CALIFORNIA INSTITUTE OF TECHNOLOGY
JET PROPULSION LABORATORY
GENERAL PROVISIONS - PART I

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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 "contract amount" means the Contract price, the estimated cost and fee, if any, or the ceiling price of the Contract.

(c) 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.

(d) The term "FAR" means the Federal Acquisition Regulation as in effect on the date of this Contract, unless otherwise indicated.

(e) The term "Government" means the Government of the United States of America, unless the context is otherwise.

(f) The term "Government-furnished property (GFP)" includes JPL-furnished, Government-owned property.

(g) The term "Institute" means the California Institute of Technology as a party to this Contract.

(h) 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.

(i) The term "NASA" means the National Aeronautics and Space Administration.

(j) The term "NFS" means the NASA FAR Supplement as in effect on the date of this Contract, unless otherwise indicated.

(k) The term "person" means any individual, partnership, corporation, association, institution or other entity.

(l) The term "Prime Contract" means the Contract between the Institute and NASA for the United States of America (herein called the Government),.

(m) The term "subcontract," as used in this Contract, includes, but is not limited to, purchase orders under this Contract.

(n) 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 [i] to any time-and-material or labor-hour contract where the work is performed at a JPL-controlled facility and [ii] to any other contract for which any contractor personnel work in residence 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:
4. Contractor name:
5. Total number of on-site personnel:
6. Cognizant Negotiator:

(form continued on next page)

7. Subcontractors under this Contract with union personnel working on-site at JPL-controlled facilities.

Subcontractor	Number of Subcontractor Personnel at JPL Site: Total Personnel	No. of Union Personnel

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. CONTRACTOR EMPLOYMENT OF JPL EMPLOYEES' CHILDREN AND RELATIVES (CONTRACTOR'S EMPLOYEES IN RESIDENCE AT JPL)

(a) When work under this Contract is to be performed at any JPL-controlled facility, the Contractor agrees to require applicants for such work, as part of the application process, to identify any relatives they know to be employed at JPL. The Contractor also agrees to notify the cognizant negotiator prior to hiring an applicant who so identifies a relative. The Contractor agrees to abide by JPL's determination as to whether the applicant may be assigned to a particular JPL organization.

(b) The term "relatives" means parents, stepparents, grandparents, sisters, brothers, spouses, children, stepchildren, grandchildren, aunts, uncles, nieces, nephews, legal wards, and spouse's parents, grandparents, sisters and brothers.

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) <u>Disclosure</u>.

(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 or 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. INTEGRITY OF UNIT PRICES

(This Article is applicable if the initial Contract price exceeds the small purchase limitation in FAR Part 13, unless the Contract is for services where supplies are not required, construction or architect-engineer services, utility services, or petroleum products.)

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.

(b) The requirement in paragraph (a) of this Article does not apply to any contract or subcontract item of supply for which the unit price is, or is based on, an established catalog or market price for a commercial item sold in substantial quantities to the general public. A price is based on a catalog or market price only if the item being purchased is sufficiently similar to the catalog or market price commercial item to ensure that any difference in price can be identified and justified without resort to cost analysis.

(c) The Contractor shall also identify those supplies which it will not manufacture or to which it will not contribute significant value, when requested by the JPL Negotiator. However, this information shall not be required for commercial items sold in substantial quantities to the general public when the price is, or is based on, established catalog or market prices.

(d) The Contractor shall insert the substance of this Article, less paragraph (c), in all subcontracts.

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

(a) As prescribed by regulation (14 C.F.R. Part 1266), NASA agreements involving Space Shuttle services are required to contain broad cross-waivers of liability among the parties and the parties' related entities to encourage participation in space exploration, use, and investment. The purpose of this provision is to extend this cross-waiver requirement to contractors and subcontractors as related entities of NASA. This cross-waiver of liability shall be broadly construed to achieve the objective of encouraging participation in space activities.

(b) As used in this provision, the term:

(1) "Contractors" and "Subcontractors" include suppliers of any kind.

(2) "Damage" means:

(A) Bodily injury to, or other impairment of health of, or death of, any person;

(B) Damage to, loss of, or loss of use of any property;

(C) Loss of revenue or profits; or

(D) Other direct, indirect, or consequential damage;

(3) "Party" means a person or entity that signs an agreement involving a Space Shuttle service;

(4) "Payload" means any property to be flown or used on or in the Space Shuttle; and

(5) "Protected Space Operations" means all Space Shuttle and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of an agreement involving Space Shuttle services or performed under this Contract. It includes, but is not limited to:

(A) Research, design, development, test, manufacture, assembly, integration, operation, or use of the Space Shuttle, transfer vehicles, payloads, related support equipment, and facilities and services;

(B) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

(NOTE: "Protected Space Operations" excludes activities on Earth which are conducted on return from space to develop further a payload's product or process except when such development is for Space Shuttle-related activities necessary to implement an agreement involving Space Shuttle services or to perform this Contract.)

