

**CALIFORNIA INSTITUTE OF TECHNOLOGY
JET PROPULSION LABORATORY
GENERAL PROVISIONS -
FIXED-PRICE CONSTRUCTION CONTRACT**

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GENERAL PROVISIONS CANNOT BE ALTERED WITHOUT NASA APPROVAL

The attached Exhibits are incorporated into the General Provisions. Submission of an offer and beginning performance constitute certification and recertification per Exhibit A.

Exhibit A. Certifications of Nonsegregated Facilities, Clean Air and Water, Anti-Kickback Compliance, Americans with Disabilities Act Compliance, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and Certification of Full Disclosure Regarding Debarred, Suspended, or Proposed for Debarment Status (Form JPL 2892)

Exhibit B. Release of Information (Form JPL 1737)

Exhibit C. Asbestos Notification (Form JPL 2895)

Exhibit D. Notification to Prospective Contractors of JPL's Ethics Policies and Anti-Kickback Hotline (Form JPL 2385)

ARTICLE GP-1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meanings set forth below:

- (a) The term "Administrator" means the Administrator or Deputy Administrator of the National Aeronautics and Space Administration.
- (b) The term "Comptroller General" means the Comptroller General of the United States, and the term "the Comptroller General's duly authorized representative" means any person or persons authorized to act for the Comptroller General.
- (c) The term "contract amount" means the Contract price, the estimated cost and fee, if any, or the ceiling price of the Contract.
- (d) The term "Contracting Officer" means the Government Contracting Officer for the Prime Contract. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (e) The term "FAR" means the Federal Acquisition Regulation as in effect on the date of this Contract, unless otherwise indicated.
- (f) The term "Government" means the Government of the United States of America, unless the context is otherwise.
- (g) The term "Government-furnished property (GFP)" includes JPL-furnished, Government-owned property.
- (h) The term "Institute" means the California Institute of Technology as a party to this Contract.
- (i) The term "JPL" means the Jet Propulsion Laboratory as the organizational element of the Institute having responsibility for administration of this Contract. The rights of JPL under this Contract are the rights of the California Institute of Technology as a party to this Contract.
- (j) The term "NASA" means the National Aeronautics and Space Administration.
- (k) The term "NFS" means the NASA FAR Supplement as in effect on the date of this Contract, unless otherwise indicated.
- (l) The term "person" means any individual, partnership, corporation, association, institution or other entity.
- (m) The term "Prime Contract" means the Contract between the Institute and NASA for the United States of America (herein called the Government),.
- (n) The term "subcontract," includes, but is not limited to, purchase orders under this Contract.
- (o) The terms "United States" or "U.S." mean the United States of America.

ARTICLE GP-2. ORDER OF PRECEDENCE

- (a) The rights and obligations of the parties of this Contract shall be subject to and governed by the Schedule, the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise.
- (b) To the extent of any inconsistency between (i) the Schedule, other than the Alterations Article, (ii) the Alterations Article in the Schedule, and (iii) the GPs, the inconsistency will be resolved in the following order of priority:
 - (1) The Alterations Article.

- (2) The GPs not altered.
- (3) The Schedule, other than the Alterations Article.
- (c) To the extent of any inconsistency between
 - (1) the Schedule, other than any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise, in the Schedule, and
 - (2) any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise in the Schedule,
- (c)(1) has order of precedence over (c)(2).

ARTICLE GP-3. AUTHORITY OF JPL REPRESENTATIVES

No request, notice, authorization, direction or order received by the Contractor and issued either pursuant to a provision of this Contract, to a provision of any document incorporated in this Contract by reference, or otherwise,

shall be binding upon either the Contractor or the Institute unless issued or ratified in writing by the Manager, Procurement Division, JPL, or by the Procurement Division Manager's authorized representative. Designations of authorized representatives shall be in writing, signed by the Manager, Procurement Division, and shall define the scope and limitations of the authorized representatives' authorities. A copy of each such designation, and of each modification or cancellation thereof, shall be furnished the Contractor. The Contractor shall immediately notify, in writing, the Manager of the Procurement Division or the Procurement Division Manager's authorized representative whenever a request, notice, authorization, direction or order has been received from a representative of JPL other than the Manager of the Procurement Division, or the Procurement Division Manager's authorized representative, which, but for the lack of authorization on the part of the issuing JPL representative, would: (i) effect a change within the meaning of the "Changes" Article; (ii) increase or decrease the Contract amount or amount allotted to this Contract; or (iii) otherwise be the basis for assertion of a claim by the Contractor under any provision of the Contract.

ARTICLE GP-4. ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES

- (a) The Contractor may assign its rights to be paid amounts due or to become due as a result of the performance of this Contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.
- (b) Any such assignment or reassignment shall be subject to the following conditions:
 - (1) Any assignment or reassignment authorized under this provision shall cover all amounts payable under this Contract, and not paid as of (i) the effective date of assignment or (ii) the date JPL receives written notice of the assignment, whichever is later.
 - (2) No assignment may be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this Contract.
 - (3) Two copies of the notice of assignment, signed by the Contractor, shall be furnished to JPL, Attn: Accounts Payable.
 - (4) If a party other than the Contractor provides JPL with a notification that the amount due or to become due under this contract has been assigned and that payment is to be made to the claimed assignee, JPL may withhold any payments which are due and payable under the Contract until JPL is furnished with either (i) verification or denial of assignment from the Contractor or (ii) reasonable proof that the assignment has been made.
 - (5) The Contractor shall not furnish or disclose to any assignee under this Contract any classified document (which term includes this Contract if access to classified material is authorized under this Contract) or information pertaining to classified work under this Contract unless JPL authorizes such action in writing.

(6) No assignment may be made which includes, either specifically or by implication, any delegation of the Contractor's duty to perform the services or provide the supplies required by this Contract unless such assignment and delegation is consented to by JPL in accordance with the provisions of paragraph (c) below.

(c) The Contractor agrees that it will delegate no part of the duties required of it by this Contract without the prior written consent of JPL; provided, however, that nothing contained herein shall be deemed to prohibit the Contractor from placing purchase orders and subcontracts, subject, however, to the provision of this Contract entitled "Subcontracts."

ARTICLE GP-5. DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS

This is a rated order certified for national defense use, and the Contractor shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700).

ARTICLE GP-6. REQUIRED NOTICES

Unless otherwise specified in this Contract, any notice which the Contractor is required to provide to JPL under any provision of this Contract shall be directed to the Manager, Procurement Division, JPL, or the Procurement Division Manager's authorized representative.

ARTICLE GP-7. RELEASE OF INFORMATION

(This Article does not apply if the Article entitled "Release of Information - Preliminary Engineering Report (PER)" is applicable.)

The Contractor agrees that all information released by the Contractor for publicity or promotional purposes (e.g., news and photo releases, exhibit copy, motion picture scripts, advertising copy) directly related to the Contractor's work with and for JPL will be submitted to JPL for review for technical accuracy prior to issuance. (See enclosed form letter JPL 1737, "Release of Information.")

ARTICLE GP-8. BANKRUPTCY

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail, written notification of the bankruptcy to the JPL negotiator responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of JPL contract numbers for all JPL contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract.

ARTICLE GP-9. UNION DATA FOR ON-SITE CONTRACTORS

(This Article applies to any work at a JPL-controlled facility.)

The Contractor shall provide JPL-requested union information, including union information pertaining to its Subcontractors, if any, on the "Request for Union Data Regarding On-Site Contractors and Their Subcontractors," set forth below. A copy of this form (sample shown below), filled in, shall be returned to the cognizant negotiator's attention. Any changes in the data, such as the addition of a new union subcontractor, shall be provided to JPL through timely resubmission of the following form:

REQUEST FOR UNION DATA REGARDING ON-SITE CONTRACTORS AND THEIR SUBCONTRACTORS

1. Date:
2. Contract number:
3. Scheduled contract completion date:

(form continued on next page)

4. Contractor name:
5. Total number of on-site personnel:
6. Cognizant Negotiator:
7. Subcontractors under this Contract with union personnel working on-site at JPL-controlled facilities.

<u>Subcontractor</u>	Number of Subcontractor Personnel at JPL Site:	
	<u>Total Personnel</u>	<u>No. of Union Personnel</u>

8. Brief description of scope of work and location of work site sufficient to locate the union contract and subcontract workers.

9.
 - a. Local union name: Local No. (if any):
 - b. Number of on-site Contractor/subcontractor personnel represented:
 - c. Name, phone number and address of business agent representing the local union:
 - (1) Name:
 - (2) Phone:
 - (3) Address:
 - d. Expiration date of labor agreement:
 - e. (1) If applicable, the employer association responsible for negotiating each agreement for Contractor/subcontractor:
 (2) If applicable, the names of Contractor's/subcontractor's local employer representatives who take part in such negotiations:
10. Name, phone number and address of the Contractor's subcontractor's representative who is responsible for handling labor relations/human resources issues:
 - a. Name:
 - b. Phone:
 - c. Address:

(Note: For items 8., 9., and 10., provide for each union and also for each on-site subcontract, as applicable.)

ARTICLE GP-10. NOTICE TO JPL OF LABOR DISPUTES

- (a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice to JPL. The initial notice shall include the following:
 - (1) Identification of parts/materials, etc., which are or may be affected;
 - (2) Brief description of work-around plans to avoid delivery or performance delays. If the actual or potential dispute involves a lower tier subcontractor, advise as to potential alternate sources;
 - (3) Other Government agencies having responsibility for any functions concerning the affected operation, e.g., quality control, agency resident representative, etc., and the title, name and telephone of the agency representative.
 - (4) Other Government agencies which have been notified of the situation, and if available, the title, name and telephone number of any representative of another agency who is involved with the actual or threatened labor dispute;
 - (5) Specific information regarding transportation of parts/materials or personnel which is or may be affected;
 - (6) Manufacturer/Subcontractor and union data to include:
 - (A) Name, address and telephone numbers of the manufacturer/subcontractor representative and Industrial Relations Representative to be contacted for further information;
 - (B) Union's name and local lodge number, if known.

If any of the required information is not available when providing the initial notice, indicate when it is estimated that such information can be provided.

- (b) The Contractor agrees to insert the substance of this Article, including this paragraph (b), in any subcontract to which a labor dispute may delay the timely performance of this Contract; except that each such subcontract shall provide that, in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher-tier subcontractor or JPL, as the case may be, concerning the dispute.

ARTICLE GP-11. ASBESTOS NOTIFICATION

(This Article applies if any of the Contract effort will be performed in JPL-Pasadena or JPL-Edwards buildings.)

Contractor acknowledges receipt of the attached "Asbestos Notification," form JPL 2895, identifying JPL buildings containing asbestos and agrees to distribute the Notice to all its personnel prior to their commencing work in such buildings. Contractor agrees to coordinate with the JPL Environmental Affairs and Chemical Controls Office for special asbestos handling instructions to be given to all Contractor's personnel, including subcontractors' personnel, prior to their commencing work, if any, which could disturb asbestos in JPL-controlled buildings. The substance of this Article will be included in all subcontracts issued under this Article for work performed in JPL-Pasadena or JPL-Edwards buildings.

ARTICLE GP-12. CONTRACTOR RECRUITING ACTIVITY

Except as may be specifically authorized by JPL in writing, during the performance of this Contract the Contractor shall refrain from engaging in any activity related to employment recruiting on any of the premises of JPL.

ARTICLE GP-13. SAFETY AND HEALTH

- (a) The Contractor shall take all reasonable safety and health measures in performing under this Contract and shall, to the extent set forth below, submit a safety and health plan for JPL's approval. The Contractor shall comply with (i) all applicable Federal, state and local laws relating to safety and health which are in effect on the date of this Contract and (ii) the safety and health standards, specifications and issuances, reporting requirements, and provisions set forth below.
- (b) The Contractor shall take or cause to be taken such other safety and health measures as JPL may direct. To the extent that the Contractor may be entitled to an equitable adjustment for such measures under the terms and conditions of this Contract, such equitable adjustment shall be determined pursuant to the procedures of the Article of this Contract entitled "Changes;" provided, that no adjustment shall be made under this Article for any change for which an equitable adjustment is expressly provided under any other provision of this Contract.
- (c) The following safety and health standards, specifications, issuances and reporting requirements are prescribed:
 - (1) General Standards and Specifications: The Contractor shall comply with applicable provisions of the Occupational Safety and Health Standards of the Occupational Safety and Health Act of 1970, Rules and Regulations of the Department of Labor issued pursuant thereto and regulations of states provided for under the Act. Within California the Contractor shall comply with applicable provisions of the California Occupational Safety and Health Act of 1973.
 - (2) Environmental Matters: Environmental controls shall be in accordance with applicable NASA and other Federal, State and local regulatory requirements and in accordance with applicable Executive Orders of the President.
 - (3) Any additional safety and health standards, specifications, issuances and reporting requirements set forth in this Contract.
- (d) The safety and health plan to be submitted by the Contractor pursuant to paragraph (a) above shall implement the requirements of this Article and of the standards and specifications of paragraph (c) of this Article and shall describe the means to be employed by the Contractor to monitor and enforce said requirements. The plan shall include the Contractor's standards and criteria for imposing safety and health standards upon its subcontractors of any tier and its plans and procedures for monitoring compliance with such standards.

