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APPENDIX A

ARMED SERVICES BOARD OF CONTRACT APPEALS

Effective 1 May 1962

Part 1—Charter

1. There is created the Armed Services Board of Contract Appeals which is hereby designated as the authorized representative of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy and the Secretary of the Air Force, in hearing, considering and determining as fully and finally as might each of the Secretaries appeals by contractors from decisions of contracting officers or their authorized representatives or other authorities on disputed questions. These appeals may be taken (a) pursuant to the provisions of contracts requiring the decision of appeals by the Secretary of Defense or by a Secretary of a Military Department or their duly authorized representative or board, or (b) pursuant to the provisions of any directive whereby the Secretary of Defense or the Secretary of a Military Department has granted a right of appeal not contained in the contract. The Board shall operate under general policies established or approved by the Assistant Secretary of Defense (Installations and Logistics).

2. Membership of the Board shall consist of qualified attorneys who have been admitted to practice before the highest court of any State or the District of Columbia. There shall be appointed from members of the Board a chairman and two vice-chairmen. Appointment of the chairman and vice-chairmen and other members of the Board shall be made jointly by the Assistant Secretary of Defense (I&L) and the Assistant Secretaries of the Military Departments responsible for procurement. The chairman and vice-chairmen shall serve in that capacity for a two-year term unless sooner removed or reappointed for an additional term or terms. The Assistant Secretaries will also designate the order in which the two vice-chairmen will act for the chairman in his absence. In the absence of a vice-chairman, the chairman or acting chairman will designate a member of the Board to serve as a temporary vice-chairman.

3. It shall be the duty and obligation of the members of the Armed Services Board of Contract Appeals to decide appeals on the record of the appeal to the best of their knowledge and ability in accordance with applicable contract provisions and in accordance with law and regulation pertinent thereto.

4. The chairman of the Board shall be responsible for establishing appropriate divisions of the Board in such manner as to provide for the most effective and expeditious handling of appeals. He shall be responsible for assigning appeals to the divisions for decision without regard to the Military Department or other procuring agency which entered into the contract involved. A division may consist of one or more members of the Board. A majority of the members of a division shall constitute a quorum for the transaction of the business of the division and the decision of a majority of the division shall constitute the decision of the Board provided that the chairman and two vice-

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chairmen jointly signify their approval of the decision. If a majority of the members of a division are unable to agree on a decision, or if the chairman or one or more of the vice-chairmen do not signify approval of the decision, determination of the appeal shall be made by the chairman and vice-chairmen. A decision by a majority of those individuals will constitute the decision of the Board. On request of the appellant, an appeal involving \$5,000 or less shall be decided under accelerated procedures as provided by the Rules of the Board.

5. When an appeal is taken pursuant to a disputes clause in a contract which limits appeals to disputes concerning questions of fact, the Board may nevertheless in its discretion hear, consider, and decide all questions of law necessary for the complete adjudication of the issue. When in the consideration of an appeal it appears that a claim is involved which is not cognizable under the terms of the contract, the Board may, insofar as the evidence permits, make findings of fact with respect to such a claim without expressing an opinion on the question of liability.

6. When a contract requires the Secretary of Defense or the Secretary of a Military Department, personally, to render a decision on the matter in dispute, the Armed Services Board of Contract Appeals, in accordance with the procedure set forth in paragraph 4, shall make findings and recommendations to the appropriate Secretary with respect thereto.

7. The Board shall have all powers necessary and incident to the proper performance of its duties. Subject to the approval of the Assistant Secretary of Defense (I&L) and the Assistant Secretaries of the Military Departments responsible for procurement, the Board shall adopt its own methods of procedure, and rules and regulations for its conduct and for the preparation and presentation of appeals and issuance of opinions. The Military Departments and other procuring agencies of the Department of Defense shall provide legal personnel to prepare and present the contentions of the departments or agencies in relation to appeals filed with the Board. It shall not be necessary for the Board, unless it otherwise desires, to communicate with more than one trial attorney in each of the departments or agencies concerning the preparation and presentation of appeals and the obtaining of all records deemed by the Board to be pertinent thereto.

8. Any member of the Board or any examiner, designated by the chairman of the Board, shall be authorized to hold hearings, examine witnesses, receive evidence and argument, and report the evidence and argument to the designated division for consideration and determination of the appeal.

9. The chairman shall be responsible for the internal organization of the Board and for its administration. He shall provide within approved ceilings for the staffing of the Board with non-member personnel, including hearing examiners, as may be required for the performance of the functions of the Board. The chairman shall appoint a recorder of the Board. Such personnel shall be responsible to and shall function under the direction, supervision and control of the chairman.

CHARTER

10. Financing of the operations of the Board as authorized herein will be provided through the use of the Navy Management Fund in accordance with Department of Defense Regulations Covering the Operation of Management Funds.

11. The chairman of the Board will furnish to the Secretary of Defense and to the Secretaries of the Military Departments by July 31 of each year a report containing an account of the Board's transactions and proceedings for the preceding fiscal year. Within 30 days following the close of a calendar quarter, the chairman shall forward a report of the Board's proceedings for the quarter to the Assistant Secretary of Defense (I&L), the Assistant Secretaries of the Military Departments responsible for procurement, and to the Director of the Defense Supply Agency. Such reports shall disclose the number of appeals received, cases heard, opinions rendered, current reserve of pending matters, and such other information as may be required.

12. The Board shall have a seal bearing the following inscription: "Armed Services Board of Contract Appeals". This seal shall be affixed to all authentications of copies of records and to such other instruments as the Board may determine.

13. All appeals pending before the Board under the "Charter for the Armed Services Board of Contract Appeals", which became effective on 1 February 1959, shall continue to be subject to the jurisdiction of the Board as established hereunder.

14. This charter will become *effective 1 May 1962*.

ELVIS J. STAHR, jr.
Secretary of the Army

FRED KORTH

Secretary of the Navy

EUGENE M. ZUCKERT
Secretary of the Air Force

APPROVED:

ROSWELL GILPATRIC

Deputy Secretary of Defense

Preface to Rules

The Armed Services Board of Contract Appeals is the authorized representative of the Secretaries of the Army, Navy, and Air Force in hearing, considering and determining as fully and finally as might each of the Secretaries:

(a) Appeals by contractors from decisions on disputed questions by contracting officers or their authorized representatives or by other authorities pursuant to the provisions of armed services contracts requiring the determination of appeals by the head of a Department of the armed services or by his duly authorized representative or board, or pursuant to the provisions of any directive whereby the Secretary of a Department of the armed services has granted a right of appeal not contained in the contract;

(b) Appeals by armed services contractors pursuant to section 13(c)(1)(i) and section 17(c) of the Contract Settlement Act of 1944.

When an appeal is taken pursuant to a disputes clause in a contract which provides only for appeals from decisions on questions of fact, the Board may, in its discretion, hear, consider, and decide all questions of law necessary for the complete adjudication of the issue. Unless the contract provides otherwise, when in the consideration of an appeal it appears that a claim for unliquidated damages is involved therein, the Board, insofar as the evidence permits, makes findings of fact with respect to such claims without expressing opinion on questions of liability.

When a contract requires the Secretary of a Department of the armed services personally to render a decision on the matter in dispute, the Board submits its findings and recommendations to the Secretary of the Department.

There are three panels of the Board: the Army, Navy, and Air Force panels. In general, appeals are assigned for decision to the panel of the Department whose contract or procurement is directly involved. Each of the panels acts in divisions, which normally consist of three or more members of the panel. Hearings may be held by a division, by a designated member, or by a duly authorized examiner. The decision of a majority of a division constitutes the decision of the panel and of the Board; *provided*, that all three panel chairmen signify that in their opinion a review by the three panel chairmen is not required. If a majority of the members of a division do not agree upon a decision, or if one or more of the panel chairmen do not waive review, determination of the appeal is made by a majority of the three panel chairmen. However, on request of the appellant and subject to the concurrence of the Department concerned, an appeal involving \$5,000 in amount or less may be decided by a single member of the Board subject to such concurrence by a division or panel of the Board as the Department concerned may direct.

Scope of Rules

1. Except to the extent otherwise provided pursuant to Rule 31 (**Optional Accelerated Procedure for Cases Involving \$5,000 in Amount or Less**), Rules 2 through 30 govern the procedure in all cases before the Board. They shall be construed for the purpose of securing just and inexpensive determination of appeals without unnecessary delay. All pleadings provided for hereunder shall be so construed as to do substantial justice.

Proceedings Preliminary to Hearings

2. Appeals, how taken. Notice of an appeal must be in writing, and the original, together with two copies, may be filed with the contracting officer from whose decision the appeal is taken. The notice of appeal must be mailed or otherwise filed within the time specified therefor in the contract or allowed by applicable provision of directive or law.

3. Notice of appeal, contents of. A notice of appeal should indicate that an appeal is thereby intended, and should identify the contract (by number), the department and agency or bureau cognizant of the dispute, and the decision from which the appeal is taken. The notice of appeal should be signed personally by the appellant (the contractor making the appeal), or by an officer of the appellant corporation or member of the appellant firm, or by the contractor's duly authorized representative or attorney. The complaint referred to in Rule 5 may be filed with the notice of appeal.

4. Duties of contracting officer. When a notice of appeal in any form has been received by the contracting officer he shall endorse thereon the date of mailing or the date of receipt if otherwise filed and within 10 days shall forward the notice of appeal, and the complaint if filed therewith, to the Board. The contracting officer shall promptly thereafter compile and transmit to counsel for the Government copies of all documents pertinent to the appeal, including the following:

- (1) The findings of fact and the decision from which the appeal is taken, and the letter or letters or other documents of claim in response to which the decision was issued;
- (2) The contract and pertinent plans, specifications, amendments, and change orders;
- (3) Correspondence between the parties and other data pertinent to the appeal;
- (4) Transcripts of any testimony taken during the course of the proceedings on the matter in dispute prior to the filing of the notice of appeal with the Board;
- (5) Such additional information as the contracting officer may consider material.

When the Board has received the original notice of appeal the Board will promptly so advise the contractor and the contracting officer, and will forward to the contractor a copy of these rules. [Note: Attention is invited to Rule 31, below, providing an **Optional Accelerated Procedure** for cases involving \$5,000 in amount or less. It is the duty of the contracting officer to advise the contractor of the **Optional Accelerated Procedure** in connection with an appeal involving \$5,000 in amount or less.]

5. Complaint. Within 30 days after receipt of notice of docketing by the Board of the appeal, or within such longer period of time as may be allowed by the Board, the appellant shall file with the Board, if not previously filed with the notice of appeal, a complaint setting forth simple, concise and direct statements of each of his claims showing that he is entitled to relief including the dollar amount claimed. If the amount claimed involves \$5,000 or less, he may, in his complaint, request that the appeal be handled under the **Optional Accelerated**

Procedure (Rule 31). Each claim shall be stated with as much particularity as is practical. No technical form is required, but each claim should be separately identified. Documentary evidence in support of claims may be filed as exhibits to the complaint. All documents filed as exhibits to the complaint shall be plainly listed and identified in the complaint. An original and three copies of the complaint shall be filed. Upon receipt thereof the recorder of the Board shall serve a copy of the complaint on counsel for the Government.

6. Answer. Within 60 days after service of the complaint, or within such longer period of time as may be allowed by the Board, counsel for the Government shall prepare and file with the Board an answer thereto. The answer shall set forth simple, concise, and direct statements of the Government's defenses to each claim asserted by appellant. Each defense shall be stated with as much particularity as is practical. Defenses which go to the jurisdiction of the Board may be included in the answer, or may be raised by motion pursuant to the provisions of Rule 10. If the appellant requests recourse to the **Optional Accelerated Procedure** (Rule 31), the answer shall contain a statement as to whether such request is concurred in by the Department concerned. Counsel for the Government shall at the same time file with the Board the following documents, which shall be plainly listed and identified:

(1) The findings of fact if any and the decision from which the appeal is taken, and the letter or letters or documents of claim in response to which the decision was issued by the contracting officer;

(2) The contract and pertinent plans, specifications, amendments, and change orders.

Documentary evidence in support of the Government's defenses may be filed as exhibits to the answer. All documents filed as exhibits to the answer shall be plainly listed and identified in the answer. An original and three copies of the answer shall be filed with the Board. Upon receipt thereof the Recorder shall serve a copy of the answer on appellant or his attorney.

7. Appeal file; inspection of file. The notice of appeal, the complaint and exhibits attached thereto, the answer and exhibits attached thereto, and the documents required to be filed therewith pursuant to Rule 6, all papers filed by the parties with the Board pursuant to these rules, and all correspondence exchanged between the Board and the parties or their attorneys shall constitute the appeal file, which shall be available for inspection by appellant and Government counsel at the offices of the Board. Prior arrangements for inspection of the file should be made with the recorder of the Board.

8. Amendments of pleadings. At any time before oral hearing or before submission of a case by the parties without an oral hearing the Board in its discretion may permit a party, within the proper scope of the appeal, to amend its complaint or answer, upon conditions just to both parties. The Board upon its own initiative or upon application by a party may, in its discretion, order a party to make a more definite statement of its complaint or answer, or to reply to an answer. When issues within the proper scope of the appeal but not raised by the complaint and answer are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised therein. Such amendment of the complaint and answer as may be necessary to cause them to conform to the evidence may be made upon motion at any time, even

after decision, but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the hearing on the ground that it is not within the issues made by the complaint and answer, the hearing member or examiner may allow the pleadings to be amended within the proper scope of the appeal and shall do so freely when the presentation of the merits of the action will be served thereby and the objecting party fails to satisfy the hearing member or examiner that the admission of such evidence would prejudice him in maintaining his case or defense upon the merits. The hearing member or examiner may, however, grant a continuance to enable the objecting party to meet such evidence.

9. Trial briefs. The Board in its discretion may order the submission of trial briefs prior to assignment of a case for oral hearing.

10. Motions to dismiss. Defenses which go to the jurisdiction of the Board may be raised by motion. Filing of motions to dismiss for lack of jurisdiction shall not be unreasonably delayed. The Board, however, has the right at any time to recognize its lack of authority to proceed in a particular case. Motions to dismiss for lack of jurisdiction shall, on application of either party, be heard and determined before oral hearing on the merits unless the Board orders that determination of the motion be deferred pending oral hearing on both the merits and the motion.

11. Failure to state a case. In the event, after completion of the pleadings, the Board finds that appellant has failed to state a case on which any relief could be granted by the Board, the Board may give notice to appellant to show cause why the appeal should not be dismissed on the ground that no useful purpose would be served by setting the case for oral hearing on the merits. Appellant, in such event, will be afforded the opportunity to be heard orally for the purpose of showing cause why the appeal should not be dismissed on that ground, and if appellant so desires to move to amend the complaint, within the proper scope of the appeal. If the Board thereafter finds appellant has failed to show cause, and finds that the complaint, with such amendments as may be offered by appellant, fails to state a case on which the Board could grant relief, the appeal shall be dismissed.

12. Depositions. Depositions which a party desires to take for the purpose of offering in evidence shall be taken in accordance with the procedure set forth in Appendix to the rules.

13. Interrogatories to parties; inspection of documents; admission of facts. Under appropriate circumstances, but not as a matter of course, the Board will entertain applications for permission to serve written interrogatories upon the opposing party, applications for an order to produce and permit the inspection of designated documents, and applications for permission to serve upon the opposing party a request for the admission of specified facts. Such applications shall be received and approved only to the extent and upon such terms as the Board in its discretion considers to be consistent with the objectives of securing just and inexpensive determination of appeals without unnecessary delay, and essential to the proper pursuit of that objective in the particular case.

14. Prehearing conferences. In any case the Board in its discretion, upon its own initiative or upon the application of one of the parties, may call upon the parties or their attorneys or representatives to appear before a member or examiner of the Board for a conference to consider:

- (1) The simplification of the issues.
- (2) The necessity or desirability of amendments to the pleadings;
- (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (4) The limitation of the number of expert witnesses;
- (5) Such other matters as may aid in the disposition of the appeal.

The presiding member or examiner, at the conclusion of such a conference, shall make such order as in his discretion is found to be appropriate with reference to action taken at the conference, amendments allowed or to be made to the pleadings, agreements made by the parties as to any of the matters considered, and limitation of issues for trial.

15. Service of papers. Service of papers in all proceedings pending before the Board may be made personally, or by mailing the same in a sealed envelope, certified, return receipt requested, with postage prepaid, addressed to the party upon whom service shall be made, and the date of the certified receipt shall be the date of service. Waiver of the service of any papers may be noted thereon or on a copy thereof, or on a separate paper, signed by the parties or their attorneys and filed with the Board. When any party has appeared by attorney, service upon the attorney will be deemed proper service upon such party.

Hearing

16. Where and when held. (a) Hearings will be held at the office of the Board in Washington, D.C., unless it is otherwise ordered by the Board. Hearings will not ordinarily be held elsewhere, but if a request therefor is seasonably made and good cause therefor appears, the Board may order a hearing to be held at another location. (For hearings under the **Optional Accelerated Procedure**, see Rule 31.)

(b) Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals and other factors. However, on request or motion of either party the Board, in its discretion, may advance the hearing for good cause shown.

17. Notice of hearings. Appellant and Government counsel shall be given at least 15 days' notice of the time and place of hearing.

18. Submission without a hearing. If either party does not wish to appear or be represented at a hearing, the Board shall be so advised. A party who so advises the Board may submit a brief within 20 days after the date assigned for the hearing, or within such other period of time as may be allowed by the Board. If both parties advise the Board that an oral hearing is not desired, briefs may be submitted by the parties within such period of time as may be allowed by the Board. (For submission on the record under the **Optional Accelerated Procedure** see Rule 31.)

19. Absence of parties or counsel. The unexcused absence of a party or his authorized representative at the time and place set for the hearing will not be the occasion for delay. In such event the hearing will proceed and the case will be regarded as submitted by the absent party.

20. Nature of hearings. Hearings shall be as informal as may be reasonably allowable and appropriate under all the circumstances. Appellant and Government counsel may offer at a hearing on the merits such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the exercise of reasonable discretion by the presiding member or examiner in supervising the extent and manner of presentation of such evidence. Letters or copies thereof, affidavits, or other evidence, not ordinarily admissible under the generally accepted rules of evidence, may be received in evidence at the discretion of the presiding member or examiner. The weight to be attached to evidence presented in any particular form will be determined by the Board in the exercise of reasonable discretion under all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be regarded and used in evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may, however, in any case, require additional evidence.

21. Examination of witnesses. Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated or the Board member or examiner shall otherwise order. If the testimony of a witness is not given under oath the Board may, if it seems expedient, warn the witness that his statements may be subject to the provisions of Title 18, United States Code, sections 287, 1001; section 19 of the Contract Settlement Act of 1944 (41 U.S.C. 119), and any other provisions of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

22. Copies of papers. When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

23. Briefs. All briefs shall be filed within 20 days after conclusion of the hearing, or within such other period of time as may be allowed by the Board.

24. Transcript of proceedings. Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders except that under the **Optional Accelerated Procedure** the stenographic record will not be transcribed unless requested by either of the parties. Transcripts of the proceeding shall be supplied to the parties at such rates as may be fixed by contract between the Board and the reporter. If the proceedings are reported by an employee of the Government, the appellant may receive transcripts upon payment to the Government at the same rates as those set by contract between the Board and the independent reporter.

25. Withdrawal of exhibits. After a decision has become final the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

Representation

26. The contractor. An individual appellant may appear before the Board in person, a corporation by an officer thereof, a partnership or joint venture by a member thereof, or by an attorney at law duly licensed in any State, Commonwealth, Territory, or in the District of Columbia. The Board may authorize a contractor to appear by a duly authorized representative other than those mentioned in a special case, but for the purposes of that case only.

27. Status of Government counsel. Government counsel designated by the various departments to represent the departments, agencies, and bureaus cognizant of the disputes brought before the Board may in accordance with their authority represent the interests of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or his attorney in the form specified by the Board from time to time. Government counsel may, when it appears to them that there are questions of fact as to which there is no substantial controversy, agree with appellant or his attorney as to such facts by written stipulation or otherwise. Whenever at any time it appears that appellant and Government counsel are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal in order to permit reconsideration by the contracting officer: *provided, however,* that if the Board is advised thereafter by either party that the controversy has not been disposed of by agreement the case shall be restored to the Board's calendar for hearing without loss of position.

Decisions

28. (a) Decisions of the Board will be made in writing and authenticated copies thereof will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions (except those required for good cause to be held confidential and not cited as precedents) shall be available to public inspection at the offices of the Board in Washington, D.C.

(b) Under the **Optional Accelerated Procedure** the decision shall be as brief as the circumstances permit and will ordinarily state only a summary of the facts and issues and the conclusions of the Board member. Such decision will not be published or distributed except to the parties and will not be regarded or cited as precedent for future cases. The Board member will also prepare a written memorandum of the basis for his decision which will not be published or distributed. Such memorandum will be available for examination by the parties.

Motions for Reconsideration

29. A motion for reconsideration, if filed by either party, shall set forth specifically the ground or grounds relied upon to sustain the motion, and shall

be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

Definitions

30. (a) As used in these rules the term "contracting officer" includes any officer or other authority whose decision may be reviewed by the Board pursuant to the Board's charter.

(b) As used in these rules the term "Board" means the full Board, president of the Board, panel, chairman of a panel, member, or examiner, as may be appropriate, except that in Rule 11 the term "Board" refers to action of the Board by written decision in accordance with the procedures set forth in the Board's charter.

31. Optional accelerated procedure for cases involving \$5,000 in amount or less. An appeal involving \$5,000 in amount or less shall be processed under this rule at the request of the appellant, subject to the concurrence of the Department concerned. Under this rule:

(a) The appeal will be decided by a single member of the Board, designated by the chairman of the panel concerned, who shall have for this purpose all the authority and power of the full Board to hear, consider, determine and reconsider the matter, subject to such concurrence by a division or panel as the Department concerned may direct.

(b) The appeal shall be deemed submitted for decision on the record unless the appellant or the Government, within 10 days after receipt of the Government's answer by the appellant, requests the Board to schedule an oral hearing.

(c) Such oral hearing shall be fixed at such time and place as shall be agreeable to the parties and to the chairman of the panel concerned, taking into consideration any request therefor of the appellant.

(d) For the purpose of this rule, the amount involved in an appeal shall be the difference between the amount of the appellant's claim as stated in his complaint and the amount, if any, determined by the decision from which the appeal is taken.

(e) If the Board member assigned to the case under this rule determines that the amount involved exceeds or may exceed \$5,000, the parties shall be so informed, and the appeal shall be disposed of in accordance with Rules 2-30, inclusive. The determination so made shall be final and conclusive.

Effective Date and Applicability

32. These revised rules shall take effect on the first day of the second month following the month in which they are approved by the cognizant Assistant Secretaries of the Department of the Army, Department of the Navy and the Department of the Air Force. Except as otherwise directed by the

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Board, these rules shall not apply to appeals which have been docketed prior to their effective date.

Approved this 31st day of December 1958.

F. H. HIGGINS

Assistant Secretary of the Army (Logistics)

F. A. BANTZ

Assistant Secretary of the Navy (Material)

DUDLEY C. SHARP

Assistant Secretary of the Air Force (Material)

Depositions

1. When Depositions May Be Taken. After an appeal has been docketed by the Board either party may take the testimony of any person by deposition upon oral examination or written interrogatories for use as evidence in the appeal proceedings.

2. Before Whom Taken. Depositions to be offered in evidence before the Board may be taken before and authenticated by any person authorized by the laws of the United States, or by the laws of the place where the deposition is taken, to administer oaths.

3. Written Interrogatories. (a) A party desiring to take the deposition of any person upon written interrogatories shall serve them upon the opposite party with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the person before whom the deposition is to be taken. Within 15 days thereafter the party so served may serve cross interrogatories upon the party proposing to take the deposition.

(b) A copy of the notice and copies of all interrogatories served shall be delivered by the party taking the deposition to the person designated in the notice who should proceed promptly to take the testimony of the witness in response to the interrogatories.

4. Oral Interrogatories. When either party desires to take the testimony of any person by deposition upon oral examination, unless the parties stipulate as to the time and place where the deposition is to be taken and the name of the person before whom it is to be taken and the name and address of the witness, such party shall give the opposite party at least 15 days' written notice of the time and place where such deposition will be taken and the name and address and official title of the person before whom it is proposed to take the deposition, and the name and address of the witness.

5. Form and Return of Deposition. Each deposition should show the docket number and the caption of the proceedings, the place and date of taking, the name of the witness, and the names of all persons present. The persons taking the deposition shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness, and shall enclose the original deposition and exhibits in a sealed packet with postage and other transportation prepaid and forward same to the Recorder, Armed Services Board of Contract Appeals.

6. Introduction in Evidence. Either party to the appeal may offer depositions in evidence. The entire deposition must be offered unless otherwise stipulated by the parties or directed by the Board.

APPEN.
B

APPENDIX B

MANUAL FOR CONTROL OF GOVERNMENT PROPERTY IN
POSSESSION OF CONTRACTORS

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APPENDIX B

MANUAL FOR CONTROL OF GOVERNMENT PROPERTY IN
POSSESSION OF CONTRACTORS

Part I—Introduction

B-101 Scope of Manual. This Manual sets forth basic requirements to be observed by the Military Departments, for establishing and maintaining control over Government property furnished to or acquired by contractors pursuant to the terms of their contracts.

B-102 Applicability of Manual. This Manual applies to all types of contracts, leases and bailments pursuant to which Government property is furnished to or acquired by a contractor.

B-103 Definitions. As used in this Manual, the following terms have the meanings shown.

B-103.1 Contract administrator means the individual duly designated by appropriate authority in the Military Departments to administer the contract. In the case of the Army, Air Force, and the Defense Supply Agency, usually this is a contracting officer; and in the Navy, usually this is the authorized representative of the contracting officer having administrative cognizance over the contract.

B-103.2 Property administrator means the Government representative responsible to the contract administrator for:

- (i) reviewing and approving the contractor's property control procedures;
- (ii) examining the records maintained by the contractor of Government property;
- (iii) making usage analyses of Government property; and
- (iv) the maintenance of such Government property records as are required by this Manual.

B-103.3 Government property means all property owned by or leased to the Government, or acquired by the Government under the terms of a contract; except that property to which the Government has acquired a lien or title solely as a result of partial, advance or progress payments shall not for the purpose of this Manual be classified as Government property. With this exception, Government property includes both Government-furnished property and contract-acquired property, as defined below:

- (i) *Government-furnished property* is property in the possession of or acquired directly by the Government and subsequently delivered or otherwise made available to the contractor; and
- (ii) *Contractor-acquired property* is property procured or otherwise provided by the contractor for the performance of a contract, pursuant to the terms of which title is vested in the Government. The term "provide," as used in the context of such phrases as "Government property provided to the contractor" and "Government-provided property," is intended to include both Government-furnished property and contractor-acquired property.

B-103.4 Industrial facility means property, other than material and special tooling, of use for the performance of a contract or subcontract, including real property and rights therein, buildings, structures, improvements, and plant equipment.

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B-103.5 *Industrial property*, as distinguished from military property, means any contractor-acquired or Government-furnished property, including materials, special tooling, and industrial facilities furnished or acquired in the performance of a contract or subcontract.

B-103.6 *Real property*, for purposes of accounting classification, means (i) land and rights therein, (ii) utility distribution systems, and (iii) buildings, structures, and improvements thereto, excluding plant equipment.

B-103.7 *Utility distribution system* means a system (including distribution and transmission lines, substations, and installed equipment forming an integral part of the system), by which gas, water, steam, electricity, sewerage, or other utility services are transmitted between (i) the outside of the building or structure in which the services are used, and (ii) the point of origin or disposal, or the connection with some other system. For the purpose of this Manual it does not include communication services.

B-103.8 *Plant equipment* means personal property of a capital nature (consisting of machinery, equipment, furniture, vehicles, machine tools, and accessory and auxiliary items, but excluding special tooling) used or capable of use in the manufacture of supplies or in the performance of services or for any administrative or general plant purpose.

B-103.9 *Minor plant equipment* means an item of plant equipment having a unit value of less than \$200 and other plant equipment, regardless of cost, when so designated by the Government.

B-103.10 *Production equipment* means those items of plant equipment located within a manufacturing, processing, assembly or service establishment and used for cutting, abrading, grinding, shaping, forming, joining, measuring, testing, heating or treating production materials or work in process.

B-103.11 *Machine tools* mean those items of production equipment which are power-driven, nonportable machines used for cutting, abrading, grinding, shaping or forming metal.

B-103.12 *Accessory item* means an item which facilitates or enhances the operation of plant equipment but which is not essential for its operation, such as remote control devices.

B-103.13 *Auxiliary item* means an item without which the basic unit of plant equipment cannot operate, such as motors for pumps and machine tools.

B-103.14 *Special tooling* means all jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, other special equipment and manufacturing aids, and replacements thereof, acquired or manufactured by the contractor for use in the performance of a contract, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of such supplies or parts thereof, or the performance of such services, as are peculiar to the needs of the Government. The term does not include: (i) items of tooling or equipment acquired by the contractor prior to the contract, or replacements thereof, whether or not altered or adapted for use in the performance of the contract, (ii) consumable small tools, or (iii) general or special machine tools, or similar capital items.

B-103.15 *Material* means property which may be incorporated into or attached to an end item to be delivered under a contract or which may be consumed or expended in the performance of a contract. It includes, but is not

limited to, raw and processed material, parts, components, assemblies, and small tools and supplies which may be consumed in normal use in the performance of the contract.

B-103.16 *Salvage* means property recoverable for further use or which because of its worn, damaged, deteriorated, or incomplete condition, or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs or alterations but which has some value in excess of its scrap value.

B-103.17 *Scrap* means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

B-103.18 *Property account* means the official records of the Government property provided to a contractor by a Department, which are established and maintained under the provisions of this Manual. Separate property accounts will be maintained either on an individual contract basis or contractor basis.

B-103.19 *Stock record* means a perpetual inventory form of record which shows, by nomenclature, the quantities received and issued, and the balances on hand.

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B-200 Scope of Part. This Part sets forth (i) the duties and responsibilities of Government representatives and contractors charged with the control of Government property, (ii) the sources from which Government property may be received or acquired, and (iii) the manner in which Government property will be controlled, both physically and administratively.

B-201 Duties and Responsibilities of the Contract Administrator with Respect to the Control of Government Property.

(a) The function of the contract administrator with respect to the control of Government property is to insure that the contractor complies with the provisions of the contract and this Manual pertaining to Government property and that the Government's interests therein are fully protected at all times. He shall require the contractor to (i) exercise reasonable care and proper usage of all Government property, (ii) establish and maintain adequate records therefor, and (iii) maintain controls that will assure the recording of all debits and credits to the property record as hereinafter defined.

(b) It is incumbent upon the contract administrator to familiarize himself with the provisions of this Manual and the contract involved.

(c) He shall require the contractor to correct all deficiencies in complying with the provisions of the contract and this Manual pertaining to Government property.

(d) He shall take proper action with respect to recommendations of the property administrator relating to usage or control of Government property.

(e) He shall make appropriate written findings with respect to the contractor's liability for Government property lost, damaged, destroyed, or unreasonably consumed in production, as may be required by this Manual.

B-202 Designation of Property Administrator.

(a) A property administrator shall be designated for each Government contract involving Government property. In appropriate cases the contract administrator may be assigned the additional duty of property administrator. An assistant property administrator may be appointed for specific contracts. The property administrator will not be required to post a bond by virtue of the duty as property administrator.

(b) It is the policy of the Department of Defense that a single property administrator shall be designated for all Department of Defense contracts performed at one location by a contractor. Within each Military Department, responsibility for the direction, administration, and review of the property administration interchange program shall be assigned to a single office at the Department level. This office, designated to direct and administer the program, shall have the following responsibilities:

(1) Implementation of pertinent Department of Defense directives, instructions, and regulations.

(2) Review of field contract administration activities for compliance with Department of Defense and Departmental directives pertinent to the property administration interchange program.

(3) Resolution of intra-departmental interchange problems.

(4) Resolution of inter-departmental interchange problems.

(c) Property administration interchange agreements shall be negotiated only by those offices administering current contracts or orders with the

contractors. Property administration interchange agreements shall be effected at the field level between representatives of the procuring activities having contract administration responsibility. In formulating such agreements, the following factors, among others, shall be considered:

(1) Comparative value and types of Government property in the possession of the contractor and the Government property yet to be provided under Government contracts.

(2) Existence of a resident property administrator or accessibility of an itinerant property administrator.

(3) Other contract administration functions which may have a bearing on property administration such as quality control, industrial mobilization planning and audit cognizance.

(d) Based on the above factors, when two or more offices are equally concerned with property administration at a contractor's location, that office which has contracts or orders that indicate the greatest continuous duration of future interest in Government property shall be given primary consideration for property administration cognizance. When all contracts or orders of the Department designated to perform property administration have been completed at a contractor's location, that Department shall cease to have cognizance at that location unless all military contracts providing for Government property are scheduled to expire within a succeeding three-month period. When all contracts or orders of the Department designated to perform property administration have been completed at a contractor's location where other Departments continue to perform contracts or orders which are not scheduled to expire within a succeeding three-month period, property administration cognizance shall be determined by negotiation between those Departments which continue to perform contracts or orders providing for Government property with the suppliers. When a Department that previously had no contracts at a contractor's location at the time the existing property administration interchange agreement was made acquires a contract providing for Government property of greater continuous duration of future interest than those involved in the existing agreement, the cognizance agreement shall be reviewed and either confirmed or revised by a new agreement.

(e) When the Departments are unable to reach property administration interchange agreements, those unresolved property administration assignments shall be referred to the Assistant Secretary of Defense (Supply and Logistics) for resolution.

(f) Property administration functions required by the Armed Services Procurement Regulation will be performed by the designated property administrator who will generally follow his current operating procedures in performing property administration. Each Department will provide the designated property administrator with manuals, instructions, and directives pertaining to reports and documentation required by contractual provisions. Documents and records required by this Appendix B for property administration of current contracts, subcontracts, and purchase orders involving Government property will be provided to the designated property administrator prior to the effective date of an agreement. Copies of such contracts, subcontracts, and purchase orders and amendments thereto or extracts of property provisions thereof will

accompany the transmittal. The name of the individual designated as property administrator for such contracts will be furnished to the procuring activity performing contract administration. New contracts, subcontracts, purchase orders and amendments thereto or extracts of property provisions thereof where Government property is involved will be transmitted to the designated property administrator. Contracts containing the Special Tooling clause (13-504) will likewise be transmitted to the designated property administrator for necessary surveillance.

(g) The designated property administrator may correspond directly with the contractor and appropriate Department of Defense personnel on matters pertaining to Government property. The contract administrator will keep the property administrator informed as to all communications, correspondence, and actions affecting property matters under the assigned contract.

(h) Property administration interchange agreements shall be in the general format shown below. Where required, appendices shall be added thereto.

1. **PURPOSE.** This is a local interchange agreement providing for property administration at the designated contractor's location by (Department-procurement office) in accordance with ASPR B-202.

2. **EFFECTIVE DATE.** This agreement becomes effective on _____.

3. **CONTRACTOR'S LOCATION**

(Identify specific location covered by this agreement)

 (Signatures of authorized representatives of
 Departments concerned)

B-203 Duties and Responsibilities of the Property Administrator.

(a) The property administrator shall familiarize himself with the provisions of this Manual and the contract provisions pertaining to Government property.

(b) He shall, as the authorized representative of the contract administrator or administrators, insure compliance with the contract requirements relative to Government property and insure fulfillment of all obligations imposed by this Manual. He shall at the inception of the contract review and approve in writing the contractor's property control records and procedures.

(c) He shall be responsible for property management data required by contractual provisions and, when acting as property administrator under a property administration interchange agreement, shall also provide the procuring activities concerned with such management data and with information, documents, records, and assistance required by the latter for conformance with the provisions of this Appendix B and/or Departmental procedures, including, but not limited to, those for the following purposes:

- (1) Public vouchers.
- (2) Fulfilling managerial and financial requirements for property report cards.
- (3) Marking and identification of property under Departmental procedures.
- (4) Disposition of excess.
- (5) Approval of the contractor's property control procedures and records.

(6) Relief from responsibility for property loss, damage, unauthorized use, or unreasonable consumption.

(7) Final property clearance.

(d) He shall examine the documents, including but not limited to consumption or usage reports, adjustment reports, reports of spoilage or shrinkage, sales, shipments, transfers, etc., recorded by the contractor in the property account, to the extent necessary to establish the correctness and completeness of such records.

(e) It shall be his responsibility to determine whether the contractor is using Government property for the purposes authorized by the contract, and whether the contractor is exercising the degree of care in the handling of Government property prescribed in the contract.

(f) He shall make usage analyses to determine the reasonableness of the consumption and expenditure of Government property. Control records shall be utilized in the performance of the usage survey and, to the extent necessary, selective physical inspections of Government property shall be made in the appropriate states of production.

(g) He shall periodically examine all property records to determine whether such records reflect the status of Government property and indicate compliance with the provisions of the contract and applicable directives. He shall report promptly in writing to the contract administrator any non-compliance by the contractor with the contract provisions and applicable directives.