(6) "Related entity" means:

(A) A party's contractors or subcontractors at any tier;

(B) A party's users or customers at any tier; or

(C) A contractor or subcontractor of a party's user or customer at any tier.

(c) (1) The Contractor agrees to a waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(A) through (c)(1)(C) of this provision based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract, against:

(A) Any party other than the Government;

(B) A related entity of any party other than the Government; and

(C) The employees of any of the entities identified in (c)(1)(A) and (c)(1)(B) above.

(2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this provision to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(A) through (c)(1)(C) of this provision.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and Other International Acts Series (T.I.A.S.) No. 7762 in which the person, entity, or property causing the damage is involved in Protected Space Operations, and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this provision, this waiver of liability shall not be applicable to:

(a) As prescribed by regulation (14 C.F.R. Part 1266), NASA agreements involving ELV launches are required to contain broad cross-waivers of liability among the parties and the parties' related entities to encourage participation in space exploration, use, and investment. The purpose of this provision is to extend this cross-waiver requirement to contractors and subcontractors as related entities of NASA. This cross-waiver of liability shall be broadly construed to achieve the objective of encouraging participation in space activities.

(b) As used in this provision, the term:

(1) "Contractors" and "Subcontractors" include suppliers of any kind.

(2) "Damage" means:

(A) Bodily injury to, or other impairment of health of, or death of, any person;

(B) Damage to, loss of, or loss of use of any property;

(C) Loss of revenue or profits; or

(D) Other direct, indirect, or consequential damage;

(3) "Party" means a person or entity that signs an agreement involving an ELV launch;

(4) "Payload" means any property to be flown or used on or in the ELV; and

(5) "Protected Space Operations" means all ELV and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of an agreement involving ELV Launch services or performed under this Contract. It includes, but is not limited to:

(A) Research, design, development, test, manufacture, assembly, integration, operation, or use of the ELV, transfer vehicles, payloads, related support equipment, and facilities and services;

(B) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

(<u>NOTE</u>: "Protected Space Operations" excludes activities on Earth which are conducted on return from space to develop further a payload's product or process except when such development is for ELV-related activities necessary to implement an agreement involving an ELV launch or to perform this Contract.)

(6) "Related entity" means:

(A) A party's contractors or subcontractors at any tier;

(B) A party's users or customers at any tier; or

(C) A contractor or subcontractor of a party's user or customer at any tier.

(c) (1) The Contractor agrees to a waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(A) through (c)(1)(C) of this provision based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to a delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract, against:

(A) Any party other than the Government;

(B) A related entity of any party other than the Government; and

(C) The employees of any of the entities identified in (c)(1)(A) and (B) above.

(2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this provision to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(A) through (c)(1)(C) of this provision.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and Other International Acts Series (T.I.A.S.) No. 7762) in which the person, entity, or property causing the damage is involved in Protected Space Operations.

(4) Notwithstanding the other provisions of this provision, this waiver of liability shall not be applicable to:

(A) Claims between any party and its related entities or claims between any party's related entities (e.g., claims between the Government and the Contractor are included within this exception);

(B) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(C) Claims for damage caused by willful misconduct; and

(D) Intellectual property claims.

(5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.

(6) This cross-waiver shall not be applicable when the Commercial Space Launch Act cross-waiver (49 U.S.C. App. 2615) is applicable.

PART C. CROSS-WAIVER OF LIABILITY FOR SPACE STATION ACTIVITIES

(a) The Intergovernmental Agreement for Space Station Freedom contains a broad cross-waiver provision to encourage participation in the exploration and use of outer space through the Space Station. The purpose of this provision is to extend this cross-waiver requirement to contractors and subcontractors as related entities of NASA. This cross-waiver of liability shall be broadly construed to achieve this objective of encouraging participation in space activities.

(b) As used in this provision, the term:

(1) "Damage" means:

(A) Bodily injury to, or other impairment of health of, or death of, any person;

(B) Damage to, loss of, or loss of use of any property;

(C) Loss of revenue or profits; or

(D) Other direct, indirect, or consequential damage.