- (e) The Contractor shall immediately notify and promptly report to JPL any accident, incident or exposure resulting in fatality, lost-time occupational injury, occupational disease, contamination of property (or, if this Contract sets forth any acceptable threshold limits of contamination, any contamination of property beyond those stated limits) beyond any stated acceptable threshold limits set forth in this Contract or property loss of \$25,000 or more arising out of work performed under this Contract; provided, however, the Contractor will not be required to include in any report an expression of opinion as to the fault or negligence of any employee. In addition, the Contractor shall comply with the illness, incident and injury experience reporting requirements set forth below or elsewhere in this Contract. The Contractor will also provide quarterly reports which specify lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses. The Contractor will investigate all work-related incidents or accidents to the extent necessary to determine their cause or causes and furnish JPL with a report, in such form as JPL may require, of the investigative findings and proposed or completed corrective actions. In addition, the Contractor shall comply with the illness, incident and injury experience reporting requirements set forth below or elsewhere in this Contract.
- (f) Illness, Incident and Injury Experience Reports.
- (1) Reports required by this Article or elsewhere in this Contract shall be furnished in three copies.
- (2) The following illness, incident, and injury experience reports are prescribed pursuant to paragraph (e) above:
- (A) Investigative Reports: The Contractor shall furnish reports of investigation of individual incidents or accidents in formats approved by JPL, provided, however, that the Contractor shall not be required to furnish personally identifiable information concerning Contractor or subcontractor employees.
- (B) The Contractor shall furnish such other reports as JPL determines to be related to the Contractor's safety and health program and its experiences thereunder.
- (g) (1) JPL may notify the Contractor in writing of any noncompliance with the provisions of this Article and may also specify corrective actions to be taken. The Contractor shall promptly take, and report, any necessary corrective action.
- (2) If the Contractor fails or refuses to institute prompt corrective action in accordance with (g)(1) above, JPL may invoke any stop work or suspension of work provision of this Contract or any other remedy legally available to the Institute in the event of such failure by the Contractor.
- (h) The Contractor (or subcontractor or supplier) shall cause the substance of this Article, including this paragraph (h) and any applicable provisions of this Contract, with any appropriate changes of designations of the parties, to be inserted in subcontracts of every tier which:
- (1) Amount to \$1,000,000 or more, unless JPL makes a written determination that this is not required;
- (2) Require construction, repair, or alteration in excess of \$25,000; or
- (3) Regardless of dollar amount, involve the use of hazardous materials or operations.
- (i) The Contractor agrees that authorized representatives of JPL or the Contracting Officer shall have access to and the right to examine the sites or areas where work under this Contract is being performed in order to determine the adequacy of the Contractor's safety and health measures under this Article.
- (j) As part of the Contractor's safety and health plan, the Contractor shall furnish a list of all hazardous operations to be performed, including operations covered by measures indicated in paragraphs (a) and (b) of this Article and a list of other major or key operations required or planned in the performance of the contract, even though not deemed hazardous by the Contractor. JPL and the Contractor shall jointly decide which operations are to be considered hazardous with JPL as the final authority. Before hazardous operations commence, the Contractor shall develop, review, and provide plans for the operation for JPL to review. The Contractor's review procedure shall include evaluations by operating personnel, management and safety professionals, as appropriate. Lists of personnel trained and certified or specified for each hazardous operation shall be maintained. Such records shall be supplied to JPL on request.

ARTICLE GP-14. DRUG-FREE WORKPLACE REQUIREMENTS

The Contractor agrees to inform all Contractor personnel, prior to their first entrance upon JPL premises, that JPL's policy is to fully comply with the requirements of the Drug-Free Workplace Act and that Contractor personnel are required to comply with JPL's policy of maintaining a drug-free workplace.

ARTICLE GP-15. SAFETY: ILLNESS AND INJURY PREVENTION PROGRAM

All Contractors whose personnel work at a site in California must establish and implement an effective illness and injury prevention program in compliance with California law.

ARTICLE GP-16. ANTI-KICKBACK PROCEDURES

(a) Definitions.

- (1) "Kickback," as used in this Article, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.
- (2) "Person," as used in this Article, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
- (3) "Prime contract," as used in this Article, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.
- (4) "Prime Contractor," as used in this Article, means a person who has entered into a prime contract with the United States.
- (5) "Prime Contractor employee," as used in this Article, means any officer, partner, employee, or agent of a prime contractor.
- (6) "Subcontract," as used in this Article, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.
- (7) "Subcontractor," as used in this Article, (i) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (ii) includes any person who offers to furnish or furnishes general supplies to the prime contractor or a higher tier subcontractor.
- (8) "Subcontractor employee," as used in this Article, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from:

- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback; or
- (3) Including, directly or indirectly, the amount of any kickback in the Contract price charged by a prime Contractor to the United States or in the Contract price charged by a subcontractor to a prime contractor or higher tier subcontractor.

(c) (1) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this Article may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

- (2) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this Article.

- (3) The Institute may (i) offset the amount of the kickback against any monies owed under the Contract and/or (ii) direct that the Contractor withhold, from sums owed a subcontractor under the contract, the amount of any kickback. JPL may order that monies withheld under subdivision (c)(3)(ii) of this Article be paid over to JPL unless JPL has already offset those monies under subdivision (c)(3)(i) of this Article. In either case, the Contractor shall notify JPL when the monies are withheld.
- (4) The Contractor agrees to incorporate the substance of this Article, including this subparagraph (c)(4), in all subcontracts under this Contract.

ARTICLE GP-17. LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

(This Article applies if this Contract is expected to exceed \$100,000.)

(a) Definitions.

- (1) "Agency," as used in this Article, means executive agency as defined in 2.101.
- (2) "Covered Federal action," as used in this Article, means any of the following Federal actions:
 - (A) The awarding of any Federal contract.
 - (B) The making of any Federal grant.
 - (C) The making of any Federal loan.
 - (D) The entering into of any cooperative agreement.
 - (E) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (3) "Indian tribe" and "tribal organization," as used in this Article, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.
- (4) "Influencing or attempting to influence," as used in this Article, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.
- (5) "Local government," as used in this Article, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of governmental duty, including a local public authority, special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.
- (6) "Officer or employee of an agency," as used in this Article, includes the following individuals who are employed by an agency:
 - (A) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.
 - (B) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.
 - (C) A special Government employee, as defined in section 202, title 18, United States Code.
 - (D) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.
- (7) "Person," as used in this Article, means an individual corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

- (8) "Reasonable compensation," as used in this Article, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.
- (9) "Reasonable payment," as used in this Article, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.
- (10) "Recipient," as used in this Article, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
- (11) "Regularly employed," as used in this Article, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.
- (12) "State," as used in this Article, means, a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory of possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.

- (1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; and the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) The act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.
- (3) The prohibitions of the Act do not apply under the following conditions:
 - (A) Agency and legislative liaison by own employees.
 - (i) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this Article, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.
 - (ii) For purposes of paragraph (b)(3)(A)(i) of this Article, providing any information specifically requested by an agency or Congress is permitted at any time.
 - (iii) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:
 - a. Discussing with an agency the qualities and characteristics (including individual demonstrations) of any person's products or services, conditions or terms of sale, and service capabilities.

- b. Technical discussions and other activities regarding the application to adaptation of the person's products or services for an agency's use.
- (iv) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action -
 - a. Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - b. Technical discussions regarding preparation of an unsolicited proposal prior to its official submission; and
 - c. Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.
- (v) Only those services expressly authorized by paragraph (b)(3)(A)(i) are permitted under this Section (b)(3)(A).

(B) Professional and technical services.

- (i) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this Article, does not apply in the case of :
 - a. A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
 - b. Any reasonable payment to a person other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (ii) For purposes of paragraph (b)(3)(B)(i) of this Article, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

- (iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
- (iv) Only those services expressly authorized by paragraphs (b)(3)(B)(i)a. and b. of Section (b)(3)(B) are permitted under this Section.
- (v) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure.

- (1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard for LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to *include* profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this Article, if paid for with appropriated funds.
- (2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this Article. An event that materially affects the accuracy of the information reported includes -
 - (A) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (B) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - (C) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- (3) The Contractor shall submit and require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.
- (4) All contractor and subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the JPL negotiator for JPL, the prime Contractor. The Contractor shall submit all disclosures to the JPL negotiator (for provision to the Contracting Officer) at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding contractor.

(d) Agreement. The Contractor agrees not to make any payment prohibited by this Article.

(e) Penalties.

- (1) Any person who makes an expenditure prohibited under paragraph (a) of this Article or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this Article shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
- (2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) Cost allowability. Nothing in this Article makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this Article will not be made allowable under any other Article.

ARTICLE GP-18. CONTRACTOR AND SUBCONTRACTOR COST OR PRICING DATA

(This Article is applicable if either the basic Contract or any modification exceeds \$500,000.)

- (a) Contractor Cost or Pricing Data. Whenever the price of the basic Contract, or the negotiated price of any change, or other modification to this Contract is expected to exceed \$500,000, the Contractor agrees to furnish the Institute certified cost or pricing data, using the JPL certificate, form JPL 2496, or approved equivalent unless the Institute determines that the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or that the prices are set by law or regulation.
- (b) Subcontractor Cost or Pricing Data.
- (1) Before awarding any subcontract expected to exceed \$500,000 when entered into, or before pricing any subcontract modification involving a pricing adjustment expected to exceed \$500,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is:
 - (A) Based on adequate price competition;
 - (B) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
 - (C) Set by law or regulation.
 - (2) The requirement for obtaining certified cost or pricing data with respect to any subcontract change or other modification does not apply to any subcontract change or modification, at any tier, where this Contract is a firm fixed-price or fixed-price with escalation contract unless such change or other modification results from a Contract change or other modification to this Contract, nor does it apply to a subcontract change or other modification, at any tier, where this Contract is not firm fixed price or firm fixed-price with escalation, unless the price for such change or modification becomes reimbursable under this Contract.
 - (3) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.804-4, and any corresponding implementing or supplementing provisions in the NFS, that, to the best of its knowledge and belief, the data submitted under subparagraph (b)(1) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
 - (4) In each subcontract that exceeds \$500,000 when entered into, the Contractor shall insert either:
 - (A) The substance of this Article, including this paragraph (4), if paragraph (b)(1) above requires submission of cost or pricing data for the subcontract; or
 - (B) The substance of the clause at FAR 52.215-25, "Subcontractor Cost or Pricing Data - Modifications," including any corresponding implementing or supplementing provisions in the NFS.
- (c) Price Reduction for Defective Cost or Pricing Data.
- (1) If any price, including profit or fee, negotiated in connection with this Contract, or any cost reimbursable under this Contract, was increased by any significant amount because (i) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (ii) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (iii) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the Contract shall be modified to reflect the reduction.

- (2) Any reduction in the Contract price under paragraph (1) above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (i) the actual subcontract or (ii) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- (3) (A) If the Contracting Officer determines under paragraph (1) of this Article that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
- (i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the Contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
 - (ii) The Institute should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of JPL.
 - (iii) The Contract was based on an agreement about the total cost of the Contract and there was no agreement about the cost of each item procured under the Contract.
 - (iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (B) (i) Except as prohibited by subdivision (c)(3)(B)(ii) of this Article, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a Contract price reduction if:
- a. The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
 - b. The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the Contract (or price of the modification) and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if:
- a. The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or
 - b. The Government proves that the facts demonstrate that the Contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.
- (4) In the event of a disagreement between the Contracting Officer and the Contractor with respect to a question of fact involved in the Contracting Officer's determination to reduce the price of this Contract, the Contractor may, subject to the prior approval of the Institute, which approval will not be unreasonably withheld, process such disagreement as a dispute to the extent that it may be entitled to do so under the provisions of the Prime Contract.
- (d) Examination of Records. For purposes of verifying that certified cost or pricing data required to be submitted in conjunction with the negotiation of this Contract or change or modification thereto, or otherwise pursuant to the provisions of this Article, were accurate, complete, and current, the Contracting Officer of the Prime Contract, or authorized representatives, shall - until the expiration of three years from the date of final payment under this Contract or of the time periods specified in FAR subpart 4.7 and any corresponding implementing or supplementing provisions in the NFS, whichever expires earlier - have the right to examine those books, records, documents, papers and other supporting data which involve transactions related to this Contract or which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein. The rights herein are in addition to those contained in any other provision of this Contract dealing with records, audit and records, and examination of records.

- (e) If any reduction in the Contract price under this Article reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall indemnify the Institute for costs incurred by the Institute involved in repayments to the Government resulting from the Contractor's defective pricing including simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Institute at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2).

ARTICLE GP-19. SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION

- (a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give JPL 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 case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to JPL, which shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. JPL shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.
- (b) Whenever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of JPL is intended and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" JPL, unless otherwise expressly stated.
- (c) Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this Contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed."
- (d) Shop drawings or as-built drawings shall be submitted in accordance with specifications, special conditions or other requirements under this Contract.
- (e) If this Contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with Contract requirements. JPL may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this Contract.
- (f) This Article shall be included in all subcontracts at any tier.

ARTICLE GP-20. AUDIT-NEGOTIATION

- (a) Examination of Costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable Contract, or any combination of these, the Contractor shall maintain - and the Contracting Officer or representatives of the Contracting Officer shall have the right to examine and audit - books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this Contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the Contract.
- (b) Cost or Pricing Data. If, pursuant to law, the Contractor has been required to submit cost or pricing data in connection with pricing this Contract or any modification to this Contract, the Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit all books, records, documents, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the Contract or Modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used.

- (c) **Reports.** If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit books, records, other documents, and supporting materials, for the purpose of evaluating (i) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (ii) the data reported.
- (d) **Availability.** The Contractor shall make available at its office at all reasonable times the materials described in paragraphs (a) and (b) above, for examination, audit, or reproduction, until three years after final payment under this Contract, or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of FAR and any corresponding implementing or supplementing provisions in the NFS, or for any longer period required by statute or by other Article of this Contract. In addition:
 - (1) If this Contract is completely or partially terminated, the records relating to the work terminated shall be made available for three years after any resulting final termination settlement; and
 - (2) Records relating to appeals under the Disputes clause of the prime contract or if this Contract contains a "Disputes" Article, to appeals under such Article, or to litigation or the settlement of claims arising under or relating to this Contract, shall be made available until such appeals, litigation, or claims are disposed of.
- (e) Except as otherwise provided in FAR Subpart 4.7, Contractor Records Retention, and any corresponding implementing or supplementing provisions in the NFS, the Contractor may transfer computer data in machine readable form from one reliable computer medium to another. The Contractor's computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original data. The Contractor's choice of form or type of materials described in paragraphs (a), (b), and (c) of this Article affects neither the Contractor's obligations nor the Government's rights under this Article.
- (f) The Contractor shall insert all of the provisions of this Article, including this paragraph (f), in all subcontracts under this Contract which are over the small purchase limitation in FAR Part 13, altering the Article only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.
- (g) If this Contract is a cost-reimbursement contract with an educational or other nonprofit institution, the provisions of OMB Circular No. A-133, "Audits of Institutions of Higher Learning and Other Nonprofit Institutions," apply to this Contract.