(h) He shall advise the contract administrator on all property matters.

B-204 Duties and Responsibilities of the Contractor. The contractor shall be directly responsible for and accountable for all Government property in accordance with the provisions of the contract. The contractor shall maintain and make available such records as are required by Part III of this Manual and must account for all Government property until relieved of responsibility therefor in accordance with the procedures as set forth in Part IV of this Manual. Liability for loss, damage, or excessive use of property in a given instance will necessarily depend upon all the circumstances surrounding the particular case and must be considered and determined in accordance with the provisions of the contract. The contractor shall furnish all necessary data substantiating any request for discharge from responsibility.

B-205 Sources from which Government Property May Be Furnished or Acquired.

B-205.1 *Military Installations or Other Contractors' Plants.* Government property may be shipped to a contractor from military installations or plants of department contractors.

B-205.2 *Direct Purchase by the Contractor.* Direct purchases shall be subject to a determination by the contract administrator that the items are allocable to the contract involved and are reasonably necessary therefor. For purposes of property control within the scope of this Manual, it shall be considered that property purchased by a contractor, for which reimbursement is to be requested, becomes Government property upon its receipt by the contractor. This provision shall not be deemed to alter or modify contractual provisions relating to passage of title.

B-205.3 *Withdrawal From Contractor-Owned Stores.* For purposes of property control, within the scope of this Manual, property withdrawn from contractor-owned stores, for direct charge to the contract, shall be considered Government property at the time of approval of the claim for reimbursement, or at the time of issuance for use of such property for the performance of the contract, whichever is earlier.

B-205.4 *Contract Provisions, Terminations, Contract Changes.* Pursuant to specific contractual provisions, or as a result of termination of a contract, or change orders issued under a contract, the Government may acquire title to property.

B-205.5 *Advance, Progress, or Partial Payments.* Pursuant to the terms of a contract the Government may acquire title to property upon the making of advance, progress or partial payments to the contractor. Property to which the Government has acquired a lien or title solely as a result of partial, advance or progress payments shall not be subject to the provisions of this Manual.

B-206 **Segregation or Commingling of Government Property and Contractor's Property.** Ordinarily Government property, particularly material, will be segregated and kept physically separate from contractor-owned property at all times. There will be occasions, however, where commingling of property would be advantageous to the Government. Commingling may be allowed in the following types of cases:

(a) Where a production line is engaged solely in Government work, contractor and Government special tooling and plant equipment may be commingled. Normally no approval is required for commingling in this category, but the property administrator may prohibit it at his discretion if it is considered not to be in the best interest of the Government.

(b) Where Government-furnished special tooling or plant equipment is held by a contractor in storage, pending its use under a production contract, the property administrator may give permission in writing for commingling with contractor property.

(c) Where approved by the property administrator in connection with research and development contracts.

(d) Any commingling, other than that set forth herein, may be permitted by the property administrator upon the approval of the cognizant Department in accordance with Departmental procedures.

B-207 Physical Inventories.

B-207.1 *Before Termination or Completion.* It shall be the responsibility of the property administrator to review and approve the type and frequency of physical inventories to be taken. In this respect, he may accept and approve in writing the contractor's established procedures if he determines that they adequately protect the interests of the Government and are in conformity with applicable regulations.

B-207.2 *Upon Termination or Completion.* Upon termination or completion of a contract, a physical inventory adequate for disposal purposes shall be required of all Government property applicable to the contract in the custody, control or possession of the contractor.

B-207.3 *Joint Physical Inventories or Selective Examinations under B-207.1 and B-207.2.*

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(a) The property administrator may, at his discretion, require physical inventories to be taken jointly by his designated representatives and the contractor.

(b) In lieu of a joint physical inventory, selective examinations of the inventory being taken by the contractor may be made when the property administrator determines that such procedure is more economical and will adequately protect the interest of the Government. When selective examinations are made they must embrace a representative number of items in the account and must adequately cover, by class and price range, all Government property involved.

B-207.4 *Quantitative and Monetary Control.* As directed or required by proper authority, the contractor's physical inventories shall be prepared on both a quantitative and monetary basis and classified by categories such as material, special tooling, plant equipment, etc.

B-207.5 *Discrepancies.* Any discrepancies disclosed as a result of inventorying will be adjusted in accordance with the provisions of Part III and Part IV of this Manual.

B-301 General.

(a) In order satisfactorily to perform work under a Government contract, a contractor must maintain some form of control records for all Government property, whether furnished to or acquired by a contractor for the account of the Government. It is the Government's policy to designate and use such records as the official contract records, and not to maintain duplicate property control records, other than those required by B-303, and other than industrial facility records. With respect to industrial facilities, additional records shall be maintained by the property administrator or higher headquarters, as may be required by the respective Departments pursuant to B-303.1(c). Exceptions to the above policy may be authorized by the respective Departments in special circumstances, such as where the administrative expense of maintaining Government personnel at the contractor's plant or providing frequent official visits to the plant would exceed the cost of maintaining Government records or otherwise not be in the best interest of the Government.

(b) The contractor's property control records and procedures shall be reviewed and approved in writing by the property administrator at the inception of the contract. Any necessary corrective action will be required of the contractor prior to approval. Such corrective action will normally be effected by the property administrator through mediation with the contractor. Where corrective action would involve substantial increased costs or where agreement as to the corrective action is not reached through mediation, the differences will be referred to the contract administrator.

(c) The contractor's property control system will provide financial accounts for Government-owned industrial facilities in the contractor's possession or control. The system will be subject to internal control standards and be supported by property records for such facilities; in the manner described in B-304.

(d) The official records shall be kept in such condition that at any stage of completion of the work under a contract the status of Government property may be readily ascertained.

(e) Separate property records for each contract are desirable but a consolidated property record may be maintained; *provided*, that the consolidated record provides the information set forth in B-304.

(f) Property records shall be established for any usable components which are permanently removed from items of Government property, as a result of modification, or otherwise.

(g) Special tooling and equipment fabricated from materials which are the property of the Government will be appropriately recorded immediately upon fabrication. Special tooling and equipment fabricated from materials which are the property of the contractor will be appropriately recorded at the time title passes to the Government.

(h) Departmental policies will govern the establishment of monetary levels below which individual item records of plant equipment will not be required.

B-302 Pricing. Property records shall show a unit price for each item.

(a) The unit price of contractor-acquired property shall be determined

in accordance with the system established by the contractor in conformance with sound accounting principles and consistently applied.

(b) The unit price of Government-furnished property shall be determined by the Government and furnished to the contractor.

B-303 Records To Be Maintained by Government Personnel.

B-303.1 *Records of Specific Contracts Where Property Is Involved.*

(a) Where a contract provides for the use of Government property a copy of the contract shall be made available or furnished to the property administrator.

(b) The property administrator shall maintain a record of each contract assigned to him for property administration. That record shall contain the following minimum information:

- (i) Contract number and name of contractor.
- (ii) Type of contract (CPFF, fixed price, research and development, etc.).
- (iii) End item to be produced or services to be performed, and the points of inspection and acceptance.
- (iv) Record of amendments and changes pertaining to Government property.
- (v) Listing and type of all subcontracts which involve Government property.
- (vi) Provisions of contract pertaining to liability of the contractor for loss, damage or improper use of Government property.
- (vii) Record of contract administrators and dates of tenure.
- (viii) Record of property administrators and dates of tenure.
- (ix) Record of plant representatives (or officers-in-charge) and dates of tenure.
- (x) Record of written approval of contractor's property control procedures.
- (xi) Record of deviations granted in property procedures. (The deviations granted shall be in accordance with procedural regulations issued by each Department.)
- (xii) Record of property audits and inspections performed by the responsible agencies in each Department.
- (xiii) Records of property inspections during production and usage analyses performed.
- (xiv) Record of any deficiencies found in property control and the corrective action taken.
- (xv) Interim and final clearance data for Government property.

(c) The contractor shall be required to furnish written receipts for all, or specific classes of Government provided property only in those instances where such action is determined by the property administrator to be essential for maintenance of minimum acceptable property controls. In these instances the property administrator shall maintain for each contract a file of such documents or property record cards. Where such evidence of receipt is required, it shall be provided by the contractor not later than the time he submits his application for payment (public voucher). Otherwise, the property

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administrator shall utilize the contractor's file of documents evidencing receipt and not establish a duplicate file.

(d) The property administrator shall maintain for each contract a file containing copies of all instruments affecting relief from responsibility for Government property.

B-303.2 *Control Records To Be Maintained.* The property administrator shall maintain a system of file control that will permit the ready location of any document that he is required by this section to maintain.

B-303.3 *Record of Completed Products.* The property administrator shall maintain a record of all completed products produced under the contract, based upon authenticated receiving reports or processed vendors' shipping documents, as follows:

(a) When there is no lapse of time between Government inspection and acceptance of the completed products and shipment from the plant site, the records shall, as a minimum, consist of a summarization of quantities accepted and shipped. When end items are accepted by the Government and stored with the contractor the record shall show the quantities stored and location.

(b) Some contracts provide that completed products are to be retained by the contractor for further use under the contract. Upon acceptance of such items they shall be considered to be "Government-furnished property" and shall be recorded as prescribed in B-304.

B-304 **Records To Be Maintained by the Contractor.** It is the contractor's responsibility (i) to maintain adequate control records in accordance with the requirements of this Manual of all Government property provided under a contract, including property provided under such contract as may be in the possession or control of a subcontractor, and to establish separate property accounts to be located at the subcontractor's plant and at the contractor's secondary site when so requested by the property administrator.

B-304.1 *Records of Material.* All Government material furnished to the contractor, as well as all other material, title to which has passed to the Government, by reason of allocation from contractor-owned stores, or by reason of purchase by the contractor for direct charge to a Government contract, or otherwise, shall be recorded in accordance with the contractor's property control system, as follows:

(a) *Contractor's Property Control System.* Except as provided in (d) below, the contractor's property control system shall be such as to provide the following information:

- (i) Contract number.
- (ii) Nomenclature or description of item.
- (iii) Quantity received.
- (iv) Quantity issued.
- (v) Balance on hand.
- (vi) Posting reference.
- (vii) Date received or issued.
- (viii) Unit price.
- (ix) Location.
- (x) Disposition action taken.

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(b) *Consolidated Stock Record.* Where a contractor has more than one Government contract, under which Government property is provided, a consolidated record for materials may be authorized, *provided* the total quantity of any item is allocated to each contract by contract number and each requisition of property from contractor-owned stores is charged to the contract on which the property is to be used. The supporting document or issue slip shall show the contract number or equivalent code designation to which the issue is charged.

(c) *Custodial Records.* Custodial records shall be maintained for tool crib items, guard force items, protective clothing and other items issued for the use of individuals in the performance of their work under the contract.

(d) *Use of Receipt and Issue Documents.* Based on a determination of the property administrator in accordance with B-301(b), the contractor may maintain in lieu of "stock records" a file of appropriately cross-referenced documents representing receipt, issue, and adjustments of Government-provided material in performance of a Government contract. Such determination shall be consistent with generally accepted accounting practices and a low frequency of receipt and issue of the items of material specified (*i.e.* usually issued directly upon receipt). Accordingly:

- (i) The property administrator may authorize this method of property control for Government-provided material, including but not limited to items used in manufacturing or maintenance, office supplies, etc.; and
- (ii) This method of property control may be used for research and development contracts.

B-304.2 *Records of Special Tooling.* The Contractor's property control system shall be such as to provide the following minimum information regarding each item of Government-owned special tooling:

- (i) Contract number or equivalent code designation.
- (ii) Nomenclature or description of item.
- (iii) Identification number and item on which used.
- (iv) Quantity received or fabricated.
- (v) Voucher reference.
- (vi) Location.
- (vii) Disposition action taken.
- (viii) Unit price or group price.

B-304.3 *Records of Plant Equipment.*

(a) Plant equipment shall be accounted for by individual item except as provided in subparagraphs below. Records of plant equipment will be maintained on DD Form 1342 shown in Exhibit A. Blank forms will be furnished the contractor by the property administrator and will be used to reflect all Government-provided plant equipment received, altered or shipped by, the contractor on and after 1 July 1961. The forms will be completed by the contractor, showing as a minimum the information specified in instructions furnished to the contractor by the property administrator. After completion, the original copy of the form will be retained by the contractor as part of the official property records of the contract under this paragraph 304; the balance of the copies will be delivered to the property administrator for distribution in accordance with the above instructions.

(b) *Record of Accessory and Auxiliary Equipment.* Individual records for accessory and auxiliary equipment which is attached to or otherwise a part of an item of plant equipment and which is required for its normal operation need not be maintained, but the description of such accessory and auxiliary equipment shall be entered on the respective plant equipment records.

(c) *Record of Manufacturing Systems.* Where plant equipment and accessory type items are assembled and interconnected to form a single operating unit designed to perform continuously the same manufacturing process, such equipment may, for property and inventory control purposes, be grouped and reported as a single item of plant equipment on one plant equipment record in lieu of an individual record for each component comprising the item of plant equipment. This does not preclude the requirement for completely describing the component items nor does it preclude the use of more than one plant equipment record when additional space is required.

(d) *Record of Minor Plant Equipment.* Summary stock records, rather than individual item records, shall be maintained for minor plant equipment, except in cases where individual item records are necessary for effective control.

(e) *Record of Plant Equipment Costing Between \$200 and \$500.* Summary stock records, rather than individual item records, shall be maintained for plant and production equipment costing between \$200 and \$500, except in cases where individual item records are necessary for effective control.

B-304.4 *Records of Real Property.* Records of real property shall consist of maps, drawings, plans and specifications supplemented, where necessary, to reflect building installations such as heating, electrical, sanitary, ventilating, drainage, sprinkler systems, etc. Appropriate changes will be made to the records to reflect alterations, additions, or extensions to real property. Where the maps, drawings, plans, and specifications do not adequately reflect descriptive data as to building installations, supplemental records will be maintained. The foregoing records (i) will be complete, (ii) will show the original cost of the property and improvements, and the cost of changes and additions thereto, and (iii) will be appropriately indexed.

B-304.5 *Records of Scrap.* The contractor shall maintain separate or consolidated records of all scrap or salvage generated. These records may be in accordance with the contractor's system of scrap or salvage control, if approved in writing by the property administrator, who shall take into consideration the need for protecting the Government's interest in the proration, disposition and allocation of proceeds resulting therefrom.

B-304.6 *Records of Related Data and Information.* Except as provided in this subparagraph, the requirements of this Manual are not applicable to manufacturing or assembly drawings, installation, operation, repair or maintenance instructions, or other similar data and information furnished by the Government to the contractor. The contractor shall maintain property control and

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accountability with respect to such Government-furnished property in accordance with sound industrial practice.

B-304.7 *Financial Control Accounts.* The contractor's property control system should be such as to provide annually, or not more often than quarterly if required in accordance with Departmental procedures, the dollar amounts of Government-owned industrial facilities in the following classifications:

- (i) land and rights therein,
- (ii) utility distribution systems,
- (iii) buildings, structures and improvements thereto, excluding plant equipment,
- (iv) plant equipment, excluding production equipment and minor plant equipment, and
- (v) production equipment.

The contractor's accounts will be susceptible to local reconciliation in total and subtotals as to whether contractor-acquired or Government-furnished.

B-305 *Numbering Property Accounts.* A property account, consisting of records maintained either by a contractor or Government personnel, shall be assigned a property account number.

Part IV—Miscellaneous Provisions

B-401 Identification. All Government property shall be recorded and identified as such by the contractor promptly upon receipt, and it shall remain so identified so long as it remains in the custody, control or possession of the contractor.

(a) *Extent of Identification.*

(1) As a general rule, all Government material and minor plant equipment shall be identified as Government property except in those cases where:

- (i) no materials or minor plant equipment of the same type at the same location are owned by the contractor, his employees, or other contracting agencies;
- (ii) adequate physical control is maintained over tool-crib items, guard force items, protective clothing and other items issued for use by individuals in the performance of their work under the contract;
- (iii) property is of bulk type or by its general nature of packing or handling precludes adequate marking, as may be determined by the property administrator; and
- (iv) where property is commingled, as authorized by E-206 hereof.

(2) Government-owned special tooling shall be marked with the designation of the Military Department responsible for funding and control of such tooling, as follows: Army—"USA", Navy—"USN", Air Force—"USAF", and Defense Supply Agency—"USD", unless it is determined that such marking will damage the special tooling or is otherwise impracticable. Marking and identification procedures may be expanded by the Department having cognizance over the tooling to include end item reference, drawing number, and such other information as may be desired in a given case.

(3) Unless already marked in accordance with these instructions, all Government-owned plant equipment, including industrial reserve plant equipment, shall be marked by the contractor with an identification number, except minor plant equipment; or when the size of the equipment or nature of the material for which it is made makes it impracticable, and in which case such item will be assigned an identification number for record purposes, which number shall be shown in the plant equipment property records; or the equipment is accessory or auxiliary and attached to or otherwise a part of an item of plant equipment and is required for its normal operation (see B-304.3(a)), in which case such item shall be entered and described on the record of the equipment to which it is attached or of which it is otherwise a part. Once an identification number has been affixed to an item of plant equipment, the identification will be permanent and will not be changed so long as the equipment remains under the control of the same Military Department (but see (4) below). Identification shall be effected by affixing a metal, fibre, plastic or other plate directly to the equipment; by using indelible ink, acid or electric etch, steel dies, or any other legible, permanent, conspicuous, and tamper-proof method. Identification shall consist of the following markings:

PROPERTY IN POSSESSION OF CONTRACTORS

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- (i) An indication of Government-ownership and of the Military Department responsible for funding and control of the plant equipment, as follows: Army—"USA", Navy—"USN", Air Force—"USAF", and Defense Supply Agency—"USD"; however, the identification "U.S." property shall not be changed solely to conform to the provisions of this paragraph.
 - (ii) A two-part identification number, furnished by the Government, consisting solely of numerals except as provided in (iii) below. The first part shall be the property account number, and the second part shall be a serial number. In case plant equipment furnished by the Government is already identified as property of a Military Department, no change shall be made in the markings, except as provided in (4) below.
 - (iii) In the case of items included within a standard Departmental registration system, for example, automotive, construction, or weight-handling equipment, application for a proper registration number will be made to the cognizant Department, which number shall be used in lieu of any other identification number.
- (4) Government identification markings shall be removed prior to sale or scrapping. The markings so removed shall be shown on the appropriate documents involved. In the case of a transfer of funding and control responsibilities to other Military Departments, new identification markings, in accordance with the requirements of (2) or (3) above, may be affixed upon receipt of the equipment by the receiving Military Department.
- (b) *Recording Identification Numbers.* Assigned property identification numbers will be recorded on all applicable receiving documents, shipping documents, and other documents pertaining to the property accounts.

B-402 Contractor's Responsibility and Liability.

B-402.1 Contractor's Responsibility. A contractor shall be responsible for

all Government property in his custody or control in accordance with the terms of the contract. The contractor may be relieved of responsibility for Government property by any of the following methods, subject in any case to specific contract provisions or specific instructions of the contract administrator within the scope of the contract:

- (i) *Consumption of Property in the Performance of the Contract.* To the extent that the property administrator determines that property has been consumed or expended for proper purposes and in reasonable amounts in the performance of the contract, the contractor shall be relieved of responsibility for such property.
- (ii) *Retention by the Contractor.* This may occur when the contract is completed, terminated or otherwise amended during the performance of the contract. The contractor shall be relieved of responsibility for all property which has been retained by the contractor; *provided*, that the Government shall have approved the retention and shall have been reimbursed therefor in accordance with the terms of the contract or applicable regulations.
- (iii) *Sale of Property.* The contractor shall be relieved of responsibility for Government property sold pursuant to the instructions of the contract administrator, in accordance with applicable regulations; *provided*, however, that the proceeds from such sale shall have been received by or credited to the Government.
- (iv) *Shipment of Government Property from a Contractor's Plant.* The contractor shall be relieved of responsibility when Government property is shipped from the contractor's plant pursuant to the instructions of the contract administrator.
- (v) *Written Advice of Contract Administrator.* The contractor shall be relieved of responsibility for Government property lost, damaged, destroyed, or consumed, in excess of that normally anticipated in the manufacturing or processing operation as the result of appropriate action by the contract administrator to determine the liability of the contractor, *provided* such determination is furnished to the contractor in writing and the Government shall have been adequately reimbursed when appropriate.

B-402.2 *Contractor's Liability.* Subject to the terms of the contract, the contractor may be liable when shortages of Government property are disclosed or when Government property is lost, damaged, or destroyed, or when there is evidence of unreasonable use or consumption of Government property as measured by the allowances provided for by the terms of the contract or the appropriate bill of materials.

(a) The property administrator will require the contractor to report to him, all cases of loss, damage, or destruction of Government property in his possession, as soon as such fact becomes known. The property administrator will forward such report to the contract administrator, together with his own report of the facts of the case and his recommendations thereon. If the contract administrator is the contracting officer, or a designated representative of the contracting officer for that purpose, he will thereupon determine the contractor's liability in accordance with the terms of the contract; otherwise he will forward the papers to the contracting officer, who will make such determination.

In making any such determination, consideration will be given to the reports and recommendations submitted and to any additional facts which the contractor may submit. The contractor and the property administrator shall be furnished with a written copy of such determination. A copy shall be held in the files of the contract administrator.

(b) When inventory adjustments or usage analyses disclose consumption of property which is considered unreasonable by the property administrator, or when instances of losses, damages to, or destruction of Government property, which have not been reported by the contractor, are discovered by the property administrator, he shall prepare a statement of the items and amount of loss involved. This statement shall be furnished the contractor for investigation and written justification. Further procedure shall be in accordance with that prescribed in subparagraph (a) above.

(c) When completed products or end items are lost, destroyed, or damaged beyond repair while such property is in the physical possession or control of the contractor, the action prescribed in subparagraph (a) above will be required.

(d) Where it has been determined that the contractor is liable to the Government by reason of the loss, damage or destruction of Government property, a letter of advice from the contract administrator shall be considered a valid credit to the official Government property records, *provided*:

- (i) when the contractor pays by check, the letter of advice will identify the check received by number, date and amount;
- (ii) when settlement is made by offset against amounts due the contractor on a public voucher, the letter of advice will cite the actual voucher (Form 1034) on which the deduction is made; and
- (iii) when collection of the claim against the contractor is to be made by the fiscal office designated for the contract, the letter of advice will have attached thereto a copy of the document used by the contract administrator to notify the fiscal office to effect collection.

(e) When property is rendered unserviceable by damages thereto, the letter of advice from the contract administrator will be considered a valid credit to the Government property account when supported by or appropriately cross-referenced to shipping documents or listing covering proper disposition of the unserviceable items.

B-402.3 *Shipment and Receipt of Government-Furnished Property.* In the case of Government property shipped to a contractor's plant from a military installation or from another contractor's plant, the contractor becomes responsible therefor upon delivery of the property to his plant. The shipping activity shall furnish the property administrator, who is responsible for the receiving contractor's property account, with copies of the documents necessary to permit the property account to reflect the transaction. On receipt of the property the contractor, where required, shall furnish the property administrator with documented evidence of such receipt. The property administrator shall take the action necessary to insure that his records of these transactions are complete. (See B-203 and B-204.)

B-403 Control of Scrap and Salvage.

B-403.1 *Sources.* Scrap originating from Government property includes, but is not limited to, the following:

- (i) cutting and processing waste, such as chips, cuttings, borings,

- turnings, short ends, circles, trimmings, clippings, and remnants;
- (ii) spoiled partially manufactured materials, parts and assemblies, including parts and assemblies damaged in handling or installation;
 - (iii) materials and supplies and small tools and special equipment, when worn out or damaged beyond repair, used packaging materials, and nonreusable containers; and
 - (iv) unusable materials generated in the performance of overhaul or conversion contracts.

B-403.2 *Salvage.* A salvage procedure shall be established by the contractor whereby all Government property that can be salvaged shall be recovered and returned to Government stock.

B-403.3 *Approval of Scrap Procedure by the Property Administrator.* The property administrator shall review and approve the contractor's procedures relating to the physical control of scrap and records relating thereto. The property administrator shall periodically assure by actual inspection and selective examinations that the approved procedures are effectively carried out. If the property administrator determines that corrective measures are necessary to protect the Government's interest, he shall so advise the contractor and the contractor shall take necessary corrective action. Where corrective action would involve substantial increased costs or where agreement as to the corrective action is not reached through mediation, the differences will be referred to the contractor administrator.

B-403.4 *Minimum Essential Requirements of Contractor's Scrap Procedures.* The contractor's scrap procedures must include the following:

- (i) appropriate inspection and study to determine the possibility of reworking or converting for use the scrap resulting from operations under the contract;
- (ii) prompt accumulation of all scrap generated and storage thereof under adequate protection;
- (iii) recording the scrap data on appropriate records to provide the basis for control by weight or other unit of measure;
- (iv) sorting of scrap, including the segregation of the various metals to prevent contamination; and
- (v) recording of scrap shipments out of the plant.

B-403.5 *Segregation of Scrap and Salvage.* Where the contractor is engaged in work involving both Government-owned and contractor-owned materials from which scrap of a uniform nature is produced, the physical segregation of Government-owned and contractor-owned scrap and salvage may be impracticable. In such cases, the contract administrator shall require proration of such basis as will result in equitable recovery by the Government.

B-404 *Auditing Property Accounts.* Records of Government property shall be audited by the Departments as frequently as conditions warrant. Any such audit or audits may take place at any time during the performance of the contract, upon completion or termination of the contract, or at any time thereafter. These audits will include records maintained by the contractor and such records as may be maintained by Government personnel in connection with such property. The property administrator and the contractor shall make all property records, including correspondence related thereto available to the auditors.

[Next page is B23]

MISCELLANEOUS PROVISIONS

DOD PROPERTY RECORD <input type="checkbox"/> INVENTORY <input type="checkbox"/> CHANGE <input type="checkbox"/> CODE REQUEST			Form Approved Budget Bureau No. 22-R209		REPORT CONTROL SYMBOL		NAME OF ITEM		
SECTION I - INVENTORY CODES									
1. COMMODITY CODE: (1) CC		<input type="checkbox"/> PEC <input type="checkbox"/> SCC		2. MODEL CODE		3. MANUFACTURER'S CODE		4. TYPE	
5. IDENTIFICATION NUMBER									
6. MANUFACTURER (Name, city, and state)									
(1) FSN									
7. POSSESSION CODE (30)			8. PRESENT LOCATION			9. YEAR OF MFR (42)		10. OPER POWER CODE (44)	11. SVC CODE (46)
12. ACQUISITION COST (No cents) (48)			13. MANUFACTURER'S SERIAL NUMBER (54)			14. STATUS CODE (68)	15. CONDITION (70)	16. INSPEC-TION (71)	
17. DEPARTMENTAL USE (72)									
SECTION II - INVENTORY DATA									
18. DESCRIPTION AND CAPACITY									
19. MANUFACTURER'S DESIGNATION									
20. CONTRACT NUMBER						21. END ITEM			
22. ADMINISTERING OFFICE		23. DIMENSIONAL DATA				24. ASOD NO.		25. DATE ASOD APPROVED	
		LENGTH	WIDTH	HEIGHT	SQUARE FEET	WEIGHT			
SECTION III - ACQUISITION AND TRANSFER									
26. AUTHORITY FOR ACQUISITION OR TRANSFER AND DATE					27. CONTRACT FOR PURCHASE AND DATE			28. <input type="checkbox"/> NEW <input type="checkbox"/> USED	
29. CONSIGNOR					30. CONSIGNEE				
31. CONSIGNOR VOUCHER NUMBER AND DATE					32. CONSIGNEE VOUCHER NUMBER AND DATE				
33. ACCOUNT NUMBER					34. DATE RECEIVED				
35. COST INCREASE					36. COST DECREASE				
SECTION IV - DISPOSITION DATA									
37. CONSIGNEE (Name and address)					38. DISPOSAL AUTHORITY AND DATE				
39. TYPE OF DISPOSITION AND PROCEEDS									
<input type="checkbox"/> DONATION <input type="checkbox"/> SALE <input type="checkbox"/> DESTRUCTION <input type="checkbox"/> ABANDONMENT <input type="checkbox"/> \$									
40. VOUCHER NUMBER AND DATE					41. TITLE TRANSFER DATE				
SECTION V - ELECTRICAL CHARACTERISTICS									
QUANTITY	HORSE-POWER	VOLTS	PHASE	CYCLE	AC	DC	SPEED	TYPE AND FRAME NUMBER	

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Exhibit A

PROPERTY IN POSSESSION OF CONTRACTORS

SECTION VI - PLANNING DATA			
43. NAME AND ADDRESS OF PRIME CONTRACTOR		44. NAME AND ADDRESS OF SUB-CONTRACTOR	
45. PLANNED ADMINISTERING OFFICE		46. PROCUREMENT CONTROL CENTER	
SECTION VII - CHANGE PROCEDURE			
47. SERVICE CODE	48. ITEM NAME	49. POSSESSOR OF ITEM AND CODE (Name and address)	
50. COMMODITY CODE		51. GOVERNMENT TAG NUMBER	
52. ORIGINATOR OF CHANGE AND CODE (Name and address)			
ITEM NUMBER	CHANGE FROM	CHANGE TO	REMARKS
SECTION VIII - REMARKS			
<input type="checkbox"/> CONTINUED ON ATTACHED SHEET			
SECTION IX - CERTIFICATION OF INVENTORY			
DATE	USER (Signature and title)	DATE	DEPARTMENTAL (Signature, title, and agency)
SECTION X - VALIDATION OF LAYAWAY			
DATE	USER (Signature and title)	DATE	DEPARTMENTAL (Signature, title, and agency)
LAYAWAY CONTRACT NUMBER	LAYAWAY CONTRACTOR	TYPE OF STORAGE	
		1. UNCONTROLLED 2. CONTROLLED, HEATED AND VENTILATED 3. DEHUMIDIFIED	

Exhibit A—Continued

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C

APPENDIX C

MANUAL FOR CONTROL OF GOVERNMENT PROPERTY IN POSSESSION OF NONPROFIT RESEARCH AND DEVELOPMENT CONTRACTORS

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APPENDIX C

MANUAL FOR CONTROL OF GOVERNMENT PROPERTY IN POSSESSION OF NONPROFIT RESEARCH AND DEVELOPMENT CONTRACTORS

Part I—Introduction

C-100 Scope of Manual. This Manual sets forth basic requirements to be observed by the Departments of the Army, Navy, Air Force, and the Defense Supply Agency for establishing and maintaining control over Government property furnished to or acquired by contractors in the case of research and development contracts with educational or other nonprofit organizations, provided such contracts are executed on a nonprofit basis.

C-101 [Reserved.]

C-102 Applicability of Manual. Subject to C-100 above, this Manual applies to all types of contracts, leases, and bailments, pursuant to which Government property is furnished to or acquired by a contractor.

C-103 Definitions. As used in this Manual, the following terms have the meanings shown:

C-103.1 *Educational or other nonprofit organization* means any corporation, foundation, trust, or institution operated for scientific or educational purposes, not organized for profit, no part of the net earnings of which inures to the profit of any private shareholder or individual.

C-103.2 *Contract administrator* means the individual duly designated by appropriate authority in the Military Departments to administer the contract. In the case of the Army, Air Force, and the Defense Supply Agency, this is a contracting officer; and in the Navy, the authorized representative of the contracting officer having administrative cognizance over the contract.

C-103.3 *Government property* means all property owned by or leased to the Government, or acquired by the Government under the terms of a contract except that property to which the Government has acquired a lien or title solely as a result of partial, advance or progress payments shall not for the purpose of this Manual be classified as Government property. With this exception, Government property includes both Government-furnished property and contractor-acquired property, as defined below:

(i) *Government-furnished property* is property in the possession of or acquired directly by the Government and subsequently delivered or otherwise made available to the contractor; and

(ii) *Contractor-acquired property* is property procured or otherwise provided by the contractor for the performance of a contract, pursuant to the terms of which title is vested in the Government.

The term "provide" as used in the context of such phrases as "Government property provided to the contractor" and "Government-provided property" is intended to include both Government-furnished property and contractor-acquired property.

C-103.4 *Classification of Government Property.* The terms "classify" and "classification" as used herein with reference to Government property refer to the grouping of property into different categories having different incidents.

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For purposes of this Manual, Government property shall be classified in five categories, defined as follows:

(a) *Real property* means lands, buildings, structures, improvements and appurtenances thereto. It does not include plant equipment as defined in subparagraph (b) below.

(b) *Plant equipment* means personal property of a capital nature (consisting of machinery, equipment, furniture, vehicles, machine tools, and accessory and auxiliary items, but excluding special tooling) used or capable of use in the manufacture of supplies or in the performance of services or for any administrative or general plant purpose.

(c) *Minor plant equipment* means an item of plant equipment having a unit value of less than \$200 and other plant equipment, regardless of cost, when so designated by the Government.

(d) *Material* means property which may be incorporated into or attached to, and end item to be delivered under a contract or which may be consumed or expended in the performance of a contract. It includes, but is not limited to, raw and processed material, parts, components, assemblies, and small tools and supplies which may be consumed in normal use in the performance of the contract.

(e) *Special tooling* means all jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, other special equipment and manufacturing aids, and replacements thereof, acquired or manufactured by the contractor for use in the performance of a contract, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of such supplies or parts thereof, or the performance of such services, as are peculiar to the needs of the Government. The term does not include (i) items of tooling or equipment acquired by the contractor prior to the contract, or replacements thereof, whether or not altered or adapted for use in the performance of the contract, (ii) consumable small tools, or (iii) general or special machine tools, or similar capital items.

C-103.5 *Property administrator* means the Government representative responsible to the contract administrator for reviewing and approving the contractor's property control procedures, for examining the records maintained by the contractor of Government property, for making usage analyses of Government property, and for the maintenance of such Government property records as are required by this Manual.

C-103.6 *Property account* means the official records of the Government property provided to a contractor by a Department, which are established and maintained under the provisions of this Manual. Separate property accounts will be maintained either on an individual contract basis or contractor basis.

C-103.7 *Stock Record* means a perpetual inventory form of record which shows by nomenclature the quantities received and issued, and the balances on hand.

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C-103.8 *Salvage* means property which is recovered for further use or which, because of its worn, damaged, deteriorated, or incomplete condition, or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs or alterations, but which has some value in excess of its scrap value.

C-103.9 *Scrap* means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

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C-200 Scope of Part. This Part sets forth (i) the duties and responsibilities of Government representatives charged with the control of Government property, (ii) the sources from which Government property may be received or acquired, and (iii) the instructions to Government representatives for the control of Government property, both physically and administratively.

C-201 Duties and Responsibilities of the Contract Administrator with Respect to the Control of Government Property.

(a) The function of the contract administrator with respect to the control of Government property is to insure that the contractor complies with the provisions of the contract and this Manual pertaining to Government property and that the Government's interests therein are fully protected at all times. He shall require the contractor to (i) exercise reasonable care and proper usage of all Government property, (ii) establish and maintain adequate records therefor, and (iii) maintain controls that will assure the recording of all debts and credits to the property records as hereinafter defined.

(b) It is incumbent upon the contract administrator to familiarize himself with the provisions of this Manual and the contract involved.

(c) He shall require the contractor to correct all deficiencies in complying with the provisions of the contract and this Manual pertaining to Government property.

(d) He shall take proper action with respect to recommendations of the property administrator relating to usage or control of Government property.

(e) He shall make appropriate written findings with respect to the contractor's liability for Government property lost, damaged, destroyed, or unreasonably consumed, as may be required by this Manual.

C-202 Designation of Property Administrator.

(a) A property administrator shall be designated for each Government contract involving Government property. In appropriate cases the contract administrator may be assigned the additional duty of property administrator. An assistant property administrator may be appointed for specific contracts. The property administrator will not be required to post a bond by virtue of the duty as property administrator.

(b) It is the policy of the Department of Defense that a single property administrator shall be designated for all Department of Defense contracts performed at one location by a contractor. Within each Military Department, responsibility for the direction, administration and review of the property administration interchange program shall be assigned to a single office at the Department level. This office, designated to direct and administer the program, shall have the following responsibilities:

(1) Implementation of pertinent Department of Defense directives, instructions and regulations.

(2) Review of field contract administration activities for compliance with Department of Defense and Departmental directives pertinent to the property administration interchange program.

(3) Resolution of intra-departmental interchange problems.

(4) Resolution of inter-departmental interchange problems.

(c) Property administration interchange agreements shall be negotiated only by those offices administering current contracts or orders with the

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contractors. Property administration interchange agreements shall be effected at the field level between representatives of the procuring activities having contract administration responsibility. In formulating such agreements, the following factors, among others, shall be considered:

(1) Comparative value and types of Government property in the possession of the contractor and the Government property yet to be provided under Government contracts.

(2) Existence of a resident property administrator or accessibility of an itinerant property administrator.

(3) Other contract administration functions which may have a bearing on property administration such as quality control, industrial mobilization planning and audit cognizance.

