpart B—Use of Production Aircraft in Emergencies and Control of Flight Test and Demonstration Flights

Sec.
1059.201 Use of production aircraft in emergencies.
1059.202 Control of flight test and demonstration flights.

Subpart E—Financing of Engineering and Development or "Product Improvement Proposal" With Production Funds

1059.502 Definition.
1059.504 General.

Subpart F—Special Procurements

1059.602 Procurement of mobile training units.
1059.603 Procurement of external fuel tanks.
1059.604 Procurement of petroleum products.

Subpart G—Industry Preparedness Measures Contracts

1059.702 General.

Subpart I—Termination of Second Sources

1059.902 Policy.

Subpart J—Funding of Supply Contract To Include Production Acceleration Capability and/or Production Compression Capability Projects

1059.1002 Definition.
1059.1003 General.

AUTHORITY: §§ 1059.201 to 1059.1003 issued under sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314.

SUBPART B—USE OF PRODUCTION AIRCRAFT IN EMERGENCIES AND CONTROL OF FLIGHT TEST AND DEMONSTRATION FLIGHTS

§ 1059.201 *Use of production aircraft in emergencies*—(a) *Definitions.* The term "production aircraft" as used in this part refers to aircraft accepted by AF plant representatives at the factory but not yet delivered to the receiving service; it particularly excludes "experimental aircraft."

(b) *Policy.* (1) Hq AMC, may authorize the use of a production aircraft for emergency flights on official business, provided suitable permanently assigned aircraft are not available. Authorization will be granted for specific cases and only for emergency matters of limited duration.

(2) Local flights by AF or contractor pilots for the purpose of transitional training on the pertinent type of aircraft, or for similar related reasons necessary in the best interest of the AF, may be authorized by the local AF plant representative.

(3) In any of the above cases, care will be exercised to select aircraft which have not been reported as available for delivery. Where the case is deemed to be of sufficient importance to warrant the use of aircraft previously reported available, immediate steps will be taken to cancel the availability notice and explain such cancellation.

(4) Care will also be exercised in selecting aircraft for such emergency missions, to avoid the necessity of performing a 25-hour or 50-hour check prior to arrival at the domestic destination designated in shipping instructions. Further, steps will be taken to insure that no additional expense is borne by the contractor for maintenance or service of the aircraft as a result of such missions.

§ 1059.202 *Control of flight test and demonstration flights.*—(a) *General.* In the interest of exercising every reasonable safety precaution in the performance of flying these airplanes and to obviate as far as possible criticisms and complaints from residents in areas adjacent to the airports from which these flights originate, AMA commanders will establish and maintain in current status such procedures as they deem necessary to assure positive supervision of the aircraft under their respective jurisdiction. They will accomplish frequent and periodic examinations of the control and coordination between their activities and contractors under their cognizance to assure that any deviation from proven practices will be made the subject of corrective action. It is desired to emphasize to all military and contractor flying personnel operating AF aircraft or aircraft in which the Government has assumed liability for flight risks, the importance of recognizing and feeling personally responsible for the highest possible flying safety standards and the maintenance of the good will of the general public.

(b) *Policies and procedures.* Certain rules and principles are basic in maintaining high flying safety standards. Local conditions may require that these basic rules be implemented with additional and more detailed instructions. AMA commanders are urged to initiate such additional detailed instructions as are considered necessary to control flights of aircraft which are under their immediate jurisdiction and to maintain close supervision over all such flights to assure strict observance of these instructions. The following rules will be mandatory:

(1) Test flights of a routine nature, not included in a test-flight program approved by the Government under a specific contract, may be made on authority of the AMA commander or his designated representative.

(2) No other test flights or demonstration flights will be performed unless specifically authorized by either the Chief, Aircraft Division, Hq AMC, on production aircraft, or the Deputy for Operations, WADC, ARDC, on test aircraft. Such authorized flights will be made in accordance with Air Force and CAA regulations (unless deviation from regulation is authorized by competent authority). All requests for test flights, other than routine, and demonstration flights will be coordinated with the Deputy for Operations, WADC, ARDC, prior to authorization being granted. Authorization granted will be made in writing over the personal signature of the authorizing official and will be forwarded to the contractor concerned through the AMA commander exercising jurisdiction.

(3) In addition to the authorization required for performing flights pursuant to subparagraph (2) of this paragraph, pilot and air crew members will not perform flight tests or demonstration flights unless so authorized in writing by the AMA commander or his designated representative. (Such representative will be designated in writing over the personal signature of the AMA commander.)