ARTICLE GP-21. EXAMINATION OF RECORDS BY COMPTROLLER GENERAL

- (a) This Article does not apply if this Contract does not exceed the FAR Part 13 small purchase limitation and does not apply if this Contract is for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.
- (b) The Comptroller General of the United States or a duly authorized representative from the General Accounting Office shall, until three years after final payment under this Contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, and any corresponding implementing or supplementing provisions in the NFS, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this Contract.
- (c) The periods of access and examination in paragraph (b) above for records relating to (i) appeals under the "Disputes" Article of the Government prime contract, or if this Contract contains a "Disputes" Article, to appeals under such Article, (ii) litigation or settlement of claims arising from the performance of this Contract, or (iii) costs and expenses of this Contract to which the Comptroller General or a duly authorized representative from the General Accounting Office has taken exception shall continue until such appeals, litigation, claims, or exceptions are disposed of.

ARTICLE GP-22. PROHIBITION OF CONTRACTOR USE OF PRIVATELY OWNED AIRCRAFT IN CONTRACT PERFORMANCE

The Contractor, its employees, agents and subcontractors, shall not use privately owned (noncommercial) aircraft in the performance of this Contract without prior approval of JPL. Any request for approval to use privately owned aircraft must include a certificate of insurance as evidence that the Contractor has in effect Aircraft Liability Insurance coverage of not less than \$5,000,000 for all deaths, injuries and property damage arising from one accident or occurrence. The Contractor shall include this provision in any subcontract involving travel subject to JPL approval.

ARTICLE GP-23. ELECTRICAL EQUIPMENT ACQUISITION

(This Article is applicable if the Contract involves acquisition of off-the-shelf electrical equipment for delivery to or use by JPL or its designees.)

The electrical equipment being provided by the Contractor under this Contract shall be listed by Underwriters Laboratory, Factory Mutual Insurance Association, Canadian Standards Association, or similar organization of recognized standing. In the event that the equipment does not carry an appropriate approval, the individual components making up the item must be listed. Proof of listing shall be provided with delivery of the equipment in the form of accompanying data or labels. Any item not conforming to these requirements may be returned to the Contractor at the Contractor's expense. The Contractor agrees to require subcontractors, if any, which supply electrical equipment for delivery to or use by JPL or its designees to comply with this Article.

ARTICLE GP-24. HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

(This Article applies if any hazardous materials as defined in paragraph (a) below are to be delivered under this Contract.)

- (a) Hazardous material, as used in this Article includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the Contract).
- (b) The Offeror must list any hazardous material, as defined in paragraph (a) of this Article, to be delivered under this Contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this Contract. The following format will be used:

Material (If none, insert "None")	Identification No.
_____	_____
_____	_____
_____	_____

- (c) The apparently successful offeror, by acceptance of the Contract, certifies that the list submitted in accordance with paragraph (b) of this Article is complete. This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this Contract is hazardous.
- (d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in accordance with paragraph (b) of this Article. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.
- (e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this Article or the certification submitted under paragraph (c) of this Article, the Contractor shall promptly notify the JPL Negotiator and resubmit the data.

- (f) Neither the requirements of this Article nor any act or failure to act by the Government or JPL shall relieve the Contractor of any responsibility or liability for the safety of JPL, Government, or other Contractor, or subcontractor personnel or property.
- (g) Nothing contained in this Article shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (h) The Government's and JPL's rights in data furnished under this Contract with respect to hazardous material are as follows:
 - (1) To use, duplicate and disclose any data to which this Article is applicable. The purposes of this right are to:
 - (A) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
 - (B) Obtain medical treatment for those affected by the material; and
 - (C) Have others use, duplicate, and disclose the data for the Government and JPL for these purposes.
 - (2) To use, duplicate, and disclose data furnished under this Article, in accordance with subparagraph (h)(1) of this Article, in precedence over any other of this Contract providing for rights in data.
 - (3) The Government and JPL are not precluded from using similar or identical data acquired from other sources.
- (i) Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDSs), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this Article.
 - (1) For items shipped to consignees, the Contractor shall include a copy of the MSDS with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to mail MSDSs to consignees in advance of receipt of shipments by consignees, if authorized in writing by the cognizant JPL Negotiator..
 - (2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDSs in or on each shipping container. If affixed to the outside of each container, the MSDS must be placed in a weather resistant envelope.

ARTICLE GP-25. NOTICE OF RADIOACTIVE MATERIALS

(This Article is applicable only if this Contract is for radioactive materials as defined in paragraph (a) of this provision.)

- (a) The Contractor shall notify the JPL Negotiator or designee, in writing, 30 days prior to the delivery of, or prior to completion of any servicing required by this Contract of, items containing either (i) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (ii) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).
- (b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the JPL Negotiator or designee waive the notice requirement in paragraph (a) of this Article. Any such request shall:

- (1) Be submitted in writing;
 - (2) Contain a certification that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and
 - (3) Cite the contract number on which the prior notification was submitted .
- (c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to JPL or the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the Contract.
- (d) This Article, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this Article.

ARTICLE GP-26. CLEAN AIR AND WATER

(This Article does not apply to small purchases as defined in FAR Part 13 or to the use of facilities outside the United States.. The Article applies to the Contract if it exceeds \$100,000 [or \$100,000 in one year for an indefinite delivery contract], or the facility to be used has been the subject of a conviction under the Air Act or Water Act and is listed by the EPA as a violating facility, and the acquisition is not otherwise exempt under FAR 23.104.)

(a) Definitions.

- (1) "Air Act," as used in this Article, means the Clean Air Act (42 U.S.C. 7401 et seq.).
- (2) "Clean air standards," as used in this Article, means:
 - (A) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;
 - (B) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d));
 - (C) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411 (c) or (d)); or
 - (D) An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412 (d)).
- (3) "Clean water standards," as used in this Article, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).
- (4) "Compliance," as used in this Article, means compliance with:
 - (A) Clean air or water standards; or
 - (B) A schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.
- (5) "Facility," as used in this Article, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

(6) "Water Act," as used in this Article, means Clean Water Act (33 U.S.C. 1251 et seq.).

(b) The Contractor agrees:

- (1) To comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this Contract;
- (2) That no portion of the work required by this Contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this Contract was awarded unless and until the EPA eliminates the name of the facility from the listing;
- (3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the Contract is being performed; and
- (4) To include this Article into any nonexempt subcontract, including this paragraph (b)(4), if:
 - (A) The contract is expected to exceed \$100,000;
 - (B) The Contractor believes that orders under an indefinite quantity contract in any year will exceed \$100,000; or
 - (C) A facility to be used has been the subject of a conviction under the applicable portion of the Air Act (42 U.S.C. 7413(c)(1)) or the Water Act (33 U.S.C. 1319(c)) and is listed by EPA as a violating facility; and
 - (D) The acquisition is not otherwise exempt under FAR 23.104 and any corresponding implementing or supplementing provisions in the NFS.

ARTICLE GP-27. SCHEDULES FOR CONSTRUCTION CONTRACTS

- (a) The Contractor shall, within five days after work commences on the Contract, or within such other period as determined by JPL, prepare and submit to JPL for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, JPL may withhold approval of progress payments until the Contractor submits the required schedule.
- (b) The Contractor shall enter the actual progress on the chart as directed by JPL, and upon doing so shall immediately deliver three copies of the annotated schedule to JPL. If, in the opinion of JPL, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by JPL, without additional cost to the Institute. In this circumstance, JPL may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as JPL deems necessary to demonstrate how the approved rate of progress will be regained.
- (c) Failure of the Contractor to comply with the requirements of JPL under this Article shall be grounds for a determination by JPL that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, JPL may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the Article entitled "Default" of this Contract.

ARTICLE GP-28. OPERATIONS, FACILITIES AND STORAGE AREAS

- (a) Unless otherwise approved by JPL, the Contractor shall provide and maintain, for the duration of the work, its own office on the job site.

- (b) All operations of the Contractor (including storage of materials) upon JPL-controlled premises shall be confined to areas authorized or approved by JPL. No unauthorized entry upon, or passage through, or storage or disposal of materials shall be made upon, JPL-controlled premises.
- (c) Temporary buildings (storage sheds, shops, offices, etc.) may be erected by the Contractor only with approval of JPL, and either may be of a removable, portable type, or may be erected by the Contractor with labor and materials furnished by the Contractor without expense to the Institute. Such temporary buildings shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon the completion of the work. With the written consent of JPL, such buildings may be abandoned and need not be removed.
- (d) The Contractor shall, under regulations prescribed by JPL, use only established roadways or construct and use such temporary roadways as may be authorized by JPL. 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 curbs or sidewalks, protection against damage shall be provided by the Contractor and any roads, curbs, or sidewalks damaged by the Contractor, its subcontractors, or by the agents, servants or employees of the Contractor or subcontractor, shall be repaired by, or at the expense of the Contractor.
- (e) The Contractor shall hold and save the Institute, its trustees, officers, and agents free and harmless from liability of any nature occasioned by the Contractor's performance.

ARTICLE GP-29. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION

(This provision is not applicable to contracts exempt under regulations of the Secretary of Labor (29 CFR 5.15), including but not limited to contracts for supplies, materials, or articles ordinarily available in the open market, contracts, other than construction of \$2500 or less, construction contracts of \$2000 or less, contracts to be performed solely within a foreign country, and contracts for supplies in connection with which any required services are merely incidental to the contract and do not require substantial employment of laborers or mechanics.)

- (a) Overtime Requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics (see FAR 22.300 and any corresponding implementing or supplementing provisions in the NFS) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) Violation, Liability for Unpaid Wages, and Liquidated Damages. In the event of any violation of the provisions set forth in paragraph (a) of this Article, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this Article in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this Article.
- (c) Withholding for Unpaid Wages and Liquidated Damages. Either JPL or the Contracting Officer shall, upon their own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract, or any other contract with JPL, or any other Federally assisted contract which is subject to the Federal Contract Work Hours and Safety Act which is held by the Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this Article.
- (d) Payrolls and Basic Records.
 - (1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of Contract work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics working on the Contract. Such records shall contain the name and address of

each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d)(1) of this Article shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Institute, the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.

(e) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (e) of this Article and also an Article requiring the subcontractors to include these provisions in any lower-tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this Article.

ARTICLE GP-30. COMPOSITION OF CONTRACTOR

If the Contractor hereunder is composed of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

ARTICLE GP-31. EQUAL OPPORTUNITY

(The following Article is applicable unless this Contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor issued under Executive Order 11246, as amended; for example, contracts are exempt for work performed outside the United States by employees recruited outside the United States.)

If, during any 12-month period (including the 12 months preceding the award of this Contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (a) through (k) below during performing this Contract. Upon request, the Contractor shall provide information necessary to determine the applicability of this Article.

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this Article.
- (d) The Contractor shall, in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this Article and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish to NASA all information required by Executive Order 11246, as amended, and by the rules, regulations and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

- (h) The Contractor shall permit access to its books, records, and accounts by NASA or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.
- (i) If the OFCCP determines that the Contractor is not in compliance with this Article or any rule, regulation, or order of the Secretary of Labor, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (j) The Contractor shall include the terms and conditions of paragraphs (a) through (k) of this Article in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.
- (k) The Contractor shall take such action with respect to any subcontract or purchase order as NASA may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

ARTICLE GP-32. AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS

(This Article is applicable if the amount of this Contract is in excess of, or is expected to exceed, \$2,500, unless the work is performed outside the United States by employees recruited outside the United States.)

(a) General.

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental handicap. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as (i) employment, (ii) upgrading, (iii) demotion or transfer, (iv) recruitment, (v) advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.
- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings.

- (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped individuals and (ii) the rights of applicants and employees.
- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.
- (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified physically and mentally handicapped individuals.

(c) Noncompliance. If the Contractor does not comply with the requirements of this Article, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

- (d) Subcontracts. The Contractor shall include the terms of this Article in every subcontract or purchase order in excess of \$2,500 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

ARTICLE GP-33. AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS

(This Article is applicable if this Contract is for, or is expected to amount to, \$10,000 or more, unless the work is performed outside the United States by employees recruited outside the United States.)

(a) Definitions.

- (1) "Appropriate office of the State employment service system," as used in this Article, means the local office of the Federal-State national system of public employment offices assigned to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.
- (2) "Openings that the Contractor proposes to fill from within its own organization," as used in this Article, means employment openings for which no one outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) will be considered and includes any openings that the Contractor proposes to fill from regularly established "recall" lists.
- (3) "Openings that the Contractor proposes to fill under a customary and traditional employer-union hiring arrangement," as used in this Article, means employment openings that the Contractor proposes to fill from union halls, under their customary and traditional employer-union hiring relationship.
- (4) "Suitable employment openings," as used in this Article:
 - (A) Includes, but is not limited to, openings that occur in jobs categorized as (i) production and nonproduction, (ii) plant and office, (iii) laborers and mechanics, (iv) supervisory and nonsupervisory, (v) technical, and (vi) executive, administrative, and professional positions compensated on a salary basis of less than \$25,000 a year; and
 - (B) Includes full-time employment, temporary employment of over three days, and part-time employment, but not openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement, nor openings in an educational institution that are restricted to students of that institution.