(d) Based on the above factors, when two or more offices are equally concerned, with property administration at a contractor's location, that office which has contracts or orders that indicate the greatest continuous duration of future interest in Government property shall be given primary consideration for property administration cognizance. When all contracts or orders of the Department designated to perform property administration have been completed at a contractor's location, that Department shall cease to have cognizance at that location unless all military contracts providing for Government property are scheduled to expire within a succeeding three-month period. When all contracts or orders of the Department designated to perform property administration have been completed at a contractor's location where other Departments continue to perform contracts or orders which are not scheduled to expire within a succeeding three-month period, property administration cognizance shall be determined by negotiation between those Departments which continue to perform contracts or orders providing for Government property with the suppliers. When a Department that previously had no contracts at a contractor's location at the time the existing property administration interchange agreement was made acquires a contract providing for Government property of greater continuous duration of future interest than those involved in the existing agreement, the cognizance agreement shall be reviewed and either confirmed or revised by a new agreement.

(e) When the Departments are unable to reach property administration interchange agreements, those unresolved property administration assignments shall be referred to the Assistant Secretary of Defense (Supply and Logistics) for resolution.

(f) Property administration functions required by the Armed Services Procurement Regulation will be performed by the designated property administrator who will generally follow his current operating procedures in performing property administration. Each Department will provide the designated property administrator with manuals, instructions, and directives pertaining to reports and documentation required by contractual provisions. Documents and records required by this Appendix C for property administration of current contracts, subcontracts, and purchase orders involving Government property will be provided to the designated property administrator prior to the effective date of an agreement. Copies of such contracts, subcontracts, and purchase

orders and amendments thereto or extracts of property provisions thereof will accompany the transmittal. The name of the individual designated as property administrator for such contracts will be furnished to the procuring activity performing contract administration. New contracts, subcontracts, purchase orders and amendments thereto or extracts of property provisions thereof where Government property is involved will be transmitted to the designated property administrator.

(g) The designated property administrator may correspond directly with the contractor and appropriate Department of Defense personnel on matters pertaining to Government property. The contract administrator will keep the property administrator informed as to all communications, correspondence, and actions affecting property matters under the assigned contract.

(h) Property administration interchange agreements shall be in the general format shown below. Where required, appendices shall be added thereto.

1. **PURPOSE.** This is a local interchange agreement providing for property administration at the designated contractor's location by (*Department-procurement office*) in accordance with ASPR C-202.

2. **EFFECTIVE DATE.** This agreement becomes effective on -----

3. **CONTRACTOR'S LOCATION**

(Identify specific location covered by this agreement)

(Signature of authorized representatives of
Departments concerned)

C-203 Duties and Responsibilities of the Property Administrator.

(a) The property administrator shall familiarize himself with the provisions of this Manual and the contract provisions pertaining to Government property.

(b) He shall, as the authorized representative of the contract administrator or administrators, insure compliance with the contract requirements relative to Government property and insure fulfillment of all obligations imposed by this Manual. He shall at the inception of the contract review and approve in writing the contractor's property control records and procedures.

(c) He shall examine any documents, including but not limited to consumption or usage reports, adjustment reports, reports of spoilage or shrinkage, sales, shipments, transfers, etc., recorded by the contractor in the property account, to the extent necessary to establish the correctness and completeness of such records.

(d) It shall be his responsibility to report to the contracting officer any instances of what he deems to be improper usage of Government property. To the extent necessary to fulfill this function selective physical inspections of Government property shall be made.

(e) He shall periodically examine property records to determine whether such records reflect the status of Government property and indicate compliance with the provisions of the contract and applicable directives. He shall report promptly in writing to the contract administrator any noncompliance by the Contractor with the contract provisions and applicable directives.

(f) He will observe the following procedure in connection with loss, damage, and destruction of Government property in the possession of the contractor:

(i) He will require the contractor to report to him all cases of loss,

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damage, or destruction of Government property in his possession, as soon as such fact becomes known. He will forward such report to the contract administrator, together with his own report of the facts of the case and his recommendations thereon. If the contract administrator is the contracting officer, or a designated representative of the contracting officer for that purpose, he will thereupon determine the contractor's liability, in accordance with the terms of the contract; otherwise he will forward the papers to the contracting officer, who will make such determination. In making any such determination, consideration will be given to the reports and recommendations submitted and to any additional facts which the contractor may submit. The contractor and the property administrator shall be furnished with a written copy of such determination. A copy shall be held in the files of the contract administrator.

- (ii) When inventory adjustments or usage analyses disclose consumption of property which is considered unreasonable by the property administrator, or when instances of losses, damages to, or destruction of Government property, which have not been reported by the contractor, are discovered by the property administrator, he shall prepare a statement of the items and amount of loss involved. This statement shall be furnished the contractor for investigation and written justification. Further procedure shall be in accordance with that prescribed in (i) above.
- (iii) When end items are lost, destroyed, or damaged beyond repair while such items are in the physical possession or control of the contractor, the action prescribed in (i) above will be required.
- (iv) Where it has been determined that the contractor is liable to the Government by reason of the loss, damage, or destruction of Government property, a letter of advice from the contract administrator shall be considered a valid credit to the official Government property records, *provided*:
 - (A) When the contractor pays by check, the letter of advice will identify the check received by number, date, and amount;
 - (B) When a settlement is made by offset against amounts due the contractor on a public voucher, the letter of advice will cite the actual voucher (Form 1034) on which the deduction is made; or
 - (C) When collection of the claim against the contractor is to be made by the fiscal office designated for the contract, the letter of advice will have attached thereto a copy of the document used by the contract administrator to notify the fiscal office to effect collection.
- (v) When property is rendered unserviceable by damage thereto, the letter of advice from the contract administrator will be considered a valid credit to the Government property account when supported by or appropriately cross-referenced to shipping documents or listing covering proper disposition of the unserviceable items.

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(g) He shall take the action necessary to insure that his records of the transactions discussed in C-204 below are complete.

(h) He shall review and approve the contractor's scrap procedures and records as provided in C-212 of this Manual.

(i) He shall advise the contractor administrator on all property matters.

C-204 Shipment and Receipt of Government-Furnished Property. In the case of Government property shipped to a contractor's plant from a military installation or from another contractor's plant, the contractor becomes responsible therefor upon delivery of the property to his plant. The shipping activity shall furnish the property administrator, who is responsible for the receiving contractor's property account, with copies of the documents necessary to permit the property account to reflect the transaction. On receipt of the property the contractor, where required, shall furnish the property administrator with documented evidence of such receipt. The property administrator shall take the action necessary to insure that his records of these transactions are complete. (See C-203.)

C-205 Sources From Which Government Property May Be Furnished or Acquired.

C-205.1 *Military Installations or Other Contractors' Plants.* Government property may be shipped to a contractor from military installations or plants of Department contractors.

C-205.2 *Direct Purchase by the Contractor.* Direct purchases shall be subject to a determination by the contract administrator that the items are allocable to the contract involved and are reasonably necessary therefor. For purposes of property control within the scope of this Manual, it shall be considered that property purchased by a contractor, for which direct reimbursement is to be requested, becomes Government property upon its receipt by the contractor. This provision shall not be deemed to alter or modify contractual provisions relating to passage of title.

C-205.3 *Withdrawal From Contractor-Owned Stores.* For purposes of property control, within the scope of this Manual, property withdrawn from contractor-owned stores, for direct charge to the contract shall be considered Government property at the time of approval of the claim for reimbursement, or at the time of issuance for use of such property for the performance of the contract, whichever is earlier.

C-205.4 *Contract Provisions, Termination, Contract Changes.* Pursuant to specific contractual provisions, or as a result of termination of a contract, or change orders issued under a contract, the Government may acquire title to property.

C-205.5 *Advance, Progress, or Partial Payments.* Pursuant to the terms of a contract the Government may acquire title to property upon the making of advance, progress, or partial payments to the contractor. Property to which the Government has acquired a lien or title solely as a result of partial, advance, or progress payments shall not be subject to the provisions of this Manual.

C-206 [Reserved.]

C-207 Contractor's Records.

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C-207.1 *General Policy.* In order to satisfactorily perform work under a Government contract, a contractor must maintain adequate control records for all Government property, whether furnished to or acquired by a contractor for the account of the Government. It is the Government's policy to designate and use such records as the official contract records, and not to maintain duplicate property control records, other than those required by C-213, and other than such real property and plant equipment records as may be required by the respective Departments. Exceptions to this policy may be authorized by the respective Departments in special circumstances, such as where the administrative expense of maintaining Government personnel at the contractor's plant or providing frequent official visits to the plant would exceed the cost of maintaining Government records or otherwise not be in the best interest of the Government.

C-207.2 *The Contractor's Property Control System.* The contractor's property control system shall be reviewed and approved in writing by the property administrator. If any corrective action is necessary, it will be required of the contractor prior to approval. Such corrective action will normally be effected through mediation with the contractor. Where corrective action would involve substantial increased costs or where agreement as to the corrective action is not reached through mediation, the differences will be referred to the contract administrator. Consistent with the provisions of the contract, the principles and requirements stated in the subparagraphs below shall be observed by the property administrator in approving the contractor's property control system.

C-207.3 *Records for Material in Stores.* For material maintained by the contractor in stocks or stores, the contractor's property control system shall be such as to provide the following information:

- (i) Contract number, or equivalent code designation.
- (ii) Nomenclature or description of item.
- (iii) Quantity received.
- (iv) Quantity issued.
- (v) Balance on hand.
- (vi) Posting reference.
- (vii) Date received or issued.
- (viii) Price.
- (ix) Disposition action taken.

C-207.4 *Records for Material Issued Directly Upon Receipt, for Minor Plant Equipment, and for Special Tooling.* For material, whether Government-furnished or contractor-acquired, issued by the contractor directly so as to be considered expended under the contract, for minor plant equipment, and for special tooling, the Government invoices, contractor's purchase documents, or other documentary evidence of acquisition and issue, will be accepted as adequate property control records.

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C-207.5 *Records of Plant Equipment.*

(a) Individual records of each item of plant equipment shall be maintained unless summary stock records are maintained as provided in (b) below. Individual item records will be maintained on DD Form 1342 shown in Exhibit A. See paragraph C-306(c).

(b) Summary stock records may be maintained in lieu of individual property records for those items of plant equipment having a value of less than \$500 each when designated by the contract administrator in accordance with Departmental procedures. Full consideration should be made of the contractor's existing property control system. The following information shall be available from such records:

- (i) Name and address of contractor.
- (ii) Description and classification of the item.
- (iii) Acquisition reference and date.
- (iv) Disposition reference and date.
- (v) Contract number under which acquired.
- (vi) Cost (F.O.B. Manufacturer).
- (vii) Quantity received.
- (viii) Quantity transferred or disposed of as authorized in C-203(f) above.
- (ix) Balance on hand.

In addition, where appropriate as determined by the contract administrator, the serial number or the U.S. Government identification number for each item shall be recorded in a permanent manner on the summary stock record and upon disposition a line drawn through the appropriate number.

C-207.6 *Records of Real Property.* Records of real property shall be as provided in C-306(d).

C-207.7 *Separated Components.* Property records shall be required for any usable components which are permanently removed from items of Government property, as a result of modification, or otherwise, to the same extent as would be the case if such components had been provided separately by the Government; *provided*, that the contractor shall not be required to augment his property control system for the purpose of recording minor plant equipment, special tooling or materials, except upon return to stocks or stores.

C-207.8 *Custodial Records.* Custodial records normally should be maintained for items issued from tool cribs or the like, guard force items, protective clothing and other items issued for the use of individuals in the performance of their work under the contract. However, it is the general policy of the Government to accept for the control of Government property of the above character the same system as employed by the contractor for his own similar property.

C-207.9 *Consolidated Stock Record.* Where a contractor has more than one Government contract, under which Government property is provided, a

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consolidated record for materials may be authorized, *provided* the total quantity of any item is allocated to each contract by contract number and each requisition of property from the contractor's stores is charged to the contract on which the property is to be used. The supporting document or issue slip shall show the contract number or equivalent code designation to which the issue is charged.

C-207.10 Pricing. Property records shall show a unit price for each item except for items constructed for research or development purposes by the contractor. In the case of contractor-acquired property the price shall be determined in accordance with the system established by the contractor in conformance with sound accounting principles and consistently applied. The unit price of Government-furnished property shall be as determined by the Government and furnished to the contractor.

C-208 [Reserved.]

C-209 Identification. Government property shall be recorded and identified by the contractor as provided in C-307.

C-210 Segregation or Commingling of Government Property and Contractor's Property. Ordinarily Government property, particularly material, should be segregated and kept physically separate from contractor-owned property at all times. There will be occasions, however, where commingling of property would be advantageous to the Government. The property administrator should consider and arrange with the contractor plans for segregation and commingling of property. This agreement reached with respect to commingling shall be reduced to writing by the property administrator. Commingling may be allowed in the following types of cases:

- (i) where such commingling is approved by the property administrator; and
- (ii) where the Government property involved is plant equipment, special tooling or minor plant equipment which is clearly identified or marked as Government property and is supported by appropriate control records.

C-211 Physical Inventories.

C-211.1 Before Termination or Completion. It shall be the responsibility of the property administrator to review and approve the type and frequency of physical inventories to be taken. In this respect, he may accept and approve in writing the contractor's established procedures if he determines that they adequately protect the interests of the Government and are in conformity with applicable regulations.

C-211.2 Upon Termination or Completion. Upon termination or completion of a contract, a physical inventory adequate for disposal purposes shall be required of all Government property applicable to the contract in the custody, control or possession of the contractor. Standard items that have been modified may be described as standard items, with a general description of the modification. Items that have been constructed, such as test equipment, should be described in sufficient detail to permit a potential user to determine whether they are of sufficient interest to warrant further inspection.

C-211.3 *Inventories and Selective Examinations by the Property Administrator.*

(a) The property administrator may, at his discretion, join with the contractor in the taking of any inventory required to be made by the contractor.

(b) The property administrator should make selective examinations of the inventory being taken by the contractor when he determines that such procedure is necessary to protect the interests of the Government. When selective examinations are made they must embrace a representative number of items in the account and must adequately cover, by class and price range, all Government property involved.

C-211.4 *Quantitative and Monetary Controls.* As directed or required by proper authority, the property administrator shall require the contractor's physical inventories to be prepared on both a quantitative and monetary basis and be classified by categories such as material, special tooling, and minor equipment, plant equipment, etc.

C-211.5 *Discrepancies.* The property administrator shall proceed to adjust any discrepancies disclosed as a result of inventorying in accordance with the provisions of the contract and this Manual.

C-212 **Control of Scrap and Salvage.** Procedures for the control of scrap and salvage shall not be applicable to nonprofit research and development contracts unless the property administrator determines that the scrap or salvage is substantial in amount and that the Government is not receiving sufficient benefits from the the use or disposal thereof, in which event the procedures set forth in B-403, shall be applied.

C-213 **Records To Be Maintained by Government Personnel.**

C-213.1 *Records of Specific Contracts Where Property Is Involved.*

(a) Where a contract provides for the use of Government property a copy of the contract shall be made available or furnished to the property administrator.

(b) The property administrator shall maintain a record of each contract assigned to him for property administration. That record shall contain the following minimum information:

- (i) contract number and name of contractor;
- (ii) type of contract (CPFF, fixed price, research and development, etc.);
- (iii) end item to be produced or services to be performed, and the points of inspection and acceptance;
- (iv) record of amendments and changes pertaining to Government property;
- (v) listing and type of all subcontracts which involve Government property;
- (vi) provisions of contract pertaining to liability of the contractor for loss, damage or improper use of Government property;
- (vii) record of contract administrators and dates of tenure;
- (viii) record of property administrators and dates of tenure;
- (ix) record of plant representatives (or officers-in-charge) and dates of tenure;

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- (x) record of written approval of contractor's property control procedures;
- (xi) record of deviations granted in property procedures. (The deviations granted shall be in accordance with procedural regulations issued by each Department.);
- (xii) record of property audits and inspections performed by the responsible agencies in each Department;
- (xiii) records of property inspections during production and usage analyses performed;
- (xiv) record of any deficiencies found in property control and the corrective action taken;
- (xv) interim and final clearance data for Government property;
- (xvi) a file of all documents evidencing receipt of Government-furnished property by the contractor where required in accordance with C-305; and
- (xvii) a file containing copies of all instruments affecting relief from responsibility for Government property.

C-213.2 Control Records To Be Maintained. The property administrator shall maintain a system of file control that will permit the ready location of any document that he is required by this Manual to maintain.

C-213.3 Record of End Items. The property administrator shall maintain a record of all end items produced under the contract, based upon authenticated receiving reports or processed vendors' shipping documents, as follows:

(a) When there is no lapse of time between Government inspection and acceptance of the end items and shipment from the contractor, the records shall, as a minimum, consist of a summarization of quantities shipped and accepted. When end items are accepted by the Government and stored with the contractor, the record shall show the quantities stored and location.

(b) Some contracts provide that end items are to be retained by the contractor for further use under the contract. Upon acceptance of such items, they shall be considered to be "Government-furnished property" and shall be recorded by the contractor as required by the terms of the contract.

C-214 Numbering Property Accounts. A property account, consisting of records maintained either by a contractor or Government personnel, shall be assigned a property account number.

C-215 Auditing Property Accounts. Records of Government property shall be audited by the Departments as frequently as conditions warrant. Any such audit or audits may take place at any time during the performance of the contract, upon completion or termination of the contract, or at any time thereafter. These audits will include records maintained by the contractor and such records as may be maintained by Government personnel in connection with such property. The property administrator and the contractor shall make all property records, including correspondence related thereto, available for inspection by the auditors.

C-300 Scope of Part. This Part covers (i) the duties and responsibilities of the contractor with respect to Government property, (ii) the liability of the contractor for Government property lost, damaged, or for which the contractor is otherwise unable to account, and (iii) the obligations of the contractor with respect to the control of Government property, both physically and administratively. This Part III of this Manual is designed so that it may be incorporated by reference in the contract, as desired.

C-301 General. The contractor shall be directly responsible for and accountable for all Government property in accordance with the provisions of the contract. The contractor shall maintain and make available such records as are required by Part III of this Manual, and must account for all Government property until relieved of responsibility therefor in accordance with the procedures as set forth hereinafter. Liability for loss, damage, or excessive use of property in a given instance will necessarily depend upon all circumstances surrounding the particular case and must be considered and determined in accordance with the provisions of the contract. The contractor shall furnish all necessary data substantiating any request for discharge from responsibility.

C-302 Definitions. The definitions used in Part I of this Manual apply to those terms defined therein when used in this Part III of this Manual or in the contract.

C-302.1 Contracting Officer. As used in this Part III, the term "contracting officer" shall include any authorized representative of the contracting officer acting within the limits of his authority, including the contract administrator and the property administrator, as those terms are defined in C-103.2 and C-103.5 of Part I.

C-303 Contractor's Responsibility. A contractor shall be responsible for all Government property in his custody or control in accordance with the terms of the contract. The contractor may be relieved of responsibility for Government property by any of the following methods, subject in any case to specific contract provisions or specific instructions of the contracting officer within the scope of the contract:

(a) *Consumption of Property in the Performance of the Contract.* To the extent that property has been consumed or expended for proper purposes and in reasonable amounts in the performance of the contract, the contractor shall be relieved of responsibility for such property.

(b) *Retention by the Contractor.* This may occur when the contract is completed or terminated, or otherwise in accordance with the provisions of the contract. The contractor shall be relieved of responsibility for all property which has been retained by the contractor; *provided*, that the Government shall have approved the retention and shall have been reimbursed therefor in accordance with the terms of the contract or applicable regulations.

(c) *Sale of Property.* The contractor shall be relieved of responsibility for Government property sold with the approval of the contracting officer, in accordance with applicable regulations; *provided*, however, that the proceeds from such sale shall have been received by or credited to the Government.

(d) *Shipment of Government Property from a Contractor's Plant.* The contractor shall be relieved of responsibility when Government property is

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shipped from the contractor's plant pursuant to the instructions of the contracting officer.

(e) *Written Advice of Contracting Officer.* The contractor shall be relieved of responsibility for Government property lost, damaged, destroyed, or consumed, in excess of that normally anticipated in the manufacturing or processing operation, as the result of appropriate action by the contracting officer to determine the liability of the contractor *provided* such determination is furnished to the contractor in writing and the Government shall have been adequately reimbursed when appropriate. If the contract administrator is the contracting officer or a designated representative of the contracting officer for that purpose, he will thereupon determine the contractor's liability.

C-304 Contractor's Liability. Subject to the terms of the contract, the contractor may be liable when shortages of Government property are disclosed or when Government property is lost, damaged, or destroyed, or when there is evidence of unreasonable use or consumption of Government property as measured by the allowances provided for by the terms of the contract or the appropriate bill of materials.

C-305 Receipting for Government Property. The contractor shall be required to furnish a written receipt for all, or specific classes of Government provided property only in those instances where such action is determined by the property administrator to be essential for maintenance of minimum acceptable property controls. In these instances the property administrator shall maintain for each contract a file of such documents or property record cards. Where such evidence of receipt is required, it shall be provided by the contractor not later than the time he submits his application for payment (public voucher).

C-306 Property Control Records. The Contractor shall maintain proper control over all Government property in accordance with methods which have been established by the contractor and approved by the property administrator consistent with the following:

(a) *Material Issued Directly Upon Receipt, Minor Plant Equipment and Special Tooling—*

- (i) *Fixed-Price Contracts.* In the case of Government-furnished material which is issued directly by the contractor upon receipt so as to be considered expended under the contract, and in the case of minor plant equipment, and special tooling, the documents evidencing receipt and issue maintained by the contractor will be accepted as property control records; and
- (ii) *Cost-Type Contracts.* For material, whether Government-furnished or contractor-acquired, issued by the contractor directly so as to be considered expended under the contract, for minor plant equipment, and for special tooling, the Government invoices, contractor's purchase documents or other documentary evidence of acquisition and issue, will be accepted as adequate property control records.

(b) *Material Maintained in Stocks.* In the case of material furnished by the Government under fixed-price contracts, and in the case of material

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furnished by the Government or procured by the contractor, title to which vests in the Government, under cost-type contracts, which material is maintained by the contractor in stock or stores, the contractor shall compile and maintain appropriate records covering the description, cost when known, acquisition and disposition, and such other information as may be required to identify the property. Records of consumption on a unit or accumulated basis shall also be maintained. The contractor shall be prepared to locate such property within a reasonable time after request therefor.

(c) *Plant Equipment.* In the case of plant equipment furnished by the Government under fixed-price contracts, or in the case of plant equipment furnished by the Government or procured by the contractor, title to which vests in the Government, under cost-type contracts, the contractor shall compile and maintain individual property records covering the description, cost, acquisition, and disposition of each item of plant equipment and such other information as may be required to identify the property. The contractor shall be prepared to locate any item of such property within a reasonable time after request therefor. Records of plant equipment will be maintained on DD Form 1342 shown in Exhibit A. Blank forms will be furnished the contractor by the property administrator and will be used to reflect all Government-provided plant equipment received, altered or shipped by, the contractor on and after 1 July 1961. The forms will be completed by the contractor, showing as a minimum the information specified in instructions furnished to the contractor by the property administrator. After completion, the original copy of the form will be retained by the contractor as part of the official property records of the contract under this paragraph; the balance of the copies will be delivered to the property administrator for distribution in accordance with the above instructions.

(d) *Real Property.* In the case of real property furnished by the Government under fixed-price contracts, and in the case of real property furnished by the Government or acquired by the contractor, title to which vests in the Government, under cost-type contracts, the contractor shall maintain a continuous itemized record of the description, location, acquisition cost, and disposition of all Government real property, including unimproved real property, all alterations and all construction work, and any site connected with such alteration or construction, acquired by purchase, lease or otherwise. This itemized record may be in the form of a cross-reference to maps, drawings, plans and specifications.

C-307 Identification. All Government property shall be recorded and identified as such by the contractor promptly upon receipt, and it shall remain so identified so long as it remains in the custody, control or possession of the contractor.

(a) *Extent of Identification:*

- (i) As a general rule, all Government material and minor plant equipment shall be identified as Government property except in those cases where—

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- (A) no materials or minor plant equipment of the same type at the same location are owned by the contractor, his employees, or other contracting agencies;
 - (B) adequate physical control is maintained over tool-crib items, guard force items, protective clothing and other items issued for use by individuals in the performance of their work under the contract;
 - (C) property is of bulk type or by its general nature of packing or handling precludes adequate marking, as may be determined by the property administrator; or
 - (D) property is commingled, as authorized by C-210 hereof;
- (ii) Government-owned special tooling shall be marked with the designation of the Military Department responsible for funding and control of such tooling, as follows: Army—"USA", Navy—"USN", Air Force—"USAF", and Defense Supply Agency—"USD", unless it is determined that such marking will damage the special tooling or is otherwise impracticable. Marking and identification procedures may be expanded by the Department having cognizance over the tooling to include end item reference, drawing number, and such other information as may be desired in a given case. The identification "U.S." property shall not be changed solely to conform to the provisions of this paragraph;
- (iii) Unless already marked in accordance with these instructions, all Government-owned plant equipment, including industrial reserve plant equipment, shall be marked by the contractor with an identification number, except minor plant equipment, or when the size of the equipment or the nature of the material from which it is made makes it impracticable, in which case such item will be assigned an identification number for record purposes, which number shall be shown in the plant equipment property record; or the equipment is accessory or auxiliary and attached to or otherwise a part of an item of plant equipment and is required for its normal operation, in which case such item shall be entered and described on the record of the equipment to which it is attached or of which it is otherwise a part. Once an identification number has been affixed to an item of plant equipment, the identification will be permanent and will not be changed so long as the equipment remains under the control of the same Military Department (but see (iv) below). Identification shall be effected by affixing a metal, fibre, plastic or other plate directly to the equipment; by using indelible ink, acid or electric etch, steel dies, or any other legible, permanent, conspicuous, and tamper-proof method. Identification shall consist of the following markings:
- (A) An indication of Government ownership and of the Military Department responsible for funding and control of the plant equipment, as follows: Army—"USA", Navy—"USN", Air Force—"USAF", and Defense Supply Agency—"USD";

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- however, the identification "U.S." property shall not be changed solely to conform to the provisions of this paragraph;
- (B) A two-part identification number, furnished by the Government, consisting solely of numerals except as provided in (C) below. The first part shall be the property account number, and the second part shall be a serial number. In case plant equipment furnished by the Government is already identified as property of a Military Department, no change shall be made in the markings, except as provided in (iv) below, and
 - (C) In the case of items included within a standard Departmental registration system, for example, automotive, construction, or weight-handling equipment, application for a proper registration number will be made to the cognizant Department, which number shall be used in lieu of any other identification number.
- (iv) Government identification markings shall be removed prior to sale or scrapping. The markings so removed shall be shown on the appropriate documents involved. In the case of a transfer of funding and control responsibilities to other Military Departments new identification markings, in accordance with the requirements of (ii) or (iii) above, may be affixed upon receipt of the equipment by the receiving Military Department.

(b) *Recording Identification Numbers.* Assigned property identification numbers will be recorded on all applicable receiving documents, shipping documents, and other documents pertaining to the property accounts.

C-308 Segregation and Commingling. The contractors shall keep Government property segregated, except where commingling is approved by the property administrator as being to the mutual benefit of the Government and the contractor, or where the Government property involved is plant equipment, special tooling or minor plant equipment which is clearly identified or marked as Government property and is supported by appropriate control records.

C-309 Inventories.

(a) *Interim Physical Inventory.* The contractor shall take a physical inventory of Government property whenever required by the property administrator but such inventory shall not normally be required of the contractor more often than once a year. The inventory shall show the quantity and monetary value of each item of property inventoried, and shall normally be limited to materials and minor equipment held in stocks and stores, and plant equipment. It shall be classified by categories of whatever items are inventoried, such as material, special tooling, minor equipment, plant equipment, etc.

(b) *Joint Physical Inventory and Selective Examinations.* The property administrator, if he desires, may join with the contractor in taking the inventory required to be taken by the contractor. The property administrator shall have the right to take an inventory or make selective examinations, whenever he deems it necessary to protect the Government's interest.

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(c) *Terminal Physical Inventory.* The contractor shall take upon completion or termination of the contract, a physical inventory adequate for disposal purposes of all Government property applicable to the contract in the custody, control, or possession of the contractor. The inventory shall be prepared on both a quantitative and monetary basis and be classified by categories, such as material, special tooling, minor equipment, plant equipment, etc. Standard items that have been modified may be described as standard items, with a general description of the modification. Items that have been constructed, such as test equipment, should be described in sufficient detail to permit a potential user to determine whether they are of sufficient interest to warrant further inspection.

C-310 Control of Scrap and Salvage. Procedures for the control of scrap and salvage shall not be required unless the property administrator determines that the scrap or salvage is substantial in amount and that the Government is not receiving sufficient benefits from the use or disposal thereof in which event the following procedures shall be applicable:

- (i) The contractor shall establish a procedure whereby all Government property that can be salvaged shall be returned to Government stock, which procedure shall be subject to the approval of the property administrator; and
- (ii) If the property administrator determines that the contractor's scrap procedures and records are adequate to protect the Government's interest, he shall approve same in writing and furnish the contractor a copy thereof. If the property administrator determines that corrective measures are necessary to protect the Government's interest, he shall so advise the contractor. Where corrective action would involve substantial increased costs or where agreement as to corrective action is not reached through mediation, the difference will be referred to the contract administrator.

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DOD PROPERTY RECORD			Form Approved Budget Bureau No. 22-R209		REPORT CONTROL SYMBOL	NAME OF ITEM		
<input type="checkbox"/> INVENTORY <input type="checkbox"/> CHANGE <input type="checkbox"/> CODE REQUEST								
SECTION I - INVENTORY CODES								
1. COMMODITY CODE: (1) CC		2. MODEL CODE	3. MANUFACTURER'S CODE (13)		4. TYPE			
5. IDENTIFICATION NUMBER (19)		6. MANUFACTURER (Name, city, and state)						
7. POSSESSOR CODE (30)		8. PRESENT LOCATION			9. YEAR OF MFR (42)	10. OPER POWER CODE (44)		
11. SVC CODE (46)		12. ACQUISITION COST (No cents) (48)		13. MANUFACTURER'S SERIAL NUMBER (54)		14. STATUS CODE (68)		
15. INSPEC-TION (71)		16. CONDITION CODE (70)		17. DEPARTMENTAL USE (72)				
SECTION II - INVENTORY DATA								
18. DESCRIPTION AND CAPACITY								
					19. MANUFACTURER'S DESIGNATION			
20. CONTRACT NUMBER				21. END ITEM				
22. ADMINISTERING OFFICE		23. DIMENSIONAL DATA			24. ASOD NO.			
		LENGTH	WIDTH	HEIGHT	SQUARE FEET	WEIGHT		
					25. DATE ASOD APPROVED			
SECTION III - ACQUISITION AND TRANSFER								
26. AUTHORITY FOR ACQUISITION OR TRANSFER AND DATE				27. CONTRACT FOR PURCHASE AND DATE		28. <input type="checkbox"/> NEW <input type="checkbox"/> USED		
29. CONSIGNOR			30. CONSIGNEE					
31. CONSIGNOR VOUCHER NUMBER AND DATE			32. CONSIGNEE VOUCHER NUMBER AND DATE					
33. ACCOUNT NUMBER			34. DATE RECEIVED					
35. COST INCREASE			36. COST DECREASE					
SECTION IV - DISPOSITION DATA								
37. CONSIGNEE (Name and address)				38. DISPOSAL AUTHORITY AND DATE				
39. TYPE OF DISPOSITION AND PROCEEDS								
<input type="checkbox"/> DONATION <input type="checkbox"/> SALE <input type="checkbox"/> DESTRUCTION <input type="checkbox"/> ABANDONMENT \$								
40. VOUCHER NUMBER AND DATE				41. TITLE TRANSFER DATE				
SECTION V - ELECTRICAL CHARACTERISTICS								
QUANTITY	HORSE-POWER	VOLTS	PHASE	CYCLE	AC	DC	SPEED	TYPE AND FRAME NUMBER

DD FORM 1342
1 MAR 61

Exhibit A



ALBERT
D

APPENDIX D

RULES FOR NOTICE AND HEARING UNDER GRATUITIES CLAUSE IN ARMED SERVICES PROCUREMENT REGULATION 7-104.16

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APPENDIX D

RULES FOR NOTICE AND HEARING UNDER GRATUITIES CLAUSE
IN ARMED SERVICES PROCUREMENT REGULATION 7-104.16

D-1. Introduction

Section 631 of the Department of Defense Appropriation Act, 1952, Public Law 179, 82d Congress*, and similar statutory requirements in subsequent Department of Defense appropriation acts require all contracts, other than contracts for personal services, which call for the expenditure of funds appropriated for the Military Departments under the Act to contain a clause permitting the termination of the contractor's right to proceed under any such contract and permitting the Government to pursue the remedies that it could pursue in the event of breach of contract if it is found after notice and hearing by the Secretary of the Department with which the contract was made, or by his duly authorized representative, that gratuities (in the form of entertainment, gifts or otherwise) were offered or given by the contractor or by his agent or representative to any officer or employee of the Government with a view toward securing a Government contract or favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performing of such contract. The Military Departments have prescribed the use of such clause, as set forth in the Armed Services Procurement Regulation, paragraph 7-104.16, in contracts as required by the above Act and in other procurement contracts. It is the purpose of these rules to make provision for the giving of the notice of hearing, for the conduct of the hearing, and for other procedural matters incident to the exercise of the rights and special remedies provided by the prescribed clause, wherever it is now or may hereafter be used in contracts of the Military Departments. In the interest of uniformity in proceedings before the three Military Departments, these rules are hereby adopted. Nothing herein shall be construed to affect or impair (1) the pursuit of other remedies available to the Government in any instance, or (2) the right of termination of any contract for any reason available to the Government under the terms of such contract.

D-2. Definitions

Department. The term "*Department*" means the Department of the Army, the Department of the Navy, or the Department of the Air Force.

Secretary. The term "*Secretary*" means the Secretary, the Under Secretary, or any Assistant Secretary of any Military Department.

Designee. The term "*designee*" means the person or board to whom authority has been delegated by the Secretary under Rule 3. The designee is the Secretary's authorized representative.

*The provisions of § 631 of P.L. 179, 82d Congress have been enacted as permanent law (5 U.S.C. 174).

RULES FOR NOTICE AND HEARING UNDER GRATUITIES CLAUSE (7-104.16)**D-3. Delegation of Authority**

The Secretary may delegate to any person, military or civilian, or board of such persons within his Department all the authority of the Secretary conferred by statute or the prescribed contract clause to give notice of hearings, to conduct hearings and to make findings of fact with respect to (i) whether a gratuity was offered or given by a contractor or any agent or representative of such contractor to a Government officer or employee with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performance of such contract; and (ii) where appropriate, the amount of the costs incurred by the contractor in providing such gratuity. If the Secretary delegates his authority to a board, one of the members thereof shall be a person trained in the law, and the Secretary shall designate one member to be the presiding officer of the board.

D-4. Notice and Contents

Whenever information coming to the attention of the Department indicates that the procedures provided herein may be properly invoked, the Department may cause a written notice to be served upon the contractor in the manner hereinafter provided. The notice shall be signed by the Secretary or his designee and dated and shall include the following items:

- (i) A statement of the time, place, and purpose of the hearing, and the authority and jurisdiction under which it will be held. The statement as to purpose need only identify the contract clause, the contract or contracts involved, and the ultimate facts to be determined. The time of the hearing shall not be less than 10 days after service of the notice.
- (ii) Brief allegations setting forth the circumstances surrounding the offering or giving of the gratuity, including a description of the alleged gratuity itself and its estimated cost to the contractor; an identification of the offeree or donee and of the offeror or donor and the latter's relationship to the contractor; and the approximate date and place of the alleged offer or gift. Such allegations need be only sufficient to apprise the contractor reasonably of the issues involved in the hearing.
- (iii) A request that the contractor answer in writing the allegations of the notice, including in his answer such facts or arguments as he may wish, and that he attend the hearing to adduce such evidence with respect to the alleged offer or gift as he may desire.

A suggested form of notice is set out as an appendix to these rules.

D-5. Service of Notice

Service shall be made by mailing or delivering a copy of the notice to the contractor. Delivery of a copy means handing it to the party to be served, or, if the party is a corporation, partnership, or unincorporated association, handing it to an officer, partner, managing or general agent, or any other agent authorized by appointment or by law to receive service of process, or by leaving the copy at the contractor's office with the person in charge

thereof. Service by mail shall be made only by certified mail and service shall be complete upon mailing. The manner of service shall be evidenced by the signed endorsement of the person making the service upon a copy of the notice to be included in the record of the proceeding. Service of notice may be accepted or waived by the contractor by written endorsement on a copy of the notice.

D-6. Continuances and Delays

The authority to grant continuances or to adjourn the hearing shall rest with the person presiding at the hearing. Continuances will only be allowed for the most compelling reasons.

D-7. Parties

The parties to the hearing will be the contractor concerned and the Government. No intervention by other persons shall be permitted.