(4) In all aircraft equipped with two-way radio communication, aircraft commanders will not attempt flights unless two-way radio communication is operative. All aircraft in flight will maintain a listening watch on a designated communication frequency whereby required information may be relayed in compliance with the mission and communication will be available in the event of trouble or difficulty. All aircraft which are provided with two-way radio communication will have operative transmission and reception on a standard Air Force emergency frequency.

(5) Aircraft will at all times be piloted in such a manner as to reflect good judgment and due consideration for other air traffic and public safety.

(6) All flights will be conducted according to AF and CAA flight regulations. Deviations from these regulations are prohibited except as specifically authorized by competent authority for test flight and/or demonstration flight purposes. A copy of the current issue of CAA "Flight Regulations" and CAA "ANC Procedures for the Control of Air Traffic" will be available in all flight operation offices.

(7) Flying over metropolitan or other densely populated areas will be avoided insofar as practical. Approach and takeoff lanes, where established over populated areas, may be used.

(8) Normally, all test flying will be conducted under VFR conditions and during the hours of daylight. However, AMA commanders may authorize test and acceptance flights under other conditions when deemed necessary to more effectively accomplish their mission.

(9) Formation takeoffs are prohibited. Low-altitude flying over metropolitan and populated areas or any attempts at exhibitionism are prohibited. When tests require that low-altitude flying be accomplished, it will be performed over areas specifically designated for this purpose.

(10) Acrobatics will only be performed according to AF and CAA specified minimums.

(11) Takeoffs will be made only after proper radio clearances have been received from the control tower and/or according to existing AF and CAA requirements. Takeoffs will be in a normal manner consistent with the type aircraft being flown. Turns will not be made until a minimum safe altitude is reached, and will conform with local traffic control instructions.

(12) Approaches and landings will be made in orderly fashion according to existing traffic pattern and AF and CAA requirements.

(13) AMA commanders will make certain that all practicable rescue equipment is available to insure the safeguarding of life in the event of crash landings or ditching. This includes adequate air-sea rescue service.

(c) *Flights requiring escorts.* It is AF policy that first flights of experimental aircraft, first flights of initial article production aircraft, plus such subsequent flights as deemed necessary, and all flights of any test aircraft which are of a hazardous nature, or those which require observation from another aircraft to obtain data, will be accompanied by an "observer" aircraft.

SUBPART E—FINANCING OF ENGINEERING AND DEVELOPMENT OR "PRODUCT IMPROVEMENT PROPOSAL" WITH PRODUCTION FUNDS

§ 1059.502 *Definition.* For convenience, and by general usage, the term "Product Improvement Proposal" is defined as a specified program of continuing engineering and development leading to continuing improvement of an article in production or the immediate family of similar articles, and with respect to airframes and equipment, over and above changes processed under the Engineering Change Proposal (ECP) procedures; i. e., normal configuration changes, safety changes, etc. (as set forth in ANA Bulletins Nos. 390a and 391). An engineering change proposal is a medium used by the contractor for formally proposing and processing engineering changes proposed by the contractor or requested by the procuring activity.

§ 1059.504 *General.* (a) Product improvement will be included in the production control by specifying as a separate clause in such contract the principal engineering items and the amounts of money required for each item.

(b) Product improvement will not be used as a subterfuge for preproduction funds which are funded under a separate project.

(c) It is necessary to distinguish between the costs of a product improvement program proper, and a change in unit costs resulting from a product improvement. An increase or addition in price of an end article caused by an improvement to the article as result of a product improvement program is not to be considered as chargeable to the product improvement proposal, but is to be chargeable to production costs. For example, on an engine, the result of a product improvement program may be to change the model designation from an R-xxxx-1 to an R-xxxx-2. The difference in cost between the -1 and the -2 is not a product improvement proposal. Any cost associated with the procurement of actual parts to retrofit and convert a -1 into a -2 is not a part of the product improvement proposal and would normally be procured out of 400 Series funds. Only costs associated with the -1 procurement for the purpose of product improvement which eventually leads to the procuring of the -2 engine is product improvement.

SUBPART F—SPECIAL PROCUREMENTS

§ 1059.602 *Procurement of mobile training units.*—(a) *Definitions.* (1) "Mobile Training Unit (MTU)" consists of training aids that are representative of major aircraft components, and related airborne and supporting equipment representative of a specific type and model of aircraft.