(2) "Launch Vehicle" means an object (or any part thereof) intended for launch, launched from Earth, or returning to Earth which carries payloads or persons, or both.

(3) "Partner State" means each contracting party for which the "Agreement among the Government of the United States of America, Governments of Member States of the European Space Agency, Government of Japan, and the Government of Canada on Cooperation in the Detailed Design, Development, Operation, and Utilization of the Permanently Manned Civil Space Station" (the "Intergovernmental Agreement") has entered into force, in accordance with Article 25 of the Intergovernmental Agreement. It includes the Cooperating Agency of a Partner State. The National Aeronautics and Space Administration (NASA) for the United States, the Canadian Space Agency (CSA) for the Government of Canada, the European Space Agency and the Science and Technology Agency of Japan (STA) are the Cooperating Agencies responsible for implementing Space Station cooperation. A Partner State also includes any entity specified in the Memorandum of Understanding (MOU) between NASA and the Government of Japan to assist the Government of Japan Cooperating Agency in the implementation of that MOU.

(4) "Payload" means any property to be flown or used on or in a launch vehicle or the Space Station.

(5) "Protected Space Operations" means all launch vehicle activities, space station activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of the Intergovernmental Agreement or performed under this Contract. It includes, but is not limited to:

(A) Research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles, payloads, related support equipment, and facilities and services;

(B) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

(<u>NOTE</u>: "Protected Space Operations" also includes all activities related to evolution of the Space Station as provided for in Article 14 of the Intergovernmental Agreement. "Protected Space Operations" excludes activities on Earth which are conducted on return from the Space Station to develop further a payload's product or process except when such development is for Space Station-related activities in implementation of the Intergovernmental Agreement or in performance of this Contract.

(6) "Related entity" means:

(A) A Partner State's contractors or subcontracts at any tier;

(B) A Partner State's users or customers at any tier; or

(C) A contractor or subcontractor of a Partner State's user or customer at any tier.

(7) "Contractors" and "Subcontractors" include suppliers of any kind.

(c) (1) The Contractor agrees to a waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(A) through (c)(1)(C) of this provision based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract against:

(A) Any Partner State other than the United States;

(B) A related entity of any Partner State other than the United States; and

(C) The employees of any of the entities identified in paragraphs (c)(1)(A) and (B) above.

(2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this provision to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(A) through (c)(1)(C) of this provision.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and other International Acts Series (T.I.A.S.) No. 7762) in which the person, entity, or property causing the damage is involved in Protected Space Operations.

(4) Notwithstanding the other provisions of this provision, this cross-waiver of liability shall not be applicable to:

(A) Claims between any Partner State and its related entities or claims between the related entities of any Partner State (e.g., claims between the Government and the Contractor are included within this exception);

(B) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(C) Claims for damage cause by willful misconduct; and

(B) Intellectual property claims.

(5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.

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. WALSH-HEALEY PUBLIC CONTRACTS ACT

If this Contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed $10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:

(a) All representations and stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These representations and stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

(b) All employees whose work relates to this Contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

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 - SUPPLIES

(This Article applies to supply contracts exceeding $2,500 and to contracts for services which involve the furnishing of supplies when the supply portion of the contract exceeds $2,500.)

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic end products.

(b) Definitions.

(1) "Components," as used in this Article, means those articles, materials, and supplies incorporated directly into the end products.

(2) "Domestic end product," as used in this Article, means (i) an unmanufactured end product mined or produced in the United States, or (ii) an end product 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 products referred to in subparagraphs (c)(2) or (3) of this Article shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic. On acquisitions above $25,000 in value, components of Canadian origin are treated as domestic.

(3) "End products," as used in this Article, means those articles, materials, and supplies to be acquired for public use under this Contract.

(c) The Contractor shall deliver only domestic end products except those:

(1) For use outside the United States;

(2) That the Contracting Officer determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(3) For which the Administrator determines that domestic preference would be inconsistent with the public interest; or

(4) For which the Administrator determines the cost to be unreasonable (see section 25.105 of the FAR and any corresponding implementing or supplementing provisions in the NFS).

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954, as amended, and Subpart 25.1 of the FAR and any corresponding implementing or supplementing provisions in the NFS.)

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

(This Article is applicable when the Contract amount is expected to be over the small purchase limitation in FAR Part 13.)