D-8. Representation and Hearing Assistants

The parties may be represented at the hearing and proceedings incident thereto by legal counsel. Upon the appearance of record of legal counsel of the contractor in the proceedings, service of papers as may thereafter be required may be made upon such legal counsel. The Department will make available such technical assistants, including a reporter, secretary or notary, as may be required.

D-9. Transcript

Testimony and arguments shall be reported verbatim. The reporter or secretary shall make available to the contractor and to the Government transcripts of the proceedings, including all testimony and copies of all documentary exhibits upon the payment of the reasonable costs thereof as the Department may by order fix.

D-10. Hearings

Hearings shall be conducted by the Secretary or his designee. Hearings will be as informal as may be reasonably appropriate under all the circumstances. Evidence and testimony, although not ordinarily admissible under legal rules of evidence, may be received subject to the discretion of the person presiding at the hearing. Immaterial, irrelevant, or unduly repetitious evidence shall be excluded. The parties may stipulate as to any facts or testimony. The testimony of witnesses shall be under oath and witnesses shall be subject to cross-examination. The hearing officer shall make such rulings with respect to the conduct of hearings as circumstances may require to ensure the orderly and expeditious presentation of evidence in a manner fair to the parties and consistent with these Rules and requirements of due process of law.

D-11. Depositions

Following service of the notice of hearing, a deposition may be taken as herein provided, and placed in evidence whenever the ends of justice will be served thereby.

D4 RULES FOR NOTICE AND HEARING UNDER GRATUITIES CLAUSE

(7-104.16)

- (a) *Notice to Take.* When either party desires to take a deposition, unless the parties stipulate as to the time when, and place where, the deposition is to be taken, the name of the officer before whom it is to be taken, and the names and addresses of the witnesses, the moving party shall give to the opposite party at least ten days' notice of the time when and the place where such deposition will be taken, the name and address and official title of the officer before whom it is proposed to take the deposition, and the names of the witnesses. A deposition may be taken either upon written interrogatories or upon oral examination, as may be specified in the notice. If the deposition is to be taken upon written interrogatories, copies thereof must accompany the notice to take depositions; if the opposite party desires to submit cross-interrogatories, written cross interrogatories should be served upon the party giving the notice within 5 days from the receipt of the notice to take the deposition. Notices may be served upon the contractor as provided by Rule 4 or upon his legal counsel of record. Service upon the Government may be made upon the person signing the notice of hearing or the Government representative of record. If service is made by mail, the mail shall be registered and service will be complete upon mailing.
- (b) *Taking Depositions.* Depositions may be taken before and authenticated by any officer, military or civil, authorized by the laws of the United States or by the laws of the place where the deposition is taken, to administer oaths. Witnesses shall be under oath and shall be subject to cross-examination as at the hearing. Objections will be reserved for determination at the hearing; *provided*, however, objections as to the form of questions shall be made and noted in the deposition. Each deposition shall show the caption of the proceeding, the place and date of taking, the names of the witnesses, and the party by whom called. The officer taking a deposition shall enclose the original deposition and exhibits, in a sealed packet, with postage or other transportation prepaid, and forward the same to the Secretary or his designee.
- (c) *Use of Deposition.* Testimony taken by deposition will not be considered until offered in whole or in part and received in evidence. A deposition taken by one party may be offered by the opposite party.

D-12. Submissions Without Appearance: Absence of Parties

If the contractor fails or refuses to appear or to make a written submission without appearing at the hearing, the hearing shall proceed upon such evidence as the Government may offer. The unexcused absence of any party shall not be occasion for delay of the hearing. Notwithstanding the nonappearance of the contractor at the hearing, proposed findings, conclusions, and argument may be submitted in writing on the contractor's behalf as provided in Rule 13.

D-13. Argument and Request for Findings

Within the discretion of the person presiding at the hearing, limited oral argument may be presented by the parties upon the completion of the hearing. Within ten days after the hearing is completed, both parties may file in writing with the person or board conducting the hearing proposed findings and conclusions with reasons and argument in support thereof. Copies will be provided to the opposite party.

D-14. Findings and Decision

As soon as practicable after completion of the hearing and the timely submission of proposed findings and conclusions, the person or board that conducted the hearing shall make written findings and conclusions with respect to all material issues; reasons for the findings will be included at such length as may be appropriate. The findings where adverse to the contractor will include, in addition to other appropriate items, the following: (i) a description of the gratuity that was offered or given; (ii) a statement of the costs incurred by the contractor in providing the gratuity; (iii) the name and relationship to the contractor of the person by whom the gratuity was offered or given on the contractor's behalf; (iv) the name and position of the officer or employee of the Government to whom the gratuity was offered or given; (v) a description of the contract which the Contractor sought to secure by the offering or giving of the gratuity, or a statement as to the nature of the favorable treatment so sought with respect to the awarding or amending, or the making of any determinations with respect to the performing of a contract. When the findings are made by a designee they shall be forwarded to the Secretary with recommendations as to whether the right of the contractor to proceed under any contract mentioned in the notice of hearing shall be terminated, and as to the exemplary damages to be imposed against the contractor, which shall be in an amount which shall not be less than three nor more than ten times the costs incurred in providing the gratuity.

Approved this 5th day of July 1952.

[Signed] EARL D. JOHNSON
Assistant Secretary of the Army.
[Signed] H. R. ASKINS
Assistant Secretary of the Navy.
[Signed] ROSWELL L. GILPATRIC
Under Secretary of the Air Force.

1 July 1960

D6 RULES FOR NOTICE AND HEARING UNDER GRATUITIES CLAUSE (7-104.16)

APPENDIX TO RULES

Form of Notice

BEFORE THE OF THE

In the Matter of the XYZ Corporation, Contract: Proceedings Pursuant to Clause of Contract No. File No.

To: XYZ Corporation Rockefeller Plaza New York City, New York

1. You are hereby notified that at M. on 1952, at room of the Building, a hearing will be held before to determine whether or not under the provisions of clause of Government contract a gratuity has been offered or given on behalf of the XYZ Corporation to an officer or employee of the Government of the United States with a view toward securing (a contract) (favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of a contract). If it is found that a gratuity was so offered or given, your right to proceed under the contract may be terminated, and a penalty imposed in accordance with the contract clause mentioned above. In the event of such termination the Government will be entitled to pursue the remedies available for breach of contract.

2. The hearing at the time and place aforesaid will be held under the authority of (cite applicable Public Law and clause of contract(s)). Enclosed is a copy of the Rules promulgated by the Secretary of the pursuant to which the hearing will be conducted. Papers pertaining to the proceedings may be captioned as above.

3. The contract(s) involved in the hearing, and which is (are) subject to termination if a gratuity is found to have been given or offered to secure favorable action as aforesaid, is (are) identified as follows:

Contract number dated under the cognizance of and executed by on behalf of the Government as the Contracting Officer.

4. The gratuity offered or given and the circumstances relating thereto are alleged to be as follows: (Include in a concise statement the nature of the alleged gratuity; a fair estimate of the costs incurred by the contractor in providing the gratuity; the identity of the offeree or donee and his position with the Government; the identity of the offeror or donor and his relationship to the contractor; and the approximate date, time, and place of the alleged offer or gift. Also allege, as appropriate, that the gratuity was (offered) (given) with a view toward securing a Government contract or favorable treatment with respect to the awarding or amending, or the making of a determination with respect to the performing of a Government contract. Identify or describe the contracts involved). On proof of the facts alleged as aforesaid, the Government, in accordance with the applicable statutory and contract provisions mentioned in paragraph 2, may terminate your right to proceed under the contract identified in paragraph 3 and to pursue the remedies available for breach of contract; also to impose exemplary damages as provided in such law and contract provision.

5. If you desire to be heard in this matter, you are requested to file with the Department on or before the time of the hearing a written answer and to appear at the hearing.

Dated By direction of the of the

NOTE: Portions set apart by parentheses should be stricken or modified as appropriate to conform to the facts.

ARMED SERVICES PROCUREMENT REGULATION



APR 2

APPENDIX E—DEFENSE CONTRACT FINANCING REGULATIONS

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APPENDIX E

DEFENSE CONTRACT FINANCING REGULATIONS

E-000 Scope—Financing Defined. These regulations cover the financing of contracts and subcontracts for the national defense. They are applicable to contract financing for all types of contracts for all kinds of work, supplies and services, except as provided in E-500.2 or as otherwise indicated herein. The term "financing" as used in these regulations covers Government guaranteed loans, advance payments and progress payments (not including partial payments for delivery of one or more completed units called for under a contract) necessary for both performance and termination purposes, to the extent authorized by law. Part 6 of these regulations covers the ascertainment and collection of contract debts.

E-001 Purposes. These regulations are intended to (i) state basic contract financing policy, (ii) assure proper uniformity in policies procedures and forms, (iii) provide for application of the fundamental management principle of internal check and balance, (iv) insure that the need for advance or progress payments by contractors will not be treated as a handicap in awarding contracts, (v) facilitate and accelerate the making of progress payments requested by small business concerns under Government contracts, and (vi) emphasize the usefulness and desirability of providing proper contract financing assistance to small business concerns. In addition, Part 6 provides for the prompt ascertainment and timely collection of contract debts owed to the Department of Defense, provides an inducement for prompt payment by requiring the charging of interest on such indebtedness, and states policies governing postponement of payments.

E-002 Application. These regulations supersede all regulations, directives, procedures and instructions inconsistent herewith, including the joint regulations dated 17 December 1956, issued as AR 715-6, NAVEXOS P-1006 (NPD 31-001) and AFR 173-133.

E-003 Implementation. The content of these regulations shall be distributed promptly to all personnel concerned with procurement and with contract financing, including contracting officers, for information and compliance. Copies of all implementing regulations, directives, procedures, and instructions, as issued from time to time within the Military Departments, at all levels, shall be furnished promptly through channels to the Army Comptroller, in the Department of the Army, the Assistant Comptroller, Accounting and Finance, in the Department of the Navy, and the Deputy for Contract Financing to the Assistant Secretary (Financial Management) in the Department of the Air Force, with an additional copy to be forwarded by those contract financing offices, respectively, to the Assistant Secretary of Defense (Comptroller). Changes and additions for these regulations will be developed within the Contract Finance Committee, in the manner contemplated by E-107.3 and E-218.

DEFENSE CONTRACT FINANCING REGULATIONS

Part 1—Introduction

E-100 Scope of Part. This Part describes the methods of contract financing by guaranteed loans, advance payments and progress payments, and states basic authority and responsibilities.

E-101 Guaranteed Loans—Authority. Under Section 301(a) of the Defense Production Act of 1950, as amended, and Section 301 of Executive Order No. 10480, the Department of the Army, the Department of the Navy, and the Department of the Air Force, among others, are designated as “guaranteeing agencies,” and authorized by Section 302(a) of Executive Order No. 10480 “to guarantee in whole or in part any public or private financing institution (including any Federal Reserve Bank), by commitment to purchase, agreement to share losses, or otherwise, against loss of principal or interest on any loan . . . which may be made by such financing institution for the purpose of financing any contractor, subcontractor, or other person in connection with the performance of any contract or other operation deemed by the guaranteeing agency to be necessary to expedite production and deliveries or services under Government contracts for the procurement of materials or the performance of services for the national defense, or for the purpose of financing any contractor, subcontractor, or other person in connection with or in contemplation of the termination, in the interest of the United States, of any contract made for the national defense.”

As defined in Section 702(d) of the Defense Production Act of 1950, as amended, “the term ‘national defense’ means programs for military and atomic energy production or construction, military assistance to any foreign nation, stockpiling, and directly related activity.”

E-102 Guaranteed Loans—Description. Guaranteed loans, usually called “V-loans,” are essentially the same as other loans made by financing institutions without guarantee, except that under a standard form of guarantee agreement the guaranteeing agency is obligated on demand of the lender to purchase a stated percentage of the loan and to share losses in the amount of the guaranteed percentage. Guaranteed loans afford an especially convenient medium for financing borrowers who hold subcontracts, or numerous prime contracts, or prime contracts with several contracting agencies. Funds are disbursed and collected by the lending institution, and its personnel administer the loan. Government funds are not involved except for purchases of the guaranteed portion of loans or settlement of losses.

E-103 Advance Payments—Authority. Advance payments on all contracts are authorized in accordance with the provisions of 10 U.S.C. 2307. When appropriate, advance payments are also authorized pursuant to the Act of August 28, 1958 “to authorize the making, amendment and modification of contracts to facilitate the national defense” (P.L. 85-804, 72 Stat. 972), Executive Order No. 10789, and Department of Defense Directive No. 7830.1. Navy advance payments for salvage operations are also authorized by 10 U.S.C. 7364.

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E-104 Advance Payments—Description. Advance payments are advances of money, made by the Government to a contractor prior to, in anticipation of, and for the purpose of complete performance under a contract or contracts. Advance payments are made only to prime contractors. They are expected to be liquidated from payments due to the contractor incident to performance of contracts. Since they are not measured by performance, they differ from partial, progress, or other payments made because of and on the basis of performance or part performance of a contract. Advance payments may be made to prime contractors for the purpose of making subadvances to subcontractors.

E-105 Progress Payments—Authority. Progress payments are authorized in accordance with the provisions of 10 U.S.C. 2307.

E-106 Progress Payments—Description. The term "*progress payments*," as used herein, signifies payments made as work progresses under a contract, upon the basis of costs incurred, of percentage of completion accomplished, or of a particular stage of completion. As used in these regulations this term does not include payments for partial deliveries accepted by the Government under a contract, or partial payments on contract termination claims.

E-107 Responsibilities. The following sets forth organization and responsibilities:

E-107.1 Organization. In terms of organization, the financing function should be separated from the procurement function, but close cooperation between the procurement and financing functions should be preserved at all times. Insofar as progress payments are concerned, it is contemplated that contract financing officers will ordinarily participate in the development of appropriate regulations and standard contract provisions designed to avoid undue risk to the Government, but will otherwise participate only in specific cases involving policy questions or unusual financial arrangements and conditions.

E-107.2 Resolution of Disagreements. If a disagreement arises between the financing office and the interested procuring activity in any Department as to whether, to what extent, or in what form, financing should be furnished, the matter will be referred immediately to and resolved in the higher echelons of authority responsible respectively for financing and procurement functions, subject to any issue being resolved ultimately by the Secretary of the Department concerned.

E-107.3 Responsibility—Administration—Contract Finance Committee. The responsibility for insuring uniform administration of financing in accordance with directions shall be in the Assistant Secretary of Defense (Comptroller). Specific cases need not be referred to the Office of the Assistant Secretary (Comptroller), unless policy or important procedural problems are involved, and the day-to-day financing operations shall be the responsibility of the Military Departments.

DEFENSE CONTRACT FINANCING REGULATIONS

Responsibility for financing in each Department shall be in the Under or Assistant Secretary responsible for the comptroller function, with the focal point of such activities at Departmental headquarters although contract financing offices may be established at the operational level determined by that Department.

There shall be a Contract Finance Committee composed of a representative of the Assistant Secretary of Defense (Comptroller) as Chairman, a representative of the Assistant Secretary of Defense (Installations and Logistics) and two representatives of each Military Department (one representing procurement and one representing the contract finance office), which Committee shall meet upon call by the Chairman, upon his own initiative or when requested by a member of the Committee. This Committee shall advise and assist the Assistant Secretary of Defense (Comptroller) in assuring proper and uniform application of policies and the development of procedures and forms, and may from time to time recommend to the Secretary of Defense through the Assistant Secretary of Defense (Comptroller) and the Assistant Secretary of Defense (Installations and Logistics) such further policy directives on the subject of financing as may appear desirable. This Committee shall be responsible also for the formulation, revision and promulgation of uniform regulations on contract financing (E-218). For matters involving guaranteed loans, a representative of the Board of Governors of the Federal Reserve System may be invited to meet with the Committee. The Committee also may from time to time secure the advice of representatives of other branches of the Government and other persons and may invite such representatives and persons to its meetings.

E-200 Scope of Part. This Part sets forth basic policies applicable to guaranteed loans, advance payments, and progress payments. Policies and procedures more particularly pertaining to the specific methods of contract financing are contained in the parts of these regulations relating to each method of financing.

E-201 Acceleration of Payments. Payments must be made promptly on all contracts when due. It is of continuing importance that there be acceleration of all proper payments earned by contractors, including progress payments.

E-202 Timely Action. In connection with requests for provision of progress payments, advance payments, or loan guarantees, there must be timely action, no unwarranted delay, and no hesitation to make proper contract financing provisions.

E-203 Uniformity. Uniform financing policies and, so far as practicable, uniform procedures and standard forms are to be used by the Military Departments and, to the extent mutually agreed upon by the Military Departments, facilities and personnel are to be used in common.

E-204 Small Business. Immediate and continuing attention must be given at all levels to insure that constructive measures will be taken to facilitate and accelerate necessary contract financing assistance to small business concerns. Every reasonable effort must be made to assist small business concerns in the resolution of their problems relative to the financing of contract performance, including any cases in which it may be reasonably necessary to increase the rate for progress payments and to assist them in understanding and complying with the requirements of performance as to payment forms, inspection and cost accounting. However, the issuance of a certificate of competency by the Small Business Administration shall not be considered as a requirement that contract financing must be provided by a Military Department.

E-205 Purpose of Contract Financing. The providing of funds for payment of expenses of performance of contracts is an essential element of defense production. Contract financing is to be regarded as a useful working tool that may be used to the benefit of the Government, for aiding procurement by expediting performance of defense contracts and subcontracts. The contract financing system makes possible production in volume that could not be accomplished otherwise. Prudent contract financing supports procurement and production and fosters the small business policy by providing necessary funds to supplement other funds available to contractors for contract performance.

E-206 Support of Procurement—Minimizing Monetary Loss. Financing must support procurement and should be designed to aid, not impede, essential procurement, but should be so administered as to avoid the risk of monetary loss to the Government to the extent compatible with aiding essential procurement.

E-207 Reasonable Need. Government financing for production or services should be provided only if, and to the extent, reasonably required for prompt and efficient performance of Government contracts and subcontracts.

E-208 Working Capital Purposes. Guaranteed loans under Section 301 of the Defense Production Act of 1950, as amended, will be used primarily for working capital purposes. Such guarantee authority will not be used for loans for facilities expansion.

It is not the intent of these regulations, however, to preclude guarantees in cases in which a relatively small part of the loan might be used for facilities expansion of a minor or incidental nature; *provided*, that the borrower's financial condition is such that the facilities expansion will not delay or impair repayment of a guaranteed loan which would be granted on a commercial banking basis.

Since advance payments and progress payments should be self-liquidating from contract performance, they also will not be used to finance fixed asset acquisitions for contractor ownership.

These limitations are not intended to apply to contracts under which facilities are being acquired for Government ownership.

E-209 Order of Preference. In determining what form of financing shall be recommended or made available to suppliers, the following order of preference generally should be observed, recognizing that there may be valid exceptions in specific cases or classes of cases:

- (i) Private financing on reasonable terms (without governmental guarantee)—supplemented when reasonably necessary by Government financing to the extent reasonably required;
- (ii) Customary progress payments, as described herein (E-503) including progress payments incident to "Small Business Restricted Advertising" or incident to procurement by formal advertising, as authorized herein (E-504) except that guaranteed loans may be preferable to customary progress payments when so indicated by a contractor and financing institution; or progress payments based on a percentage or stage of completion, confined to contracts for construction (10-101.6), shipbuilding and ship conversion, alteration or repair;
- (iii) Guaranteed loans (with financing institutions participating to an extent appropriate to the risk involved);
- (iv) Unusual progress payments, as described herein (E-505), not including contracts involving advance payments;
- (v) Advance payments (E-408.)

E-210 Financing Not a Handicap. The need for advance payments or for progress payments or for a guaranteed loan (with reasonable percentage of guarantee) shall not be treated as a handicap in awarding contracts to those qualified contractors who are deemed competent and capable of satisfactory performance (1-903.1, 2-406, E-211, and E-212). The ability of the contractor to perform the contract, including the availability of money or credit necessary for performance, must be reasonably assured in all cases. Awards which are otherwise proper must not be deterred by the necessity for providing reasonable contract financing. A contractor deemed reliable, competent, capable and otherwise responsible, must not be regarded as any less responsible by reason of the need for reasonable contract financing provided or guaranteed

by a Military Department. Responsible personnel must endeavor to assure that full, proper and prudent use is made of contract financing, in such ways that financial difficulties will not bring about delay or failure in performance or result in monetary losses to the Government. In selection of an appropriate method for provision of funds, contractors will not be expected to seek or obtain loans or credit (i) at excessive interest rates or other exorbitant charges, or (ii) from agencies of the Government outside the Department of Defense.

E-210.1 *Nonindication of Contract Financing Need.* Before contract awards, contractors sometimes indicate that contract financing by guaranteed loan, progress payments or advance payments will not be required. In some of those cases, the need for such contract financing later arises, usually from changed circumstances differing from those projected at the time of the award. The fact that a contractor did not indicate before award that he would require contract financing, or that he stated that he would not require such financing, does not disqualify the contractor for proper contract financing conforming to these regulations and should not be permitted to deter such financing. Each such case should be dealt with and decided on its merits, without giving weight to the contractor's earlier error with regard to the need for contract financing.

E-211 *Financial Responsibility of Contractors.* Procuring activities in placing contracts must give due regard to the financial capabilities of the supplier. Financial difficulties encountered by contractors and subcontractors may (i) disrupt production schedules, (ii) cause wastage of manpower and materials, and (iii) if connected with guaranteed loans, advance payments, or progress payments, result in monetary loss to the Government. Also, if financial crises occur in the course of a contractor's production, the need for continued production may make guaranteed loans or advance payments imperative for continuance of such production, even though monetary losses may be likely under the circumstances. In order to reduce these hazards so far as possible, contracts should be entered into only with those potential contractors who meet the requirements of 1-903.1 or 2-406, and who have the financial capacity or credit (giving due regard to the availability of progress payments, guaranteed loans, and advance payments), technical skill, management competence, and plant capacity and facilities (including subcontracting capacity) reasonably to assure their ability to perform their contracts in accordance with their terms. Care should be taken also to the extent practicable to avoid the placement of additional contracts or subcontracts with contractors in situations where additional contracts will overload the contractor's production capacity, overextend his financial resources and credit, and thus tend to interfere with timely performance of contracts on hand, and create need for additional contract financing arrangements, which may be impossible to establish on a prudent basis. In all cases, whether involving formal advertising or negotiation, it must be determined that the contractor is financially and otherwise able to perform the contract. In addition, consideration must be given to the judgment, skill, and integrity of the potential contractor, and to his reputation and experience, including prior work of a similar nature done by him, and the other factors set forth in 1-903.1, 2-406, or 3-101, as appropriate. Persons placing subcontracts, at all levels of subcontracting, should be encouraged to

apply these standards in placing subcontracts. Some practical examples of important points which should be kept in mind are set out below.

E-211.1 *Small Volume of Work.* Unduly small volume of work, in relation to amount of overhead expense, may result in losses to such extent as to interfere with or prevent performance of contracts. The order backlog on hand and reasonably foreseeable should be sufficient to enable operations to continue at least through the contemplated term of the contracts for which contract financing is being considered.

E-211.2 *Large Volume of Work.* Unduly large volume of work to be performed concurrently with a contract may result in insufficiency of cash or credit to support the work, or in delays or collapse on account of inadequacy of plant space, production equipment, engineering or production personnel, or unavailability of materials, parts or components. An apparently unduly large backlog may or may not be a deterrent, depending upon the relationship of the scheduling of all the work to the available credit, facilities, personnel, suppliers and subcontractors.

E-211.3 *Unrealistic Cost Estimates.* Incompetence, carelessness, or over-optimism of management may cause or permit the making of bids or proposals for work involving techniques, processes or "know-how" on which the contractor has no sufficient experience. Such work may be for the end items under a Government contract or for end items under other contracts (whether existing or prospective). In either case, unforeseen difficulties of performance and unanticipated excess of costs over contract prices may prove ruinous. In such cases, the proposed price, or cost estimates, whether or not based on past performance and experience of qualified competent contractors for the same or similar kinds of end items, may be unrealistic for the inexperienced contractor and may make the company's financial projections completely unrealistic. Comparative bids or proposals by others are important and useful factors in evaluation of the adequacy or inadequacy of proposed prices. However, a proposed price that seems unduly low may in fact be founded solidly on superior efficiency or on the discovery of new and improved techniques or processes that will enable the contractor to perform at costs substantially less than those of other contractors.

E-211.4 *Technical and Engineering Evaluation.* While management and technical competence must be evaluated largely on the basis of past performance of management and technical personnel, in doubtful cases financial forecasts cannot be analyzed adequately without the benefit of technical and engineering judgments based upon detailed scrutiny of the contractor's production plans and contemplated processes in relation to the quantity and quality of available facilities and personnel. However, while inexperience of the contractor in production of a contemplated end item or similar kinds of end items is a danger signal requiring close collaboration of all personnel concerned with the various elements of contract awards and contract financing, close analysis of the facts may provide sound reasons for belief that the prospective contractor, with proper and prudent contract financing assistance, will be able to perform on terms and conditions, including price, beneficial to the Government.

E-211.5 *Importance of Type of Contract—Development.* The type of contract may constitute the dividing line for decision as to ability or inability to perform and the related question of the prudence or imprudence of providing contract financing. If the contemplated end items are essentially development items—whether or not the contract is labeled a development contract—a fixed-price type of contract, whether firm fixed-price, fixed-price with escalation or fixed-price subject to price revision with a ceiling, may prove impossible of performance within the contract price and may result in nondelivery of acceptable end items and in disaster to the contractor. Except for those contractors who are exceptionally strong financially, it is imperative in these cases that financial analysis and evaluation be based upon the closest possible scrutiny by, and stated judgments of, qualified engineering and technical personnel with regard to the details and difficulties of performance and their relation to projected costs of the work.

E-211.6 *Engineering, Production and Purchase Plans.* Company plans may contemplate engineering costs, tooling costs, direct labor costs, or prices of materials, parts or components that are unduly low. Financial forecasts cannot be made intelligently or usefully without the benefit of careful and competent analysis of all significant elements of the engineering, production and purchasing aspects—by qualified technical personnel. Such analysis would need to evaluate the company's estimated costs for each significant performance element against the probable costs to be encountered for all elements necessary for actual performance. It may, for example, be foreseeable upon analysis that the company has materially underestimated the amount of engineering and testing necessary for completion of a satisfactory preproduction model, or the quantity and quality of special tooling or other manufacturing aids that may be required for production of the end items, or the amount of direct labor that will be required, or the purchase price of necessary materials, parts or components. The company may also have been in error as to the probable technical ability of contemplated subcontractors to provide acceptable parts or components. The company may even—in some cases—be expecting to have significant portions of the work done by technically or financially irresponsible subcontractors, some of whom may be affiliated with the contractor or related financially to the contractor's ownership or management. All these elements, in appropriate cases, require analysis and evaluation by competent engineering and technical personnel and bear upon the soundness or lack of soundness of the evaluations of financial capability and of the risks of monetary losses that would be involved in contract financing.

E-212 *Coordination Before Contract Award.* For effective application of the principles stated in E-211, each purchasing office should be staffed with and use the services of persons qualified and competent to evaluate credit and financial problems, or each contracting officer should have available within his procuring activity, and should use the services of persons so qualified and competent to evaluate credit and financial problems. Among other things, the duties of such persons would be to arrange, prior to contract awards, and so far as practicable, prior to subcontract arrangements, that financing for performance of contemplated contracts and subcontracts is reasonably assured

prior to or contemporaneously with the making of contracts. In those exceptional cases where there is substantial doubt that a prospective contractor has the financial capacity or credit resources essential to the performance of the contemplated contract, the interested procuring activity, after having determined that no satisfactory alternative sources of supply are readily available on terms equally as favorable to the Government, should, prior to placement of the contract, consult with the appropriate contract financing office of the interested Department, to determine whether financing can prudently be arranged. These contract financing offices are the Army Comptroller, in the Department of the Army, the Assistant Comptroller, Accounting and Finance, in the Department of the Navy, and the Deputy for Contract Financing to the Assistant Secretary (Financial Management), of the Air Force. In such consultation it should be resolved, if placement of the contract is deemed beneficial to the interests of the Government, whether and by what means financing should be provided.

E-213 Financial Information and Analysis. The necessity for financial information and analysis, and the scope, depth and detail of analysis of the financial capability of contractors, for contract financing purposes, must vary reasonably with the circumstances of particular cases. The extent of accumulation of data, and the evaluation thereof, must necessarily be determined by the informed judgment of competent, responsible personnel. Essentially, this process must be neither over-done nor under-done. For example, financial analysis would serve no useful purpose in connection with provision of customary progress payments (i) for contractors who are known from experience to be so strong and so competently managed as to be fairly relied upon to perform their contracts satisfactorily, or (ii) for contractors who are known to be in satisfactory financial condition and operating profitably, where the items involved are regularly produced by the contractor and the contract amounts are well within the normal sales volume of the contractor. In such cases, the financial evaluation might well consist of no more than scrutiny of readily available published balance sheets and operating statements. In doubtful cases, the financial analysis would have to be as broad, and as meticulously and painstakingly detailed, as is necessary to fit the circumstances of the case. The obtaining of information relevant to financial capability, and the analysis and proper evaluation of that data, are of particular importance where (i) the contractor is a new supplier to the procuring activity, or (ii) the contractor has not supplied the item or a substantially similar item to the procuring activity within the preceding twelve months, or (iii) the contractor is a newly organized concern, or (iv) the contractor is on a list requiring pre-award clearances or special clearance prior to awards, or (v) the contractor is on any current list indicating current or past contract defaults or delinquencies, or (vi) the contractor is known to be involved in performance difficulties as a supplier or subcontractor for private customers on either Government or commercial work, or (vii) the contractor is listed on the consolidated list of contractors indebted to the Government (Hold-Up List), or (viii) there are any known facts or circumstances which support reasonable doubts as to the contractor's financial capability of performance.

When only minimum information is reasonably necessary, such as a current balance sheet and operating statement and similar financial statements for the next preceding fiscal year, these may be either published statements, audited statements, certified statements, or any combination of those, from any convenient source.

E-214 Appropriate Information—Purposes. The kinds of information and data that *may* be appropriate under the circumstances of particular cases (E-213) for adequate disclosure of the contractor's financial condition, for full understanding of the propriety and reasonable necessity for contract financing, for evaluation of the contractor's ability to perform his contracts without loss to the Government, and for informed judgment with regard to the terms, conditions and protective provisions that *may* be appropriate and prudent for the protection of the Government, are outlined below. It is emphasized that *only* those items which *are* appropriate to the particular case will be required.

(a) Balance sheet and profit and loss statement for the most recent fiscal year prepared and certified by an independent public accountant (including his comments, if any), and, if available, similar financial data for the two previous years; also latest available interim balance sheet and profit and loss statement of the current fiscal year; also a separate statement of amounts of defense and commercial sales. If audit reports are not available, then corresponding statements should be submitted, certified by an authorized officer, partner, or individual proprietor as truly and fully setting forth the financial condition and operating results of the applicant; also, if a proprietorship, partnership or joint venture, personal financial statements of proprietor, partners, or members of joint venture and description of individual liabilities of partners or members of joint venture on contracts of partnership or joint venture;

(b) Summary history of contractor and his principal management personnel, indicating particularly any past insolvencies of the contractor or a predecessor or of the officers, partners, or proprietors; also a description of his products or services;

(c) Statement of all affiliates of the contractor, showing financial interests of the contractor in affiliates and of affiliates in the contractor, and also mutual officers, directors, and major stockholders or owners, and disclosing character and amount of business transactions with affiliates or with officers, directors, major stockholders or owners of the contractor or his affiliates; also, if a corporation, list of major stockholders, and shares held;

(d) Statement of compensation payable to each officer, partner, proprietor, and principal executive, and to each key employee receiving comparable compensation, including bonus, commission, and profit-sharing arrangements, together with similar data for the past two years; also past and projected dividends, unless obtained with (a) above;

(e) Schedule of principal contracts and orders on hand, showing defense orders and civilian orders separately, and showing face amounts, unfinished amounts, and unliquidated advance or progress payments, and also indicating bids outstanding and contemplated and explanation concerning contracts under negotiation;

(f) Cash forecast, showing estimated disbursements and receipts for the period or periods involved (see E-214.1 and E-214.2);

(g) Estimated profit and loss statements and estimated balance sheets (see E-214.3);

(h) Comparison of past financial results with estimates previously furnished by the contractor;

(i) Credit agency ratings of the contractor, and, when significant, credit agency ratings of principal subcontractors and of principal business customers (defense and commercial) of the contractor;

(j) Existing and contemplated credit or financing arrangements, names of parties and relationship, if any, to contractor, amounts available or to be available, periods of availability, and required or contemplated payments, including (i) loans and credits, (ii) advances and progress payments, (iii) projected equity capital increases, (iv) deferred trade credit, if any, (v) creditor subordinations or standbys, and (vi) mortgages, liens, pledges, assignments, conditional sales, lease-purchases, hypothecations, and other encumbrances or security arrangements, both existing and contemplated;

(k) Status of all tax accounts, particularly Federal income, excise, and withholding taxes, and social security taxes or contributions (including verification with Internal Revenue Service, when appropriate) with special attention to the matter of Federal tax delinquencies (which are covered by the lien and right of distraint and levy provided by Sections 6321 and 6331 of the Internal Revenue Code);

(l) Appropriate information, explanation and schedules to indicate (i) leases, deferred purchase arrangements, and patent or royalty arrangements, outlining terms and showing relationship, if any, of other parties to the contractor, (ii) insurance maintained and to be maintained, (iii) contemplated capital expenditures, debt reduction or retirement, and acquisitions of capital stock, (iv) delinquencies on contracts, subcontracts or purchase orders, and status thereof, (v) pending or anticipated liability for contract price refunds, or for renegotiation, or for other Government claims, (vi) anticipated losses on contracts, (vii) contingent liabilities, including those on endorsements, guarantees, warranties, surety bonds, and material litigation pending or threatened, (viii) aging and collectibility of accounts and notes receivable, status of disputed receivables, identification of any amounts included in receivables but not currently due and payable, (ix) obsolescence of inventory and method of valuing inventory, (x) aging of accounts and notes payable, identifying major creditors and interest rates and other charges, if any, and status of significant disputed items, (xi) adequacy of reserves for depreciation, (xii) analysis of surplus;

(m) Significant ratios such as (i) inventory to annual sales, (ii) inventory to current assets, (iii) liquid assets to current assets, (iv) liquid assets to current liabilities, (v) current assets to current liabilities, and (vi) net worth to debt;

(n) Comments and opinion of audit agency concerning contractor's accounting system and controls, and available audit agency analysis of important elements of financial statements or projections;

(o) Other facts that may be appropriate for the purposes stated at the beginning of this E-214. See E-211.1 to E-211.6, inclusive.

E-214.1 *Cash Flow Forecast, and Estimated Financial Statements.* In doubtful cases, an estimated cash budget (Cash Flow Forecast) and related estimated Profit and Loss Statements and estimated Balance Sheets prepared by the contractor, will be very useful for the purpose of arriving at an informed judgment as to the cash requirements (both for the contract and for the contractor's other activities), cash receipts for the contract period, and cash or credit needed to supply any excess of projected expenditures over projected receipts. When considered useful or necessary, such estimates should be requested from the prospective contractor, analyzed by financial personnel, and discussed to the extent necessary or appropriate with the prospective contractor. Many contractors will have such projections readily available, perhaps not including estimated balance sheets. The failure of the contractor to have prepared such estimates, or resistance to their preparation, or difficulties and delays in preparation, or poor quality of the projections, or the use of unreasonable or unrealistic assumptions in their preparation, may well constitute warning signals that the company's planning has been insufficient and that significant financial troubles may be encountered during the contemplated period of contract performance.

E-214.2 *Realistic Assumptions.* Cash forecasts can, of course, be no more reliable and representative of probable financial developments than the assumptions on which these forecasts are based. Each cash forecast and related projection should disclose the important underlying assumptions. Most important of these assumptions are the—

- (i) estimated amounts and timing of purchases of materials, parts, components, subassemblies, services, and payments therefor;
- (ii) estimated amounts and timing of purchases of machinery and equipment, other production or test facilities, other fixed assets, and purchases or production of special tooling, and payments therefor;
- (iii) schedule of fixed cash charges, such as debt installments, interest, rentals and taxes;
- (iv) projected manufacturing and production schedules;
- (v) projected shipments, or delivery acceptances;
- (vi) estimated amounts and timing of billings to customers (including progress payments), and customer payments;
- (vii) estimated amounts and timing of cash receipts from lenders or other credit sources, and liquidation of loans; and
- (viii) estimated amounts and timing of cash receipts from other sources.

The assumptions underlying cash forecasts should be checked for reasonableness and realism—with the contractor, Government personnel responsible in the areas of engineering, production scheduling, cost and price analysis, and with others (including prospective supply, subcontract, and loan or credit sources)—as may be prudent in the circumstances of the case.