(b) General.

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a special disabled or Vietnam Era veteran. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their disability or veterans' status in all employment practices such as (i) employment, (ii) upgrading, (iii) demotion or transfer, (iv) recruitment, (v) advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.
- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing Openings.

- (1) The Contractor agrees to list all suitable employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this Contract. An independent corporate affiliate is exempt from this requirement.

- (2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.
- (3) The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.
- (4) Whenever the Contractor becomes contractually bound to the listing terms of this Article, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this Contract Article.
- (5) Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations when (i) the Government's needs cannot reasonably be supplied, (ii) listing would be contrary to national security, or (iii) the requirement of listing would not be in the Government's interest.

(d) Applicability.

- (1) This Article does not apply to the listing of employment openings which occur and are filled outside the 50 states, the District of Columbia, Puerto Rico, Guam, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.
- (2) The terms of paragraph (c) above of this Article do not apply to openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

(e) Postings.

- (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.
- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.
- (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified special disabled and Vietnam Era veterans.

(f) Noncompliance. If the Contractor does not comply with the requirements of this Article, appropriate actions may be taken under the rules, regulations and relevant orders of the Secretary issued pursuant to the Act.

(g) Subcontracts. The Contractor shall include the terms of this Article in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

ARTICLE GP-34. EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

(This Article is applicable if this Contract is for, or is expected to amount to, \$10,000 or more, unless the work is performed outside the United States by employees recruited outside the United States.)

(a) The Contractor shall report at least annually, as required by the Secretary of Labor, on:

- (1) The number of special disabled veterans and the number of veterans of the Vietnam era in the workforce of the Contractor by job category and hiring location; and
 - (2) The total number of new employees hired during the period covered by the report, and of that total, the number of special disabled veterans, and the number of veterans of the Vietnam era.
- (b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."
- (c) Reports shall be submitted no later than March 31 of each year.
- (d) The employment activity report required by paragraph (a)(2) of this Article shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this Article. Contractors may select an ending date (i) as of the end of any pay period during the period January through March 1st of the year the report is due, or (ii) as of December 31, if the Contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
- (e) The count of veterans reported according to paragraph (a) of this Article shall be based on voluntary disclosure. Each contractor subject to the reporting requirements at 38 U.S.C. 2012(d) shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 2012 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 2012.
- (f) Subcontracts. The Contractor shall include the terms of this Article in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

ARTICLE GP-35. BUY AMERICAN ACT - CONSTRUCTION MATERIALS

- (a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic construction material.
- (b) Definitions.
- (1) "Components," as used in this Article, means those articles, materials, and supplies incorporated directly into construction materials.
 - (2) "Construction material," as used in this Article, means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.
 - (3) "Domestic construction material," as used in this Article, means (i) an unmanufactured construction material mined or produced in the United States, or (ii) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50% of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to FAR subparagraph 25.202(a)(3), and any corresponding implementing or supplementing provisions in the NFS, shall be treated as domestic.
- (c) The Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, materialmen, and suppliers in the performance of this Contract, except for foreign construction materials, if any, listed in this Contract.

ARTICLE GP-36. PREFERENCE FOR U.S.-FLAG AIR CARRIERS

(a) Definitions.

- (1) "International air transportation," as used in this Article, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
 - (2) "United States," as used in this Article, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.
 - (3) "U.S.-flag air carrier," as used in this Article, means an air carrier holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371).
- (b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- (c) The Contractor agrees, in performing work under this Contract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.
- (d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a certification on vouchers involving such transportation essentially as follows:

CERTIFICATION OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

I hereby certify that international air transportation of persons (and their personal effects) or property by U.S.- flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation): [state reasons]:

(end of certification)

- (e) The Contractor shall include the substance of this Article, including this paragraph (e), in each subcontract or purchase order under this Contract that may involve international air transportation.

ARTICLE GP-37. PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS

- (a) Except as provided in paragraph (b) below, the Contractor shall use privately owned U.S.-flag commercial vessels, and no others, in the ocean transportation of any supplies to be furnished under this Contract.
- (b) If such vessels are not available for timely shipment at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels, the Contractor shall notify JPL and request (i) authorization to ship in foreign-flag vessels or (ii) designation of available U.S.-flag vessels. If the Contractor is authorized in writing by JPL to ship the supplies in foreign-flag vessels, the Contract price shall be equitably adjusted to reflect the difference in costs of shipping the supplies in privately owned U.S.-flag commercial vessels and in foreign-flag vessels.
- (c) (1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) the Contracting Officer and (ii) the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, D.C. 20590. Contractor and subcontractor bills of lading shall be submitted through JPL.

- (2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:
- (A) NASA shown as the sponsoring U.S. Government agency.
 - (B) Name of vessel.
 - (C) Vessel flag of registry.
 - (D) Date of loading.
 - (E) Port of loading.
 - (F) Port of final discharge.
 - (G) Description of commodity.
 - (H) Gross weight in pounds and cubic feet, if available.
 - (I) Total ocean freight revenue in U.S. dollars.
- (d) Except for purchases under the small purchase threshold in 48 CFR 13, the Contractor shall insert the substance of this Article in all purchase orders and subcontracts under this Contract.
- (e) The requirement in paragraph (a) does not apply to:
- (1) Small purchases as defined in 48 CFR 13;
 - (2) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;
 - (3) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and
 - (4) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.
- (f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, D.C. 20590. Phone: 202-426-4610.

ARTICLE GP-38. REQUIRED SOURCES FOR JEWEL BEARINGS AND RELATED ITEMS

- (a) This Article applies only if supplies furnished under this Contract contain jewel bearings or related items.
- (b) Definitions.
- (1) "Jewel bearing," as used in this Article, means a piece of synthetic corundum (sapphire or ruby) of any shape, except a phonograph needle, that has one or more polished surfaces to provide supporting surfaces or low-friction contact areas for revolving, oscillating, or sliding parts in an instrument, mechanism, subassembly, or part. A jewel bearing may be unmounted or may be mounted into a ring or bushing. Examples are watch holes - olive, watch holes - straight, pallet stones, roller jewels (jewel pins), endstones (caps), vee (cone) jewels, instrument rings, cups, and double cups.
 - (2) "Plant," as used in this Article, means the Government-owned, contractor-operated William Langer Plant, Rolla, North Dakota 58367 (phone: 701-477-3193).
 - (3) "Price list," as used in this Article, means the U.S. Government Jewel Bearing Price List, published periodically by the General Services Administration for jewel bearings produced by the Plant.

- (4) "Related item," as used in this Article, means a piece of synthetic corundum (sapphire or ruby), other than a jewel bearing, that (i) is made from material produced by the Verneuil flame fusion process, (ii) has a geometric shape up to a maximum of one inch in any dimension, (iii) requires extremely close tolerances and highly polished surfaces identical to those involved in manufacturing jewel bearings, and (iv) is either mounted in a retaining or supporting structure or unmounted. Examples are window, nozzle, guide, knife edge, knife edge plate, insulator domed pin, slotted insulator, sphere, ring gauge, spacer, disc, valve seat, rod, vee groove, D-shaped insulator, and notched plate.
- (c) All jewel bearings and related items required for the supplies to be furnished under this Contract (or an equal quantity of the same type, size, and tolerances) shall be acquired from the following sources: jewel bearings from the Plant, unless the Plant declines or rejects the order; and related items from domestic manufacturers, including the Plant, if the items can be obtained from those sources. Sources other than the foregoing may be used if the foregoing sources decline or reject the order.
- (1) Orders may be placed with the Plant for individual contracts, for a combination of contracts, or for stock. If the order is for an individual contract, the prime contract number shall be placed on it.
- (2) Orders, and any supplements to orders, for items listed in the price list shall refer to the most recent price list and its date.
- (3) Requests for quotations for items not listed in the price list should be accompanied by drawings and forwarded to the Plant as soon as possible to ensure prompt quotation or rejection of the order.
- (d) At its option, the Plant may decline or reject all or part of the Contractor's or subcontractor's order. If the order is declined or rejected, the Contractor shall notify JPL promptly in writing, enclosing a copy of the rejection notice. Unless the declination or rejection has been caused by current excessive and overdue Contractor indebtedness to the Plant as determined by the Plant, JPL shall evaluate the impact and make an equitable adjustment in the Contract amount, in the delivery schedule, or in both, if one is warranted. This procedure shall also apply to orders for related items rejected by any other domestic manufacturer.
- (e) The Contractor agrees to insert this Article, including this paragraph (e), and the prime contract number in every subcontract unless the Contractor has positive knowledge that the subassembly, component, or part being purchased does not contain jewel bearings or related items.

ARTICLE GP-39. RESTRICTIONS ON CERTAIN FOREIGN PURCHASES

- (a) "Parastatal organization," as used in this Article, means a corporation, partnership, or entity owned, controlled, or subsidized by the Government of South Africa. It does not include a corporation, partnership, or entity which previously received start up assistance from the South African Industrial Development Corporation but which is now privately owned and which is not owned, controlled, or subsidized by the Government of South Africa.
- (b) Unless advance written approval of JPL and the Contracting Officer is obtained, the Contractor shall not acquire for use in the performance of this Contract:
- (1) Any supplies or services originating from sources within the communist areas of North Korea, Vietnam, Cambodia, or Cuba;
- (2) Any supplies that are or were located in or transported from or through North Korea, Vietnam, Cambodia, or Cuba;
- (3) Arms, ammunition, or military vehicles produced in South Africa, or manufacturing data for such articles; or
- (4) Supplies or services from the South African Government or parastatal organizations of South Africa.
- (c) The Contractor shall not acquire for use in the performance of this Contract supplies or services originating from sources within Iraq, any supplies that are or were located in or transported from or through Iraq, or any supplies or services from entities controlled by the Government of Iraq.

- (d) The Contractor agrees to insert the provisions of this Article, including this paragraph (d), in all subcontracts hereunder.

ARTICLE GP-40. TEMPORARY UTILITIES AND UTILITY TIE-INS

- (a) Water. All reasonably required amounts of water will be made available to the Contractor by JPL from existing water system outlets and supplies. Any pumping facilities, temporary connections or piping required to transmit the water shall be furnished by the Contractor, subject to the approval of JPL, and shall be removed in a satisfactory manner, at the Contractor's expense, when the job is completed.
- (b) Electricity.
- (1) All reasonable electric current required by the Contractor shall be furnished by JPL. All temporary connections for electricity shall be subject to the approval of JPL.
 - (2) All temporary lines will be furnished, installed, connected and maintained by the Contractor in a workmanlike manner satisfactory to JPL and shall be removed by the Contractor in like manner at its expense prior to completion of the construction.
 - (3) The Contractor shall furnish engine-driven welders for required welding power.
- (c) Telephone Service. Unless otherwise provided in this Contract, telephone service shall be provided by the Contractor, or, where available, JPL pay telephones may be used.
- (d) Utility Tie-Ins.
- (1) All tie-ins, modifications, or moving of JPL utilities such as air, power, fire sprinkler systems, water, air-conditioning systems, etc., must be scheduled through JPL and shall be done on Saturdays or Sundays, if required, at no additional cost to JPL.
 - (2) Unless otherwise specified in this Contract, the Contractor shall submit schedules to JPL at least 10 calendar days in advance of any building utility outages and off-hour work, and JPL will inform the Contractor within seven calendar days of receipt of notification of approval or disapproval of such schedules.
- (e) Water and Utility Usage. The Contractor shall provide continuous surveillance of water flow or other utility usage to prevent waste or damage to JPL property.

ARTICLE GP-41. REPORT ON SUBCONTRACTS

(This Article is applicable if the amount of this Contract exceeds \$100,000.)

- (a) The Contractor shall submit information on NASA Form 667 to the National Aeronautics and Space Administration (Code HM), Washington, DC 20546, substantially as follows with respect to each subcontract or subcontract modification exceeding \$25,000 within 10 working days after its execution:
- (1) The name and address of the prime contractor and the NASA prime contract number.
 - (2) The name and address of the subcontractor.
 - (3) Whether the subcontractor is a large or small business concern and/or a minority business concern.
 - (4) Whether the type of effort being performed involves research and development.
 - (5) A brief description of the subcontract work.
 - (6) The amount of the subcontract.
 - (7) The principal location where the subcontract work is to be performed, if known.

- (b) The Contractor and its subcontractors shall submit negative reports annually, if applicable, on each prime contract and first-tier subcontract subject to this reporting requirement. These negative reports shall be submitted not later than October 31 for the 12-month period ending September 30th of each year. The negative reporting shall be continued until the contract or subcontract has been physically completed and the National Aeronautics and Space Administration (Code HM), Washington, DC 20546, so notified by the Contractor or subcontractor.
- (c) "Subcontract," as used in this Article, means procurement in excess of \$25,000 by the Contractor or first-tier subcontractor of articles, materials, or services for performing this Contract (including facility leases), except purchases, regardless of amount, of stock items, materials, or services that cannot be specifically identified with this Contract.
- (d) "Research and development," as used in this Article, means basic and applied research, and design and development of prototypes and processes, to (i) pursue a planned search for new knowledge, with or without reference to a specific application, (ii) apply existing knowledge in the creation of new products or processes, or (iii) apply existing knowledge in the improvement or modification of present products and processes. It excludes subcontracts for the purchase of standard commercial items and services.
- (e) The Contractor shall:
 - (1) Insert the provisions of paragraphs (a), (b), (c), and (d) of this Article in each subcontract over \$100,000;
 - (2) Instruct its subcontractors to submit their reports directly to the National Aeronautics and Space Administration (Code HM), Washington, DC 20546; and
 - (3) Provide its subcontractors with the number of the NASA prime contract.