(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. GEOGRAPHIC PARTICIPATION IN THE AEROSPACE PROGRAM

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

(a) It is the policy of the National Aeronautics and Space Administration to advance a broad participation by all geographic regions in filling the scientific, technical, research and development, and other needs of the aerospace program.

(b) The Contractor agrees to use its best efforts to solicit subcontract sources on the broadest feasible geographic basis, consistent with efficient contract performance, and without impairment of program effectiveness or increase in program cost.

(c) The Contractor further agrees to insert this Article in all subcontracts of $100,000 and over.

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. RESTRICTIONS ON SUBCONTRACTOR SALES

(a) Except as provided in (b) below, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to JPL or the Government of any item or process (including computer software) made or furnished by the subcontractor under this Contract or under any follow-on production contract.

(b) The prohibition in (a) above does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this Article, including this paragraph (c), in all subcontracts under this Contract.

ARTICLE GP-49. PRINTING AND DUPLICATING

(This Article does not apply unless this Contract requires the Contractor to provide printing or significant reproduction, i.e., in excess of 5,000 copies of a single page or in excess of 25,000 copies in the aggregate of multiple pages.)

(a) The Contractor shall reproduce any documentation required by this Contract in accordance with the provisions of the Government Printing and Binding Regulations published by the Joint Committee on Printing, Congress of the United States.

(b) The term "printing," as used in this provision, is defined in the Government Printing and Binding Regulations and includes the processes of composition, plate making, presswork, binding, and the end items produced by such processes and equipment.

(c) The Contractor is authorized to duplicate production units by offset plate making, copy-processing machines, or lithographs presses when negatives or metal plates are not required. The Contractor shall not exceed 5,000 production units of any one page or 25,000 units in the aggregated of multiple pages. Such plates may not exceed a maximum image size of 10- 3/4 by 14-1/4 inches. A "production unit" is one sheet, size 8-1/2 x 11 inches (215 x 280 mm) one side only, and one color.

(d) This Article does not preclude writing, editing, preparation of manuscript copy, or preparation of related illustrative material as a part of this Contract; or administrative printing, for example, forms and instructional materials, necessary to be used by the Contractor

(e) If the Contractor has reason to believe that any activity required under this Contract violates the regulations referred to in paragraph (a) of this Article, the Contractor shall provide the JPL Negotiator with immediate notice in writing and request approval prior to accomplishment of the activity.

Note 1: The terms "documentation" referred to in paragraph (a) and "production units" referred to in paragraph (c) of this Article, Printing and Duplicating, pertain solely to "Government publications." "Government publications" is defined as (i) reports intended primarily for internal use by the Government and (ii) reports or other materials of the type that the Government itself distributes to the public under an agency program. "Government publications" shall, unless subject to exemption under applicable regulations, be printed by or through the Government Printing Office even though the distribution of these reports and materials may be effectuated by the Contractor for the Government.

Examples of documents which are "Government publications" include, but are not limited to: (i) publications released by the Contractor or a subcontractor to the public for the purpose of promoting NASA or a Government agency sponsor; (ii) deliverable final reports but not interim drafts of such reports; (iii) deliverable review board presentations and conclusions in which a majority of the review board membership consists of Government representatives.

Examples of documents which are not "Government publications" include, but are not limited to: (i) publications for internal usage and communication by JPL or any contractor or a subcontractor such as JPL's or a contractor's Telephone Directory or JPL's or a contractor's internal newsletter, (ii) public information, education and public service documents, and award certificates printed for JPL or a contractor rather than Government usage, including those which may contain an incidental reference to sponsorship by NASA or another Government agency; (iii) publications for which the printing costs are not paid for by the Government; (iv) non-deliverable reports provided to the Government for informational purposes which are suitable for publication in academic, technical or professional journals and similar publications; and (v) review board presentations and conclusions in which a majority of the formal review board membership consists of JPL or contractor or subcontractor representatives, where Government attendance is only incidental, and the Contract does not expressly require Government approval of the proceedings.

Note 2: Requests for waivers to permit commercial printers to print "Government publications" in cases of exigencies or other appropriate circumstances shall be submitted by the Contractor to the JPL negotiator for submission to the NASA Printing Management Officer through the Contracting Officer.

ARTICLE GP-50. RIGHTS IN TECHNICAL PROPOSAL DATA

(This Article applies to contracts resulting from a proposal containing technical data. The Article does not cover rights to commercial or financial information contained in the successful proposal.)

It is agreed that as a condition of the award of this Contract, and notwithstanding the conditions of any notice appearing thereon, the Government and the Institute shall have the right to use, duplicate, and disclose, and have others so do, for any purpose whatsoever, the technical data contained in the proposals upon which this Contract and any future modifications are based.