E-214.3 *Estimated Profit and Loss Statements and Balance Sheets.* The cash budget or cash forecast does not show anticipated profit or loss, and is limited to the forecast of movements within a company's cash account. The concurrent submission of an estimated profit and loss statement covering the same period serves to tie in the anticipated cash transactions with the estimated

sales and expense activity, and culminates in the estimated balance sheet position. The estimated profit and loss statement also can serve as a guide for evaluating the company's projections with respect to sales volume, cost of goods sold, gross profit and net profit in relation to the known results of past performance.

The interrelationship between the cash budget, estimated profit and loss statement and estimated balance sheet, covering a given period, is illustrated in charts 1 and 2.

E-215 Termination Financing. It is recognized that adequate protection against the financial impact of termination of Government contracts and subcontracts should encourage suppliers to invest their own funds in performance under such contracts and that financing for termination purposes will be an important aid to ultimate reconversion of industry to peacetime activities. Accordingly, termination financing may be made available, with appropriate protection of the Government's interest, either in connection with or independently of performance financing.

E-216 Report of Adverse Developments—Prompt Decisions. When materially adverse developments concerning a borrower having a guaranteed loan, or concerning a contractor having advance payments or progress payments, become known to a procuring activity, pertinent facts, including report of remedial or protective action taken or proposed, should be reported by the procuring activity to the contract financing office of the Department principally concerned with the contract financing, so that timely appropriate protective or remedial action may be taken by coordinated action of all concerned. However, the filing of such reports shall not relieve the personnel responsible for administration of the contract from taking such action as is deemed proper, prudent, and beneficial to the Government. When there are reasons to doubt the prudence of continuing progress payments or advance payments in cases involving performance difficulties or financial deterioration, decision must be made promptly and with proper regard to the harmful effects of delay on the continued operation of the contractors concerned.

E-217 Reports. Each Department shall submit reports of financing activities at such times and in such form as may be prescribed or approved by the Assistant Secretary of Defense (Comptroller).

E-218 Deviations—Amendments. Actions in the exercise of the judgment and discretion allowed by these regulations are not deviations. Actions contrary to or inconsistent with or varying from these regulations would be deviations. Deviations will be permitted only when necessary in exceptional circumstances, after (i) the proposed deviation has been presented to the Contract Finance Committee, (ii) the recommendations of that Committee have been obtained, and (iii) the approval of the Assistant Secretary of Defense (Comptroller) or his designated representative has been given. The above procedure will be followed also for amendments to these regulations (see E-003). The provisions of the Armed Services Procurement Regulation pertaining to deviations (1-109.2 and 1-109.3) and to amendments (1-105) do not apply to these contract financing regulations.

1 July 1960

BASIC POLICIES

E15

Chart No. 1

PROJECTION OF FINANCIAL STATEMENTS

	1st mo.	2d mo.	3d mo.	Totals
Profit and Loss Projection				
Net Sales	123			
Materials Used	42			
Direct Labor	31			
Mfg. Exp	32			
Cost of Goods Sold	105			
Gross Profit	18			
G & A Exp	10			
Operating Profit	8			
Income Tax Provision	4			
Net Profit	4			
* * * * *				
Cash Projection				
Cash Balance (Opening)	78			
Receivable Collections	112			
Progress Payments Received	30			
Bank Loan Proceeds	100			
Total Proceeds	320			
Trade Payables Paid	76			
Direct Labor Paid	31			
Mfg. Exp. Paid	35			
G & A Exp. Paid	9			
Payment on Long Term Debt	2			
Fixed Asset Addition	4			
Income Taxes Paid	11			
Progress Payments Repaid	24			
Bank Loan Repayment	66			
Total Disbursements	258			
Cash Balance (Closing)	62			
* * * * *				
Balance Sheet Projection				
Assets	Beginning			
Cash	78	62		
Receivables	188	199		
Inventory	306	308		
Current Assets	572	569		
Fixed Assets (Net)	53	56		
Deferred Charges	27	25		
Total Assets	652	650		
Liabilities				
Notes Payable—Banks	150	184		
Progress Payments Outstanding	56	62		
Trade Payables	102	71		
Income Tax	45	38		
Accruals	30	24		
Current Liabilities	383	379		
Long Term Debt	62	60		
Capital Stock	153	153		
Surplus	54	58		
Total Liabilities and Net Worth	652	650		
Working Capital	189	190		

ARMED SERVICES PROCUREMENT REGULATION

INTERRELATIONSHIP OF PROJECTION OF FINANCIAL STATEMENTS

E16

DEFENSE CONTRACT FINANCING REGULATIONS

1 July 1960

ARMED SERVICES PROCUREMENT REGULATION

	Bal Sheet (Begin- ning)	Cash Flow		Profit and Loss		Bal Sheet (End- ing)	Net Changes	
		DR	CR	DR	CR			
ASSETS:								
Cash.....	78		16			62	(16)	
Receivables.....	188		112		123	199	11	
Inventory.....	306			Purchases..... 45	42 Mat. Used.....	} Applied 308	2	
				Dir. Labor & Mfg. Exp. Incurred..... 62	31 Dir. Labor.....			
					32 Mfg. Exp.....			
Current Assets.....	572		128		230	569	(3)	
Fixed Assets.....	53	4				56	3	
Deferred Charges.....	27					25	(2)	
Total Assets.....	652	4	128		230	650	(2)	
LIABILITIES:								
Notes Payable—Banks.....	150	66	100			184	34	
Progress Payments.....	56	24	30			62	6	
Trade Payables.....	102	76			45 Purchases.....	71	(31)	
Income Tax.....	45	11			4	38	(7)	
Accruals.....	30	Paid { Dir. Labor..... 31 Mfg. Exp..... 35 G & A Exp..... 9	}		62 Dir. Labor & Mfg. Exp. Incurred.....	} 24	(6)	
								7 G & A Exp.....
Current Liabilities.....	383	252	130		118	379	(4)	
Long Term Debt.....	62	2				60	(2)	
Capital Stock.....	153					153		
Surplus.....	54				4	58	4	
Total Liabilities and Net Worth.....	652	254	130		122	650	(2)	

E-219 Interpretations. It is important that these regulations and the clauses set forth herein be applied fairly and uniformly for all contractors. When a serious question of interpretation or application of these regulations arises within a procuring activity, and is regarded as being of general importance, if the circumstances reasonably permit the obtaining of an advance opinion on the question from Departmental headquarters, the question should be presented, through procurement channels, to the procurement policy office of the Department primarily interested, namely, the Deputy Chief of Staff for Logistics, Office of Naval Material, or Deputy Chief of Staff/Materiel. If the circumstances do not reasonably permit request for advance opinion, report of an interpretation made (if regarded as important and of general interest for uniform application or interpretation of these regulations) should be made to the appropriate one of the procurement policy offices mentioned. Those are expected to take appropriate and timely action to obtain the views of interested offices of the other Departments, including the contract financing offices (E-212). When questions submitted are considered to be of importance in the general interest of uniformity and of fair and effective administration of these regulations, appropriate revision of these regulations, will be considered in the manner outlined in E-003. In periods between any amendments of these regulations, it is contemplated that information on important interpretations of general interest, reported to or made at Departmental headquarters, will be made available to procuring activities for dissemination to interested purchasing offices.

E-220 Foreign Procurement. These regulations apply equally to domestic and foreign procurement, with the exceptions and qualifications stated below. The enforceability of a contract provision in a foreign jurisdiction is dependent on local law and procedure. It may sometimes become necessary to take action in foreign countries to enforce collateral security or other contract financing protective provisions, or to recover property pursuant to a progress payment clause, and to collect contract financing indebtedness. In such cases, the nature and extent of remedies available for enforcement of contract provisions is necessarily determined by the laws, rules and procedures of the country in which the relief is sought.

E-220.1 Progress Payments on Contracts for Foreign Performance. When progress payments (Part 5) are contemplated for contracts to be performed wholly or partly in a foreign country, appropriate legal advice should be obtained with respect to the validity, enforceability and effectiveness of the contemplated progress payment clause (E-510.1, E-510.2, E-511) and of any proposed guarantees, pledges or other special protective arrangements, within the foreign country involved. Such legal advice should also cover the need, if any, for additional protective provisions (E-511.6) or for deviations (E-509.9) from the uniform clauses, that may be required to comply with the applicable foreign law and to provide for the most effective protection and enforcement of the interests of the United States. Paragraph E-517 requires that proposed deviations (E-509.9) must have prior approval of the contract financing office (E-212) after the coordination mentioned in E-518.

E-220.2 Advance Payments on Contracts for Foreign Performance. When advance payments are proposed (Part 4) for contracts to be performed wholly

or partly in a foreign country, the recommendation (E-412) for advance payments should include appropriate legal advice along the lines of that outlined in E-220.1. When advance payments are proposed to be made on contracts with foreign governments, it is expected that the advance payment arrangement, if approved (E-406), would not include provisions generally unsuitable for government-to-government agreements, such as those for special bank accounts, unilateral withdrawal of funds, liens, insurance, additional security, or representations, warranties and covenants of the kinds set forth in E-414.2(16) and E-414.2(18). It is recognized that advance payments to foreign governments, when authorized, will need to be adapted to the special circumstances of each case to provide appropriate protection in the light of the relationship of the United States to each affected foreign government and with due recognition of the sovereign status of the contracting parties.

E-220.3 *Guaranteed Loans for Foreign Contract Performance.* When contracts or subcontracts are to be performed in a foreign country, financing by means of loans guaranteed by the Military Departments seldom will be practicable because of difficulties of loan administration and enforcement. When loans are to be utilized for financing of such contracts or subcontracts, it is considered generally preferable that the loans be provided within the internal financial system of the foreign country concerned, without Military Department guarantee.

Part 3—Guaranteed Loans

E-300 Scope of Part. This Part covers the policies, organization, and procedure particularly applicable to guaranteed loans.

E-301 Federal Reserve Banks. Under Section 302(b) of Executive Order No. 10480, pursuant to Section 301(b) of the Defense Production Act of 1950, as amended, each Federal Reserve Bank is designated and authorized to act, on behalf of each guaranteeing agency, as fiscal agent of the United States in the making of contracts of guarantee and in otherwise carrying out the purposes of Section 301 of the Defense Production Act of 1950, as amended, in respect of private financing institutions. Pursuant to Regulation V of the Board of Governors of the Federal Reserve System, any private financing institution may submit to the Federal Reserve Bank of its district an application for guarantee of a loan or credit. This application is in substantially standard form, as approved by the Board of Governors of the Federal Reserve System, after consultation with the guaranteeing agencies. Forms of application, and information and guidance concerning applications, are available at all Federal Reserve Banks.

E-302 Board of Governors of the Federal Reserve System. Under Section 302(c) of Executive Order No. 10480, all actions and operations of Federal Reserve Banks, as fiscal agents, are subject to the supervision of the Board of Governors of the Federal Reserve System (hereinafter referred to as "Federal Reserve Board"). The Federal Reserve Board is authorized, after consultation with the heads of the guaranteeing agencies, (i) to prescribe such regulations governing the actions and operations of fiscal agents as it may deem necessary, (ii) to prescribe, either specifically or by maximum limits or otherwise, rates of interest, guarantee and commitment fees, and other charges which may be made in connection with loans, discounts, advances, or commitments guaranteed by the guaranteeing agencies through such fiscal agents, and (iii) to prescribe regulations governing the forms and procedures (which shall be uniform to the extent practicable) to be utilized in connection with such guarantees.

E-303 Procedure on Application of a Private Financing Institution. A defense contractor or subcontractor (at any level) or supplier, who requires operating funds may apply to the private financing institution selected by him, for the necessary loan or revolving credit, and furnish necessary information to the financing institution. If the financing institution is willing to extend credit, but considers Government guarantee necessary, it may file application for guarantee with the Federal Reserve Bank of its district. The Federal Reserve Bank promptly submits copy of the application to the Federal Reserve Board listing defense contracts, for transmittal to the interested guaranteeing agency, so that determination may be made as to eligibility of the prospective borrower. For the purpose of expediting, the Federal Reserve Bank may also, pursuant to general instructions of the guaranteeing agencies, submit schedules of defense contracts to the interested contracting officers, who are expected at once to take appropriate steps for determination of eligibility, and to submit their findings and report, including certificate of eligibility where appropriate, to the designated central procurement office, or contract financing office as the case may be, within the guaranteeing agency. Concurrently with the process for determination of eligibility, the Federal Reserve Bank makes any necessary

credit investigation, to the extent and in the manner that it considers investigation or verification appropriate to supplement information furnished by the applicant financing institution, all with a view to expediting necessary defense financing in such a way as to afford the best reasonable protection against monetary loss. The report and recommendation of the Federal Reserve Bank are sent to the Federal Reserve Board, which transmits them to the interested guaranteeing agency, in Washington. If the application is approved on such terms and conditions as may be deemed appropriate by the responsible officer or official within the guaranteeing agency, the guaranteeing agency then authorizes the Federal Reserve Bank, by standard form of authorization transmitted through the Federal Reserve Board, to execute and deliver to the financing institution a standard form of guarantee agreement (of which sample copy is attached hereto, as Annex 1), with the terms and conditions approved for the particular case. The Federal Reserve Bank, as fiscal agent for the guaranteeing agency, then issues the guarantee to the financing institution which makes the loan. Substantially the same procedure may be followed on application for guarantee of loans to be made to a potential defense contractor who is actively negotiating or bidding for defense business, except that the guarantee is not authorized until the prospective defense contract has been executed.

E-304 Loan Guarantees to Federal Reserve Banks. The Defense Production Act of 1950, as amended, and Executive Order No. 10480 also authorize guarantees for loans made or participated in by Federal Reserve Banks. The procedure outlined in E-303 applies also to loan guarantees where a Federal Reserve Bank is making or participating in the loan, except that in such cases the interested Federal Reserve Bank, as a financing institution, does not act as fiscal agent, and when approved, the guarantee agreement is executed by an official of the guaranteeing agency.

E-304.1 Other Government Agencies. Loan guarantees are not issued to other departments or agencies of the Government.

E-305 Loan Guarantees for Terminated Contracts. Guaranteed loans ordinarily provide for financing based on the borrower's recoverable investment in defense production contracts, including those contracts which have been terminated for the convenience of the Government. Guaranteed loans also may be established after total or partial termination of contracts for the convenience of the Government, or before such termination when it is known that termination of particular contracts for the convenience of the Government is about to occur. Such guaranteed loans are expected to provide necessary financing pending termination settlements and payments, and also to provide any funds necessary for continuing performance of defense production contracts that are eligible for financing under the guaranteed loan.

The procedure on applications for such guarantees will be substantially the same as that outlined in E-303, except that certificates of eligibility (E-314, E-315—E-315.11) will not be required for contracts which have been wholly terminated, nor for the terminated portion of contracts which have been partially terminated. It is of course expected that necessary precautions, appropriate to the circumstances of individual cases, will be taken,

as in other cases, to avoid losses and to cause such loans to be self-liquidating from the proceeds of defense production contracts. This type of loan guarantee, intended primarily for contract termination financing, is not provided before the imminence of particular contract terminations, for the reasons outlined in E-313.2. Further reasons include the difficulty of determining whether contract terminations will occur in the future and will require guaranteed loan financing, and the expense and administrative burden that would be involved in establishing commitments which may in fact never be used.

E-306 Guaranteeing Agency. The guaranteeing agencies which have been designated under Section 301 of the Defense Production Act of 1950, as amended, are the Departments of the Army, Navy, Air Force, Agriculture, Commerce, and Interior, General Services Administration, and Atomic Energy Commission. All of the guaranteeing agencies have concurred in the following policy:

Where a prospective borrower under a V-loan has defense contracts or subcontracts in which more than one of the guaranteeing agencies are interested, the guaranteeing agency in such case will be in general that agency which, as of the time of the application for the guarantee, has the preponderance of interest in such contracts and subcontracts on the basis of the dollar amount of the prospective borrower's unfilled and unpaid balances of such contracts and subcontracts and estimated claims under terminated contracts (exclusive of contracts with advance payments, if such advance payments are not to be liquidated by the proposed guaranteed loan). If the application is approved and a guarantee agreement is executed on behalf of such agency having the preponderance of interest, that agency will bear all losses and expenses and receive all revenues under such guarantee without allocation to other agencies of the Government. In this connection, among the Military Departments, single service procurement contracts are deemed those of the purchasing department.

E-306.1 Effect on Preponderance of Progress Payments or Denial of Certificate of Eligibility. Among the Military Departments, the determination of preponderance of interest, under E-306, is made without regard to the existence of progress payments on particular contracts, and without regard to the issuance or nonissuance of certificates of eligibility on particular contracts.

E-306.2 Shifting of Preponderance. During the course of a guaranteed loan, preponderance of interest in the borrower's defense production contracts may shift from one of the Military Departments, as guaranteeing agency, to another Military Department. When such preponderance has shifted materially so that substantial preponderance is in one of the Military Departments other than the guaranteeing agency, action on requests for increases in the amount of guaranteed loans, and on requests for extensions of maturity for a period of more than six months, ordinarily will be taken by the Military Department then having such preponderance of interest. However, in the above situation, action will be taken by the Military Department which has guaranteed the loan, if the loan is in distress, with fairly foreseeable losses, and the requested extension or increase is for the purpose of orderly liquidation of the loan in a manner designed to reduce the amount of the loss. If such a loan is

not in distress, and losses are not fairly foreseeable, and the greater part of the borrower's defense production contracts are determined to be eligible for a continuing guaranteed loan, and the circumstances of the case are such that favorable action would have been taken by the then guaranteeing agency if it had remained preponderantly interested in the borrower's defense production contracts, similar favorable action will be taken by the Military Department then having such preponderance of interest. In these cases, while new application for guarantee is required, the file of the contract financing office which has authorized the existing guarantee will be transferred to the contract financing office of the Military Department then having preponderant interest in the case, and the information to be submitted with the application need be only current financial information, data concerning the borrower's defense production contracts, and other pertinent facts concerning the borrower and his operations, to the extent necessary to supplement and bring up to date the information previously furnished to the guarantor. In order not to disturb or impair any security for the existing loan, and for the convenience of all concerned, it is preferable that the new guarantee merely replace the former guarantee, with appropriate recitals as to cancellation of the former guarantee, and with appropriate revision of the existing loan agreement and of such collateral security instruments as may require revision.

E-307 One-hundred Percent Guarantees. It is the policy of the guaranteeing agencies that 100 percent guarantees shall be limited to the greatest extent compatible with the requirements of the national defense. Applications for 100 percent guarantees will be approved only in cases in which the guaranteeing agency determines that the circumstances are exceptional, that the operations of the borrower are vital to the national defense, and that no other suitable means of financing are available.

E-308 Asset Formula. It is the policy of the guaranteeing agencies that borrowings under guaranteed loans made primarily for working capital purposes should be limited, in accordance with an asset formula, to amounts which do not exceed specified percentages (90 percent or less) of the borrower's investment in defense production contracts. The formula may include all items for which the borrower would be entitled to payment on performance or termination of defense contracts, but would not include any amounts (for which no work has been done nor expenditures made by the borrower) to become due as the result of later performance under the borrower's contracts. However, any such asset formula would be subject to relaxation in appropriate cases to the extent and for the time actually necessary for contract performance where the contractor's working capital and credit are inadequate. This "asset formula" does not include "cash collateral" or bank deposit balances.

E-309 Amount and Maturity of Guaranteed Loans. Subject to the limitations of the asset formula (E-308), the maximum amount of guaranteed credit in individual cases, and the maturity date of guaranteed loans or credits, are fixed to conform reasonably to the borrower's financing requirements for defense production contracts on hand at the time of application for guarantee. If additional defense production contracts are entered into after the application and before authorization of a guarantee, to such extent as to

require increase in the maximum amount, or longer maturity for the requested guaranteed loan, adjustments may be made to provide for the borrower's additional financing requirements. Also, guarantee agreements for existing guaranteed loans may be amended, on submission of pertinent information and Federal Reserve Bank report to the guaranteeing agency concerned, to provide financing for defense production contracts entered into by the borrower during the term of the guaranteed loan.

Also, within the limits of the applicable loan formula and ceiling amount, there is generally no objection to inclusion in the borrowing base, of assets under defense production contracts entered into after the date of the guarantee agreement. However, in exceptionally weak cases, and in the cases of guaranteed loans established for financing only one or a small number of contracts, it is the practice to require that financing of relatively substantial additional defense contracts under existing guaranteed loans be done only with the consent of the guarantor.

E-310 Assignments of Claims Under Contracts. Assignments of claims under the borrower's defense production contracts are generally required, including assignment of proceeds of such contracts entered into after issuance of the guarantee if after acquired contracts are eligible for financing under the guaranteed loan in a given case. However, assignments need not be required in particular cases, (i) where the borrower's financial condition is so strong as to cause assignments of any contracts to be considered not necessary for the protection of the loan, or (ii) where incident to assignment of major contracts it is considered not necessary for the protection of the loan to require initial assignment of relatively small contracts, or (iii) where the large number of contracts of the borrower for small dollar amounts, would cause the making and administration of contract assignments to be unduly burdensome and inconvenient so long as not deemed essential for the protection of the loan.

E-310.1 It is required, as standard practice, that defense production contracts, not theretofore assigned, will be assigned whenever requested by the guarantor or the financing institution.

E-310.2 Subcontracts and purchase orders issued to subcontractors are not considered acceptable for financing under guaranteed loans if and so long as the issuer of the subcontracts or purchase orders (i) reserves the privilege of making payments directly to the assignor or to the assignor and assignee jointly after notice of the assignment, or (ii) reserves the right to reduce or set off assigned proceeds under defense production contracts by reason of claims against the borrower arising after notice of assignment and independently of defense production contracts under which the borrower is the seller.

E-311 Other Collateral Security. Ordinarily, mortgages on fixed assets are not required, but they are required where considered essential to protect the Government. Liens or other security arrangements pertaining to inventories are also seldom required, except when desired by financing institutions or in exceptional circumstances when deemed necessary to protect the Government. Depending upon the circumstances of individual cases, endorsements, guarantees, subordinations, and standbys of other indebtedness, and other special security devices are required when deemed necessary for the protection of the Government.

E-312 Contract Surety Bonds in Relation to Loan Guarantees. In most jurisdictions, upon default by a contractor and performance of the surety's obligations, the surety's right of subrogation gives to the surety, ahead of a financing institution which had made a loan for contract performance, prior claim to payments made on the bonded contract after default, and in performance of his obligations the surety also has the benefit of materials on hand that have been paid for by the contractor, even though progress on the contract before default has been financed by loans from the financing institution.

E-312.1 Because of the foregoing, on loan guarantees in connection with prime contracts, the guarantor's loss on the loan, payable to the financing institution, may serve to take away from the Government the benefit of performance of the surety's obligations on his bond; and in subcontract cases the loan may serve to benefit the surety at the expense of the financing institution and guarantor.

E-312.2 Except to the extent that surety bonds are required by law, bonds are generally not required. Yet it sometimes may be necessary to rely upon a contractor whose capacity to perform is so doubtful that a bond is required for the protection of the Government. The guarantee of a loan to a contractor of such doubtful capacity to perform necessarily involves unusual risks of monetary loss. Contract surety bonds, and guaranteed loans for financing bonded contracts are regarded as fundamentally incompatible unless the interests of the surety are subordinated in favor of the guaranteed loan.

E-312.3 In order to maintain the advantages of performance bonds existing in favor of the Government on prime contracts, in cases where the Government contract or contracts covered by surety bonds are substantial in relation to the contractor's total backlog of defense production contracts or where the amount of the bond is substantial in relation to the contractor's net worth, applications for loan guarantees are approved only if the surety or sureties on the bonds involved will subordinate their rights and claims in favor of the guaranteed loan.

E-312.4 In cases involving relatively substantial subcontracts covered by surety bonds, approval of an application for loan guarantee will also be contingent upon the establishment of a reasonable allocation agreement between the surety or sureties and the financing institution, which would have the effect of giving the financing institution the benefit, with regard to payments to be made on the contract, of that portion of its loans fairly attributable to expenditures made under the bonded subcontracts prior to notice of default.

E-313 Other Borrowings. Since V-loans are generally measured, and limited by, stated percentages of the borrower's investment in defense production operations and terminated defense contracts, it is evident that borrowings outside the guarantee may be necessary in some cases to support the borrower's nondefense activities. It has been recognized in practice, that while prohibition of borrowings outside the guaranteed loan is preferable where practicable in a given V-loan case, such other borrowings should be permitted when necessary.

E-313.1 However, in cases where borrowings outside the V-loan are not prohibited, some restrictions on unguaranteed borrowings appear necessary for protection of the Government interest. These include reasonable

limitations on the amount of, and collateral security for, such unguaranteed borrowings, and usually a provision that collateral security, if any, for such unguaranteed loans made by the same financing institutions should also be secondary collateral for the V-loan.

E-313.2 If a credit is to be guaranteed under Section 301 of the Defense Production Act, in circumstances where there may be borrowings either under or outside the guarantee, the guaranteed credit, having been established, and being susceptible to use at any time, should be utilized first and fully, and not reserved as free insurance pending such time and circumstances as may make its use convenient to the financing institution. It has therefore been determined, in line with the practice developed toward the end of the past war, that for those cases in which borrowings outside the V-loan are not prohibited, it should be required uniformly that other borrowings outside the V-loan may be incurred and remain outstanding without the consent of the financing institution and the guarantor only when the V-loan is being used to the full extent permitted by the V-loan agreement. Appropriate certificates of the borrower, in the same form as those used to measure the amount that may be outstanding under the V-loan, but submitted at intervals not longer than 30 days, could be used to determine when there may be borrowings outstanding outside the V-loan.

E-313.3 It is of course recognized that appropriate exceptions will have to be made in individual cases to permit the continuation of outstanding term loans, to permit future unguaranteed term loans for expansion of facilities, and to permit continuance of such financing as may be necessary to supplement a V-loan.

E-314 Eligibility Certifications. Financing through guaranteed loans may be made available to a supplier in cases where (i) the production or service is essential and (ii) no alternative source is readily available without prejudice to the national defense. However, in connection with applications for guarantees or loans to be made to small business concerns, and in connection with increases or extensions of maturities of guaranteed loans made to small business concerns, and if they otherwise qualify, the factor of ready availability of alternative sources will not be considered, and the statement that the contracts or subcontracts involved cover materials or services which cannot be procured readily from an alternative source without prejudice to the national defense will be omitted from the certificate of eligibility. When financing through loan guarantees is requested, the interested procuring activity shall certify that the case meets the requirements set forth in this paragraph, and shall accompany such certification with adequate supporting data pertinent to the case.

E-314.1 Certificate of Eligibility. The certificates of eligibility and supporting data furnished by principally interested procuring activities, are the basis for the ultimate findings, incident to authorization or approval of loan guarantees, that the case meets the requirements of Section 301 of the Defense Production Act of 1950, as amended, and of Section 302 of Executive Order No. 10480.

In its present form this certificate includes findings that the materials or services involved are deemed essential to the national defense, that (except

for small business concerns) these cannot be procured readily from an alternative source without prejudice to the national defense, and that the contractor has the technical ability and the required facilities to perform. It is required that supporting data be contained in or accompany the certificate. It has been provided on the approved form of certificate, as the standard for guidance in considering issuance of certificates of eligibility, that—

This is not intended as a statement that there is absolutely no alternative source other than this contractor. The certification is founded on practical considerations. These considerations include the urgency of supply schedules, technical and plant capacity and unwillingness of other suppliers, time and expense involved in reletting all or parts of contracts (including expense of terminations for convenience, and delays incident to future determinations of default), comparative prices, effect of interruptions of established subcontracting arrangements, and other pertinent practical factors. (MAY 1959)

E-315 Procedure for Certificate of Eligibility. It is important that the processing of certificates of eligibility be accomplished expeditiously. It is necessary that there be application of uniform and consistent standards in determining eligibility.

E-315.1 As indicated in E-314.1, the determination in the certificate of eligibility is based upon giving full weight to practical considerations. It is also intended that in determining whether the materials or services can be procured readily from an alternative source without prejudice to the national defense, due consideration will be given to the effect of the use of alternative sources on the established major policies affecting procurement, such as those relating to the mobilization base, and industrial dispersal. If the reletting of contracts with other sources would involve conflict with any of such policies, such reletting in conflict with any such policy should be deemed prejudicial to the national defense. Also, in considering the practicability of alternative sources, in addition to the considerations outlined above, regard should be given to the question whether such potential alternate sources would require Government financing by progress payments, or advance payments, or Government supported financing by means of a guaranteed loan. If such financing would be required for alternative sources, such alternate sources may be fairly considered not "readily available" within the meaning of the certificate of eligibility.

E-315.2 Ordinarily, if the certificate of eligibility is not issued by the interested procuring activity, it does not follow that the contract involved will be terminated unless the contractor is in default to the extent that termination for default is considered desirable, or unless it has been determined that the contractor will be unable to perform his contract. Thus, in determining whether alternate sources are readily available without prejudice to the national defense, consideration should be given to the effect on supply schedules, and costs to the Government, if the contractor should default at a later date and be unable to perform by reason of inadequate financing.

E-315.3 In determining eligibility of small business concerns, the factor of ready availability of alternative sources will not be considered, and the paragraph of the form of certificate of eligibility pertaining to alternative sources will be deleted in cases of small business concerns. In such cases the fact that the particular items or services involved are being procured under or pursuant

to a contract of a Military Department is considered adequate to support and require the finding that the materials or services involved are deemed essential to the national defense. However, this does not mean that the certificate of eligibility should be provided automatically for small business concerns, or that any less care and diligence should be exercised for determining eligibility for small business cases than for other cases. See E-315.4.

E-315.4 It is necessary in all cases, whether or not involving a small business concern, that, in considering issuance of a certificate of eligibility, emphasis be placed on the factors of the contractor's technical ability, management competence and reliability, plant capacity and facilities, and generally on his ability to perform satisfactorily if adequate financing is provided. If these factors are not favorable, the certificate of eligibility should not be issued. See E-210 and E-211.

E-315.5 With regard to contracts existing at the time of request for the certificate of eligibility, the percentage of guarantee requested by a financing institution is not a factor to be considered in connection with issuance of the certificate.

E-315.6 In all cases, the supporting data furnished to the contract financing office should be sufficient to support the findings made in the certificate of eligibility. This data should contain available information pertinent to the matter of ability to perform satisfactorily, including known information as to past performance and available information on the relation of the contractor's operations to supply schedules, and available pertinent information on other practical factors such as comparative prices and the time and expense that would be involved if reletting the contracts should become necessary (E-214 does not apply). All of this information, including particularly an indication as to whether or not the contractor is considered an important source for materials or services, is necessary and important for consideration by the contract financing offices in determining the ultimate question whether, on their evaluation of all the circumstances of particular cases (including the contractor's financial condition and financial record), the authorization of a guarantee would be prudent and in the best interest of the Government. When the certificate of eligibility is not furnished, the facts and reasons leading to declination of the certificate should be furnished.

E-315.7 In those cases of subcontracts, where the prospective borrower is financially weak in relation to the financial condition of his defense contract customer, and the interests of the Government would be fostered by the making of progress payments to the subcontractor by his customer, it is appropriate that steps be taken, by coordinated effort of the procuring activity and the contract financing office, to arrange to the extent practicable for such progress payments to the subcontractor by his customer. By such means, in appropriate cases, the guaranteed loan may become unnecessary, or necessary in lesser amount, and the risks of loss are borne wholly or partly by the prime contractor or subcontractor responsible for selection of the prospective borrower as his subcontractor.

E-315.8 If materially adverse information of any character concerning the prospective borrower is known to a procuring activity, such materially adverse information should be fully reported to the interested contract

financing office. However, procuring activities are not expected to make any special investigation of the prospective borrower's financial condition in connection with applications for loan guarantees, as reports concerning financial condition of prospective borrowers are made by the Federal Reserve Banks.

E-315.9 When certificates of eligibility are requested within a Department, or by one Department from another Department, reply will be made as promptly as possible, on a priority basis, as delays in financing may retard contract performance. Ordinarily, requests for certificates of eligibility, and pertinent data, will be made only with respect to those contracts deemed of material consequence under the circumstances of particular cases.

E-315.10 In cases involving several contracts or subcontracts, including contracts or subcontracts relatively minor in relation to dollar amounts of other contracts involved, the processing of certificates of eligibility should not be delayed pending determinations concerning the relatively minor contracts. When any office within a procuring activity has on hand information concerning the substantial preponderance of amount of contracts with which it is concerned, its action concerning the certificate of eligibility should be completed without awaiting information on which to make determinations or recommendations concerning minor contracts. Basically, in situations involving numerous contracts, the determination as to eligibility should be founded upon the need of the prospective borrower's operation in the defense production program, and if his operation is considered necessary for performance of substantial preponderance of his contracts, it usually should be unnecessary to make determinations concerning the eligibility of any particular minor contracts.

E-315.11 When a contracting officer or other person within a procuring activity responsible for processing requests for certificates of eligibility has reason to believe that an application for loan guarantee has been filed or is about to be filed, relating to a contract or subcontract within his cognizance, he should, without awaiting request for a certificate of eligibility or request for information bearing on issuance of a certificate of eligibility, initiate the completion and transmittal of such information and certificate to the appropriate office within his Department, for forwarding to the contract financing office within the Department.

E-400 Scope of Part—References. This Part covers policy and procedure for advance payments on prime contracts, including advance payments on subcontracts under all types of prime contracts. It applies to all advance payments hereafter authorized pursuant to any legislation or other authority, except as provided in E-419. It is to be applied in conformity to the policies stated in Part 2. Paragraphs E-000, E-001, E-002, E-003, E-100, E-103, E-104, E-107.2, and E-107.3 are also applicable to advance payments.

E-400.1 Advance Payments on Subcontracts. The policies, standards and procedures of this Part 4 are applicable to advance payment to subcontractors under all prime contracts, including fixed-price types and cost-reimbursement types of prime contracts. For the prime contractor to receive advances for or to be reimbursed for such advance payments, it is required that the prime contract make provision for advance payments conforming to these regulations, with appropriate provision for advance payments by the prime contractor to subcontractors or suppliers. See E-414.2(17).

E-401 Types of Contracts That May Have Advance Payments. Advance payments may be made on any approved type of contract, as defined in 1-201.4.

E-402 Advance Payments in Addition to Progress Payments. Where necessary and in accordance with these regulations, advance payments may be authorized in addition to progress payments on the same contract. See E-508.

E-403 Interest. Interest will be charged on all advance payments hereafter authorized, at the rate of five percent per annum on the unliquidated balance; *provided*, however, advance payments may be approved without interest when in connection with nonprofit contracts with nonprofit educational or research institutions for experimental, research and development work, or on nonprofit contracts in the dependents' medical care program, or on contracts solely for the management and operation of Government-owned plants, or, in unusual cases when specifically authorized by the Under or Assistant Secretary responsible for the comptroller function. In this connection, contracts for acquisition of facilities at cost, for Government ownership, in combination with or in contemplation of supply contracts or subcontracts, will be treated as ordinary profit contracts requiring interest on advance payments.

Contracts with interest-free advance payments, hereafter authorized, should provide that the contractor will charge interest at the rate of five percent per annum on subadvances or downpayments to subcontractors, and that interest charged on such subadvances or downpayments will be credited to the account of the Government. However, interest need not be charged on subadvances on nonprofit subcontracts with nonprofit educational or research institutions for experimental, research, or development work.

Interest on advance payments will not be allowed as a cost under any cost-reimbursement type contract nor cost-reimbursement subcontract thereunder, and no such contract or subcontract may provide or be amended to provide for allowance of such interest as an item of cost.

E-404 Standards—Amounts—Need. Advance payments should be used sparingly and care should be taken to see that advances outstanding are

sufficient for but do not exceed the actual reasonable requirements for the contracts. The amount of the advance payment in any case should be based upon an analysis of the cash flow required under the contract, and as a general rule should not exceed the interim cash needs arising during the reimbursement cycle.

Generally, except for (1) nonprofit contracts with nonprofit educational or research institutions for experimental, research and development work, and (2) contracts solely for the management and operation of Government-owned plants, advance payments should not be authorized unless no other means of adequate financing is available to the contractor (not including loans or credit (i) at excessive interest rates or other exorbitant charges, or (ii) from agencies of the Government outside the Department of Defense), and the amount of the authorization is predicated upon use of the contractor's own working capital to the extent possible.

E-405 Statutory Requirements. The authorizing statutes (E-103) apply equally to negotiated contracts and to contracts awarded or to be awarded by formal advertising. It is required for all advance payments, that—

- (i) the contractor give adequate security (E-413);
- (ii) the advance payments shall not exceed the unpaid contract price;
- (iii) the making of advance payments is in the public interest, as determined by the authorized official concerned (E-406 and E-406.1), when the action is pursuant to the authority of Title 10 U.S.C. Section 2307; and
- (iv) the making of advance payments will facilitate the national defense, as determined by the authorized official concerned (E-406 and E-406.1), when the action is pursuant to P.L. 85-804, and Executive Order No. 10789.