(2) The primary function of the MTU is to provide on-the-job training of aircraft maintenance personnel, as well as the familiarization of aircrew personnel.

(3) "General MTU Specification" is a specification prepared by Equipment Laboratory, Wright Air Development Center, which outlines the overall requirements for an MTU and is used by contractors as a guide in preparation of a detailed MTU specification.

(4) "Detailed MTU Specification" is a documented specification prepared by the contractor describing in detail the components of an MTU and containing lists of GFP required in construction of the various panels of the MTU. The representative airplane will be specified in the detailed specification.

(b) *Policy.* (1) MTU's will ordinarily be procured from the manufacturer of the aircraft which the MTU's represent.

(2) Normally, MTU's will be procured concurrently with the aircraft which they represent.

(3) Each MTU will represent a specifically designated airplane, hereafter referred to as the "representative airplane."

(4) At the time of delivery, the MTU will accurately portray the systems of the representative airplane.

(5) MTU's are normally required to be delivered 30 days in advance of the scheduled delivery date of the representative airplane.

(6) Contractors will be required to afford such priority to the MTU as may be required to insure timely delivery.

§ 1059.603 *Procurement of external fuel tanks.* (a) WADC is currently standardizing upon external fuel tanks in an effort to minimize the number of different types of tanks required by AF aircraft. It is a joint responsibility of the Directorate of Procurement and Production, Hq AMC and WADC to require airframe manufacturers to use standard AF tanks wherever possible. When a requirement for external fuel tanks exists, the responsible buyer of the Aircraft and Missiles Division will to the extent practicable require the appropriate airframe manufacturer to use standard tanks for the aircraft.

(b) Where the airframe contractor can prove that a standard tank is not com-

patible, and WADC concurs, it will be the responsibility of the airframe manufacturer to design a tank for the particular aircraft based on USAF requirements and accomplish initial supply thereof as CFE.

Such CFE quantity will be limited to those installations and spares quantities required to support the first fiscal-year quantity of aircraft using the new tank. At such time as the new design has been standardized by WADC and producibility established, continuing supply will be accomplished as GFAE.

§ 1059.604 *Procurement of petroleum products*—(a) *Definition.* For the purpose of this section, "petroleum products," as used in this section applies to all products of petroleum peculiar to aircraft. These materials are further divided into the following two categories:

(1) Category I, aircraft engine fuel and oil, and services related thereto.

(2) Category II, all petroleum products other than aircraft engine fuel and oil, and services related thereto.

(b) *Policy*—(1) *Category I.* All types of materials in this category necessary to be used in connection with AF contracts will normally be supplied as Government-furnished property (GFP). The only exceptions to this requirement will be where the circumstances surrounding the proposed use or procurement of the materials in this category make it manifestly impractical or economically not feasible to obtain such materials as GFP. Such circumstances are construed to be:

(i) Where the contractor has conclusively established that it would not be feasible or practicable to make available adequate facilities to handle GFP fuel.

(ii) Where the contractor's typical order quantities would not warrant GFP procurement. Such typical order quantities should be less than tank-truck capacities, i.e., less than between 7,000 to 8,000 gallons of fuel.

(2) *Category II.* All types of materials of this category required by a contractor will be furnished by the contractor as CFP.

SUBPART G—INDUSTRY PREPAREDNESS MEASURES CONTRACTS

§ 1059.702 *General.* Industry preparedness measures are of two categories:

(a) Plans and data which will provide for the accomplishment of industry preparedness to meet mobilization production objectives. This involves the determination of such requirements as manpower, materials, machine tools, and facilities necessary to provide an adequate production structure to meet a proposed program and to insure continued production. These measures are divided into three types:

(1) Industry security.

(2) Licensee—Licensor study.

(3) Exploratory measures:

(i) Production capability.

(ii) Production preparedness.

(iii) Duplicate data.

(iv) Economic readjustment.

(b) The elimination of specific manufacturing bottlenecks in aircraft and related components by solving production problems connected with high volume output. This category involves processes, designs, and methods to improve industry preparedness and accelerate post-M-day production. These measures are divided into six types:

(1) Reduction of critical materials.

(2) Development of special purpose tools and equipment.

(3) Development of production methods.

(4) Redesign of items for high-volume production.

(5) Pilot production.

(6) Development of processes.