ARTICLE GP-42. UTILIZATION OF LABOR SURPLUS AREA CONCERNS

- (a) Applicability. This Article is applicable if this Contract exceeds the small purchase limitation in FAR part 13.
- (b) Policy. It is the policy of the Government to award contracts to concerns that agree to perform substantially in labor surplus areas (LSAs) when this can be done consistent with the efficient performance of the Contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use its best efforts to place subcontracts in accordance with this policy.
- (c) Order of Preference. In complying with paragraph (b) above and with paragraph (c) of the Article of this Contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns", the Contractor shall observe the following order of preference in awarding subcontracts:
 - (1) Small business concerns that are LSA concerns;
 - (2) Other small business concerns; and
 - (3) Other LSA concerns.
- (d) Definitions.
 - (1) "Labor surplus area," as used in this Article, means a geographical area identified by the Department of Labor in accordance with 20 CFR 654, Subpart A, as an area of concentrated unemployment or underemployment, or an area of labor surplus.
 - (2) "Labor surplus area concern," as used in this Article, means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the Contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50% of the Contract price.

ARTICLE GP-43. LABOR SURPLUS AREA SUBCONTRACTING PROGRAM

(This Article is applicable if the amount of this Contract is in excess of, or is expected to exceed, \$500,000, unless the work including all subcontracts will be performed outside the United States.)

- (a) See the "Utilization of Labor Surplus Area Concerns" Article of this Contract for applicable definitions.
- (b) The Contractor agrees to establish and conduct a program to encourage labor surplus area (LSA) concerns to compete for subcontracts within their capabilities when the subcontracts are consistent with the efficient performance of the Contract at prices no higher than obtainable elsewhere. The Contractor shall:
 - (1) Designate a liaison officer who will (i) maintain liaison with authorized representatives of the Government on LSA matters, (ii) supervise compliance with the "Utilization of Labor Surplus Area Concerns" Article, and (iii) administer the Contractor's Labor Surplus Area Subcontracting Program;
 - (2) Provide adequate and timely consideration of the potentialities of LSA concerns in all make-or-buy decisions;
 - (3) Ensure that LSA concerns have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of offers, quantities, specifications, and delivery schedules so as to facilitate the participation of LSA concerns;
 - (4) Include the "Utilization of Labor Surplus Area Concerns" Article in subcontracts that offer substantial LSA subcontracting opportunities; and
 - (5) Maintain records showing (i) the procedures adopted and (ii) the Contractor's performance, to comply with this Article. The records will be kept available for review by the Government until the expiration of one year after the award of this Contract, or for such longer period as may be required by any other Article of this Contract or by applicable law or regulations.
- (c) The Contractor further agrees to insert in any related subcontract that may exceed \$500,000 and that contains the "Utilization of Labor Surplus Area Concerns" Article, terms that conform substantially to the language of this Article, including this paragraph (c), and to notify JPL of the names of subcontractors.

ARTICLE GP-44. USE OF RURAL AREA SMALL BUSINESSES

- (a) Definitions.
 - (1) "Rural area" means any county with a population of fewer than twenty thousand individuals.
 - (2) "Small business concern," as used in this Article, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding under this Contract, and qualified as a small business under the criteria and size standards in 13 CFR part 121.
- (b) NASA prime and subcontractors are encouraged to use their best efforts to award subcontracts to small business concerns located in rural areas.
- (c) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as small business concerns located in rural areas.
- (d) The Contractor agrees to insert the provisions of this Article, including this paragraph (d), in all subcontracts hereunder that offer subcontracting possibilities.

ARTICLE GP-45. UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS

(This Article is applicable when the Contract amount is expected to be over the small purchase limitation in FAR Part 13, unless (i) a personal services contract is contemplated, or (ii) the Contract together with all its subcontracts is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.)

- (a) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.
- (b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or NASA as may be necessary to determine the extent of the Contractor's compliance with this Article.
- (c) As used in this Contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern (i) which is at least 51% unconditionally owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (ii) whose management and daily business operations are controlled by one or more of such individuals. This term also means a small business concern that is at least 51% unconditionally owned by an economically disadvantaged Indian Tribe or Native Hawaiian Organization, or a publicly owned business having at least 51% of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian Tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR 124. The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Subcontinent Asian-Americans, Asian-Indian Americans and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act. The Contractor shall presume that socially and economically disadvantaged entities also include Indian Tribes and Native Hawaiian Organizations.
- (d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.
- (e) It is understood and agreed that the failure of the Contractor to comply in good faith with this Article or with any plan required to be included in this Contract, shall be a material breach of this Contract.

ARTICLE GP-46. UTILIZATION OF WOMEN-OWNED SMALL BUSINESSES

(This Article is applicable when the Contract amount is expected to exceed the small purchase limitation in FAR Part 13, unless (i) the Contract is to be performed outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands, or (ii) a personal services contract is contemplated.)

(a) Definitions.

- (1) "Women-owned small businesses," as used in this Article, means small business concerns that are at least 51% owned by women who are United States citizens and who also control and operate the business.
- (2) "Control," as used in this Article, means exercising the power to make policy decisions.
- (3) "Operate," as used in this Article, means being actively involved in the day-to-day management of the business.
- (4) "Small business concern," as used in this Article means a concern including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.

- (b) It is the policy of the United States that women-owned small businesses shall have the maximum practicable opportunity to participate in performing contracts awarded by any Federal agency.

- (c) The Contractor agrees to use its best efforts to give women-owned small businesses the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with the efficient performance of its contract.
- (d) The Contractor may rely on written representations by its subcontractors regarding their status as women-owned small businesses.

ARTICLE GP-47. SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (SB/SDB PLAN)

(This Article is applicable if the basic contract or any separate modification exceeds \$500,000 [\$1,000,000 for construction], except it does not apply to contracts with small businesses or orders under GSA contracts.)

- (a) If there will be any subcontracting under this Contract and the basic or any modification exceeds \$500,000, (\$1,000,000 for construction), the Contractor agrees to submit for JPL approval a Small Business and Small Disadvantaged Business Subcontracting Plan (Plan) and to provide a written update to the Plan for every modification exceeding \$500,000 (\$1,000,000 for construction). JPL's approval will be based on the requirements in JPL form 0294 entitled "Requirements for a Subcontracting Plan," R 1/95. The approved Plan and approved updates will be deemed incorporated into this Contract.
- (b) If a Plan is required under this Contract, SF 295, "Summary Subcontract Report," and SF 294, "Subcontracting Report for Individual Contracts," are deliverables which must be submitted by the Contractor to the JPL Negotiator in accordance with the instructions on the forms except that:
 - (1) The Contractor shall submit the Summary Subcontract Report (SF 295) quarterly for the reporting periods specified in block 1.A. of the form. Reports are due 30 days after the close of each reporting period.
 - (2) The Contractor shall also complete Item 15 (Subcontract awards to Historically Black Colleges and Universities/Minority Institutions) in accordance with the existing instructions applicable to DOD activities.(All other provisions in the instructions paragraphs of the SF 295 remain in effect.)
- (c) It is understood and agreed that the failure of the Contractor to comply in good faith with the Article of this Contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns," or with any Plan required to be included in this Contract, shall be a material breach of this Contract.

ARTICLE GP-48. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

- (a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (i) conditions bearing upon transportation, disposal, handling, and storage of materials, (ii) the availability of labor, water, electric power, and roads, (iii) uncertainties of weather, river stages, tides, or similar physical conditions at the site, (iv) the conformation and conditions of the ground, and (v) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by JPL, as well as from the drawings and specifications made a part of this Contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to JPL.
- (b) JPL assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by JPL, nor does JPL assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents or employees before the execution of this Contract, unless that understanding or representation is expressly stated in this Contract.

ARTICLE GP-49. PERMITS AND RESPONSIBILITIES

The Contractor shall, without additional expense to JPL, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others, including, but not limited to, the enclosing of the Contractor's work area with adequate barricades and, where appropriate, flashing lights as approved by JPL. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the Contract. The Contractor agrees to indemnify the Institute and the Government against any loss, cost, liability or damage by reason of the Contractor's violation of or failure to comply with any applicable laws, executive orders or regulations.

ARTICLE GP-50. DIFFERING SITE CONDITIONS

- (a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to JPL of (i) subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or (ii) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Contract.
- (b) JPL shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this Contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this Article and the Contract modified in writing accordingly.
- (c) No request by the Contractor for an equitable adjustment to the Contract under this Article shall be allowed, unless the Contractor has given the written notice required by paragraph (a) above.
- (d) No request by the Contractor for an equitable adjustment to the Contract for differing site conditions shall be allowed if made after final payment under this Contract.

ARTICLE GP-51. SUPERINTENDENCE BY THE CONTRACTOR

At all times during performance of this Contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work a competent superintendent who is satisfactory to JPL and has authority to act for the Contractor. The Contractor shall submit the name of this representative to JPL within a reasonable time after receipt of written Notice to Proceed.

ARTICLE GP-52. SUSPENSION OF WORK

- (a) JPL may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this Contract for the period of time that JPL determines appropriate for the convenience of JPL or the Government.
- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (i) by an act of JPL in the administration of this Contract, or (ii) by JPL's failure to act within the time specified in this Contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Contract modified in writing accordingly. However, no adjustment shall be made under this Article for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Contract.
- (c) A claim under this Article shall not be allowed (i) for any costs incurred more than 20 days before the Contractor shall have notified JPL in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (ii) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the Contract.

ARTICLE GP-53. CLEANING UP

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to JPL. Unless otherwise stated in this Contract, the time stated for completion of the work shall include cleaning-up time.

ARTICLE GP-54. TRANSFER OF TECHNICAL DATA UNDER SPACE STATION INTERNATIONAL AGREEMENTS

(This Article applies if the contract is in support of Space Station Freedom Program activities which may involve transfer of technical data subject to the International Traffic in Arms Regulations, 22 CFR parts 120 through 130 (Subchapter M) in accordance with the "Space Station Level I Directive - Subject: Space Station Technology Transfer Control - dated March 21, 1989.")

- (a) In the cooperative Space Station Freedom program, NASA has the authority to provide to the international partners all information necessary to implement the multilateral Space Station Intergovernmental Agreement and the Space Station Memoranda of Understanding. NASA is committed under these Space Station agreements to provide its international Space Station partners with certain technical data which are subject to the U.S. export control laws and regulations. NASA will have obtained any necessary approvals from the Department of State for the transfer of any such technical data. Space Station contractors, acting as agents of NASA under the specific written direction of the Contracting Officer, or designated representative, require no other separate approval under the International Traffic in Arms Regulations (ITAR) to transfer such data.
- (b) The Contractor agrees, when specifically directed in writing by the JPL Negotiator or an authorized JPL representative under this Contract, to transfer identified technical data to a named foreign recipient, in the manner directed. No export control marking should be affixed to the data unless so directed. If directed, the text of the marking to be affixed will be furnished by the JPL Negotiator or an authorized JPL representative under this Contract.
- (c) It should be emphasized that the transfer is limited solely to those technical data which NASA specifically identifies and directs the Contractor to transfer in accordance with paragraph (b), above, and that all other transfers of technical data to foreign entities are subject to the requirements of the U.S. export control laws and regulations.
- (d) Nothing contained in this Article affects the allocation of technical data rights between NASA and the Contractor or any subcontractors as set forth in the "Rights in Data" Article of this Contract, nor the protection of any proprietary technical data which may be available to the Contractor or any subcontractor under that Article.
- (e) The Contractor agrees to include this Article, including this paragraph (e), in all subcontracts hereunder, appropriately modified to reflect the relationship of the parties.

ARTICLE GP-55. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

(The provisions of this Article shall be applicable only if the amount of this Contract exceeds \$25,000.)

- (a) The Contractor shall report to the Contracting Officer and JPL, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed under this Contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

- (c) The Contractor agrees to include, and require inclusion of, this Article in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed \$25,000.

ARTICLE GP-56. AUTHORIZATION AND CONSENT

- (a) The Government authorizes and consents to all use and manufacture, in performing this Contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by JPL under this Contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this Contract or (ii) specific written instructions given by JPL directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this Contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.
- (b) The Contractor agrees to include, and require inclusion of, this Article, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples and design or testing services expected to exceed \$25,000); however, omission of this Article from any subcontract, under or over \$25,000, does not affect this authorization and consent.

ARTICLE GP-57. NEW MATERIAL

Unless this Contract specifies otherwise, the Contractor represents that the supplies and components are new, including recycled (not used or reconditioned) and are not of such age or so deteriorated as to impair their usefulness or safety. If the Contractor believes that furnishing used or reconditioned supplies or components will be in JPL's interest, the Contractor shall so notify JPL in writing. The Contractor's notice shall include the reasons for the request along with a proposal for any consideration to JPL if JPL authorizes the use of used or reconditioned supplies or components.

ARTICLE GP-58. AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION

(The provisions of this Article shall be applicable only if the amount of this Contract exceeds \$10,000.)

(a) Definitions.