E-406 Responsibility—Delegation of Authority. Except as provided in E-406.1, the responsibility and authority for making findings and determinations with respect to advance payments, and in each case for approval of contract provisions for advance payments, or for approval of the terms and conditions thereof, shall be in the Under or Assistant Secretary responsible for the comptroller function in each Military Department, or the authorized deputy of either of them. The Government may not be committed, in any manner, directly or indirectly to make an advance payment without the approval of the Under or Assistant Secretary responsible for the comptroller function, or the authorized deputy of either of them (or in appropriate cases, of a person to whom advance payment approval authority has been delegated in accordance with E-406.1), and no procurement involving advance payments may become final until such approval is obtained.

E-406.1 Delegation of Authority. The authority in each case to make findings and determinations with respect to advance payments and to approve contract provisions for advance payments, or to authorize the terms and conditions thereof, may be delegated within each Department no further than, to the Comptroller of the Army (and an alternate within his office) in the Department of the Army, to the Assistant Comptroller, Accounting and Finance (and an alternate within his office) in the Department of the Navy,

and to the Deputy for Contract Financing to the Assistant Secretary (Financial Management) of the Air Force (and an alternate responsible to such Deputy for Contract Financing). However, to the extent deemed necessary or prudent and efficient under exceptional circumstances, further delegations of this advance payment authority may be made with the approval of the Assistant Secretary of Defense (Comptroller).

E-407 Public Law 85-804—Formally Advertised Contracts. Pursuant to Public Law 85-804, and Executive Order No. 10789, the Department of Defense, the Department of the Army, the Department of the Navy, and the Department of the Air Force are authorized to make advance payments under contracts heretofore or hereafter made, without regard to other provisions of law relating to contracts, including advance payments under contracts awarded on competitive bids after formal advertising, and to amend such contracts to provide for advance payments.

Pursuant to the above statute and executive order (as well as 10 U.S.C. 2307) and subject to these regulations, advance payments may be granted at or after awards of contracts made on competitive bids after formal advertising (as well as on negotiated contracts) notwithstanding the absence of provision for or with regard to advance payments in the invitations for bids. Bids will be rejected if they are conditioned, qualified, or limited in such way that binding awards can be made only with provision for advance payments. Bids shall not be treated as nonresponsive because they contain, or are accompanied by or supplemented by request for advance payments or other indication that advance payments are desired or needed, so long as the advance payment aspect is not a condition, qualification or limitation of the bid. In the cases mentioned in the previous sentence, or if the need for advance payments becomes apparent in the course of inquiry as to whether the necessary funds will be available for performance by the prospective contractor, (i) the award may be made with provision for advance payments, in conformity with these regulations, or (ii) the award may be made without provision for advance payments if the prospective contractor is determined to be a responsible contractor and advance payments are considered not necessary, or (iii) the award may be denied because funds for performance are not otherwise available to the prospective contractor and the making of advance payments has been declined in accordance with these regulations.

E-407.1 Special Contract Provisions. All contracts providing for advance payments under the authority of the above-cited Act (P.L. 85-804) and Executive Order shall—

- (i) Make reference to the Act and Executive Order; and
- (ii) Include appropriate clauses required by the Act and Executive Order (17-102), or by other applicable regulations. See 7-203.7, 7-402.7.

E-407.2 Data. Complete data shall be maintained by each Department as to all contracts and amendments to contracts relating to advance payments made pursuant to the above-cited Act (P.L. 85-804) and Executive Order.

E-408 Uses of Advance Payments. Advance payments are last in the general order of preferences stated in E-209. Subject to the provisions of these regulations, advance payments are considered useful and appropriate

for (i) nonprofit contracts with nonprofit educational or research institutions for experimental, research and development work (E-404), (ii) contracts solely for the management and operation of Government-owned plants (E-404), (iii) contracts for acquisition of facilities at cost, for Government ownership, (iv) contracts involving operations so remote from a financing institution that the financing institution could not be expected to provide suitable administration of a guaranteed loan, (v) contracts of such highly classified nature that the Department considers it undesirable for national security to permit assignment of claims under the contract, (vi) rare but essential contracts of those contractors, unusually weak or overextended financially, in those cases in which performance may be better fostered and risks of financial loss most effectively minimized by very close control of funds and supervision of performance by personnel of the Department concerned, (vii) contracts for the financing of which a financing institution will not (A) assume a reasonable portion of the risks under a guaranteed loan, or (B) provide funds except at excessive interest rates or other exorbitant charges, and (viii) exceptional cases in which the utilization of advance payments will be more beneficial to the interest of the Government than any other available method of financing. Circumstances will occur, especially on contracts with small business concerns, in which advance payments will be more beneficial to the interest of the Government and more suitable to the situation of the contractor than other methods of contract financing. If, incident to a bid or proposal, or after award of a contract, an otherwise qualified contractor is found to require advance payments, there should be no hesitation in recommending to higher authority that advance payments be established.

E-409 Standards for Advance Payment Determinations—All Contracts.

It is not required for the granting of advance payments that the contractor be the sole or only source or prospective source for the required supplies or services. Important practical factors include comparative prices, urgency of supply schedules, and the time and expense involved in arranging other sources or in reletting contracts. The governing principles and standards for decision as to whether to make or approve the necessary determinations for advance payments are those set forth in this paragraph and E-202 through E-212, E-404, E-405, E-407, and E-408. Affirmative recommendations should be made in favor of granting advance payments when (i) advance payments are necessary to supplement other funds or credit available to a contractor or prospective contractor, (ii) the contractor or prospective contractor is otherwise qualified as a responsible contractor (1-903.1, 2-407, E-211), (iii) there will be a benefit to the Government from performance prospects or other practical advantages, and (iv) the case is within one or more of the categories described in E-408. These recommendations should be approved unless the responsible contract financing office (E-212), or the Under or Assistant Secretary or other official concerned (E-406 and E-406.1), considers that under all the relevant circumstances the making of advance payments would be unreasonable or imprudent or would involve undue risks of monetary loss to the Government, or would otherwise fail to conform to these regulations.

E-410 Findings, Determinations, and Authorization. The following is the standard text of findings, determinations, and authorization (E-412(vi)) for use in establishing advance payments.

ADVANCE PAYMENTS

FINDINGS, DETERMINATIONS, AND AUTHORIZATION FOR ADVANCE
PAYMENTS (MAY 1959)

FINDINGS

1. I hereby find that:

a. The _____ and _____ have entered
(Proposing Activity) (Contractor)
(propose to enter) into negotiated (formally advertised) Contract No. _____,
(dated _____).

[Summary of the specific facts and significant circumstances concerning the contract and contractor, which, together with the other findings, will clearly support the determinations below.]

b. Advance payments (in an amount not to exceed \$_____ at any time outstanding) (in aggregate amount not exceeding \$_____, less the aggregate amounts repaid, or withdrawn by the Government) are required by the contractor in order to perform under the contract. Such amount does not exceed the unpaid contract price, nor the estimated interim cash needs arising during the reimbursement cycle.

c. The advance payments are necessary for prompt and efficient performance of the contract, which will be of benefit to the Government.

d. The proposed advance payment clause contains appropriate provisions for the protection of the Government, as security for the advance payments. These include provision that all payments will be deposited in a special bank account, and that the United States will have a paramount lien upon (1) the credit balance in the special bank account, (2) any supplies contracted for, and (3) any material or other property acquired for performance of the contract. (Advance payment bond is required.) Such security is deemed to be adequate.

e. Within the meaning of applicable regulations, no means of adequate financing other than by advance payments are available to the contractor, and the amount designated above is predicated upon the use of the contractor's own working capital to the extent possible in performing the contract.

f. The contractor is a nonprofit (educational) (and) (research) institution, and the contract is for (experimental) (,) (research and development) work, without profit to the contractor.

g. The contract is solely for the management and operation of a Government-owned plant.

h. The following unusual facts and circumstances favor the making of advance payments to the contractor without interest:

[Recitation of pertinent facts and circumstances]

DETERMINATIONS

2. Upon the basis of the foregoing findings, I hereby determine that the making of the proposed advance payments with interest of five per cent per annum on the unliquidated balance of such advance payments (without interest except as provided by the proposed advance payment clause) (is in the public interest) (will facilitate the national defense).

[D&F continued on next page]

DEFENSE CONTRACT FINANCING REGULATIONS

AUTHORIZATION

3. Such advance payments, of which (the amount at any one time outstanding) (the aggregate amount, less the aggregate amounts repaid, or withdrawn by the Government), shall not exceed \$....., are hereby authorized pursuant to 10 U.S.C. 2307 (The Act of August 28, 1958, P.L. 85-804, 72 Stat. 972, and Executive Order No. 10789), upon (terms and conditions substantially as contained in the proposed advance payment clause of which copy (or outline) is annexed hereto) (the following terms and conditions:)

(All prior advance payment authorizations with respect to Contract No. are hereby superseded.)

[Name typed]

[Title of authorized official]

Instructions:

1. On requests for advance payment provisions, this document will be prepared, in final form for signature of an authorized official (E-406), by such office as may be designated by the procedures of each Department. It will include such of the paragraphs set out above as are appropriate. (See below.)

2. Words and expressions in parentheses and blank spaces in the above paragraphs indicate choices of language, depending upon the facts pertinent to a particular request. Forms will not be prepared in advance which include all of the above paragraphs and all of the alternate language. Each "Findings, Determinations, and Authorization" will be prepared separately to include only those paragraphs and those words (including statutory references) which are pertinent to the particular request.

3. Each such "Findings, Determinations, and Authorization" must include paragraphs 1.a., 1.b., 1.c., 1.d., 2 and 3. Paragraph 1.e will not be included in the case of nonprofit contracts with a nonprofit educational or research institution for experimental, research and development work, or in the case of contracts solely for the management and operation of Government-owned plants. Paragraph 1.f., 1.g., or 1.h., as appropriate, will be included if the advance payments are to be made without interest to the contractor. The last sentence of paragraph 3 will be included if any advance payments have previously been authorized for the contract. The numbering and lettering of the paragraphs in the completed "Findings and Determinations" will then run consecutively, based on the paragraphs actually used.

4. Modifications to adapt to special facts and circumstances are permitted.

5. 10 U.S.C. 2307 normally will be the statutory authority cited for the advance payment. The Act of August 28, 1958, and Executive Order No. 10789 are reserved for extraordinary situations not falling within the purview of 10 U.S.C. 2307.

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ADVANCE PAYMENTS

E-411 Application for Advance Payment. The contractor's application for advance payment, whether incident to the making of a contract or by way of amendment or supplemental agreement for advance payments under an existing contract, may be in the form of a letter request or other writing. The application should refer to the contract or proposed contract under which advance payments are requested, and should include or be accompanied or supported by—

- (i) Cash flow forecast (E-214(f), E-214.1, E-214.2) (limited to estimated cash flow for the contract or contracts to be financed by advance payments when the contracts are of the kinds mentioned in E-408(i) or E-408(ii));
- (ii) Proposed amount of advance payments;
- (iii) Name and address of bank suggested as depository for the advance payment special account;
- (iv) Except for contracts mentioned in E-408(i) and E-408(ii), description of efforts made to obtain private financing, including guaranteed loan; and
- (v) Such other information and data (E-214) as may be appropriate under the circumstances of the case for the purposes outlined in E-214 (of which, ordinarily, information concerning reliability,

[Next page is E35]

technical capability, and adequacy of accounting system and controls should be sufficient for contracts mentioned in E-408(i) and E-408(ii).

E-412 Action by Contracting Officer—Approval. After such investigation as may be appropriate, and analysis of the request and information submitted by the contractor, the contracting officer should transmit to the appropriate office within his Department, with such number of copies as may be required within the Department:

- (i) Date and identifying symbol of the approval of the award, citation of the appropriation available, type of contract, dollar amount of contract, the items to be supplied, and schedule of deliveries or performance, status of performance and deliveries, if any contemplated profit or fee, and (unless excepted by instructions of the Department concerned) copy of contract, if available;
- (ii) The request and information furnished by the contractor;
- (iii) Report of investigation, including past dealings with the contractor, and comment on the character and responsibility of the contractor, technical ability, and plant capacity;
- (iv) Comment on (A) the need for the advance payments for performance of the contract, and (B) the benefits to the Government from the contemplated contract performance;
- (v) Proposed advance payment contract provisions or supplemental agreement, including proposed security provisions, unless those are to be provided by the contract financing office or other office;
- (vi) The appropriate findings, determination and authorization (E-410) (for signature by the approving authority), unless those are to be provided by the contract financing office or other office;
- (vii) Recommendation that the advance payment be approved; and
- (viii) Justification of proposal, if any, for waiver of interest charge (E-403).

E-412.1 Action by Contracting Officer—Disapproval. If the contracting officer determines that the requested advance payment should be disapproved, the contractor's request, information submitted, report of investigation (if any), and statement of reasons for adverse determination should be sent forward immediately to the Army Comptroller, in the Department of the Army, to the Assistant Comptroller, Accounting and Finance, in the Department of the Navy, and to the Deputy for Contract Financing to the Assistant Secretary (Financial Management) of the Air Force. This information may be useful in connection with existing or prospective arrangements for other financing, and for such further action as may be appropriate to enhance uniform application of these regulations.

E-413 Security—Supervision—Covenants. The advance payment agreement, under any applicable statute, should provide for deposit of all payments into special bank accounts and should include suitable covenants to protect the Government's interest. Advance payments under such authorizations should be limited to the contractor's financial needs, and withdrawals from the special bank accounts provided therefor should be closely supervised. The

terms governing advance payments should include as security, in addition to or in lieu of the requirements for an advance payment bond or other security, provision for a lien in favor of the Government, paramount to all other liens, upon the supplies contracted for, upon the credit balance in any special account in which such payments may be deposited, and upon the material and other property acquired for performance of the contract, except to the extent that the Government has valid title thereto.

Because of the variations in circumstances of individual cases, no fixed rule can be prescribed for determining adequacy of security in a particular case. The minimum security will be that required by the provisions of approved contract forms, supplemented by such further provisions and arrangements, if any, as may be considered appropriate for the protection of the Government under the circumstances of each case. Advance payment bonds usually will not be required. When and to the extent deemed necessary and appropriate special security provisions will be required, such as, for example, personal or corporate endorsements or guarantees, pledges of collateral, subordination or standby of other indebtedness, and controls or limitations on profit distributions, salaries, bonuses or commissions, rentals and royalties, capital expenditures, creation of liens, debt retirement or stock retirement, and creation of additional obligations.

E-414 Forms of Contract Provisions and Supplemental Agreements.

The approved forms for agreement covering advance payment special bank accounts, and approved forms of advance payment contract provisions and supplemental agreements for use in connection with the several types of approved contracts are set out below. Variations from the approved forms of contract provisions for advance payments should be made only when necessary in exceptional circumstances, with the approval of the person having authority to approve the particular advance payment contract involved. With regard to variations, it is recognized, for example, that there may be exceptional circumstances in which it will be beneficial to the Government to modify E-414.1 (b) and the second sentence of E-414.2(7).

E-414.1 *Form of Agreement for Special Bank Account.* For all advance payments substantially the following form of agreement will be used for the special bank account or accounts:

AGREEMENT FOR SPECIAL BANK ACCOUNT (MAY 1959)

AGREEMENT entered into this _____ day of _____, 19____, between the UNITED STATES OF AMERICA, hereinafter called the Government, represented by the Contracting Officer executing this Agreement, _____, a corporation under the laws of the State of _____, hereinafter called the Contractor, and _____, a banking corporation under the laws of _____, located at _____, hereinafter called the Bank.

RECITALS

(a) Under date of _____, 19____, the Government and the Contractor entered into Contract(s) No. _____, or a Supplemental Agreement thereto, providing for the making of advance payments to the Contractor. Copy of such advance payment provisions has been furnished to the Bank.

(b) Said Contract or Supplemental Agreement requires that amounts advanced to the Contractor thereunder be deposited in a Special Bank Account or accounts at a

[Agreement continued on next page]

member bank or banks of the Federal Reserve System or any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935; 49 Stat. 684, as amended; 12 U.S.C. 264), separate from the Contractor's general or other funds; and, the Bank being such a bank, the parties are agreeable to so depositing said amounts with the Bank.

(c) This Special Bank Account shall be designated "-----,
(Name of Contractor)

----- Special Bank Account."
(Department)

COVENANTS

In consideration of the foregoing, and for other good and valuable considerations, it is agreed that—

(1) The Government shall have a lien upon the credit balance in said account to secure the repayment of all advance payments made to the Contractor, which lien shall be superior to any lien or claim of the Bank with respect to such account.

(2) The Bank will be bound by the provisions of said contract or contracts relating to the deposit and withdrawal of funds in the above Special Bank Account, but shall not be responsible for the application of funds withdrawn from said account. After receipt by the Bank of written directions from the Contracting Officer, or from the Administering Office designated in the advance payment contract mentioned above, or from the duly authorized representative of the Contracting Officer or the Administering Office, the Bank shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions. Any written directions received by the Bank through the Contracting Officer upon Department of the ----- stationery and purporting to be signed by, or by the direction of ----- or his duly authorized representative, shall, in so far as the rights, duties and liabilities of the Bank are concerned, be conclusively deemed to have been properly issued and filed with the Bank by the Department of the -----.

(3) The Government, or its authorized representatives, shall have access to the books and records maintained by the Bank with respect to such Special Bank Account at all reasonable times and for all reasonable purposes, including (but without limiting the generality thereof) the inspection or copying of such books and records and any and all memoranda, checks, correspondence or documents appertaining thereto. Such books and records shall be preserved by the Bank for a period of six (6) years after the closing of this Special Bank Account.

(4) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account, the Bank will promptly notify -----

(Administering Office)

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed as of the day and year first above written.

(Signatures and Official Titles)

E-414.2 Advance Payment Provisions. Approved contract provisions for advance payments, with directions for use where appropriate, follow:

(1) *Amount of Advance.* At the request of the Contractor, and subject to the conditions hereinafter set forth, the Government shall make an advance payment, or advance payments from time to time, to the Contractor. No advance payment shall be made (i) without the approval of the office administering advance payments (hereinafter called the "Administering Office" and designated in paragraph (14)(d) below) as to the financial necessity therefor; (ii) in an amount which together with all advance payments theretofore made, shall exceed the amount stated in paragraph (14)(a) below; and (iii) without a properly certified invoice or invoices. (MAY 1959)

(2) *Special Bank Account.* Until all advance payments made hereunder, and interest charges, are liquidated and the Administering Office approves in writing the

[Provisions continued on next page]

release of any funds due and payable to the Contractor, all advance payments and all other payments under the contract shall be made by check payable to the Contractor and be marked for deposit only in a Special Bank Account with the bank designated in paragraph (14)(b) below. No part of the funds in the Special Bank Account shall be mingled with other funds of the Contractor prior to withdrawal thereof from the Special Bank Account as hereinafter provided. Except as hereinafter provided, each withdrawal shall be made only by check of the Contractor countersigned on behalf of the Government by the Contracting Officer, or such other person or persons as he may designate in writing (hereinafter called the "Countersigning Agent"). (MAY 1959)

[When considered not reasonably necessary for the protection of the Government, the countersignature requirement may be waived for contractors who are financially strong, with good performance records and good past experience with regard to contract cost disallowances. In such cases, the following sentence may be added to paragraph (2)]:

Until otherwise determined by the Administering Office, countersignature on behalf of the Government will not be required. (MAY 1959)

(3) *Use of Funds.* The funds in the Special Bank Account may be withdrawn by the Contractor solely for the purposes of making payments for direct materials, direct labor, and administrative and overhead expenses required for the purposes of this contract (including, without limitation, payments incident to termination for the convenience of the Government) and properly allocable thereto in accordance with generally accepted accounting principles (subject to any applicable provision of Section XV of the Armed Services Procurement Regulation), or for the purpose of reimbursing the Contractor for such payments, and for such other purposes as the Administering Office may approve in writing. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office. (MAY 1959)

[In the case of a cost-reimbursement contract, insert the following paragraph instead of paragraph (3) above.]

(3) *Use of Funds.* The funds in the Special Bank Account may be withdrawn by the Contractor solely for the purposes of making payments for items of allowable cost as defined in Article ----- of this contract, or to reimburse the Contractor for such items of allowable cost, and for such other purposes as the Administering Office may approve in writing. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office. (MAY 1959)

(4) *Return of Funds.* The Contractor may at any time repay all or any part of the funds advanced hereunder. Whenever so requested in writing by the Administering Office, the Contractor shall repay to the Government such part of the unliquidated balance of advance payments as shall in the opinion of the Administering Office be in excess of current requirements, or (when added to total advances previously made and liquidated) in excess of the amount specified in paragraph 14(a). In the event the Contractor fails to repay such part of the unliquidated balance of advance payments when so requested by the Administering Office, all or any part thereof may be withdrawn from the Special Bank Account by checks payable to the Treasury of the United States signed solely by the Countersigning Agent and applied in reduction of advance payments then outstanding hereunder. (MAY 1959)

(5) *Liquidation.* If not otherwise liquidated, the advance payments made hereunder and interest charges, if any, shall be liquidated as herein provided. When the sum of all payments under this contract, other than advance payments, plus the unliquidated amount of advance payments and interest charges are equal to (--- percent) of the stated contract price of \$-----, or such lesser amount to which the contract price may have been reduced, plus (i) increases, if any (not resulting from any provisions for price redetermination or escalation), in the above stated contract price not exceeding, in the aggregate \$-----, and
(Insert here not more than 10 percent of stated contract price above)

[Provisions continued on next page]

(ii) all increases in contract price resulting from any provision for price redetermination or escalation, the Government shall thereafter withhold further payments to the Contractor and apply the amounts withheld against the Contractor's obligation to repay such advance payments and interest charges until such advance payments and interest charges shall have been fully liquidated. If upon completion or termination of the contract, all advance payments and interest charges have not been fully liquidated the balances thereof shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand. (MAY 1959)

[The percentage stated above should not be more than 95 percent. In appropriate cases, where more rapid liquidation is desirable, the following sentence may be inserted at the beginning of paragraph (5), with appropriate percentage specified.]

To liquidate the principal amount of any advance payment made to the Contractor hereunder, there shall be deductions of _____ percent from any and all payments made by the Government under the contracts involved. (MAY 1959)

[In case of a cost-reimbursement contract, insert the following paragraph instead of paragraph (5) above.]

(5) *Liquidation.* If not otherwise liquidated, the advance payments made hereunder and interest charges, if any, shall be liquidated as herein provided. When the sum of all payments under this contract, other than advance payments, plus the unliquidated amount of advance payments and interest charges are equal to the total estimated cost of \$_____ for the work under this contract (not including fixed fee, if any), or such lesser amount to which the total estimated cost under this contract may have been reduced, plus increases, if any, in this total estimated cost not exceeding, in the aggregate, \$_____,

(Insert not more than 10 percent of estimated costs stated above)

(including, without limitation, reimbursable costs incident to termination for the convenience of the Government as estimated by the Contracting Officer), the Government shall thereafter withhold further payments to the Contractor and apply the amounts withheld against the Contractor's obligation to repay such advance payments and interest charges, until such advance payments and interest charges shall have been fully liquidated. If upon completion or termination of the contract all advance payments and interest charges have not been fully liquidated, the balances thereof shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand. (MAY 1959)

(6) *Interest Charge.* If required in paragraph (14)(c) below and at the rate therein specified, the Contractor shall pay interest to the Government upon the daily unliquidated balance of advance payments made under this contract. If the full amount of such interest is not paid by deduction or otherwise upon the completion or termination of this contract, the deficiency shall be paid by the Contractor to the Government upon demand. Interest at the rate specified in paragraph (14)(c) shall be computed at the end of each calendar month in the manner herein specified on the average daily balance of the principal of the advance payments outstanding. Notwithstanding monthly computation, interest shall be computed for the actual number of days involved, on the basis of a 365- or 366-day year as the case may be. In determining such balance, (1) charges on account of the advance payments to the Contractor shall be made as of the date of the checks therefor, and (2) credits arising from deductions from payments to the Contractor shall be made as of the date of issue of the checks for such payments. *[For cost-reimbursement contracts, use, instead of (2) above: (2) credits resulting from deductions from cost reimbursements shall be made upon the approval of the vouchers by the Disbursing Officer, as of the dates respectively upon which the Contractor presents to the Contracting Officer or his duly authorized representative full and accurate data for the preparation of each such voucher, which date as to each such voucher shall be certified*

[Provisions continued on next page]

by the Contracting Officer or his duly authorized representative.] Also, in determining such balance, credits arising from cash repayments to the Government by the Contractor shall be made as of the date the checks therefor are received by the Disbursing Officer. As soon as such monthly computations shall have been made, the interest charge so determined shall be deducted from any payments otherwise due to the Contractor under the contracts on which advance payments have been made. [*For cost-plus-fixed-fee contracts, use the following, instead of the next preceding sentence:* As soon as such monthly computations shall have been made, the interest charge so determined shall be deducted from any payments on account of the fixed fee which may be made to the Contractor from time to time under the Contract.] In the event the accrued interest exceeds any such payment, the excess of such interest shall be carried forward and deducted from subsequent payments on account of the contract price or fixed fee as the case may be. The interest shall not be compounded, and shall, subject to the provisions of paragraph (11) hereof, cease to accrue with respect to each contract upon which advance payments are outstanding hereunder, upon termination of such contract for other than the fault of the Contractor, or upon the date found by the Contracting Officer to be the date upon which the Contractor completed his performance under the contract. (MAY 1959)

(7) *Bank Agreement.* Before an advance payment is made hereunder, the Contractor shall transmit to the Administering Office, in the form prescribed by such office, an Agreement in triplicate from the bank in which the Special Bank Account is established, clearly setting forth the special character of the account and the responsibilities of the bank thereunder. Wherever possible, such bank shall be a member bank of the Federal Reserve System, or an "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935, 49 Stat. 684, as amended; 12 U.S.C. 264). (MAY 1959)

(8) *Lien on Special Bank Account.* The Government shall have a lien upon any balance in the Special Bank Account paramount to all other liens, which lien shall secure the repayment of any advance payments made hereunder together with interest charges thereon. (MAY 1959)

(9) *Lien on Property Under Contract.* Any and all advance payments made under this contract, together with interest charges thereon, shall be secured, when made by a lien in favor of the Government, paramount to all other liens, upon the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other provision of this contract, or otherwise, shall have valid title to such supplies, materials, or other property as against other creditors of the Contractor. The Contractor shall identify by marking or segregation all property which is subject to a lien in favor of the Government by virtue of any provision of this contract in such a way as to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this contract. If for any reason such supplies, materials, or other property are not identified by marking or segregation, the Government shall be deemed to have a lien to the extent of the Government's interest under this contract on any mass of property with which such supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over such property on his books and records. If at any time during the progress of the work on the contract it becomes necessary to deliver any item or items and materials upon which the Government has a lien as aforesaid to a third person, the Contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, inter alia, the existence of such lien. A copy of each receipt shall be delivered by the Contractor to the Contracting Officer. If this contract is terminated in whole or in part and the Contractor is authorized to sell or retain termination inventory acquired for or allocated to this contract, such sale or retention shall be made only if approved by the Contracting Officer, which approval shall constitute a release of the Government's lien hereunder to the extent that such termination inventory is sold or retained, and to the extent that the proceeds of the sale,

[Provisions continued on next page]

or the credit allowed for such retention on the contractor's termination claim, is applied in reduction of advance payments then outstanding hereunder. (MAY 1959)

(10) *Insurance.* The Contractor represents and warrants that he is now maintaining with responsible insurance carriers, (i) insurance upon his own plant and equipment against fire and other hazards to the extent that like properties are usually insured by others operating plants and properties of similar character in the same general locality; (ii) adequate insurance against liability on account of damage to persons or property; and (iii) adequate insurance under all applicable workmen's compensation laws. The Contractor agrees that, until work under this contract has been completed and all advance payments made hereunder have been liquidated, he will (i) maintain such insurance; (ii) maintain adequate insurance upon any materials, parts, assemblies, subassemblies, supplies, equipment and other property acquired for or allocable to this contract and subject to the Government lien hereunder; and (iii) furnish such certificates with respect to his insurance as the Administering Office may from time to time require. (MAY 1959)

(11) *Default Provisions.* Upon the happening of any of the following events of default, (i) termination of this contract by reason of fault of the Contractor (ii) a finding by the Administering Office that the Contractor (a) has failed to observe any of the covenants, conditions or warranties of these provisions or has failed to comply with any material provision of this contract, or (b) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, or (c) has allocated inventory to this contract substantially exceeding reasonable requirements, or (d) is delinquent in payment of taxes or of the costs of performance of this contract in the ordinary course of business; (iii) appointment of a trustee, receiver or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization, arrangement or liquidation proceedings by or against the Contractor; (iv) service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account; or (v) the commission of an act of bankruptcy; the Government, without limiting any rights which it may otherwise have, may, in its discretion and upon written notice to the Contractor, withhold further withdrawals from the Special Bank Account and withhold further payments on this contract. Upon the continuance of any such events of default for a period of thirty (30) days after such written notice to the Contractor, the Government may, in its discretion, and without limiting any other rights which the Government may have, take the following additional actions as it may deem appropriate in the circumstances; (a) withdraw all or any part of the balance in the Special Bank Account by checks payable to the Treasurer of the United States signed solely by the Countersigning Agent and apply such amounts in reduction of advance payments then outstanding hereunder and in reduction of any other claims of the Government against the contractor; (b) charge interest on advance payments outstanding during the period of any such default at the rate of six percent (6%) per annum; (c) demand immediate repayment of the unliquidated balance of advance payments hereunder; or (d) take possession of and, with or without advertisement, sell at public sale at which the Government may be the purchaser, or at a private sale, all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to such sale, apply the net proceeds of such sale in reduction of the unliquidated balance of advance payments hereunder and in reduction of any other claims of the Government against the Contractor. (MAY 1959)

(12) *Prohibition Against Assignment.* Notwithstanding any other provision of this contract, the Contractor shall not transfer, pledge, or otherwise assign this contract, or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution. (MAY 1959)

(13) *Information—Access to Records.* The Contractor shall furnish to the Administering Office signed or certified balance sheets and profit and loss statements monthly, or at such other intervals as may be required, together with a monthly report on the operation of the Special Bank Account in prescribed form, and such other information concerning the operation of the Contractor's business as may be requested. The

[Provisions continued on next page]

contractor shall afford to authorized representatives of the Government proper facilities for inspection of the Contractor's books, records and accounts. (MAY 1959)

(14) *Designations and Determinations.*

(a) *Amount.* The amount of advance payments at any time outstanding hereunder shall not exceed \$..... [or, alternatively:]

(a) *Amount.* The aggregate amount of the advance payments to be made hereunder (less the aggregate amounts paid or withdrawn pursuant to paragraph (4)) shall not exceed \$.....

(b) *Depositary.* The bank designated for the deposit of payments made hereunder shall be

(c) *Interest Charge.* Interest shall be charged in the manner provided herein at the rate of five percent per annum. [In the case of advance payments made without interest, insert the following:] No interest shall be charged for advance payments made hereunder, except as provided in paragraph (11)(b). The Contractor shall charge interest at the rate of five percent per annum on subadvances or down payments to subcontractors, and such interest will be credited to the account of the Government. However, interest need not be charged on subadvances on nonprofit subcontracts with nonprofit educational or research institutions for experimental, research of development work.

(d) *Administering Office.* The office administering advance payments is designated as..... (MAY 1959)

(15) *Other Security.* The terms of this contract shall be considered adequate security for advance payments hereunder, except that if at any time the Administering Office deems the security furnished by the Contractor to be inadequate, the Contractor shall furnish such additional security as may be satisfactory to the Administering Office, to the extent that such additional security is available. (MAY 1959)

(16) *Representations and Warranties.* To induce the making of the advance payments, the Contractor represents and warrants that—

(a) The balance sheet, the profit and loss statement and any other supporting financial statements, heretofore furnished to the Administering Office, fairly reflect the financial condition of the Contractor at the date shown on said balance sheet and the results of the operation for the period covered by the profit and loss statement, and since said date there has been no materially adverse change in the financial condition of the Contractor.

(b) No litigation or proceedings are presently pending or threatened against the Contractor, except as shown in the above statements.

(c) The Contractor, apart from liability resulting from the renegotiation of defense production contracts, has no contingent liabilities not provided for or disclosed in the financial statements furnished to the Administering Office.

(d) None of the provisions herein contravenes or is in conflict with the authority under which the Contractor is doing business or with the provision of any existing indenture or agreement of the Contractor.

(e) The Contractor has the power to enter into this contract and accept advance payments hereunder, and has taken all necessary action to authorize such acceptance under the terms and conditions of this contract.

(f) None of the assets of the Contractor is subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by the Contractor to the Administering Office. There has been no assignment of claims under any contract affected by these advance payment provisions, or if there has been any assignment, such assignments have been terminated.

(g) All information furnished by the Contractor to the Administering Office in connection with each request for advance payments is true and correct.

(h) These representations and warranties shall be continuing, and shall be deemed to have been repeated by the submission of each invoice for advance payments. (MAY 1959)

[Provisions continued on next page]

(17) *Subadvances.* Substantially the following provision should be included in the contract when subadvances are contemplated:

Subject to the prior written approval of the Administering Office, funds from the Special Bank Account may be used by the Contractor to make advance payments or down payments to subcontractors and materialmen in advance of performance by the subcontractor or materialman. Such subadvances shall not exceed ----- percent of the subcontract price or estimated cost as the case may be, and the subcontractors or materialmen to whom such advances are made shall furnish adequate security therefor. Unless other security is required by the Administering Office, covenants in subcontracts, expressly made for the benefit of the Government providing for a Special Bank Account for the subadvance, with Government lien thereon, and providing for a Government lien, paramount to all other liens, on all property under such subcontract, and imposing upon the subcontractor and the depository bank substantially the same duties and giving the Government substantially the same rights as are provided herein (and in the Agreement for Special Bank Account supplementary hereto) between the Government, the Contractor and the Bank, may be considered as adequate security for such subadvance. (MAY 1959)

(18) *Covenants.* The following are examples of some special provisions (subject to modification to adapt to the circumstances of individual cases) that may be utilized when and to the extent deemed appropriate in particular cases.

During the period of time that advance payments may be made hereunder and so long as any such advance payments remain unliquidated, the Contractor shall not, without the prior written consent of the Administering Office—

(a) Mortgage, pledge, or otherwise encumber, or suffer to be encumbered, any of the assets of the contractor now owned or hereafter acquired by him, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor which are allocated to the performance of this contract and with respect to which the Government has a lien hereunder;

(b) Sell, assign, transfer, or otherwise dispose of accounts receivable, notes or claims for money due or to become due;

(c) Declare or pay any dividends, except dividends payable in stock of the corporation, or make any other distribution on account of any shares of his capital stock, or purchase, redeem, or otherwise acquire for value any such stock, except as required by sinking fund or redemption arrangements reported to the Administering Office incident to the establishment of these advance payment provisions;

(d) Sell, convey, or lease all or a substantial part of his assets;

(e) Acquire for value the stock or other securities of any corporation, municipality, or governmental authority, except direct obligations of the United States;

(f) Make any advance or loan to or incur any liability as guarantor, surety, or accommodation endorser for any other firm, person, or corporation;

(g) Permit a writ of attachment or any similar process to be issued against his property without procuring release thereof or bonding the same within 30 days after the entry of the writ of attachment or any similar process;

(h) Pay any salaries, commissions, bonuses, or other remuneration in any form or manner to his directors, officers, or key employees in excess of existing rates of payments or of rates provided in existing agreements, in connection with which notice has been given to the Administering Office, or accrue such excess remuneration without first obtaining an agreement subordinating the same to all claims of the Government hereunder, or employ any person at a rate of compensation in excess of \$----- per annum.

(i) Make any substantial change in management, ownership, or control of the corporation;

(j) Merge or consolidate with any other firm or corporation, change the type of his business or engage in any transaction outside the ordinary course of his business as presently conducted;

[Provisions continued on next page]

- (k) Deposit any of his funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation;
- (l) Create or incur indebtedness for borrowed money or advances other than advances to be made hereunder, except as specified herein;
- (m) Make or covenant himself to make capital expenditures exceeding in the aggregate \$-----;
- (n) Permit his net current assets, calculated in accordance with generally accepted accounting principles, to become less than \$-----; or
- (o) Make any payments on account of the obligations listed below, except in the manner and to the extent herein provided. (MAY 1959)

E-415 Pooled Advance Payments—General. Advance payments are sometimes useful and convenient for financing the performance of more than one contract, under a single advance payment agreement. Such an agreement is called an advance payment pool agreement. An advance payment pool agreement may be entered into as a separate agreement for advance payments, or may be incorporated initially in a contract for supplies or services, or added to such a contract by amendment or supplement. Advance payment pool agreements are especially convenient for the financing of non-profit contracts with nonprofit educational or research institutions for experimental, or research and development work, when several contracts or a series of contracts require financing by advance payments. When advance payments are appropriate, pooled advance payments may also be used to finance performance of other types of contracts held by a single contractor. They may be established without regard to the number of appropriations involved, and regardless of the fact that contracts affected may be those of more than one purchasing office, procuring activity, or Military Department. If more convenient or otherwise preferable, there also may be more than one advance payment pool agreement in force at the same time with a single contractor, designed separately to finance contracts of the Military Departments respectively concerned, or of one or more procuring activities respectively. Advance payment pool agreements may be established under either or both of the statutes mentioned in E-103.

