

FA8650-04-2-5000

The following contract clauses are incorporated in this contract and apply to the extent indicated.

(a) Cost Principles

The cost principles in 48 CFR 31 and 48 CFR 231 effective on May 14, 2003 apply to this contract.

(b) Claims, Disputes and Appeals. This clause is incorporated for the sole purpose of allowing Seller to appeal the Government's failure to consent to Seller's request to transfer technology to a foreign firm or institution (see paragraph (3)(C) of the Foreign Access to Technology clause of this contract).

(1) General. Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues under this clause. Department of Defense (DoD) policy is to resolve issues through discussions and mutual agreement at the agreements officer's level prior to submission of a claim. Where unassisted negotiations fail to resolve issues in controversy, the parties agree to consider the use of Alternative Dispute Resolution (ADR) procedures to the maximum extent practicable.

(2) Alternative Dispute Resolution. ADR should be used whenever practicable as a relatively inexpensive and expeditious procedure to resolve issues in controversy. ADR is any mutually agreed to voluntary means of settling issues in controversy without resorting to formal administrative appeals or litigation. ADR techniques shall be mutually agreed to and may be used at any appropriate time during the process.

(3) Claims Resolution Process. When a claim cannot be resolved by the parties, the parties agree to use the procedures identified in DoDGARs 22.815 as the administrative process to resolve claims, disputes and appeals. For purposes of this clause the Grant Appeal Authority will be the Materials and Manufacturing Laboratory (ML) Technology Director (AFRL/ML).

(4) Non-exclusivity of Remedies. Nothing in this clause is intended to limit Seller's right to any remedy under the law.

(c) Inventions. This clause applies only if this contract requires experimental, developmental, or research work.

Note: The provisions of Article 6.020 Inventions are modified from the Prime Technology Investment Agreement (Prime Agreement) to suitably identify the parties and their respective rights under the terms of the Prime Agreement as follows: "Recipient" shall mean sub-recipient or Seller, and "agreement" shall mean the Prime Agreement except where "agreement" is identified within its context to mean Seller's agreement with its subtiers or employees.

6.020 INVENTIONS (JUN 2001)

(a) Definitions

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

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

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

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

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

(6) "Nonprofit Organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) Allocation of Principal Rights

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

(c) Invention Disclosure, Election of Title and Filing of Patent Application by Recipient

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

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

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

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

(d) Conditions When the Government May Obtain Title

The recipient will convey to the Government, upon written request, title to any subject invention--

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

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

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

(e) Minimum Rights to Recipient and Protection of the Recipient Right to File

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

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

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

(f) Recipient Action to Protect the Government's Interest

(1) The recipient agrees to execute or to have executed and promptly deliver to the Government all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the recipient elects to retain title, and (ii) convey title to the Government when requested under paragraph (d) above and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The recipient agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the recipient each subject invention made under an agreement in order that the recipient can comply with the disclosure provisions of paragraph (c),

above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1), above. The recipient shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

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

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

(g) Lower Tier Agreements

The recipient will include this article, suitably modified to identify the parties, in all lower tier agreements, regardless of tier, for experimental, developmental or research work. Each subrecipient will retain all rights provided for the recipient in this article, and the recipient will not, as part of the consideration for awarding a subrecipient award, obtain rights in a subrecipient's subject inventions.

(h) Reporting on Utilization of Subject Inventions

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

(i) Preference for United States Industry

Notwithstanding any other provision of this article, the recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Government upon a showing by the recipient or its assignee that reasonable but unsuccessful efforts have been made

to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights

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

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

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

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

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

(k) Special Provisions for Agreements with Nonprofit Organizations

If the recipient is a nonprofit organization, it agrees that:

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

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

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

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

(l) Communication

The point of contact on matters relating to this article will be the servicing Staff Judge Advocate's office: AFMC/LO/JAZI, Bldg11, Area B, 2240 B Street, Suite 100, WPAFB, OH 45433-7109; Phone: (937) 255-6111, ext. 261; email: AFMCLO.JAZ@wpafb.af.mil

(End of clause)

(d) Data Rights. This article applies only if this contract requires experimental, developmental, or research work.

Note: The provisions of Article 6.022 Data Rights are modified from the Prime Technology Investment Agreement (Prime Agreement) to suitably identify the parties and their respective rights under the terms of the Prime Agreement as follows: "Recipient" shall mean sub-recipient or Seller, and "Agreement" shall mean this sub-award agreement under the Prime Agreement.

6.022 DATA RIGHTS (AUG 2001) TAILORED

A. Definitions

"Government purposes", as used in this article, means any activity in which the United States Government is a party, including cooperative agreements with international or multinational defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose data for commercial purposes or authorize others to do so.