ARTICLE GP-51. RIGHTS IN DATA - GENERAL

(Except for paragraph (h), "Subcontracting," of this Article, which shall remain applicable, if the Article entitled "Existing Commercial Computer Software - Licensing" is applicable to this Contract, it shall apply in lieu of this Article regarding any acquisition of commercial computer software.)

(a) Definitions.

(1) "Computer software," as used in this Article, means computer programs, computer data bases, and documentation thereof.

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

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

(4) "Institute" means the California Institute of Technology as a party to this Contract.

(5) "JPL" means the Jet Propulsion Laboratory as the organizational element of the Institute having responsibility for administration of this Contract. JPL's rights under this Contract are rights of the California Institute of Technology as a party to this Contract.

(6) "Limited rights," as used in this Article, means the rights of the Government, or in support and furtherance of its Government contract obligations, the Institute, in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this Article.

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

(8) "Mask work", as used in this clause, means a series of related images, however fixed or encoded (1) having or representing the predetermined, three-dimensional pattern of metallic, insulating, or semiconductor material present or removed from the layers of a semiconductor chip product; and (2) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

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

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

(11) "Semiconductor chip product", as used in this clause, means the final or intermediate form of any product (1) having two or more layers of metallic, insulating, or semiconductor material, deposited or otherwise placed on, or etched away or otherwise removed from, a piece of semiconductor material in accordance with a predetermined pattern; and (2) intended to perform electronic circuitry functions.

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

(13) "Unlimited rights," as used in this Article, means the right of the Government, or in support and furtherance of its Government contract obligations, the Institute, to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of Rights.

(1) Except as provided in paragraph (c) of this Article regarding copyright, the Government and in support and furtherance of its Government contract obligations, the Institute, shall have unlimited rights in:

(A) Data first produced in the performance of this Contract;

(B) Form, fit, and function data delivered under this Contract;

(C) Data delivered under this Contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this Contract; and

(D) All other data delivered under this Contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this Article.

(2) The Contractor shall have the right to:

(A) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this Contract, unless provided otherwise in paragraph (d) of this Article;

(B) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this Article;

(C) Substantiate use of, add or correct limited rights, restricted rights, or copyright or mask work notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this Article; and

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

(c) Copyright and Mask Work:

(1) Data First Produced in the Performance of This Contract.

(A) Unless provided otherwise in paragraph (d) of this Article, the Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this Contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contracting Officer through JPL is required to establish claim to copyright subsisting in all other data first produced in the performance of this Contract.

When claim to copyright is made, the Contractor shall affix the applicable copyright *or* notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including the Prime Contract number) to the data when such data are delivered to JPL, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. (Acknowledgment shall include a statement that "This work was performed for the Jet Propulsion Laboratory, California Institute of Technology, sponsored by the United States Government under Contract NAS7-1260.") For data other than computer software, the Contractor grants to the Government, and in support and furtherance of its Government contract obligations, the Institute, and others acting on their behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government. For computer software, the Contractor grants to the Government, and in support and furtherance of its Government contract obligations, the Institute, and others acting on their behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

(B) If the Government desires to obtain Copyright in computer software first produced in the performance of this contract for which permission to copyright has not been granted to the Contractor as set forth in subdivision (c)(1)(A) of this Article, the Contracting Officer or the Institute may direct the Contractor to establish, or authorize the establishment of, claim to copyright in said computer software and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

(2) Data Not First Produced in the Performance of This Contract. The Contractor shall not, without prior written permission of JPL, incorporate in data delivered under this Contract any data not first produced in the performance of this Contract and which contains the copyright or mask work notice of 17 U.S.C. 401 or 402 or 909, unless the Contractor identifies such data and grants to the Government, and in support and furtherance of its Government contract obligations, the Institute, or acquires on their behalf, a license of the same scope as set forth in subparagraph (c)(1) of this Article; provided, however, that if such data are computer software, the Contractor grants to the Government and in support and furtherance of its Government contract obligations, the Institute, or acquires on their behalf, a paid up nonexclusive irrevocable worldwide license as set forth in subparagraph (g)(3) of this Article.

(3) Removal of Copyright and Mask Work Notices. JPL agrees not to remove any copyright or mask work notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, Publication and Use of Data.

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

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

(3) The Contractor agrees not to establish claim to copyright or publish or release to others any computer software first produced in the performance of this Contract without the Contracting Officer's prior written permission through JPL.