E-415.1 Distinction Between Pool Contracts and Designated Pool Contracts. An advance payment pool agreement may cover a broad area of a contractor's financial needs rather than piecemeal segments related to separate contracts. A pool arrangement is based upon the contractor's financing requirements for a group of Government contracts to be performed at the same time. The monetary requirements for the group of contracts are considered in fixing the maximum dollar amount for the advance payment pool agreement. Advances are not made on each separate contract, but can be made on and charged against one or more large, long term contracts, so as to supply the monetary requirements for smaller contracts included in the advance payment pool. A contract to which the advance payments are charged is called a designated pool contract. All other contracts linked to the pool agreement are called the pool contracts.

E-416 Advance Payments Pool Agreements—Special Features. The principal features distinguishing an advance payment pool agreement from an advance payment provision affecting only a single contract are—

- (i) The advance payment pool agreement specifies a "designated pool contract" or two or more "designated pool contracts," and provides

work done under the undelivered portion of the contract, except that for negotiated contracts with small business concerns and for procurement by "Small Business Restricted Advertising" or pursuant to E-504.3, these percentages may be 75 percent of total costs or 90 percent of direct labor and material costs whenever deemed reasonably necessary. Higher percentages will be regarded as unusual, and not within the category of customary progress payments.

The long lead time or preparatory period in these cases, and the accompanying predelivery expenditures that may have a material impact on the contractor's working funds, are regarded as making these customary progress payments reasonably necessary, and as making the general preference for private financing not applicable to this class of cases. Provision for customary progress payments will be made as a matter of course when requested by contractors who are known (from experience or adequate preaward investigation) to be reliable, competent, capable of satisfactory performance, in satisfactory financial condition, and to have an adequate accounting system and controls. In such cases, it is not necessary to require projections of cash receipts and expenditures or other demonstration of actual reasonable need for progress payments. However, in order to minimize administrative effort and expense, progress payments will be discouraged on relatively small contracts of the stronger and larger contractors who are not small business concerns, *e.g.*, contracts for less than \$1,000,000. If a small business concern, and the contract involved, meet the above standards for customary progress payments, the smallness of the contract shall not deter the making of provision for customary progress payments to such small business concerns.

E-503.1 *Applicability of Percentages.* The standard percentages authorized by E-503 and E-504 shall apply to new contracts, new procurement effected by supplements, amendments or modifications of existing contracts, definitive contracts superseding letter contracts, instruments effecting new procurement under basic or master agreements, and to all supplements, amendments or modifications which affect or provide for progress payments, as well as to any outstanding contracts which contain optional provision as to progress payment percentages, after due notice by the contracting officer. See E-524.

E-503.2 *Amendment to Reduce Percentages.* Contracting officers are authorized and encouraged to negotiate amendments of existing contracts so as to reduce the progress payment percentages therein stated to the standard percentages mentioned in E-503 and E-504.

E-503.3 *Indefinite Quantity Contracts.* For indefinite quantity contracts, contemplating requisitions, delivery orders, work orders, task orders, job orders or their equivalent, if the contractor meets all other requirements for customary progress payments, the decision as to whether progress payments come within the customary category will depend upon estimates of the amount of work expected to be done, and the production lead time expected to be necessary for the major part of the work anticipated. In these cases, provision for progress payments in the indefinite quantity contract may be deemed customary if the amounts involved, and the production lead time, will result in the substantial equivalent of the customary progress payments. The standards for unusual progress payments govern when progress payments are not of the customary type.

E-500 Scope. This Part provides uniform policies, procedures, and forms for progress payments based on costs.

E-500.1 References. Paragraphs E-000, E-001, E-002, E-003, E-100, E-105, E-106, E-107, and all of Part 2 apply to all progress payments, whether based on costs or on a percentage or stage of completion.

E-500.2 Exclusions. This Part does not apply to (i) cost-reimbursement type contracts, except as to progress payments to subcontractors and suppliers thereunder (E-514), or (ii) contracts for construction (as defined in 10-101.6), or for shipbuilding or ship conversion, alteration or repair, when such contracts provide for progress payments based on a percentage or stage of completion.

E-500.3 Contract Coverage. Except as provided in E-500.2 above, this Part applies to all contracts (1-201.5) providing for progress payments. This Part applies to new procurement, to contract changes concerning progress payments, and to existing contracts whenever consistent therewith.

E-501 Percentage or Stage of Completion. Progress payments based on a percentage or stage of completion will be confined to contracts for construction (10-101.6), shipbuilding and ship conversion, alteration or repair. For all other contracts, including any separate contracts for engines, machinery, equipment or other components for ships, the only types of progress payment provisions will be those based on costs, as authorized herein. However, on existing contracts which provide for progress payments based on a percentage or stage of completion, it is not required that provision for progress payments based on costs be substituted in connection with future amendments, supplements or modifications, if such substitution is found impracticable. See E-516.1.

E-502 General. It is not and has not been the policy of the Department of Defense that the proper use of progress payments should be stopped or unreasonably curtailed. Progress payments are sometimes necessary and useful to supplement the working funds available to defense contractors of all sizes. It seldom should be necessary for progress payments based on costs to exceed 85 percent of direct labor and material costs, or 70 percent of total costs, of the work done under the undelivered portion of the contract.

E-502.1 Requests for Proposals. Requests for proposals shall state that contract provision for progress payments will be made in conformity with regulations, and that the need for progress payments conforming to regulations will not be considered as a handicap or adverse factor in the award of contracts.

E-503 Customary Progress Payments—Standards. Certain types of production contracts involve a long "lead time" or preparatory period, normally approximating six months or more between the beginning of work and the first delivery, and may require contractor's predelivery expenditures that will have a material impact on the contractor's working funds. Familiar examples include, among others, contracts for aircraft, engines, complex items of electrical or electronics equipment, heavy handling equipment, production machines and equipment, tanks and other items of heavy ordnance.

Progress payments have been traditional and customary on this class of contracts, on the basis of a percentage of total costs or of direct labor and material costs.

Percentages for customary progress payments shall be not more than 70 percent of total costs or 85 percent of direct labor and material costs of the

- (iv) tuition, as authorized by 31 U.S.C. 529i (69 Stat. 314);
- (v) subscriptions to publications, as authorized by 31 U.S.C. 530;
- (vi) small purchases of goods or services in foreign countries, when the purchase price does not exceed \$2,500 or equivalent amount of applicable foreign currency and advance payment of the purchase price or of a part thereof is required by and made in compliance with the laws or ministerial, i.e., governmental, regulations of the foreign country concerned, as authorized by 31 U.S.C. 529i (69 Stat. 314).

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contract of a nonpreponderant Department as the "designated pool contract," or where it is fairly expected that preponderance will shift during the term of the advance payment pool agreement.

(c) Inclusion of contracts of another Department in an advance payment pool arrangement, either as "pool contracts" or as a "designated pool contract," requires approval of the contract financing office of each Department concerned. This may be accomplished by concurrence in provisions of the pool agreement permitting inclusion of contracts of another Department, or by separate approvals in connection with the addition of such contracts to the advance payment pool.

(d) Situations may occur in which the remaining payments available on all pool contracts are not sufficient to liquidate outstanding advance payments. These circumstances will not affect the normal practice by which the net amount payable by or to the Government on each separate contract is determined by offsetting mutual debits and credits of the Government and the contractor respectively arising under each separate contract. For advance payments that remain outstanding after adjustment for debits and credits under each separate contract, amounts realized from the special pool bank account, from property covered by the advance payment lien, and from any other recoveries available for liquidation of advance payments should be applied first to liquidation of the remaining outstanding advance payments, ratably in proportion to the amount of unliquidated advance payments outstanding on each contract respectively. If there is only one open designated pool contract, the entire advance payment loss should fall on that contract. If there is more than one open designated pool contract on which advance payments remain outstanding after adjustment for debits and credits under each separate contract, the advance payment loss (insofar as contracts of two or more Military Departments are involved) will fall on all of those designated pool contracts, ratably in proportion to the amount of unliquidated advance payments outstanding on each contract respectively.

(e) Records will not be maintained to show separately the amount of advance payments invested in each one of the separate pool contracts. The keeping of such records is unnecessary, and would not be consistent with the purposes of pooled advance payments to provide necessary contract financing in such way as to minimize administrative effort and inconvenience of contractors and the Government.

E-419 Excluded Advance Payments. These regulations do not apply to advance payments for—

- (i) extension or connection of public utilities for military installations, as authorized by Military Construction Authorization Acts;
- (ii) insurance of official motor vehicles in foreign countries, and expenses of investigations in foreign countries, as authorized by Section 603 of the Department of Defense Appropriation Act, 1960 (73 Stat. 378) or by other legislation authorizing payments for such expenses;
- (iii) rentals, as authorized by Section 606 of the Department of Defense Appropriation Act, 1960 (73 Stat. 378) or by 31 U.S.C. 529i (69 Stat. 314) or by other legislation specifically authorizing advance payment of rent;

for substitution from time to time of new or different contracts as the "designated pool contract(s);"

- (ii) When there is only one designated pool contract, all advance payments are charged against that designated pool contract. When there is more than one designated pool contract, each advance payment made is charged against one of the designated pool contracts, except that when the foregoing is not possible, the advance must be allocated specifically by amounts to two or more designated pool contracts;
- (iii) Liquidation of advance payments is geared to the stated contract price, or total estimated cost, if applicable, of the "designated pool contract(s);"
- (iv) The advance payment pool agreement either lists other contracts as "pool contracts," or provides for inclusion of other contracts as "pool contracts" by reference to the advance payment pool agreement in such contracts, and provides for the subsequent inclusion of other contracts as "pool contracts;"
- (v) All payments under all of the pool contracts, including designated pool contracts, are made into the advance payment Special Bank Account;
- (vi) The appropriate provisions of the advance payment clause are made applicable to all pool contracts, including the designated pool contracts.

E-417 Liquidation—Designated Pool Contracts—Administering Office.

It is imperative for each advance payment pool that effective arrangements be made to insure that there will not be overpayments, and that timely liquidation is accomplished against each designated pool contract. For each pool agreement, there must be a single administering office, and to the greatest extent possible there should be only one finance office or disbursing office for all of the contracts affected by the pool, especially those contracts which are designated pool contracts.

E-418 Pooled Advance Payments—Understandings. Pooled advance payments affecting contracts of more than one Military Department necessarily require agreement by those concerned with a given case. There has not been sufficient experience with pooled advance payments to permit full coverage by these regulations. However, certain understandings which have been reached on some of the problems involved are set out below, for the guidance of all concerned.

(a) There should be no single exclusive procedure for establishing an advance payment pool agreement. Requests for pooled advance payments may be initiated at the level of the contracting officer, or chief of a procuring activity, or at Departmental headquarters.

(b) When the advance payment pool is to affect contracts of more than one Department, the authorizing Department ordinarily would be the one having preponderant interest in the contractor's backlog of unfinished contracts, along the lines of E-306. Possible exceptions to the preponderance principle are cases in which it would be more convenient to use a relatively large long term

E-503.4 Administration. When progress payments are provided in the cases mentioned in E-503.3, such as indefinite quantity contracts for overhaul or maintenance, (1) the contract price is deemed to be the total of the amount of requisitions, delivery orders, work orders, task orders or their equivalent issued under the basic contract, (2) costs for progress payment purposes are the costs allocable to all such requisitions, etc., and (3) payments and liquidations will be handled in the same way as if all such requisitions, etc., constituted work under a single fixed-price type contract.

E-504 Formal Advertising—Small Business Restricted Advertising. Incident to formal advertising, invitations for bids shall provide for progress payments in the manner and under the circumstances stated below.

E-504.1 Progress Payment Provision in Invitations for Bids. When progress payments are contemplated, the invitations for bids shall state that upon written request by the prospective contractor a progress payment clause (to be included in the invitations for bids or identified by appropriate reference therein, and to be the appropriate one of the contract clauses at 70 percent of total costs or 85 percent of costs of direct labor and material) will be included in the contract at the time of award. These invitations for bids providing for progress payments shall also state that the need for progress payments conforming to regulations will not be considered as a handicap or adverse factor in the award of contracts, and that bids including requests for progress payments will be evaluated on an equal basis with bids not including requests for progress payments.

Provision for progress payments shall be made in invitations for bids whenever the contracting officer considers (1) that the period between the beginning of work and the required first production delivery will exceed six months, or (2) that progress payments will be useful or necessary by reason of circumstances that will involve substantial accumulation of predelivery costs that may have a material impact on a contractor's working funds (including but not limited to substantial small business set-asides expected to involve a relatively large predelivery accumulation of materials, purchased parts or components).

Provision for progress payments shall also be made in invitations for bids whenever it is estimated that the procurement will involve approximately \$100,000 or more and that bids are likely to be submitted by one or more small business concerns, unless the procurement is within one or more of the excepted categories set out below. Provision for progress payments ordinarily will not be made in invitations for bids when the procurement is for quick turn-over items of kinds for which predelivery financing by progress payments is not the custom or practice on sales by members of the industry to private commercial customers, such as (i) subsistence, (ii) clothing and apparel, (iii) "off-the-shelf" items, and (iv) standard commercial items or equivalent items (including medical and dental supplies), not requiring substantial accumulation of predelivery expenditures.

Reasonable doubts should be resolved in favor of inclusion of progress payment provisions in invitations for bids, in order to (i) facilitate necessary contract financing assistance to small suppliers and (ii) avoid the necessity

for rejecting, as nonresponsive, bids conditioned on progress payments when the invitations for bids do not provide for progress payments.

E-504.2 *Small Business Restricted Advertising.* The above policy and standards also apply to procurement by "Small Business Restricted Advertising," except that in "Small Business Restricted Advertising" (and also for procurement pursuant to E-504.3), when deemed reasonably necessary, provision may be made for progress payment percentages up to 75 percent of total costs or 90 percent of costs of direct labor and material.

E-504.3 *Progress Payments Exclusively for Small Business.* A stated purpose of Public Law 85-800, 72 Stat. 966, is "to improve opportunities for small business concerns to obtain a fair proportion of Government purchases and contracts." One of the sections of this statute amended 10 U.S.C. 2307 by providing that contracting agencies "may—insert in bid solicitations—a provision limiting to small business concerns—progress payments." In furtherance of the purposes of this statute, whenever provision for progress payments is to be made in invitations for bids (as provided by E-504.1 and E-504.4), careful consideration shall be given as to whether or not the contemplated availability of progress payments shall be restricted to small business concerns only. If it is considered by the contracting officer that progress payments should not be reasonably necessary for prospective bidders other than small business concerns, the provision for progress payments (E-504.1) and the notice to bidders (E-504.4) will be supplemented by a limitation to the effect that—

"THE PROGRESS PAYMENTS CLAUSE WILL BE AVAILABLE TO SMALL BUSINESS CONCERNS ONLY, AND WILL NOT BE INCLUDED FOR CONTRACTORS WHO ARE NOT SMALL BUSINESS CONCERNS."

(For percentages, see E-503, E-504.2.)

E-504.4 *Notice to Bidders.* Those invitations for bids that make provision for progress payments (E-504.1) should contain substantially the following notice to bidders:

PROGRESS PAYMENTS (MAY 1959)

The need for progress payments conforming to regulations (Appendix E, Armed Services Procurement Regulation) will not be considered as a handicap or adverse factor in the award of contracts. Bidders desiring progress payments in accordance with the Progress Payment clause attached hereto, shall include a written request therefor in their bids, and bids including requests for progress payments will be evaluated on an equal basis with bids not including a request for progress payments. Blanks, if any, in the attached Progress Payment clause, will be filled in by the Contracting Officer, before award, in conformity with regulations.* If a bid does not contain a request for progress payment provision, the Progress Payment clause will not be included in the contract as awarded.

*[Omit the third sentence, above, when the Total Costs clause (E-510.1) is used.]

E-504.5 *Total Costs Clause Preferable.* The Total Costs clause (E-510.1) is preferable to the Direct Labor and Materials Cost clause (E-510.2) in procurement by formal advertising and in Small Business Restricted Advertising. When the Total Costs clause (E-510.1) is used, it is not necessary to make the cost estimates and computations that are required before the appropriate percentages can be determined for (a)(3)(ii), (a)(4) and (b) of the Direct Labor and Materials Cost clause (E-510.2). Generally, the principles of

E-523 and E-524.6 should be simpler to apply to the Total Costs clause (E-510.1) than to the Direct Labor and Materials Cost clause (E-510.2).

E-504.6 Nonresponsive Bids—Uninvited Progress Payment Condition. To minimize the possibility of misunderstandings, the recipients of invitations for bids, or those included on bidders lists, should be informed and kept aware that when invitations for bids do not provide for progress payments, progress payment clauses cannot be included in the contract at time of award, and that bids conditioned upon provision for progress payments will have to be rejected as nonresponsive. This precautionary warning notice may be included in invitations for bids, or may accompany invitations for bids, or may be otherwise circulated or made known to prospective bidders by such means as are considered appropriate. Also, prospective bidders who are not small business concerns should be given appropriate precautionary warning notice that when invitations for bids provide for progress payments for small business concerns only (E-504.3), progress payment provision cannot be made for contractors who are not small business concerns, and that bids of those who are not small business concerns, if conditioned upon provision for progress payments, will have to be rejected as nonresponsive.

E-505 Unusual Progress Payments—Standards—Procedure. Progress payments based on costs, other than progress payments of the class and within the limits set forth in E-503 and E-504, will be regarded as unusual, and will require special approval. This is deemed necessary for the purpose of minimizing risks, and in order to establish and maintain the greatest practicable uniformity with regard to such progress payments within and among the Military Departments. Any contractor seeking provision for progress payments that is "unusual," within the meaning of these regulations, will be required to demonstrate fully his actual need therefor, with due regard to the preference for private financing, including guaranteed loans. Requests for "unusual" progress payments shall be approved only under exceptional circumstances and must have the specific approval of the Head of a Procuring Activity (1-201.8) or of a general or flag officer designated for that purpose.

Such cases must involve a preparatory period requiring contractor's pre-delivery expenditures that are large in relation to the contract price and in relation to the contractor's working capital and credit. Contract provisions for progress payments in this category will be only supplementary to private financing, including guaranteed loans, in amounts necessary for contract performance. The percentage rates and cost bases for progress payments on new procurement in this category will be determined on a minimum basis commensurate with the contractor's production schedule requirements and minimum inventory lead time, with due regard to the contractor's projected cash needs, cash resources and their planned application.

All requests involving progress payments at rates exceeding 85 percent (or 90 percent for small business concerns) of direct labor and material costs or exceeding 70 percent (or 75 percent for small business concerns) of total costs, if regarded favorably by the Head of a Procuring Activity (1-201.8) or by a specially designated general or flag officer within a procuring activity, will be forwarded, with supporting information, for approval of a designated office or person at departmental headquarters of the Military Department

directly concerned. Such office or person may be the contract financing office at departmental headquarters or such person or persons, located at departmental headquarters and responsible to the Under or Assistant Secretary responsible for the comptroller function, as may be designated for this purpose by such Under or Assistant Secretary. Such requests, before approval, will be coordinated speedily with representatives of the other Military Departments and of the Assistant Secretary of Defense (Comptroller). When approval is given by the contract financing office, or other designated representative of the Under or Assistant Secretary above-mentioned, such approval will ordinarily extend to future contracts with the same contractor, so that resubmission of future similar requests for unusual progress payments to that contractor need not be required unless so indicated on the initial approval or thereafter required by the approving authority after review of the contractor's current condition and circumstances.

E-506 Accounting System and Controls. The contractor's accounting system and controls must be adequate for the proper administration of progress payments. If the contractor's accounting system and controls have been found (by experience or by one of the military audit agencies) to be sufficient and reliable for segregation and accumulation of contract costs, no further examination should be necessary so long as the efficiency and reliability of the contractor's system and controls are maintained. In all doubtful cases, including contracts with contractors with whom a military audit agency has had no experience within the next preceding twelve months, the adequacy of the contractor's accounting system and controls shall be determined, and any necessary changes accomplished, before inclusion of a Progress Payment clause in a contract. For this purpose, the services of the military audit agencies should be utilized to the greatest extent practicable.

E-507 Information Required. The information required to support a contract provision for progress payments is that which is found necessary under the circumstances of each case to establish that the case complies with Parts 2 and 5 of these regulations. For guidance as to necessity for financial information and analysis, and the scope, depth and detail of analysis, see particularly E-213 and E-214.

E-508 Advance Payments. When advance payments and progress payments are authorized in the same contract, progress payment percentages will not exceed 85 percent of direct labor and material costs or 70 percent of total costs, whichever may be applicable.

E-509 Definitions. As used herein, the following terms have the meanings set forth below.

E-509.1 Progress Payments. See E-106. The term "*progress payments*" must be distinguished from "*partial payments*." The term "*partial payments*" describes only (1) payments for partial deliveries accepted by the Government under a contract, or (2) partial payments on contract termination claims.

E-509.2 Customary Progress Payments. See E-503 and E-504.

E-509.3 Unusual Progress Payments. See E-505.

E-509.4 Costs. Costs include all expenses of contract performance which are reasonable, allocable to the contract, consistent with sound and generally

PROGRESS PAYMENTS BASED ON COSTS

accepted accounting principles and practices, and not excluded by the contract. The term "costs" includes "incurred costs" when the contractor is not delinquent in payment of costs of contract performance in the ordinary course of business. It may also include incurred costs, after such delinquency, to the extent provided in E-524.4.

E-509.5 *Incurred Costs.* Incurred costs are those costs identified through the use of the accrual method of accounting and reporting. As to invoices, incurred costs include only invoices for (i) completed work to which the prime contractor has acquired title, (ii) materials delivered (to which the prime contractor has acquired title), (iii) services rendered, (iv) costs billed under cost reimbursement or time and material subcontracts for work to which the prime contractor has acquired title, and (v) invoices for progress payments to subcontractors which have been paid or approved for current payment in the ordinary course of business (as specified in the prime contract), all properly recorded on the books of the contractor and identified with the contract. Costs incurred include costs of direct labor, direct material, and direct services identified with and necessary for the performance of the contract, and also all properly allocated and allowable overhead (indirect) costs as shown by the books of the contractor.

E-509.6 *Unliquidated Progress Payments.* Unliquidated progress payments are the aggregate sum of all progress payments made, less the aggregate sum of amounts applied to reduce progress payments.

E-509.7 *Contract Price.* The term "contract price" means the total amount fixed by the contract (other than any portion of the contract specifically providing for cost reimbursement only), as amended, to be paid for complete performance of the contract. If the contract provides for escalation or for redetermination of price, this term means the initial price until changed and not the ceiling price. If the contract is of the incentive type, this term means the initial or target price until changed, and not the ceiling or maximum price. For letter contracts and similar preliminary contractual instruments, this term means the maximum expenditure authorized by the contract, as amended.

E-509.8 *Amendments, Supplements, and Modifications.* The terms "amendment," "supplement," and "modification" are used interchangeably, and whenever one of these terms is used it includes the others. The terms "separate new contracts," and "separate contracts," as used herein, do not include "amendments."

E-509.9 *Deviation.* The term "deviation" means (1) any change, addition to, or deletion from the contract clauses and certificate forms required by this Part 5, (2) any contract provision, outside the Progress Payment clause, which would have the effect of altering or changing the effect of the Progress Payment clauses provided herein, and (3) any variation from these regulations. Actions pursuant to E-511.6 are not deviations.

E-510 *Contract Clauses.* Except as otherwise provided in paragraph 516, one of the following Progress Payments clauses shall be used whenever progress payments are to be made to a contractor based upon a percentage of costs, whether or not the contract schedule provides for reimbursement of progress payments to subcontractors. See E-510.3.

DEFENSE CONTRACT FINANCING REGULATIONS

E-510.1 *Total Costs Clause.*

→ PROGRESS PAYMENTS (JAN. 1961)

Progress payments shall be made to the Contractor as work progresses, from time to time upon request, in amounts approved by the Contracting Officer upon the following terms and conditions:

(a) *Computation of Amounts.* (1) Unless a smaller amount is requested, each progress payment shall be (i) 70 percent of the amount of the Contractor's total costs incurred under this contract plus (ii) the amount of progress payments to subcontractors as provided in (j) below; all less the sum of previous progress payments.

(2) The Contractor's total costs ((a)(1)(i)) shall be reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices. However, such costs shall not include (i) any costs incurred by subcontractors or suppliers, or (ii) any payments or amounts payable to subcontractors or suppliers, except for completed work (including partial deliveries) to which the Contractor has acquired title and except for amounts paid or payable under cost-reimbursement or time and material subcontracts for work to which the Contractor has acquired title, or (iii) costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(3) The amount of unliquidated progress payments shall not exceed the lesser of (i) 70 percent of the costs mentioned in (a)(1)(i) above, plus any unliquidated progress payments mentioned in item (a)(1)(ii) above, both of which are applicable only to the supplies and services not yet delivered and invoiced to and accepted by the Government, or (ii) 70 percent of the total contract price of supplies and services not yet delivered and invoiced to and accepted by the Government, less unliquidated advance payments.

(4) The aggregate amount of progress payments made shall not exceed 70 percent of the total contract price.

(5) If at any time a progress payment or the unliquidated progress payments exceed the amount permitted by this paragraph (a), the Contractor shall pay the amount of such excess to the Government upon demand.

(b) *Liquidation.* Except as provided in the clause entitled "Termination for Convenience of the Government," all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress, the amount of unliquidated progress payments, or 70 percent* of the gross amount invoiced, whichever is less. Repayment to the Government required by a retroactive price reduction will be made after recalculating liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly.

(c) *Reduction or Suspension.* The Contracting Officer may reduce or suspend progress payments, or liquidate them at a rate higher than the percentage stated in (b) above, or both, whenever he finds upon substantial evidence that the Contractor (i) has failed to comply with any material requirement of this contract, (ii) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, (iii) has allocated inventory to this contract substantially exceeding reasonable requirements, (iv) is delinquent in payment of the costs of performance of this contract in the ordinary course of business, (v) has so failed to make progress that the unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract, or (vi) is realizing less profit than the estimated profit used for establishing a liquidation percentage in paragraph (b), if that liquidation percentage is less than the percentage stated in paragraph (a)(1).

→ (d) *Title.* Immediately, upon the date of this contract, title to all parts; materials; inventories; work in process; special tooling as defined in the clause of this contract entitled "Special Tooling"; nondurable (*i.e.*, noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing.

*For lower percentage for this paragraph, see E-512.2.

[Contract clause continued on next page]

PROGRESS PAYMENTS BASED ON COSTS

aids not included within the definition of special tooling in such "Special Tooling" clause; and drawings and technical data (to the extent delivery thereof to the Government is required by other provisions of this contract); theretofore acquired or produced by the Contractor and allocated or properly chargeable to this contract under sound and generally accepted accounting principles and practices shall forthwith vest in the Government; and title to all like property thereafter acquired or produced by the Contractor and allocated or properly chargeable to this contract as aforesaid shall forthwith vest in the Government upon said acquisition, production or allocation. Notwithstanding that title to property is in the Government through the operation of this clause, the handling and disposition of such property shall be determined by the applicable provisions of this contract such as: the Default clause and paragraph (h) of this clause; Termination for Convenience of the Government clause; and the Special Tooling clause. Current production scrap may be sold by the Contractor without approval of the Contracting Officer and the proceeds shall be credited against the costs of contract performance. With the consent of the Contracting Officer and on terms approved by him, the Contractor may acquire or dispose of property to which title is vested in the Government pursuant to this clause, and in that event, the costs allocable to the property so transferred from this contract shall be eliminated from the costs of contract performance and the Contractor shall repay to the Government (by cash or credit memorandum) an amount equal to the unliquidated progress payments allocable to the property so transferred. Upon completion of performance of all the obligations of the Contractor under this contract, including liquidation of all progress payments hereunder, title to all property (or the proceeds thereof) which had not been delivered to, and accepted by the Government under this contract or which had not been incorporated in supplies delivered to and accepted by the Government under this contract and to which title has vested in the Government under this clause shall vest in the Contractor. The provisions of this contract referring to or defining liability for Government-furnished property shall not apply to property to which the Government shall have acquired title solely by virtue of the provisions of this clause.

(e) *Risk of Loss.* Except to the extent that the Government shall have otherwise expressly assumed the risk of loss of property, title to which vests in the Government pursuant to this clause, in the event of the loss, theft or destruction of or damage to any such property before its delivery to and acceptance by the Government, the Contractor shall bear the risk of loss and shall repay the Government an amount equal to the unliquidated progress payments based on costs allocable to such lost, stolen, destroyed or damaged property.

(f) *Control of Costs and Property.* The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) *Reports—Access to Records.* Insofar as pertinent to the administration of this clause, the Contractor will (i) furnish promptly such relevant reports, certificates, financial statements, and other information as may be reasonably requested by the Contracting Officer, and (ii) give the Government reasonable opportunity to examine and verify his books, records and accounts.

(h) *Special Provisions Regarding Default.* If this contract is terminated pursuant to the clause entitled "Default," (i) the Contractor shall, upon demand, pay to the Government the amount of unliquidated progress payments and (ii) with respect to all property as to which the Government elects not to require delivery under the clause entitled "Default," title shall vest in the Contractor upon full liquidation of progress payments, and the Government shall be liable for no payment except as provided by the "Default" clause.

[Contract clause continued on next page]

DEFENSE CONTRACT FINANCING REGULATIONS

(i) *Reservations of Rights.* The rights and remedies of the Government provided in this clause shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this contract. No payment, or vesting of title pursuant to this clause, shall excuse the Contractor from performance of his obligations under this contract, nor constitute a waiver of any of the rights and remedies of the parties under this contract. No delay or failure of the Government in exercising any right, power or privilege under this clause shall affect any such right, power or privilege, nor shall any single or partial exercise thereof preclude or impair any further exercise thereof or the exercise of any other right, power or privilege of the Government.

(j) *Progress Payments to Subcontractors.* (1) The amount mentioned in item (a) (i) (ii) above shall be the sum of (i) all the progress payments made by the Contractor to his subcontractors and remaining unliquidated, and (ii) unpaid billings for progress payments to subcontractors which have been approved for current payment in the ordinary course of business, when under subcontracts which conform to (2) below.

(2) Subcontracts on which progress payments to subcontractors may be included in the base for progress payments pursuant to paragraph (a) of this clause are limited to those subcontracts in which there is expected to be a long "lead time," approximating six months or more between the beginning of work and the first delivery, containing subcontract progress payment provisions which (i) are substantially similar to and as favorable to the Government as this "Progress Payments" clause, no more favorable to the subcontractor than this clause is to the contractor and on a basis of not more than 70 percent of total costs or 85 percent of direct labor and material costs (except that these percentages may be 75 percent of total costs or 90 percent of direct labor and material costs for those subcontractors which are small business concerns), and (ii) make all rights of the subcontractor with respect to all property to which the Government has title under the subcontract subordinate to the rights of the Government to require delivery of such property to it in the event of default by the Contractor under this contract or in the event of the bankruptcy or insolvency of the subcontractor.

(3) The Government agrees that any proceeds received by it from property to which it has acquired title by virtue of such provisions in any subcontract shall be applied to reduce the amount of unliquidated progress payments made by the Government to the Contractor under this contract. In the event the Contractor fully liquidates such progress payments made by the Government to him hereunder and there are progress payments to any subcontractors which are unliquidated, the Contractor shall be subrogated to all the Government's rights by virtue of such provisions in the subcontract or subcontracts involved as if all such rights had been thereupon assigned and transferred to the Contractor.

(4) The billings described in (j)(1)(ii) above shall be paid promptly by the Contractor in the ordinary course of business, not later than a reasonable time after payment of equivalent amounts by the Government to the Contractor.

(5) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to provide progress payments to those subcontractors which are small business concerns, in conformity with the standards for customary progress payments stated in paragraph 503 of Appendix E of the Armed Services Procurement Regulation, as in effect on the date of this contract. The Contractor further agrees that the need for such progress payments will not be considered as a handicap or adverse factor in the award of subcontracts.

[Next page is E58.1]

PROGRESS PAYMENTS BASED ON COSTS

E-510.2 *Direct Labor and Materials Cost Clause.*

PROGRESS PAYMENTS (OCT. 1960)

Progress payments shall be made to the Contractor as work progresses, from time to time upon request, in amounts approved by the Contracting Officer upon the following terms and conditions:

(a) *Computation of Amounts.* (1) Unless a smaller amount is requested, each progress payment shall be (i) 85 percent of the amount of the Contractor's costs incurred of direct labor and material* only under this contract plus (ii) the amount of progress payments to his subcontractors as provided in (j) below; all less the sum of previous progress payments.

(2) The Contractor's costs above-mentioned ((a)(1)(i)) shall be reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices. However, such costs shall not include (i) any costs incurred by subcontractors or suppliers, or (ii) any payments or amounts payable to subcontractors or suppliers, except for completed work (including partial deliveries) to which the Contractor has acquired title, and except for amounts paid or payable under

*[Strike out "labor and" or "and material" if progress payments are limited to single direct cost.]

[Contract clause continued on next page]

[Next page is E59]

cost-reimbursement or time and material subcontracts for work to which the Contractor has acquired title, or (iii) costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(3) The amount of unliquidated progress payments shall not exceed the lesser of (i) 85 percent of the costs mentioned in (a)(1)(i) above, plus any progress payments mentioned in (a)(1)(ii) above, both of which are applicable only to the supplies and services not yet delivered and invoiced to and accepted by the Government, or (ii) ---- percent of the total contract price of supplies and services not yet delivered and accepted to and accepted by the Government, less unliquidated advance payments. [For percentage here and in (a)(4), see the first bracketed instruction in (b) below.]

(4) The aggregate amount of progress payments made shall not exceed ---- percent of the total contract price.

(5) If at any time a progress payment or the unliquidated progress payments exceed the amount permitted by this paragraph (a), the Contractor shall pay the amount of such excess to the Government upon demand.

(b) *Liquidation.* Except as provided in the clause entitled "Termination For Convenience of The Government," all progress payments shall be liquidated by deducting from any payment under the contract, other than advance or progress, the amount of unliquidated progress payments, or ---- percent [insert a percentage which is to 85 percent as the amount of estimated costs forming the basis for progress payments is to the amount of the estimated total costs] of the gross amount invoiced, whichever is less. Repayment to the Government required by a retroactive price reduction will be made after recalculating liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. [For percentage for this paragraph, lower than the percentage computed pursuant to the above instruction and E-512.1(b), see E-512.2.]

(c) *Reduction or Suspension.* The Contracting Officer may reduce or suspend progress payments, or liquidate them at a rate higher than the percentage stated in (b) above, or both, whenever he finds upon substantial evidence that the Contractor (i) has failed to comply with any material requirement of this contract, (ii) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, (iii) has allocated inventory to this contract substantially exceeding reasonable requirements, (iv) is incurring costs, whether or not of the kinds eligible for progress payments under paragraph (a)(1) above, which are higher than the respective estimated costs used for establishing the liquidation percentage in paragraph (b) above, (v) is delinquent in payment of the costs of performance of this contract in the ordinary course of business, or (vi) has so failed to make progress that the unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract.

(d) *Title.* [Same as par. (d) of "Total Costs" clause.]

(e) *Risk of Loss.* [Same as par. (e) of "Total Costs" clause.]

(f) *Control of Costs and Property.* [Same as par. (f) of "Total Costs" clause.]

(g) *Reports—Access to Records.* [Same as par. (g) of "Total Costs" clause.]

(h) *Special Provisions Regarding Default.* [Same as par. (h) of "Total Costs" clause.]

(i) *Reservations of Rights.* [Same as par. (i) of "Total Costs" clause.]

(j) *Progress Payments to Subcontractors.* [Same as par. (j) of "Total Costs" clause.]

E-511 General Instructions for Progress Payment Clauses. The instructions below apply to the clauses required by E-510 and set forth in E-510.1 and E-510.2.

E-511.1 Contracting Officer. The term "contracting officer" as used in this Part 5 means the contracting officer as defined in 1-201.3.

E-511.2 Variation in Percentages. The percentages stated in paragraph (a)(1)(i) of the clauses in E-510.1 and E-510.2 are the normal percentages for the customary progress payments authorized by E-503. Higher percentages may be provided in the manner and to the extent authorized by E-505. Lower

percentages may be used in (a)(1)(i) of E-510.1 and E-510.2 when agreed, and will be used for unusual progress payments when found adequate in accordance with the standards set forth in E-505. Such lower percentages shall not be utilized for progress payments pursuant to E-504.

E-511.3 Total Cost Basis—Percentage Other Than 70 Percent. If a percentage other than 70 percent is specified in (a)(1)(i) of the Total Costs clause set forth in E-510.1, the percentage actually specified in (a)(1)(i) of the Progress Payment clause of the contract shall also be specified in (a)(3)(i), (a)(3)(ii), (a)(4), and (b) of the Progress Payment clause. (As to (b), see E-512.)