- (1) "Covered area," as used in this Article, means the geographical area described in the solicitation for this Contract.
- (2) "Director," as used in this Article, means Director, Office of Federal Contract Compliance Programs (OFCCP), United States Department of Labor, or any person to whom the Director delegates authority.
- (3) "Employer identification number," as used in this Article, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.
- (4) "Minority," as used in this Article, means:
 - (A) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification);
 - (B) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);
 - (C) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and
 - (D) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

- (b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this Article and the Notice containing the goals for minority and female participation stated in the solicitation for this Contract.
- (c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the "Equal Opportunity" Article, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good- faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.
- (d) The Contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this Article. The goals stated in the solicitation for this Contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.
- (e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this Article, Executive Order 11246, as amended, or the regulations thereunder.
- (f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- (g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this Article shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:
 - (1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.
 - (2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - (3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off- the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.
 - (4) Immediately notify the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

- (5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) above.
- (6) Disseminate the Contractor's equal employment policy by:
 - (A) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its Contract obligations;
 - (B) Including the policy in any policy manual and in collective bargaining agreements;
 - (C) Publicizing the policy in the company newspaper, annual report, etc.;
 - (D) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and
 - (E) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.
- (7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other contractors and subcontractors with which the Contractor does or anticipates doing business.
- (9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- (10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after- school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.
- (11) Validate all tests and other selection requirements where required under 41 CFR 60-3.
- (12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.
- (13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this Contract are being carried out.
- (14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- (15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

- (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.
- (h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16). The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the Contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16), provided the Contractor:
- (1) Actively participates in the group;
 - (2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;
 - (3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;
 - (4) Makes a good-faith effort to meet its individual goals and timetables; and
 - (5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
- (i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.
- (j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- (k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.
- (l) The Contractor shall carry out such sanctions and penalties for violation of this Article and of the "Equal Opportunity" Article, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this Article and Executive Order 11246, as amended.
- (m) The Contractor in fulfilling its obligations under this Article shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) above, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this Article, the Director shall take action as prescribed in 41 CFR 60-4.8.
- (n) The Contractor shall designate a responsible official to:
- (1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;
 - (2) Submit reports as may be required by the Government; and
 - (3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

- (o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

ARTICLE GP-59. SCHEDULE OF PAYMENTS

Within 10 days after receipt of written Notice to Proceed, the Contractor shall submit to JPL a detailed breakdown of the total Contract price showing values of each principal category and subcategories included therein, including quantities, in such detail and supported by such evidence as to its correctness as JPL may require. This Schedule, when approved by JPL, shall be used as a basis for payments in accordance with the Article entitled "Payments." In applying for payments, the Contractor shall submit a statement based upon the JPL-approved Schedule and itemized in such form and supported by such evidence as JPL may require to justify the payment.

ARTICLE GP-60. BONDS

- (a) **Payment Bond.** If this Contract exceeds \$25,000, the Contractor agrees to furnish a payment bond with good and sufficient surety or sureties acceptable to JPL for the protection of persons furnishing material or labor in connection with the performance of the work under this Contract on a form acceptable to JPL. The penal sum of such payment bond shall be 100% of the original Contract amount, provided, however, that JPL may require an additional amount of bond in connection with work added to this Contract by modification.
- (b) **Performance Bond.** If the Contract price exceeds \$25,000, the Contractor further agrees to furnish a performance bond with good and sufficient surety or sureties acceptable to JPL in connection with the performance of work under this Contract on a form acceptable to JPL. The penal sum of such performance bond shall be 100% of the original Contract amount, provided, however, that JPL may require an additional amount of bond in connection with work added to this Contract by modification.
- (c) Any bonds required hereunder will be dated as of the same date as the notice of award, if any, or if none, the same as the date of the Contract and will be furnished by the Contractor to JPL at the same time the Contract is executed. Such bonds shall be in favor of the United States of America and the California Institute of Technology. Corporations executing any of the bonds as sureties must be among those appearing on the Treasury Department's list of approved sureties and must be acting within the limitations set forth therein.
- (d) If any surety upon any bond furnished in connection with this Contract becomes unacceptable to JPL or if any such surety fails to furnish reports as to its financial condition from time to time as requested by JPL, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interest of the Institute and the Government and of persons supplying labor or materials in the prosecution of the work contemplated by this Contract.

ARTICLE GP-61. INSPECTION OF CONSTRUCTION

- (a) "Work," as used in this Article, includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.
- (b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work called for by this Contract conforms to Contract requirements. The Contractor shall maintain complete inspection records and make them available to JPL. All work shall be conducted under the general direction of JPL and is subject to JPL inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Contract.
- (c) JPL inspections and tests are for the sole benefit of JPL and do not:
- (1) Relieve the Contractor of responsibility for providing adequate quality control measures;
 - (2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
 - (3) Constitute or imply acceptance; or

- (4) Affect the continuing rights of JPL after acceptance of the completed work under paragraph (i) below.
- (d) The presence or absence of a JPL inspector does not relieve the Contractor from any Contract requirement, nor is an inspector authorized to change any term or condition of any specification, unless such inspector has been authorized to make such changes in accordance with the Article entitled "Authority of JPL Representatives."
- (e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by JPL. JPL may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. JPL shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the Contract.
- (f) The Contractor shall, without charge, replace or correct work found by JPL not to conform to Contract requirements, unless JPL consents to accept the work with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.
- (g) If the Contractor does not promptly replace or correct rejected work, JPL may (i) by Contract or otherwise, replace or correct the work and charge the cost to the Contractor or (ii) terminate for default the Contractor's right to proceed.
- (h) If, before acceptance of the entire work, JPL decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet Contract requirements, the Institute shall make an equitable adjustment in the Contract price for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- (i) Unless otherwise specified in the Contract, JPL shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work JPL determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or JPL's rights under any warranty or guarantee.
- (j) The Government has the right to inspect and evaluate the work performed or being performed under the Contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If the Government performs inspection or evaluation on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

ARTICLE GP-62. CHANGES

- (a) JPL may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a unilateral modification issued under this Article, make changes in the work within the general scope of the Contract, including but not limited to changes:
- (1) In the specifications (including drawings and designs);
 - (2) In the method or manner of performance of the work;
 - (3) In the Government-owned, JPL-furnished facilities, equipment, materials, services, or site; or
 - (4) Directing acceleration in the performance of the work.

- (b) Subject to the provisions of the Article of this Contract entitled "Authority of JPL Representatives," any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from JPL that causes a change shall be treated as an order under this Article, provided, that the Contractor gives JPL written notice stating (i) the date, circumstances, and source of the order and (ii) that the Contractor regards the order as an order issued hereunder. Notwithstanding the foregoing, no order from JPL in a Technical Direction Memorandum (JPL 2084-S) and accepted thereon by the Contractor without exception shall be treated as an order under this Article.
- (c) Except as provided in this Article, no order, statement, or conduct of JPL shall be treated as a change under this Article or entitle the Contractor to an equitable adjustment.
- (d) If any change under this Article causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this Contract, whether or not changed by any such order, the Institute shall make an equitable adjustment and modify the Contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) above shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which JPL is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.
- (e) The Contractor must assert its right to an adjustment under this Article within 30 days after (i) receipt of a written unilateral modification under paragraph (a) above or (ii) the furnishing of a written notice under paragraph (b) above, by submitting to JPL a written statement describing the general nature and amount of the proposal, unless this period is extended by JPL. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.
- (f) JPL may require change order accounting whenever the estimated cost of a change or series of related changes exceeds \$50,000. The Contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Contractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by JPL.
- (g) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this Contract.

ARTICLE GP-63. SUBCONTRACTORS

- (a) The Contractor shall within seven days after receipt of written Notice of Award, if any, or if none, within seven days after receipt of the fully executed Contract documents, furnish to JPL a list of all subcontracts which involve performance of work at the site. The Contractor shall provide written notice of any work with any person or firm other than those subcontractors named in the submitted list seven days prior to their performance or work at the site.
- (b) Nothing contained in this Contract shall create any contractual relationship between a subcontractor and the Institute. The Contractor shall be at all times responsible for the work of its subcontractors to the same extent as if the Contractor were doing or had done the work.

ARTICLE GP-64. GOVERNMENT PROPERTY

- (a) JPL shall deliver to the Contractor, at the time stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the delivery or performance schedule, the Government-owned property described as JPL-furnished property in the Schedule or specifications. If that property, suitable for its intended use, is not delivered to the Contractor, JPL shall equitably adjust affected provisions of this Contract in accordance with the Changes Article when:
 - (1) The Contractor submits a timely written request for an equitable adjustment; and
 - (2) The facts warrant an equitable adjustment.

- (b) Title to JPL-furnished property shall remain in the Government. The Contractor shall use the JPL-furnished property only in connection with this Contract. The Contractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for JPL or Government inspection at all reasonable times.
- (c) Upon delivery of JPL-furnished property to the Contractor, the Contractor assumes the risk and responsibility for its loss or damage, except:
 - (1) For reasonable wear and tear;
 - (2) To the extent property is consumed in performing this Contract; or
 - (3) As otherwise provided for by the provisions of this Contract.
- (d) Upon completing this Contract, the Contractor shall follow the instructions of JPL regarding the disposition of all JPL-furnished property not consumed in performing this Contract or previously delivered to JPL. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by JPL. The net proceeds of any such disposal shall be credited to the Contract price or shall be paid as directed by JPL.
- (e) If this Contract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "JPL-furnished" (wherever they appear in this Article) shall be construed as "United States Government" and "United States Government-owned/JPL-furnished," respectively.

ARTICLE GP-65. PAYMENTS

- (a) JPL shall pay the Contractor the Contract price as provided in this Contract.
- (b) JPL shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by JPL, on estimates of work accomplished as approved by JPL. The Contractor shall furnish a breakdown of the total Contract price showing the amount included for each principal category of work, which shall substantiate the payment amount requested in order to provide a basis for determining progress payments, in such detail as requested by the JPL negotiator. In the preparation of estimates, JPL may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration if:
 - (1) Consideration is specifically authorized by this Contract; and
 - (2) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this Contract.
- (c) Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made:

I hereby certify, to the best of my knowledge and belief, that :

 - (1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the Contract;
 - (2) Payments to subcontractors and suppliers have been made from previous payments received under the Contract, and timely payments will be made to subcontractors and suppliers from the proceeds of the payment covered by this certification.
- (d) In making these progress payments, there shall be retained 10% of the estimated amount until final completion and acceptance of the Contract work. However, if JPL finds that satisfactory progress was achieved during any period for which a progress payment is to be made, JPL may authorize payment to be made in full without retention of a percentage. When the work is substantially complete, JPL shall retain an amount that it considers adequate protection of JPL and the Government and may release to the Contractor all or a portion of

any excess amount. Also, on completion and acceptance of each separate building, or other division of the Contract, for which the price is stated separately in the Contract, payment may be made for the completed work without retention of a percentage.

- (e) All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as:
 - (1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or
 - (2) Waiving the right of JPL to require the fulfillment of all of the terms of the Contract.
- (f) JPL shall, upon request, reimburse the Contractor for the entire amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after furnishing JPL evidence of full payment to the surety.
- (g) JPL shall pay the amount due the Contractor under this Contract after:
 - (1) Completion and acceptance of all work;
 - (2) Presentation of a properly executed voucher; and
 - (3) Presentation of release of all claims against the Institute arising by virtue of this Contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this Contract has been assigned under the "Assignment of Rights and Delegation of Duties" Article of this Contract.

ARTICLE GP-66. INSURANCE AND INDEMNIFICATION (FIXED-PRICE CONSTRUCTION)

(This Article is applicable if the Contract amount exceeds the small purchase limit in FAR Part 13 and if this Contract requires work on a Government installation or premises under the control of the Institute, unless (i) only a small amount of work is required on the Government installation or Institute-controlled premises; or (ii) all such work is to be performed outside the United States, its possessions, or Puerto Rico.)

- (a) Insurance. The Contractor shall, at its own expense, provide and maintain during the entire performance period of this Contract at least the following kinds and minimum amounts of insurance with the Institute named as an additional named insured in policies for comprehensive general liability insurance with a carrier licensed and admitted in the State of California.
 - (1) Workers' Compensation and Employer's Liability Insurance, as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the Employer's Liability section of the insurance policy, except when Contract operations are so commingled with the Contractor's commercial operations that it would not be practical. The Employer's Liability coverage shall be at least \$100,000, except in states with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers. However, the Contractor in fulfillment of its obligation to provide Workers' Compensation Insurance may maintain a self-insurance program if the Contractor is qualified pursuant to statutory authority to do so.
 - (2) Comprehensive Liability Insurance, including automobiles (owned, non-owned, or leased), completed operations, products, and contractual liability, for a combined single limit of not less than \$1,000,000 for all deaths, injuries, and property damage arising from one accident or occurrence.
 - (3) Builders Risk or Course of Construction "All Risks" coverage, excluding earthquake and flood, covering damage to the work itself, including materials and supplies at the work site, protecting the interests of the Government, the Institute, the Contractor, and subcontractors, in a sufficient amount to pay in full each loss exclusive of a deductible not to exceed \$5,000.

- (b) Insurance Certificates and Endorsements. Before commencing work under this Contract, the Contractor shall furnish (i) certificates of insurance for the coverages specified in (a) above, and (ii) an additional insured endorsement naming the Institute as an additional insured to the contract for the coverage specified in (a)(2) above. Such certificates and the endorsement shall provide that any cancellation or material change in the insurance policies shall not be effective (i) for such period as the laws of the State in which this Contract is to be performed prescribe, or (ii) until 30 days after the insurer or the Contractor gives written notice to JPL, whichever period is longer. Also, such certificates and the endorsement shall (i) cover contractual liability assumed under this Contract, and (ii) be primary and non-contributing to any insurance procured by the Institute. The Contractor agrees to permit the Institute to examine its original policies, should the Institute so request. Should the Contractor at any time neglect or refuse to provide the insurance required herein, or should such insurance be canceled, the Institute shall have the right to procure same and the costs thereof shall be deducted from monies then due or thereafter to become due to the Contractor.
- (c) Indemnification. The Contractor agrees that it will be responsible to the Government and the Institute for, and will indemnify and hold harmless the Government and the Institute, its trustees, officers, and employees, from any loss, cost, damage, expense or liability, attorney's fees, or any suit therefor, by reason of actual or alleged property damage or personal injury of whatsoever kind or character, arising out of or in connection with the performance of work hereunder by the Contractor or any of its subcontractors, howsoever the same may be caused, including any of the same resulting from alleged or actual negligent act or omission, regardless of whether such act or omission is active or passive, but excepting only such loss, cost, damage, expense or liability attributable to the sole negligence or willful misconduct of the Government or of the Institute, its trustees, officers or employees.
- (d) Subcontracts. The Contractor shall insert the substance of this Article, including this paragraph (d), in subcontracts under this Contract which exceed the small purchase limit in FAR Part 13 if the subcontract requires work on a Government installation or premises under the control of the Institute, unless (i) only a small amount of work is required on the Government installation or Institute-controlled premises; or (ii) all such work is to be performed outside the United States, its possessions, or Puerto Rico, modified as necessary to correctly identify the parties. At least five days before entry of each such subcontractor's personnel on the Government installation or Institute-controlled premises, the Contractor shall furnish (or ensure that there has been furnished) to JPL a current certificate of insurance, meeting the requirements of paragraph (b) above, for each such subcontractor.