(e) Unauthorized Marking of Data.

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

(A) JPL shall make written inquiry to the Contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

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

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

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

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

(4) (RESERVED)

(f) Omitted or Incorrect Markings.

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

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

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

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

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

(2) JPL may also:

(A) Permit correction at the Contractor's expense of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized; or

(B) Correct any incorrect notices.

(g) Protection of Limited Rights Data and Restricted Computer Software.

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

(2) (RESERVED)

(3) (RESERVED)

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

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

(j) Inspection of Data Withheld. The Contractor agrees, except as may be otherwise specified in this Contract for specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this Contract, inspect at the Contractor's facility any data withheld pursuant to subparagraph (g)(1) of this Article, for purposes of verifying the Contractor's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the first-tier subcontractor whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

ARTICLE GP-52. EXISTING COMMERCIAL COMPUTER SOFTWARE - LICENSING

(This Article is applicable, with paragraph (h) of the Article entitled "Rights in Data - General," to the acquisition of any existing commercial computer software under this Contract.)

(a) Any delivered commercial computer software (including documentation thereof) developed at private expense and claimed as proprietary shall be subject to the restricted rights in paragraph (d) below. Where the Vendor/ Contractor proposes its standard commercial software license, only those applicable portions thereof which comply with the other provisions of this Contract, Federal laws, FAR and NFS, including the restricted rights in paragraph (d) below, are incorporated into and made a part of this Purchase Order/Contract.

(b) Although the Vendor/Contractor might not propose its standard commercial software license until after this Purchase Order/Contract has been issued, or at or after the time the computer software is delivered, such license shall nevertheless be deemed incorporated into and made a part of this Purchase Order/Contract under the same terms and conditions as in paragraph (a) above. For purposes of receiving updates, correction notices, consultation, and similar activities on the computer software, any authorized user may acknowledge receipt of a registration form or card and return it directly to the Vendor/Contractor; however, such signing shall not add to or alter any of the terms and conditions of this Article or the Purchase Order/Contract into which this Article is incorporated.

(c) The Vendor's/Contractor's acceptance is expressly limited to the terms and conditions of this Purchase Order/Contract. If the specified computer software is shipped or delivered to JPL or NASA, it shall be understood that the Vendor/Contractor has unconditionally accepted the terms and conditions set forth in this Article, and that the terms and conditions of this Purchase Order/Contract (including the incorporated license) constitute the entire agreement between the parties concerning rights in the computer software.

(d) The following restricted rights shall apply:

(1) The commercial computer software may not be used, reproduced, or disclosed by the Institute or the Government except as provided below or otherwise expressly stated in the Purchase Order/Contract.

(2) The commercial computer software may be:

(A) Used, or copied for use, in or with any computer owned or leased by, or on behalf of, the Government, or the Institute in support and furtherance of its Government contract obligations; provided, the software is not used, nor copied for use, in or with more than one computer simultaneously, unless otherwise permitted by the license incorporated under paragraphs (a) or (b) above;

(B) Reproduced for safekeeping (archives) or backup purposes;

(C) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and

(D) Disclosed and reproduced for use by Government or Institute contractors or their subcontractors in accordance with the restricted rights in subdivisions (A), (B), and (C) above; provided they have the Government's or the Institute's permission to use the computer software and have also agreed to protect the computer software from unauthorized use and disclosure.

(3) If the incorporated Vendor's/Contractor's software license contains provisions or rights that are less restrictive than the restricted rights in subparagraph (d)(2) above, then the less restrictive provisions or rights shall prevail.

(4) If the computer software is published, copyrighted computer software, it is licensed to the Government, and in support and furtherance of its Government contract obligations, the Institute, without disclosure prohibitions, with the rights in subparagraphs (d)(2) and (3) above.

(5) The computer software may be marked with any appropriate proprietary notice that is consistent with the rights in subparagraphs (d)(2), (3), and (4) above.

ARTICLE GP-53. WARRANTY FOR COMMERCIAL COMPUTER SOFTWARE

(This Article is applicable if commercial computer software is being purchased under this Contract.)

Contractor warrants that it has the right to sell, license, or transfer the license for the software furnished to customer under this Contract in accordance with the terms of this Contract.

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 of any invention described in and covered by a United States patent in the performance of the Prime Contract or any subcontract at any tier.

(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. (RESERVED)

ARTICLE GP-59. **(RESERVED)**

ARTICLE GP-60. **(RESERVED)**

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.