SUBPART I—TERMINATION OF SECOND SOURCES

§ 1059.902 *Policy.* (a) Basic AF policy dictates the establishment and maintenance of a production base capable of orderly and rapid acceleration to mobilization production rates. The policy includes the retention of second sources when it is determined to be in the best interests of the Government. When pertinent facts and circumstances warrant the termination of a second source, the policy stated herein will apply.

(b) Prior to terminating or canceling second sources for aircraft, engines, propellers, or major equipment items such as fire control systems, etc., procurement personnel will obtain approval from Hq USAF. Such approval of the termination of second sources for items other than aircraft, engines, propellers, or major equipment items will not be required except where unusual conditions exist or large termination costs are involved.

SUBPART J—FUNDING OF SUPPLY CONTRACT TO INCLUDE PRODUCTION ACCELERATION CAPABILITY AND/OR PRODUCTION COMPRESSION CAPABILITY PROJECTS

§ 1059.1002 *Definitions.* (a) "Production acceleration capability" applies to developing capability for rapidly accelerating production of tactical or supporting systems to a predetermined peak rate in the shortest possible time.

(b) "Production compression capability" applies to developing a capability for maximum all-out production of strategic and air defense weapon systems during the initial phase of a general war (i. e., first 60–90 days).

§ 1059.1003 *General.* The primary objective of the Industrial Production Readiness Program is to create a flexible and responsive production base that can readily adjust to current program changes and to the special requirements of a limited or general war. This objective can only be achieved if production acceleration and/or compression projects are made a continuing and integral part of the appropriate weapon or support system development and production cycle. The administration of these projects must be in sufficient detail to insure good management and close control at all times, including status of funds.

PART 1080—PRODUCTION SURVEILLANCE AND CONTROL

§ 1080.002 *Functional areas of production management as related to production surveillance and control.* The following functional areas will normally be the responsibility of production organizations within the air materiel areas (including overseas):

(a) Provide surveillance and control of the industrial complex required to insure that end items and support items on AF prime contracts under the geographical or product assignment of the AF activity, are delivered according to the required delivery schedule.

(1) Insure that action is taken to correct difficulties affecting production, and render such assistance as may be necessary.

(2) Render assistance to the contractor and/or to other segments of the procurement, production, supply, maintenance, and quality control activities wherever possible for expediting critical materials, provisioning data, components, facilities, or tooling to maintain the required delivery schedule. This will include expediting contractor-furnished equipment on subcontracts when requested.

(3) Insure that GFP shortages are brought to the attention of the appropriate AMC activity and that action is taken by the responsible AMC activity to alleviate the shortages.

(b) Determine and catalog through a survey application the capability and availability of facilities for production, maintenance, and modification of AF material, including machine tools and other production equipment available to each manufacturer and the plant's accessibility to supplies of labor, raw materials processes, transportation, and other instruments of production which would be required for expansion.

(c) Provide guidance and technical assistance to the contractor in developing industrial plans, including production capability and industrial defense plans. Provide such guidance and technical assistance and evaluate the contractor's effectiveness through regular and special surveys and studies.

(d) Determine the overall status of industrial production within the assigned geographical area through observation, analysis, and evaluation of industrial conditions, trends, and new developments in manufacturing materials, processes, and techniques which have a significant effect on the ability of industry to meet the production objectives of the Air Force.

(e) Maintain liaison with key personnel of industry with respect to production planning programs. Through these contracts, keep informed of the latest development of management technique in relation to industrial production planning. Assist contractors in determining manpower required to meet schedules and revised production plans.

(f) Provide guidance and technical assistance relating to producibility studies, standardization, product improvement, service test, specification and requirement evaluation, and engineering responsibility throughout the reproduction and inproduction phase to insure a balance between design and the utilization of materials, labor, tooling, plant and equipment to achieve efficient producibility to meet AF requirements.

(g) Maintain a production followup and expedite action with the contractor and AF activities on all major engineering changes.

(h) Acquire and maintain the current status of production and industrial capacity, expansibility, labor, facilities and industrial equipment requirements, procurement and production lead time, economic capability, and other data as may be essential for ready reference in order to accurately forecast production capability.

(i) Assure timely compilation of configuration data and listing on weapon systems, subsystems, and supporting systems. Review production lists in light of all actions and considerations necessary to procure, produce, and deliver the items to meet a planned program and recommend action to change, substitute, or otherwise assure that items contained therein are procurable and producible with program limitations.

(Sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interprets or applies secs. 2201–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

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