"Government purpose rights", as used in this article, means the right to –

(i) Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and

(ii) Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States Government purposes.

“Unlimited rights”, as used in this article, means rights to use, modify, reproduce, perform, display, release, or disclose data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

“Data”, as used in this article, means recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, software, trade secrets, and mask works. The term does not include financial, administrative, cost, pricing or management information and does not include subject inventions included under the article entitled “Inventions”.

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

“Limited rights”, as used in this article, means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release or disclose such data or authorize the use or reproduction of the data by persons outside the Government if reproduction, release, disclosure, or use is—

(i) Necessary for emergency repair and overhaul; or

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

(iii) Subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and

(iv) The party asserting the restriction is notified of such reproduction, release, disclosure, or use.

“Restricted rights”, as used in this article, apply only to noncommercial computer software and mean the Government's rights to—

(i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this agreement;

(ii) Transfer a computer program to another Government agency without the further permission of the recipient if the transferor destroys all copies of the program and

related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this article;

(iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes.

B. Allocation of Principal Rights

1. Ownership rights to Data generated under this agreement shall vest in the recipient. This agreement shall be performed with mixed Government and recipient funding and the parties agree that in consideration for Government funding, the recipient intends to reduce to practical application items, components and processes developed under this agreement.

2. The recipient agrees to retain and maintain in good condition until four (4) years after completion or termination of this agreement, all Data necessary to achieve practical application. In the event of exercise of the Government’s march-in rights as set forth under the Article entitled “Inventions”, the recipient agrees, upon written request from the Government, to deliver at no additional cost to the Government, all Data necessary to achieve practical application within sixty (60) days from the date of the written request. The Government shall have unlimited rights to this delivered Data. There are no warranties, expressed or implied, statutory or otherwise, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose, applicable to the Data necessary to achieve practical application. In no event shall the recipient be liable for any special, indirect, incidental or consequential damages, whether in contract, in tort, or strict liability arising from the Data provided.

3. RESERVED

4. The recipient asserts rights, as detailed below, to the technical data and/or computer software listed in the table below:

(Seller’s Name)

Technical Data to be Furnished with Restrictions	Basis for Assertion	Asserted Rights Category	Name of Person Asserting Restrictions
<i>To be approved by Government</i>			

*
Restricted Rights apply to that portion of any deliverable computer software that was developed at private expense.

For any deliverable software which was developed exclusively at private expense, Restricted Rights apply.

For any deliverable technical data which was developed exclusively at private expense, Limited Rights apply.

5. The Government shall receive Restricted Rights to any software made, developed, enhanced, corrected and delivered under this agreement.

C. Marking of Data. Pursuant to subparagraph B.3 above, any Data delivered pursuant to Part VII of this agreement comprising Technical Reporting Data, except for Limited or Restricted Rights Data, shall be marked with the following legend:

“Government Purpose Rights”

Prime Agreement Number: FA8650-04-2-5000
Sub-Agreement Number : _____
Recipient's Name:
Recipient's Address:

The Government may use, modify, reproduce, release, perform, display or disclose these Technical Reporting Data within the Government without restriction, and may release or disclose outside the Government and authorize persons to whom such release or disclosure has been made to use, modify, reproduce, release, perform, display or disclose these Technical Reporting Data for United States Government purposes, including competitive procurement.”

Any trade secrets and commercial or financial information the recipient wishes to protect from release under Freedom of Information Act (FOIA) requirements must be marked with a legend identifying it as privileged or confidential information.

D. Lower Tier Agreements. The recipient shall include this article, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

E. The recipient is responsible for affixing appropriate markings indicating rights on all Data delivered under the agreement. The Government will have unlimited rights in all Data delivered without markings.

(End of clause)

(e) Foreign Access to Technology. This clause applies only if this contract requires experimental, developmental, or research work.

(1) Definitions

(A) "Foreign firm or institution" means a firm or institution organized or existing under the laws of a country other than the United States, its

territories, or possessions. The term includes, for purposes of this agreement, any agency or instrumentality of a foreign government, and firms, institutions, or business organizations that are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