ARTICLE GP-67. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

- (a) Contractor agrees to comply with the Americans with Disabilities Act (42 U.S.C. 12101 et. seq.) and all implementing regulations.
- (b) Contractor agrees that it will be responsible to the Institute and will indemnify and hold harmless the Institute, its trustees, officers, and employees from any loss, cost, damage, expense or liability or suit therefor, by reason of actual or alleged property damage or personal injury of whatever kind or character, arising out of, or in connection with performance of the requirements of paragraph (a) above by the Contractor or any of its subcontractors, however the same may be caused, excepting only such loss, cost, damage, expense or liability attributable to the sole or contributory active negligence of the Institute, its trustees, officers, or employees.
- (c) Contractor agrees to insert this Article, including (c), in all subcontracts and purchase orders hereunder.

ARTICLE GP-68. MATERIAL AND WORKMANSHIP

- (a) All equipment, material, and articles incorporated into the work covered by this Contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this Contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of JPL, is equal to that named in the specifications, unless otherwise specifically provided in this Contract.

- (b) The Contractor shall obtain JPL's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to JPL the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this Contract or by JPL, the Contractor shall also obtain JPL's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.
- (c) All work under this Contract shall be performed in a skillful and workmanlike manner. JPL may require, in writing, that the Contractor remove from the work any employee JPL deems incompetent, careless, or otherwise objectionable.

ARTICLE GP-69. TERMINATION FOR CONVENIENCE

- (a) JPL may terminate performance of work under this Contract in whole or, from time to time, in part if JPL determines that a termination is in the best interest of the Institute. JPL shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.
- (b) After receipt of a Notice of Termination, and except as directed by JPL, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Article:
 - (1) Stop work as specified in the notice.
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this Article) for materials, services, or facilities, except as necessary to complete the continued portion of the Contract.
 - (3) Terminate all subcontracts to the extent they relate to the work terminated.
 - (4) Assign to JPL, as directed by JPL, all right, title, and interest of the Contractor under the subcontracts terminated, in which case JPL shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by JPL, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this Article.
 - (6) As directed by JPL, transfer to the Government title and deliver to JPL (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to JPL.
 - (7) Complete performance of the work not terminated.
 - (8) Take any action that may be necessary, or that JPL may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
 - (9) Use its best efforts to sell, as directed or authorized by JPL, any property of the types referred to in subparagraph (6) above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, JPL. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by JPL under this Contract, credited to the price or cost of the work, or paid in any other manner directed by JPL.

- (c) After expiration of the plant clearance period as defined in Subpart 45.6 of the FAR and any corresponding implementing or supplementing provisions in the NFS, in effect on the date of this Contract, the Contractor may submit to JPL a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by JPL. The Contractor may request JPL to remove those items or enter into an agreement for their storage. Within 15 days, JPL will accept those items and remove them or enter into a storage agreement. JPL may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (d) After termination, the Contractor shall submit a final termination settlement proposal to JPL in the form and with the certification prescribed by JPL. The Contractor shall submit the proposal promptly, but no later than six months from the effective date of termination, unless extended in writing by JPL upon written request of the Contractor within this six- month period. However, if JPL determines that the facts justify it, a termination settlement proposal may be received and acted on after six months or any extension. If the Contractor fails to submit the proposal within the time allowed, JPL may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- (e) Subject to paragraph (d) above, the Contractor and JPL may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) below, exclusive of costs shown in subparagraph (f)(3) below, may not exceed the total Contract price as reduced by (i) the amount of payments previously made and (ii) the Contract price of work not terminated. The Contract shall be amended, and the Contractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- (f) If the Contractor and JPL fail to agree on the whole amount to be paid the Contractor because of the termination of work, JPL shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (e) above:
 - (1) For Contract work performed before the effective date of termination, the total (without duplication of any items) of:
 - (A) The cost of this work;
 - (B) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if not included in subparagraph (A) above; and
 - (C) A sum, as profit on (A) above, determined by JPL under FAR 49.202 and any corresponding implementing or supplementing provisions in the NFS, in effect on the date of this Contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, JPL shall allow no profit under this subparagraph (C) and shall reduce the settlement to reflect the indicated rate of loss.
 - (2) The reasonable costs of settlement of the work terminated, including:
 - (A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (B) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (C) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (g) Except for normal spoilage, and except to the extent that JPL or the Government expressly assumed the risk of loss, JPL shall exclude from the amounts payable to the Contractor under paragraph (f) above, the fair value, as determined by JPL, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to JPL or to a buyer.

- (h) The cost principles and procedures of Part 31 of the FAR and any corresponding implementing or supplementing provisions in the NFS, in effect on the date of this Contract, shall govern all costs claimed, agreed to, or determined under this Article.
- (i) In arriving at the amount due the Contractor under this Article, there shall be deducted:
 - (1) All unliquidated advance or other payments to the Contractor under the terminated portion of this Contract;
 - (2) Any claim which JPL has against the Contractor under this Contract; and
 - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this Article and not recovered by or credited to JPL.
- (j) If the termination is partial, the Contractor may file a proposal with JPL for an equitable adjustment of the price(s) of the continued portion of the Contract. JPL shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this Article shall be requested within 90 days from the effective date of termination unless extended in writing by JPL.
- (k)
 - (1) JPL may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the Contract, if JPL believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
 - (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to JPL upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by JPL because of the circumstances.
- (l) Unless otherwise provided in this Contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this Contract for three years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to JPL and the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

ARTICLE GP-70. WITHHOLDING OF FUNDS

The Institute shall, upon its own action or upon written request of the Contracting Officer or an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this Contract or any other contract with the same Contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Contract, the Institute may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

ARTICLE GP-71. FEDERAL, STATE, AND LOCAL TAXES

(a) Definitions.

- (1) "Contract date," as used in this Article, means the effective date of this Contract or Modification.
- (2) "All applicable Federal, State, and local taxes and duties," as used in this Article, means all taxes and duties, in effect on the Contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this Contract.

- (3) "After-imposed Federal tax," as used in this Article, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the Contract date but whose exemption was later revoked or reduced during the Contract period, on the transactions or property covered by this Contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the Contract date. It does not include social security tax or other employment taxes.
- (4) "After-relieved Federal tax," as used in this Article, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this Contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the Contract date.
- (b) Unless otherwise provided in the Schedule, the Contract price includes all applicable Federal, State, and local taxes and duties.
- (c) The Contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the Contract price, as a contingency reserve or otherwise.
- (d) The Contract price shall be decreased by the amount of any after-relieved Federal tax.
- (e) The Contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of JPL.
- (f) No adjustment shall be made in the Contract price under this Article unless the amount of the adjustment exceeds \$250.
- (g) The Contractor shall promptly notify JPL of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the Contract price and shall take appropriate action as JPL directs.
- (h) Items of tangible personal property to be delivered under this Contract are for resale to the United States Government (California Resale Certificate No. SR AP 17-006226).
- (i) JPL shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

ARTICLE GP-72. PROTECTION OF EXISTING VEGETATION, STRUCTURES, MATERIALS, IMPROVEMENTS, UTILITIES, AND WORK IN PROGRESS

- (a) The Contractor shall preserve and protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the site of work which is not to be removed and which does not unreasonably interfere with the construction work. Care will be taken in removing trees authorized for removal to avoid damage to vegetation to remain in place. Any limbs or branches of trees broken during such operations or by the careless operation of equipment, or by workers, shall be trimmed with a clean cut and painted with an approved tree pruning compound as directed by JPL.
- (b) The Contractor shall protect from damage all existing structures, improvements or utilities, the location of which is made known to it, within or outside the working area. Such protection shall include both the exterior and interior and the finish thereof and shall be performed by adequately covering or, with the approval of JPL, by temporary removal. Any damage to such facilities resulting from the Contractor's failure to comply with the requirements of this Contract or the failure to exercise reasonable care in the performance of the work shall be promptly repaired or replaced with materials, fixtures or equipment of the same kind, quality and size. If the Contractor fails or refuses to repair any such damage promptly, JPL may have the necessary work performed and charge the cost thereof to the Contractor. Any materials or equipment temporarily removed for protection and not damaged shall be reinstalled.

- (c) The Contractor shall at all times protect and preserve all work in progress, including, but not limited to, work performed, materials, supplies and equipment of every description (including property which may be Government-owned). The protection must be substantial and so placed as to be easily removed for inspection or to facilitate the progress of other work. All reasonable requests of JPL to enclose or specifically protect such property shall be complied with. If, as determined by JPL, materials, equipment, supplies and work performed are not adequately protected by the Contractor, such property may be protected by JPL and the cost thereof may be charged to the Contractor or deducted from any payment due it.

ARTICLE GP-73. DEFAULT

- (a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this Contract including any extension, or fails to complete the work within this time, JPL may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, JPL may take over the work and complete it by Contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to JPL or the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by JPL in completing the work.
- (b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this Article, if:
- (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) acts of another Contractor in the performance of a contract with JPL, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and
 - (2) The Contractor, within 10 days from the beginning of any delay (unless extended by JPL), notifies JPL in writing of the causes of delay. JPL shall ascertain the facts and the extent of delay. If, in the judgment of JPL, the findings of fact warrant such action, the time for completing the work shall be extended.
- (c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued pursuant to the Article of this Contract entitled "Termination for Convenience."
- (d) The rights and remedies of JPL in this Article are in addition to any other rights and remedies provided by law or under this Contract.

ARTICLE GP-74. SIGNS AND ADVERTISEMENTS

No signs or advertisements will be allowed on the site unless prior written approval is obtained from JPL.

ARTICLE GP-75. LAYOUT OF WORK AND SURVEYS

- (a) The Contractor shall complete the layout of the work and shall be responsible for all measurements that may be required for the execution of the work to the location and limit marks prescribed in the specifications or drawings.
- (b) The Contractor shall furnish, at its own expense, stakes, templates, platforms, equipment, tools and material, and all labor as may be required in laying out any part of the work. It shall be the responsibility of the Contractor to maintain and preserve all stakes and other marks established by JPL until authorized to remove them; and if such marks are destroyed or removed by the Contractor prior to their authorized removal, they may be replaced by JPL at its discretion and the expense or replacement will be deducted from any amounts due or to become due the Contractor. JPL may require that work be suspended at any time that location and limit marks established by the Contractor are not reasonably adequate to permit checking of the work.

ARTICLE GP-76. WARRANTY OF CONSTRUCTION

- (a) In addition to any other warranties in this Contract, the Contractor warrants, except as provided in paragraph (j) of this Article, that work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.
- (b) This warranty shall continue for a period of one year from the date of final acceptance of the work. If JPL takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one year from the date JPL takes possession.
- (c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Institute or Government owned or controlled real or personal property, when that damage is the result of:
 - (1) The Contractor's failure to conform to Contract requirements; or
 - (2) Any defect of equipment, material, workmanship, or design furnished.
- (d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this Article. The Contractor's warranty with respect to work repaired or replaced will run for one year from the date of repair or replacement.
- (e) JPL shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- (f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, JPL shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- (g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Contract, the Contractor shall:
 - (1) Obtain all warranties that would be given in normal commercial practice;
 - (2) Require all warranties to be executed, in writing, for the benefit of JPL or the Government, if directed by JPL; and
 - (3) Enforce all warranties for the benefit of JPL or the Government, if directed by JPL.
- (h) In the event the Contractor's warranty under paragraph (b) of this Article has expired, JPL or the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
- (i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by JPL nor for the repair of any damage that results from any defect in JPL-furnished material or design.
- (j) This warranty shall not limit JPL's rights under the "Inspection of Construction" Article of this Contract with respect to latent defects, gross mistakes, or fraud.
- (k) Defects in design or manufacture of equipment, specified by JPL on a "brand name and model" basis, shall not be included in this warranty. In this event, the Contractor shall require any subcontractors, manufacturers, or suppliers thereof to execute their warranties in writing directly to the Institute.

ARTICLE GP-77. WORKING HOURS AND SPECIAL WORK DAYS

- (a) The Contract price is based on working whatever schedule may be necessary to complete the work within the prescribed time.

- (b) No work shall be performed on Saturdays, Sundays, or holidays recognized by JPL without prior notification to and approval by JPL, which notification shall be not less than 48 hours.

ARTICLE GP-78. BADGES AND PASSES

The Contractor is responsible for insuring that its personnel and subcontractor personnel, performing work under this Contract on Laboratory controlled premises, obtain from the JPL Security Group the required badges and passes, if any, authorizing admittance to the premises.

ARTICLE GP-79. OTHER CONTRACTS

- (a) JPL may undertake or award other contracts for additional work at or near the site of the work under this Contract. The Contractor shall fully cooperate with the other contractors and with JPL employees and shall carefully adapt scheduling and performing the work under this Contract to accommodate the additional work, heeding any direction that may be provided by JPL. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by JPL employees.
- (b) Where the Contractor's work is associated with that of another contractor, the Contractor shall examine the adjacent work and report in writing to JPL any defect or condition preventing the proper performance of this Contract. If the Contractor proceeds without giving such notice, the Contractor shall be held to have accepted the work or materials and the existing conditions, and shall be responsible for any defects in its own work, and shall not be relieved of the obligation of any warranty because of any such condition or imperfection.