- (B) "Know-how" means all information including, but not limited to, discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, technical data, specifications, devices, apparatus, and machines.
 - (C) "Technology" means discoveries, innovations, know-how, and inventions, whether patentable or not, including computer software, recognized under U.S. law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, mask works, and copyrights developed under this agreement.
- (2) General. Seller acknowledges that research findings and technology developments in Integration of Real Time Information with Synthetic and Enhanced Vision Displays technology may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this contract by foreign firms or institutions must be carefully controlled. The controls contemplated in this clause are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulation (22 CFR pt. 120 et seq.), the DOD Industrial Security Regulation (DOD 5220.22-R), and the Department of Commerce Export Regulation (15 CFR pt. 770 et seq.).
- (3) Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions.
- (A) In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs (3)(B), (3)(C), and (3)(D) below shall apply to any transfer of technology. For purposes of this paragraph, a transfer includes a sale of the company and sales or licensing of technology. Transfers do not include:
 - (i) sales of products or components, or
 - (ii) licenses of software or documentation related to sales of products or components, or
 - (iii) transfer to foreign subsidiaries of Seller for purposes related to Agreement No. F33615-01-2-3110, or
 - (iv) transfer which provides access to technology to a foreign firm or institution which is an approved source of supply or source for the

conduct of research under Agreement No. F33615-01-2-3110 provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under Agreement No. F33615-01-2-3110.

- (B) Seller shall provide timely notice to the Government of any proposed transfer from Seller of Technology developed under this contract to foreign firms or institutions. If the Government determines that the transfer may have adverse consequences to the national security interests of the United States, Seller, its subcontractors, and the Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to Seller.
- (C) In any event, Seller shall provide written notice to the agreements officer and Government program manager, through Buyer's Authorized Procurement Representative, of any proposed transfer to a foreign firm or institution at least 60 days prior to the proposed date of transfer. Such notice shall cite this clause and shall state specifically what is to be transferred and the general terms of the transfer. Within 30 days of receipt of Seller's written notification, the agreements officer shall advise Seller whether he or she consents to the proposed transfer. In cases where the Government does not concur or 60 days after receipt and the Government provides no decision, Seller may utilize the procedures under the clause entitled Claims, Disputes and Appeals. No transfer shall take place until a decision is rendered.
- (D) Except as provided in subparagraph (3)(A) above and in the event the transfer of technology to foreign firms or institutions is not approved by the Government, but the transfer is made nonetheless, Seller shall (a) refund to Buyer the funds paid for the development of the technology and (b) negotiate a license with Buyer to the technology under terms that are reasonable under the circumstances.
- (4) Lower Tier Agreements. Seller shall include this clause, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, development, or research work.
- (5) This clause shall remain in effect during the term of Agreement No. F33615-03-2-6316 and for one year thereafter. The end of the effectivity period is estimated to be December 5, 2011.
- (f) Equal Employment Opportunity

Seller shall comply with E.O. 11246 (3 CFR 1964-1965 Comp., p.339), "Equal Employment Opportunity," as amended by E.O. 11375 (3 CFR, 196601970 Comp., p. 684), "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR chapter 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

- (g) Clean Air and Water (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended. This clause applies only if this contract exceeds \$100,000.

Seller shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C.7401 et seq.) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the responsible DoD component and the Regional Office of the Environmental Protection Agency (EPA).

- (h) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). This clause applies only if this contract exceeds \$100,000.

By submission of a response to a solicitation that incorporates this clause or by entering into a contract that incorporates this clause, Seller will be making the certification required by the Byrd Anti-Lobbying Amendment. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal Award. Such disclosures are forwarded from tier to tier up to the recipient.

- (i) Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c). This clause applies only if this contract exceeds \$2000 and is for construction or repair.

Seller shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). In accordance with the Act, Seller is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. Seller shall report all suspected or reported violations to the responsible DoD component.

- (j) Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333). This clause is applicable only if this contract exceeds \$100,000 for construction or for other purposes that involve the employment of mechanics or laborers.

Seller shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). In accordance with Section 102 of the Act, Seller is required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1 and ½ times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. Section 107 of the Act is applicable to construction work

and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(k) Rights to Inventions Made Under a Contract, Grant or Cooperative Agreement

Contracts (including subcontracts), grants, or cooperative agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(l) Debarment and Suspension (E.O.s 12549 and 12689)

Contract (and subcontract) awards that exceed the simplified acquisition threshold and certain other contract awards shall not be made to parties listed on the nonprocurement portion of the General Services Administration's Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs in accordance with E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principals.

(m) Assurances

(1) By acceptance of this contract, Seller assures that it will comply with applicable provisions of the following National policies on:

(A) Prohibiting discrimination:

- (i) On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42USC 2000d, et seq.), as implemented by DoD regulations at 32 CFR part 195;
- (ii) On the basis of age, in the Age Discrimination Act of 1975 (42 USC 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90;
- (iii) On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 USC 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations 32 CFR part 56;

- (B) The Clean Air Act (42 USC 7401 et seq.) and Clean Water Act (33 USC 1251, et seq.), as implemented by Executive Order 11738 (3 CFR 1971-1975 Comp., p. 799).
- (2) Seller shall obtain assurances of compliance from subcontractors at lower tiers.