ARTICLE GP-80. USE AND POSSESSION PRIOR TO COMPLETION

- (a) JPL shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, JPL shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that JPL intends to take possession of or use. However, failure of JPL to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the Contract. JPL's possession or use shall not be deemed an acceptance of any work under the Contract.
- (b) While JPL has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from JPL's possession or use, notwithstanding the terms of the Article in this Contract entitled "Permits and Responsibilities." If prior possession or use by JPL delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the Contract price or the time of completion, and the Contract shall be modified in writing accordingly.

ARTICLE GP-81. DAVIS-BACON ACT

(This Article applies if the amount of the Contract is in excess of \$2,000 for construction within the United States.)

- (a) All laborers and mechanics employed or working 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 regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination 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 and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this Article; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the Article entitled "Apprentices and Trainees." Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage deter-

mination (including any additional classification and wage rates conformed under paragraph (b) of this Article) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (b) (1) The Institute shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Institute shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:
 - (A) Except with respect to helpers, as defined in FAR 22.401, the work to be performed by the classification requested is not performed by a classification in the wage determination.
 - (B) The classification is utilized in the area by the construction industry.
 - (C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
 - (D) With respect to helpers, such a classification prevails in the area in which the work is performed.
 - (2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Institute agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Institute to the Contracting Officer for transmittal to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
 - (3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Institute do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Institute shall submit the question to the Contracting Officer, who shall refer for determination the questions, including the views of all interested parties, to the Administrator of the Wage and Hour Division, through the Industrial Relations Office for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
 - (4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) and (b)(3) of this Article shall be paid to all workers performing in the classification under this Contract from the first day on which work is performed in the classification.
- (c) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
 - (d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

ARTICLE GP-82. APPRENTICES AND TRAINEES

- (a) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship

program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (b) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (c) Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this Article shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

ARTICLE GP-83. PAYROLLS AND BASIC RECORDS

- (a) Payrolls and basic records relating thereto shall be maintained by the Contractor 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 shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under paragraph (d) of the Article entitled "Davis-Bacon Act" that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially

responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (b) (1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Institute. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this Article. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005- 00014-1), U.S. Government Printing Office, Washington, DC 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors.
 - (2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:
 - (A) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this Article entitled "Payrolls and Basic Records" and that such information is correct and complete;
 - (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;
 - (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.
 - (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this Article.
 - (4) The falsification of any of the certifications in this Article may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (c) The Contractor or subcontractor shall make the records required under paragraph (a) of this Article available for inspection, copying, or transcription by the Institute, the Contracting Officer, or the Department of Labor or their authorized representatives. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Institute may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

ARTICLE GP-84. COMPLIANCE WITH COPELAND ACT REQUIREMENTS

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.

ARTICLE GP-85. PRICING OF CONTRACTOR-FURNISHED PROPERTY

On a progressive basis of construction, the Contractor shall promptly furnish and shall cause any subcontractor to furnish, in like manner, at the request of JPL, unit prices and descriptive data required by JPL for property record purposes, of fixtures and equipment furnished and installed by the Contractor.

ARTICLE GP-86. SUBCONTRACTS (LABOR STANDARDS)

- (a) The Contractor or subcontractor shall insert in any subcontracts the Articles entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act - Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Withholding of Funds," "Subcontracts (Labor Standards)," "Contract Termination - Debarment," "Disputes Concerning Labor Standards," "Compliance with Davis-Bacon and Related Act Regulations," and "Certification of Eligibility," and such other Articles as the Institute may by appropriate instructions require, and also a clause requiring the subcontractors to include these Articles in any lower-tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with all the Contract Articles cited above.
- (b) (1) Within 14 days after award of the Contract, the Contractor shall deliver to JPL a completed "Incorporation of Labor Standards Provisions," form JPL 3557, for each subcontract, including the subcontractor's signed and dated acknowledgment that the Articles set forth in paragraph (a) of this Article have been included in the subcontract.
- (2) Within 14 days after the award of any subsequently awarded subcontract, the Contractor shall deliver to JPL an updated completed form JPL 3557 for such additional subcontract.

ARTICLE GP-87. CONTRACT TERMINATION - DEBARMENT

A breach of the Contract Articles entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act - Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Subcontracts (Labor Standards)," "Compliance with Davis-Bacon and Related Act Regulations," or "Certification of Eligibility," may be grounds for termination of the Contract, and for debarment as a contractor as provided in 29 CFR 5.12.

ARTICLE GP-88. DISPUTES CONCERNING LABOR STANDARDS

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Disputes arising out of the labor standards provisions of this Contract shall be resolved in accordance with those procedures. Disputes within the meaning of this Article include disputes between the Contractor (or any of its subcontractors) and the Institute, the National Aeronautics and Space Administration, the U.S. Department of Labor, or the employees or their representatives.

ARTICLE GP-89. COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3 and 5 are hereby incorporated by reference in this Contract.

ARTICLE GP-90. CERTIFICATION OF ELIGIBILITY

- (a) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (b) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

CERTIFICATIONS OF NONSEGREGATED FACILITIES, CLEAN AIR AND WATER, ANTI-KICKBACK COMPLIANCE, AMERICANS WITH DISABILITIES ACT COMPLIANCE, CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS, AND CERTIFICATION OF FULL DISCLOSURE REGARDING DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT STATUS

(NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.)

CERTIFICATION OF NONSEGREGATED FACILITIES

- (a) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise.
- (b) By the submission of an offer in response to a solicitation incorporating this form JPL 2892, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.
- (c) By submission of the offer, the offeror further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will:
- (1) Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;
 - (2) Retain such certifications in its files; and
 - (3) Forward this certification and the following notice to the proposed subcontractors:

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES

A Certificate of Nonsegregated Facilities must be submitted before the award of a subcontract under which the subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for each subcontractor for all subcontracts during a period (i.e., quarterly, semi-annually, or annually).

(d) By commencing performance of the Contract work, the selected contractor certifies to the Nonsegregated Facilities provisions above.

CERTIFICATION OF CLEAN AIR AND WATER

By the submission of an offer in response to a solicitation incorporating this form JPL 2892, the offeror certifies as follows:

- (a) No facility to be utilized in the performance of this proposed contract is listed on the Environmental Protection Agency "List of Violating Facilities;"
- (b) The offeror will promptly notify JPL, prior to award, of the receipt of any communication from the Administrator, or a designee, of the U.S. Environmental Protection Agency, indicating that any facility which the offeror proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and
- (c) The offeror will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.
- (d) By commencing performance of the Contract work, the selected contractor certifies to the Clean Air and Water provisions above.

CERTIFICATION OF ANTI-KICKBACK COMPLIANCE

A Certification of Anti-Kickback Compliance must be submitted prior to award.

CERTIFICATION OF ANTI-KICKBACK COMPLIANCE

By submission of an offer in response to a solicitation incorporating this form JPL 2892, the offeror certifies that it has read the General Provision entitled "Anti-Kickback Procedures," contained in the solicitation and that neither it nor any of its employees has performed or participated in any prohibited actions, as defined in that provision, relating to the award of the Contract. By commencing performance of the Contract work, the selected contractor certifies to Anti-Kickback Compliance.

CERTIFICATION OF AMERICANS WITH DISABILITIES ACT COMPLIANCE

The Contractor represents and certifies the following as part of its offer:

CERTIFICATION OF AMERICANS WITH DISABILITIES ACT COMPLIANCE

By submission of an offer in response to a solicitation incorporating this form JPL 2892, the offeror certifies that it complies with the Americans with Disabilities Act, 42 U.S.C., 12101 et. seq., and will maintain compliance throughout the life of this Contract. By commencing performance of the Contract work, the selected contractor certifies to the Americans with Disabilities Act compliance.

**CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE
CERTAIN FEDERAL TRANSACTIONS**

(The following certification applies to all offers and awards in excess of \$100,000.)

- (a) The definitions and prohibitions contained in the General Provision Article "Limitation on Payments to Influence Certain Federal Transactions," are hereby incorporated by reference in paragraph (b) of this Certification.
- (b) The Offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989:
- (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;
 - (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the Offeror shall complete and submit, with its offer, OMB Standard Form LLL, "Disclosure of Lobbying Activities," to the JPL Contract Negotiator; and
 - (3) He or she will include the language of this Certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this Contract imposed by Section 1352, Title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to civil penalty of not less than \$20,000 and not more than \$100,000, for each such failure.

**CERTIFICATION OF FULL DISCLOSURE BY THE CONTRACTOR/OFFEROR
REGARDING WHETHER IT ANTICIPATES BEING OR IS DEBARRED, SUSPENDED,
OR PROPOSED FOR DEBARMENT BY THE
U.S. FEDERAL GOVERNMENT AT TIME OF AWARD.**

(This certification applies to contracts with a contract value exceeding the small purchase limitation in FAR Part 13.)

- (a) By submission of an offer in response to a solicitation incorporating this form JPL 2892, the offeror certifies that it has provided full disclosure in writing to JPL whether as of the anticipated time of award of any contract resulting from the solicitation, it anticipates that it or its principals will be debarred, suspended, or proposed for debarment by the U.S. Federal Government.
- (b) By commencing performance of the Contract work, the selected contractor certifies that it has made full disclosure to JPL in writing as to whether as of the time of award it or any of its principals is debarred, suspended, or proposed for debarment by the U. S. Federal Government. (see FAR 9.404 for information on the List of Parties Excluded from Procurement Programs).

RELEASE OF INFORMATION

This Contract with the Jet Propulsion Laboratory (JPL) constitutes a subcontract under a prime contract between the California Institute of Technology and the National Aeronautics and Space Administration (NASA). It is NASA's policy to provide the widest practical dissemination of information on all of its activities. Since 90% of NASA's research and development effort is performed by private industry, contractors and subcontractors have played a large role in this process.

In accordance with this policy, the Contractor may want to issue press releases or plan publicity and advertising from time to time, and the Contractor will be expected to respond to queries from information media.

Close coordination in all of these matters is required, and JPL requires that all materials (e.g., news and photo releases, exhibit copy, motion picture scripts, advertising copy) directly related to the Contractor's work with and for JPL be reviewed by JPL for technical accuracy prior to issuance or use.

To expedite this review, the Contractor shall send the materials to the JPL Public Information Office, mail stop 180-200, stating the Contractor's deadlines and referencing this Contract number.

In the event this Contract is a cost-reimbursement type contract, review by JPL shall not constitute approval for reimbursement of expenditures made in connection with publicity or advertising releases. Any such expenditures remain subject to applicable cost principles.

Nothing contained herein shall be deemed to change existing requirements relating to the release of classified information.

ASBESTOS NOTIFICATION

The Jet Propulsion Laboratory is committed to providing a safe and healthy work environment for all personnel.

In the past several years, the Laboratory management, working through the JPL Environmental Affairs and Chemical Controls Office (EACCO) and Facilities Division, has had an on-going program of asbestos identification and control. This program has included air monitoring and training for members of the Facilities and Maintenance staff.

Most of the asbestos located at JPL/Pasadena and JPL/Edwards is in restricted access areas such as mechanical rooms, boiler rooms, and attics. It is in good condition and does not pose any hazard during normal operations.

Some of the buildings at JPL/Pasadena have extensive sprayed fireproofing above the ceilings. These buildings at the Oak Grove Site include: 167, 168, 169, 179, 180, 183, 186, 230, 238, 264, 291 and Foothill Buildings 502, 506 and 507.

The EACCO staff has taken numerous air samples in these buildings. Visual inspections and air samples indicate that airborne asbestos levels in the buildings are much lower than those in industrial workplaces where serious adverse health effects have been observed. Levels in the buildings are not significantly different from levels outside.

Asbestos-containing materials pose no threat to your health unless the fibers become airborne. Any contractor maintenance/construction/renovation activity involving intentional or accidental contact with friable materials can release fibers. Therefore, it is important not to disturb the asbestos materials.

General written procedures and handling restrictions necessary to prevent disturbance have been provided to JPL and contractor personnel. Only authorized and properly trained personnel are permitted to perform any work which may disturb asbestos materials. All contractor operations performed in areas where asbestos is present must be reviewed by EACCO prior to initiation of activities, and then tested and released by EACCO after completion of contractor activities but prior to occupancy.

Pursuant to the California Health and Safety Code (Chapter 10.4, Section 25915), each employee has the right to review all reports about surveys, bulk sampling and air sampling. These reports are available for review during normal business hours at Building

125, Room 211. To make an appointment to review these documents, contact the Chemical Controls Group at ext. 4-1771.

If you have questions regarding operational procedures for contractor activities, contact EACCO at ext. 4-1771.

NOTIFICATION TO PROSPECTIVE CONTRACTORS OF JPL'S ETHICS POLICIES AND ANTI-KICKBACK HOT LINE

JPL is committed to conducting its business in accordance with the highest standards of ethics and integrity. In this regard, we have an on-going orientation and training program to assure that every JPL employee is aware of this commitment and their individual responsibility for compliance. We must rely on the personal integrity of our employees and the integrity and cooperation of our suppliers and contractors to make sure that these high standards are maintained.

The policies that implement our standards of business conduct state clearly that no employee may solicit or accept any "kickback," gift, gratuity, entertainment, compensation, or favors of any kind from any supplier/contractor or prospective supplier/contractor to JPL. Our policies make it clear that these standards not only apply to procurement personnel but also to employees in all functions and at all levels.

The purpose of this letter is to make sure that you and your employees are aware of our policies, and that together we can achieve and maintain excellence in the conduct of our business relationships.

In the unlikely event that any JPL employee ever attempts to solicit a "kickback," please notify us immediately. JPL has established an Anti-Kickback Hot Line number, **(818) 354-9999**. Please feel free to call this number collect. The information you provide will be handled with confidentiality, investigated thoroughly, and appropriate action taken.

Thank you for your cooperation and support in this important matter.