E-511.4 Limited Cost Basis—Other Percentages. When the Progress Payment clause set forth in E-510.2 is used, the percentage actually specified in (a)(1)(i) of the Progress Payment clause of the contract will also be specified in (a)(3)(i). The percentage to be specified in (a)(3)(ii), (a)(4), and (b) of that clause will be computed in the manner provided in E-512.1, except that a percentage higher than the percentage so computed may be specified in paragraph (b) if agreed. Subject to this exception permitting use of a higher percentage in (b) (or a lower percentage in (b) established pursuant to E-512.2) the percentage to be specified in (a)(3)(ii), (a)(4), and (b) will thus be a percentage which is to the percentage in (a)(1) as the amount of estimated costs forming the basis for progress payments is to the amount of estimated total costs of performance of the undelivered portion of the contract. This same principle will apply if a narrower cost basis, more limited than the cost basis stated in E-510.2, is utilized for progress payments. (See E-511.5)

E-511.5 Cost Basis Less Than Direct Labor and Material Costs. Instead of the direct labor and material cost basis provided in E-510.2, a narrower and more limited cost basis for progress payments may be utilized for that clause, such as direct labor only, direct material only, or direct labor or material costs applicable only to certain specified items, or specified direct costs other than direct labor or material costs. Appropriate changes will be made in (a)(1)(i) of the clause set forth in E-510.2 when such a narrower and more limited cost basis is to be used. For example, if eligible costs are to be limited to direct material costs, the words "labor and" should be deleted from (a)(1)(i); or, if eligible costs are to be limited to direct labor costs, the words "and material" should be deleted from (a)(1)(i).

E-511.6 Other Protective Provisions. When deemed reasonably necessary for the protection of the Government, the clauses set forth in E-510.1 and E-510.2 may be supplemented by additional protective provisions, such as personal or corporate guarantees, subordinations or standbys of indebtedness, special bank accounts, and other protective covenants of the kinds outlined in item 18 of E-414.2 of these regulations.

E-512 Progress Payment Liquidation. Controlling principles for liquidation of progress payments based on costs are set out below.

E-512.1 Ordinary Method. Except as authorized by E-512.2, the required method for liquidation and the applicable liquidation percentages are—

(a) when costs other than for direct labor and material are in the base for progress payments, the percentage of the contract price of delivered items to be applied for liquidation of progress payments will be not less than the percentage of costs upon which progress payments are based, *e.g.*, when

progress payments are based on 75 percent of all costs, liquidation will be at a rate not less than 75 percent of the contract price of separate items as they are delivered, or when progress payments are based on 70 percent of all costs, liquidation will be at a rate not less than 70 percent of the contract price of separate items as they are delivered;

(b) when progress payments are based on 90 percent (or specified lesser percentage) of the costs of direct labor and material, the rate of liquidation of progress payments will be not less than 90 percent (or the specified lesser percentage) of the percentage of estimated total costs represented by the estimated costs of direct labor and material. Thus, for example, if the base for progress payments is 90 percent of the costs of direct labor and material, and if estimated costs of direct labor and material are 70 percent of total estimated costs, liquidation will be at a rate not less than 63 percent (90×70) of the contract price of separate items as they are delivered. See E-512.3.

E-512.2 *Alternate Method.*

(a) The above method for liquidation of progress payments (E-512.1) will not apply if, at the inception of a contract (on the basis of satisfactory cost estimates) or thereafter by amendment (based on satisfactory data on cost experience and estimated future costs) the parties shall agree on a percentage rate of liquidation which will (i) effect liquidation of the amount of progress payments involved in each invoice from which liquidation of progress payments is to be made (*i.e.*, recovery of the portion of costs for which progress payments have been made), (ii) permit payment to the contractor of not more than the cost of items delivered and accepted (less allocable progress payments) and his earned profit on those items, and (iii) insure that unliquidated progress payments will not exceed the percentage specified in the contract, of the costs forming the base for progress payments, applicable only to that portion of the contract which has not been delivered, accepted and invoiced.

(b) However, when progress payments are made at 75 percent of the total costs, this percentage for liquidation of progress payments, lower than that prescribed by E-512.1, to the extent appropriate, shall not be fixed at a rate less than 70 percent except as provided in (c) below. If the progress payment percentage of total costs is less than 75 percent, comparable relationship between the progress payment percentage and the above minimum liquidation percentage shall be maintained. Similar principles as to minimum liquidation percentages shall be applied when progress payments are to be made at 90 percent of the costs of direct labor and material, or on a more limited cost base, or at lesser percentages of limited costs. For example, when progress payments are made at 70 percent of the total costs, this percentage for liquidation of progress payments, lower than that prescribed by E-512.1, to the extent appropriate, shall not be fixed at a rate less than 65.3 percent except as provided in (c) below.

(c) With regard only to items for which final prices have been established under contracts, progress payment liquidation percentages conforming to the standards stated in (a) above, but less than the minimum liquidation percentages stated and outlined in (b) above, (*e.g.*, less than 70 percent when progress payments are based on 75 percent of total costs or less than 65.3 percent when progress payments are based on 70 percent of total costs) may be

established by amendment of contracts upon submission of satisfactory information by the contractor showing separately (i) the cost of items that have been delivered, accepted and invoiced, (ii) the cost of work not delivered, accepted and invoiced, (iii) the estimated costs of completion, and (iv) an applicable profit on the items for which final prices have been established that is higher than the amount of profit permitted to be released by application of the progress payment liquidation percentage then specified in the contract.

(d) Liquidation percentage rates as described herein, less than those prescribed by E-512.1 will not be established initially or by amendment except on the basis of satisfactory cost data and estimates furnished by the contractor. Contracts may be amended to reduce the liquidation rate not more frequently than once in each period of twelve months. See E-512.3.

E-512.3 *Liquidation Percentages.*

(a) Liquidation percentages shall conform to E-512.1, except as authorized by E-512.2.

(b) In the application of (a) and (b) of E-512.2, when progress payments are at the rate of 75 percent of all costs, the minimum liquidation percentage of 70 percent would not apply if the estimated profit rate is less than 7.3 percent of total costs. If, for example, the estimated profit rate is 5 percent of total costs, the minimum liquidation percentage permitted by (a) and (b) of E-512.2 would be approximately 71.5 percent. At this 5 percent profit rate, assuming (1) price \$105, (2) costs \$100, and (3) progress payments \$75, this minimum liquidation rate of 71.5 percent would be necessary for recovery of the \$75 of progress payments from the \$105 delivery billing ($75 \div 105 = 71.5$ percent, and $0.715 \times \$105 = \75.07). The same principles are applicable when, pursuant to (c) of E-512.2, a liquidation rate lower than the 70 percent minimum is to be established. For example, assuming an established profit rate of 8 percent of total costs of items for which final prices have been established, the minimum liquidation rate for those items would be 69.5 percent when progress payments are at the rate of 75 percent of total costs. Assuming, (1) fixed price \$108, (2) costs \$100, and (3) progress payments \$75, the calculation would be: $75 \div 108 = 0.6944$, and (rounding this upward to 0.695), $0.695 \times \$108 = \75.06 .

(c) Subparagraph (b) of E-512.1 provides the standards, and gives an example for establishing the minimum liquidation percentage when progress payments are to be at 90 percent of costs of direct labor and material (or lesser percentages of more limited costs). In the application of (a) and (b) of E-512.2, when progress payments are at the rate of 90 percent of costs of direct labor and material, examples of the minimum liquidation rates are—

(1) When costs of direct labor and material are 70 percent of total costs, and the profit rate is 5 percent of total costs, the minimum liquidation percentage would be 60 percent. Assuming price \$105, costs \$100, costs of direct labor and material \$70, and progress payments \$63, then $63 \div 105 = 60$ percent. Application of the 60 percent liquidation percentage to the delivery price of \$105 recovers the \$63 of progress payments.

(2) On assumptions the same as example (1) above, except that costs of direct labor and material are computed at 80 percent of total costs (\$80 of the total costs of \$100), so that progress payments on the item are \$72 (90

percent of \$80), the minimum liquidation percentage would be 68.6 percent ($72 \div 105 = 68.6$ percent, *i.e.*, 68.57 percent rounded upward to 68.6 percent). Application of this 68.6 percent liquidation percentage to the delivery price of \$105 recovers \$72.03 against the \$72 of progress payments.

(d) In line with the standards set for progress payments based on 75 percent of all costs, calculation of minimum liquidation rates pursuant to (a) and (b) of E-512.2, when progress payments are at 90 percent (or lesser percentage) of costs of direct labor and material (or costs more limited), will not take into account any amount of profit that exceeds 7.3 percent of total costs. Thus, on example (1) next above (assuming profit rate 7.3 percent of costs or any greater rate), the minimum liquidation percentage would be 58.72 percent ($63 \div 107.3 = 58.72$ percent).

(e) The above principles ((a), (b), (c), (d)) apply when progress payments are at the rate of 70 percent of all costs or 85 percent of costs of direct labor and material, or at other percentages. In conformity to the above pattern, liquidation rates would be lower than those set out in (b), (c), and (d), to harmonize with percentages for progress payments that are lower than those mentioned in (b), (c), and (d). Thus, for instance, with regard to (a) above, if progress payments are at the rate of 70 percent of all costs (instead of 75 percent), the minimum liquidation rate comparable to the 70 percent liquidation rate mentioned in (b) of E-512.2, would be 65.3 percent (or a higher percentage if the estimated profit rate is less than 7.3 percent of all costs). In the first example given in (b) above, with progress payments at 70 percent of total costs, assuming (1) price \$105, (2) costs \$100, and (3) progress payments \$70, a minimum liquidation percentage of 66.7 percent would be necessary for recovery of the \$70 of progress payments from the \$105 delivery billing ($70 \div 105 = 66.7$ percent, and $0.667 \times \$105 = 70.03$). In the second example given in (b) above, for application of (c) of E-512.2, assuming (1) fixed price \$108, (2) costs \$100, and (3) progress payments \$70, the minimum liquidation rate for the finally priced items would be 64.9 percent ($70 \div 108 = 64.815$, and rounding this upward to 64.9, $0.649 \times \$108 = \70.09).

E-513 Subcontracts. Subcontractors ought to be able to get progress payments from their customers on standards which are the same as those applicable to prime contracts. Contractors should be encouraged to extend progress payments to subcontractors on subcontracts which meet the standards for customary progress payments outlined in E-503.

The policies and standards for "unusual" progress payments set forth in E-505 are equally applicable to situations where it is contemplated that contracts will provide for progress payments based on "unusual" progress payments made by a prime contractor to a subcontractor. In such cases, when the inclusion of such unusual progress payments on the subcontracts has been approved in the manner set forth in E-505, appropriate revision will be made in paragraph (j)(2) of the Progress Payment clause (E-510.1(j)(2), E-510.2(j)(2)) so as to permit inclusion of the unusual progress payments on the subcontract as part of the base for progress payments on the prime contract. Such revisions are deemed not to be deviations, and do not require the clearance called for by E-517(ii). E-510.1(a)(2) and E-510.2(a)(2) apply only to the "contractor's" costs mentioned in E-510.1(a)(1)(i) and E-510.2(a)(1)(i)

respectively. E-510.1(a)(2) and E-510.2(a)(2) do not apply to the progress payments to subcontractors mentioned in E-510.1(a)(1)(ii) and E-510.2(a)(1)(ii) respectively. This interpretation governs existing E-510.1 and E-510.2 clauses in contracts, as well as new contracts in which a new clarifying reference to "(a)(1)(i)," as set out above, will be included in (a)(2) of the Progress Payment clause.

E-513.1 *Subcontractor Progress Payments.* When progress payments have been made by a prime contractor to a subcontractor pursuant to the provisions of the applicable prime contract and subcontract, the progress payment to the prime contractor to reimburse him for such progress payment to the subcontractor shall include the full amount of his progress payment made to the subcontractor. When a percentage less than 100 percent has been specified on existing contracts, this lesser percentage will control the amount of progress payments to be made pursuant to (a)(1)(ii) of E-510.1 and E-510.2 and the maximum limit on unliquidated progress payments on account of unliquidated progress payments to subcontractors under (a)(3)(i) of E-510.1 and E-510.2.

E-513.2 *Adaptation of Uniform Clause for Subcontracts.* Contracting officers are not required to review or approve subcontracts merely because they provide for progress payments. However, they shall check and review subcontracts providing for progress payments to the extent appropriate in the ordinary course of administration of the Progress Payment clause of prime contracts. The duty rests on the prime contractor to see to it that his subcontracts providing for progress payments, to be included in the base for progress payments pursuant to the provisions of E-510.1(j) and E-510.2(j), conform to those provisions of the contract (E-510.1(j), E-510.2(j)). In adapting the clauses set forth in E-510.1 and E-510.2 for use in subcontracts, to conform to E-510.1(j) or E-510.2(j), the subcontract Progress Payment clause should have appropriate changes to reflect the position of the prime contractor as purchaser and of the subcontractor as vendor, and to indicate that the progress payments under the subcontract are being made and administered by the prime contractor. However, the title provision of the Progress Payment clause of the subcontract shall provide for the vesting of title directly in the Government, as set forth in E-510.1(d) and E-510.2(d), and the subcontract will not substitute the prime contractor for the Government as the holder of title under that paragraph of the subcontract. In that title paragraph of the subcontract, reference to the prime contractor should, however, be substituted for the word "Government" in the parenthetical expression concerning drawings and technical data, and also in the second sentence of the paragraph. In the subcontract counterpart of E-510.1(g) and E-510.2(g) entitled "Reports—Access to Records" the references to "Contracting Officer" and "Government" should not be deleted, but may in each case be expanded so as to refer to the "Contracting Officer or the prime contractor," (E-510.1(g)(i), E-510.2(g)(i)), and to the "Government or the prime contractor" (E-510.1(g)(ii), E-510.2(g)(ii)).

With regard to the subcontract counterpart of the "Special Provisions Regarding Default" (E-510.1(h), E-510.2(h)) only the substance of the first twenty six words of that paragraph (with reference to the prime contractor substituted for "Government"), is required for conformity to the provisions of E-510.1(j)(2).

E-513.3 *Substitution of New Clause for Old Clause.* In furtherance of the policy of encouraging the making of proper progress payments to subcontractors (E-513), those contracts which contain a Progress Payment clause conforming to former E-510.1 or E-510.2 as issued 25 May 1959, whether with or without the Schedule provision authorized by former E-510.3, may be amended, for nominal consideration only, so as to substitute one of the E-510.1 and E-510.2 clauses for the existing Progress Payment clause.

E-514 Progress Payments on Subcontracts Under Cost-Reimbursement Types of Prime Contracts. The policies, standards and procedures of this Part 5 and its references are applicable to progress payments to subcontractors and suppliers on fixed-price types of subcontracts under cost-reimbursement types of prime contracts. For the prime contractor to be reimbursed for such progress payments, it is required that the subcontracts involving progress payments conform to these regulations. Specifically, the case must meet the standards for customary progress payments (E-503) and progress payment percentages must not exceed those authorized by E-503 (unless unusual progress payments to the subcontractor are approved by the procedure described in E-505), liquidation must conform to E-512, and one of the uniform clauses (E-510) adapted for subcontract use (E-513.2) must be utilized.

E-515 Letter Contracts. When progress payments are to be made under letter contracts or similar preliminary contractual instruments, incorporation of one of the clauses set forth in E-510.1 and E-510.2 is required except as follows:

(a) E-510.1(a)(4) or E-510.2(a)(4) will be replaced by a provision limiting the aggregate amount of progress payments made under the letter contract to a stated amount, not exceeding 70 percent of the maximum liability of the Government under the letter contract (or such lesser percentage as may be applicable in accordance with the last two sentences of E-511.4 if the clause set out in E-510.2 is to be used). Separate limits may be prescribed for separate specified parts of the work.

(b) Until unit delivery billing prices are specified, E-510.1(b) or E-510.2(b) concerning liquidation will not be operative, and will be supplemented by the additional provision set out below:

“Progress payments made hereunder shall be liquidated in the following manner, unless previously liquidated pursuant to paragraph (b):

(1) If this letter contract shall be superseded by a fixed-price type contract (Section III, Part 4), unliquidated progress payments made hereunder shall be liquidated by deducting the amount thereof from the first progress or other payments which shall be made under such contract.

(2) If this letter contract shall be superseded by a cost-reimbursement type contract, progress payments made hereunder shall be liquidated by deducting the unliquidated amount thereof from the first payments which shall be made under such cost-reimbursement contract.

(3) If this letter contract shall not be superseded by a contract calling for the furnishing of all or part of the articles or services covered hereby, unliquidated progress payments made hereunder shall be liquidated by deducting the amount thereof from the amount payable under the provisions of the Termination clause for this letter contract.

(4) If this letter contract shall in part be terminated and shall in part be superseded by a contract, the unliquidated progress payments made hereunder shall be allocated by the Government for the purpose of liquidation to the terminated portion

[Contract clause continued on next page]

of the letter contract and to the superseding contract in such proportions as the Government shall deem to be equitable, and the part of such progress payments allocated to each shall be liquidated in accordance with the applicable provisions of subdivisions (1), (2), and (3) of this paragraph.

(5) If the method of liquidating progress payments provided above shall not result in the full liquidation thereof, the Contractor shall forthwith pay the unliquidated balance to the Government upon demand."

(c) Any superseding definitive contract will contain appropriate provisions, carried forward from the letter contract, for liquidation of progress payments made under the preliminary instrument. When the superseding contract provides for progress payments, the Progress Payment clause will be supplemented by further provision as follows:

The costs, previous progress payments, aggregate progress payments, and unliquidated progress payments, mentioned in paragraph (a) of this Progress Payments clause, include the costs incurred and progress payments made under the letter contract which has been superseded by this contract. (MAY 1959)

E-516 Transition. Contracts in existence on the effective date of this Part 5 will continue to be administered in accordance with their provisions and these regulations. The transition to uniform use of a Progress Payment clause set out in these regulations (E-510) will be accomplished in an orderly and reasonable manner and as promptly as practicable, as set forth below.

E-516.1 *Separate Contracts.* To the greatest extent feasible, procurement effected after the effective date of these regulations, and involving the establishment or continuation of progress payments, will be accomplished by separate new contracts rather than by amendments of existing contracts.

E-516.2 *Existing Indefinite Quantity Contracts.* During the specified term of existing indefinite quantity contracts (not including any extension of such term) existing progress payment provisions conforming to E-503 with regard to progress payment percentage and conforming to E-512 with regard to rate of liquidation do not need to be replaced, incident to new procurement under such contracts, by a clause set forth in E-510.

E-516.3 *Supplements, Amendments, and Modifications—When New Clause Not Required.* When it is found necessary to effect new procurement by amendment of a contract (see E-516.1) already providing for progress payments based on costs, rather than by a separate contract, it is not required that the amendment include a clause set forth in E-510 if the Progress Payment clause already in the contract provides for progress payments not exceeding 70 percent of total costs or 85 percent of direct labor and material costs and also provides for liquidation conforming to E-512. However, in these cases, a clause set out in E-510 should be substituted for the existing Progress Payment clause whenever feasible.

E-516.4 *Supplements, Amendments, and Modifications—Gradual Operation of New Clause.*

(a) When a contract provides for progress payments at rates exceeding 85 percent of direct labor and material costs or exceeding 70 percent of total costs, and it is found necessary to accomplish additional procurement by an amendment rather than by a separate new contract (see E-516.1), the amendment should, whenever reasonable and practicable, substitute a clause set forth in E-510 for the Progress Payment clause of the contract, so as to limit

all future progress payments on the entire contract to 70 percent of future total costs or 85 percent of future costs of direct labor and materials. When such substitution is made, substantially the following provision should be added:

For the purposes of paragraph (a)(1) of this clause, (i) progress payments made or to be made to the contractor on progress billings submitted to the Government on or before the date of this amendment (in the total amount of \$-----), shall be excluded in computing the "sum of previous progress payments" and (ii) costs (and progress payments to subcontractors) (in the total amount of \$-----), relating to the progress payments so excluded shall also be excluded in computing costs (and progress payments to subcontractors) eligible for progress payments under this amendment. The amount of progress payments unliquidated at the date of this amendment (\$-----), and the amount of progress payments included in progress billings pending at the date of this amendment (\$-----), aggregating (\$-----), shall be liquidated at the rate of ----- percent instead of the percentage stated in paragraph (b) of this clause. Paragraphs (a)(3) and (b) of this clause shall not apply until liquidation of the aggregate amount of progress payments made or billed at the date of this amendment. Paragraph (a)(4) does not apply. (MAY 1959)

The expression "(and progress payments to subcontractors)" will be deleted if not applicable. Billings for progress payments pending at the date of the amendment will be paid in accordance with the Progress Payment clause in effect before the amendment. The rate for liquidation of unliquidated progress payments outstanding and to be outstanding pursuant to progress billings pending at the date of the amendment will be specified in accordance with the principles stated in E-512.

(b) When, in the circumstances described in paragraph (a) above, it is not reasonable and practicable to substitute a clause set forth in E-510 so as to limit all future progress payments on the entire contract to 70 percent of costs or 85 percent of costs of direct labor and material as the case may be, the amendment (incorporating a clause set forth in E-510, with percentages as specified in E-503) ordinarily will provide for segregation of costs attributable to work under the amendment, segregation of payments under the amendment, and administration of progress payments under the amendment on the same basis as if the amendment were a separate new contract. However, when it is found that it will be expensive or otherwise impracticable to separate costs of deliveries attributable to the amendment from those attributable to the other portion of the contract, the amendment will provide for one or the other of the arrangements described in paragraphs (c) and (d) below.

(c) When the last sentence of paragraph (b) above, is applicable (and paragraph (d) below, is not applied), the amendment will include a clause set forth in E-510 (with percentages conforming to E-503), with provision that it will become operative as herein provided. The amendment will provide for continuation of progress payments pursuant to the existing Progress Payment clause and for their liquidation pursuant to E-512, until (1) the aggregate amount of progress payments made under the contract, including progress payments previously made, equals (2) the aggregate amount of progress payments that would have been made at the previously established rates if the contract had continued without this amendment (less reductions from time to time to reflect decreases in anticipated total progress payments, resulting from any partial termination of the contract); and (3) when the

amount described in item (1) above, equals the amount described in item (2) above, future progress payments will be governed by the Progress Payment clause included in the amendment, except that liquidation of the amount of unliquidated progress payments then outstanding will continue at the higher rate required to conform to E-512 until liquidation of such amount, and (a)(4) (E-510.1(a)(4), E-510.2(a)(4)) will not apply.

(d) When the last sentence of paragraph (b) above, is applicable (and paragraph (c) above, is not applied) the amendment will substitute a clause set forth in E-510 instead of the existing progress payment provision, but with the percentage specified for future progress payments being a weighted average percentage arrived at by dividing the amount described in item (1) below, into the amount described in item (2) below (and with the special liquidation provision described in item (3) below):

(1) The total of all future costs, eligible for progress payments, expected to be incurred for performance of the contract and this amendment.

(2) The sum of (i) the total of all future costs, eligible for progress payments, that would have been incurred for performance of the contract without this amendment (not including costs expected to be incurred on account of this amendment) multiplied by the percentage for progress payments theretofore specified in the contract, and (ii) the total of all future costs, eligible for progress payments, expected to be incurred solely on account of this amendment, multiplied by not more than 70 percent (or by not more than 85 percent if eligible costs are limited to direct labor and material).

(3) When such substitution is made, special provision will be added to require that (1) the unliquidated progress payments outstanding at the date of the amendment (and any progress payments made thereafter on progress billings pending at the date of the amendment) will be liquidated in the manner outlined in E-512, *e.g.*, at 90 percent of delivery billings if those progress payments had been made at 90 percent of costs, or at percentages authorized by E-512.2 and (2) that liquidation at the percentage specified in the Progress Payment clause substituted by the amendment will begin when liquidation at the higher rate mentioned in item (1) next above, has been accomplished.

E-516.5 *Supplements, Amendments, and Modifications Concerning Progress Payments.* Supplements, amendments, and modifications of existing contracts which increase the rate or percentage of progress payments, or enlarge the base for progress payments, or reduce the rate of liquidation of progress payments, or make new provision for progress payments shall conform to these regulations and in particular to E-510.

E-516.6 *Amendments Reducing the Rate of Progress Payments.* When contracts are amended to reduce the percentage for progress payments (E-503.2), the principles set forth in E-516.4 are applicable, even though additional procurement is not involved.

E-517 Contract Financing Office Clearance. The following types of provisions for progress payments require submission through channels and prior approval by the contract financing office (E-212):

- (i) Those involving progress payments at rates exceeding 85 percent of direct labor and material costs or exceeding 70 percent of total costs, except as authorized by E-503, E-504, and E-516.4;

- (ii) Those involving deviations, as defined in E-509.9;
- (iii) Those exceptional cases involving unusual risks, described in E-212;
- (iv) Those involving contractors as to whom it is known that within the preceding 12 months (1) request for advance payments has been denied for financial reasons by the contract financing office, or (2) application for guarantee of a loan to the contractor or for increase or extension of maturity of a guaranteed loan, has been disapproved for financial reasons, or (3) an approved application for guarantee of a loan or for advance payment to the contractor has lapsed or has been withdrawn; and
- (v) Those involving contractors named on the consolidated list of contractors indebted to the United States, commonly known as the "Hold-Up List."

E-518 Coordination. The coordination described in the third subparagraph of E-505 is required for all cases mentioned in items (i) and (ii) of E-517.

E-518.1 Control Lists. To give effect to E-517(iv), pertinent information will be exchanged between the several contract financing offices, and distributed through normal channels to contracting officers.

E-518.2 Hold-Up List. To give effect to E-517(v), and for other proper purposes, the "Hold-Up List" there mentioned will be distributed through normal channels to contracting officers.

E-519 Contractor's Request. All invoices for progress payments on contracts containing the Progress Payment clause set out in E-510 (with or without the modifications authorized by E-516.4), and on contracts containing any deviation from that clause approved pursuant to E-517 and E-518, will be supported by the Contractor's Request for Progress Payment (DD Form 1195) (fig. 1) with any supporting information that may be reasonably required. This form of request also will be utilized as soon as practicable (unless incompatible with contract provisions) in connection with progress payments based on costs under existing contracts and other contracts (E-516.1, E-516.2, E-516.3) not containing one of the Progress Payment clauses set out in E-510. The use of this form is subject to the instructions set forth on the reverse thereof.

E-520 Audit. For the making of progress payments, principal reliance will be placed on the adequacy of the contractor's accounting system and controls (E-506) and on the reliability of the contractor's certificates. To conserve administrative effort, hold down expense, and promote prompt payment of proper progress billings, audit before the making of progress payments will be kept to the minimum necessary for the protection of the interest of the Government. Preaudit, that is, audit before the making of a progress payment, will be limited to those situations in which there is reason to question the reliability or accuracy of the contractor's certificate, or reason to believe that the contract will involve a loss. Postreview or postaudit will be made when considered desirable by the contracting officer to determine the validity of any progress payment made on the contractor's certifications.

E-521 Administration—General. Progress Payment clauses cannot be self-executing, and require careful administration to insure against overpayments and losses. In all cases the physical progress of the work should be

evaluated periodically to assure that the progress payments are fairly supported by the value of the work actually accomplished on the undelivered portion of the contract in conformity with the contract requirements. Also, the unliquidated progress payments should not be permitted to exceed the percentage specified in the contract, of the costs forming the base for progress payments, applicable only to the partially finished undelivered portion of the contract. It is necessary for adequate supervision of progress payments that the administering office keep itself informed concerning the contractor's overall operations and financial condition, since difficulties encountered and losses suffered in operations outside the particular progress payment contract may affect adversely the performance of that contract and the liquidation of the progress payments. For contracts with those contractors whose financial condition is doubtful or not strong in relation to progress payments outstanding or to be outstanding, or whose management is of doubtful capacity or whose accounting controls are found by experience to be weak, or who are encountering substantial difficulties in performance, full information concerning both the progress under the contracts involved (including the status of subcontracts), and concerning the contractor's other operations and financial condition, should be obtained and analyzed at frequent intervals, with a view to the better protection of the interest of the Government and the taking of such action as may be proper to make contract performance more certain. If there is reason to doubt only minor elements of the costs involved in a progress billing, only the doubtful amounts should be withheld, subject to later adjustment, and the amount clearly due should be paid without awaiting resolution of the differences. So far as practicable in each case, all cost problems, particularly those involving indirect costs, of a kind likely to create disagreements in future administration of the contract, should be identified and resolved at the inception of the contract.

E-521.1 *Extent of Supervision.* The extent of supervision required, whether for loss prevention or for avoidance of overpayments, should vary inversely with the experience, performance record, reliability, quality of management, and financial strength of contractors, and with the adequacy of their accounting system and controls. Review should be of a kind and degree that will be sufficient, consistent with the circumstances of individual cases, to provide timely knowledge of circumstances that would adversely affect contract performance and the liquidation of progress payments, and timely opportunity for any action that may be appropriate for the protection of the Government. Particular care must be taken to assure that the unpaid balance of the contract price will be adequate to cover the anticipated cost of completion, or that the contractor has adequate resources to complete the contract if the unpaid balance of the contract price is inadequate to cover costs of completion.

E-521.2 *Use of Progress Payments by Contractors.* It is expected that the contractor will use the progress payments made by the Government, or equivalent amounts of money, to pay the costs incurred in the performance of the contract under which progress payments are made.

E-522 **Adjustments—Retroactive Price Reduction—Refunds.** When a retroactive price reduction has been made effective, *i.e.*, by supplemental

CONTRACTOR'S REQUEST FOR PROGRESS PAYMENT		Form Approved Budget Bureau No. 22-R170
TO BE COMPLETED IN ACCORDANCE WITH INSTRUCTIONS ON REVERSE SIDE		
SECTION I - IDENTIFICATION INFORMATION		
1. TO:	2. FROM: (Contractor's Name and Address)	
3. A. TOTAL CONTRACT PRICE \$	4. CONTRACT NUMBER	5. A. PROGRESS-PAYMENT REQUEST NUMBER
B. CONTRACT PRICE OF ITEMS TO BE DELIVERED, ACCEPTED AND INVOICED \$	5. INVOICE NUMBER AND DATE	B. DATE OF THIS REQUEST
		C. AMOUNT REQUESTED \$
SECTION II - STATEMENT OF TOTAL COSTS INCURRED UNDER THIS CONTRACT FROM _____ TO _____		
7. COSTS ELIGIBLE UNDER PROGRESS PAYMENT CLAUSE		
A. DIRECT MATERIAL		
B. DIRECT LABOR (Of prime contractor only)		
C. MANUFACTURING AND PRODUCTION EXPENSE (Specify rate _____ %)		
D. TOTAL OTHER DIRECT COSTS (Specify in attached statement)		
E. SUBTOTAL OF LINES 7A THROUGH 7D, AS APPLICABLE		
F. GENERAL AND ADMINISTRATIVE EXPENSES (Specify rate _____ %)		
G. TOTAL OF LINES 7A AND 7F		
8. PERCENTAGE (_____ %) APPLIED TO ITEM 7G FOR PROGRESS PAYMENT AND DOLLAR AMOUNT		
9. A. PROGRESS PAYMENTS MADE TO SUBCONTRACTORS		
B. LIQUIDATED PROGRESS PAYMENTS TO SUBCONTRACTORS		
C. TOTAL UNLIQUIDATED PROGRESS PAYMENTS TO SUBCONTRACTORS (See Item 9B)		
D. SUBCONTRACT PROGRESS BILLINGS APPROVED FOR CURRENT PAYMENT		
10. SUBCONTRACT PROGRESS PAYMENTS AND BILLINGS (Items 9C plus 9D)		
11. A. TOTAL DOLLAR AMOUNT (Items 8 plus 10)		\$
B. PERCENTAGE (_____ %) APPLIED TO ITEM 11A LIMITING AGGREGATE PROGRESS PAYMENT AND DOLLAR AMOUNT		
C. LESSER OF 11A OR 11B		
12. TOTAL AMOUNT OF PREVIOUS PROGRESS PAYMENTS REQUESTED		
13. MAXIMUM BALANCE ELIGIBLE FOR PROGRESS PAYMENTS (Item 12 less Item 12)		
SECTION III - TO BE COMPLETED BY THE CONTRACTOR ONLY WHEN SPECIFICALLY REQUESTED BY CONTRACT ADMINISTRATOR		
14. COSTS INCLUDED IN ITEM 7E, APPLICABLE TO ITEMS DELIVERED, INVOICED, AND ACCEPTED TO THE SECOND DATE IN HEADING OF SECTION II		\$
15. COSTS ELIGIBLE FOR PROGRESS PAYMENTS, APPLICABLE TO UNDELIVERED ITEMS AND TO DELIVERED ITEMS NOT INVOICED AND ACCEPTED (Item 7G less Item 14)		
16. PERCENTAGE (_____ %) APPLIED TO ITEM 15 LIMITING PROGRESS PAYMENTS AND DOLLAR AMOUNT		
17. CONTRACT PRICE OF ITEMS DELIVERED, ACCEPTED AND INVOICED TO THE SECOND DATE IN HEADING OF SECTION II		
18. AMOUNT OF ADVANCE PAYMENTS OUTSTANDING, IF ANY, INCLUDING ACCRUED INTEREST		
19. NET BALANCE OF CONTRACT PRICE OF ITEMS NOT DELIVERED, ACCEPTED AND INVOICED (Item 16 less Item 18)		
20. TOTAL AMOUNT APPLIED AND TO BE APPLIED TO REDUCE PROGRESS PAYMENTS		
21. UNLIQUIDATED PROGRESS PAYMENTS (Item 17 less Item 20)		
22. MAXIMUM PERMISSIBLE UNLIQUIDATED PROGRESS PAYMENTS		
A. ITEM 16 PLUS ITEM 19		\$
B. PERCENTAGE (_____ %) APPLIED TO ITEM 19 AND DOLLAR AMOUNT		
C. LESSER OF ITEM 22A OR ITEM 22B		
23. AMOUNT OF CURRENT INVOICE FOR PROGRESS PAYMENT (Item 22C less Item 21, or Item 13, whichever is the smaller)		
SECTION IV - CERTIFICATION		
I CERTIFY THAT THE ABOVE STATEMENT (With attachments) HAS BEEN PREPARED FROM THE BOOKS AND RECORDS OF THE ABOVE NAMED CONTRACTOR IN ACCORDANCE WITH THE CONTRACT AND THE INSTRUCTIONS HEREON, AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT IT IS CORRECT, THAT ALL THE COSTS OF CONTRACT PERFORMANCE (except as herewith reported in writing) HAVE BEEN PAID OR WILL BE PAID CURRENTLY, BY THE CONTRACTOR, WHEN DUE, IN THE ORDINARY COURSE OF BUSINESS, THAT THE WORK REFLECTED ABOVE HAS BEEN PERFORMED, THAT THE QUANTITIES AND AMOUNTS INVOLVED ARE CONSISTENT WITH THE REQUIREMENTS OF THE CONTRACT, THAT THERE ARE NO ENCUMBRANCES (except as reported in writing herewith, or on previous progress payment request No. _____) AGAINST THE PROPERTY ACQUIRED OR PRODUCED FOR AND ALLOCATED OR PROPERLY CHARGEABLE TO THE CONTRACT WHICH WOULD AFFECT OR IMPAIR THE GOVERNMENT'S TITLE, THAT THERE HAS BEEN NO MATERIALLY ADVERSE CHANGE IN THE FINANCIAL CONDITION OF THE CONTRACTOR SINCE THE SUBMISSION OF THE MOST RECENT WRITTEN INFORMATION DATED _____, OR IN THE STATUS OF CONTRACT PERFORMANCE SINCE THE SUBMISSION OF THE MOST RECENT WRITTEN INFORMATION DATED _____, BY THE CONTRACTOR TO THE GOVERNMENT IN CONNECTION WITH THE CONTRACT, AND THAT AFTER THE MAKING OF THE REQUESTED PROGRESS PAYMENT THE UNLIQUIDATED PROGRESS PAYMENTS WILL NOT EXCEED THE MAXIMUM UNLIQUIDATED PROGRESS PAYMENTS PERMITTED BY THE CONTRACT.		
TYPED NAME AND TITLE OF PERSON SIGNING	DATE SIGNED	SIGNATURE (For Contractor)

DD FORM 1195
1 FEB 50

PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE.

Figure 1—Front

INSTRUCTIONS

SECTION I - IDENTIFICATION INFORMATION - Complete items 1 through 6 in accordance with the following instructions:

ITEM 1 - TO - Enter the name and address of the cognizant military department representative.

ITEM 2 - FROM - CONTRACTOR'S NAME AND ADDRESS - Enter the name and mailing address of the contractor.

ITEM 3a - TOTAL CONTRACT PRICE - Enter the total contract price, as amended. If the contract provides for price redetermination, enter the initial price until changed; if the contract is of the incentive type, enter the target price until changed; not the ceiling or maximum price. For letter contracts, enter the maximum expenditure authorized by the contract, as amended.

ITEM 3b - CONTRACT PRICE OF ITEMS TO BE DELIVERED AND/OR ACCEPTED - Enter the total billing price of the undelivered items and/or of delivered items not yet accepted and invoiced under the contract.

ITEM 4 - CONTRACT NUMBER - Enter the number of the contract on which progress payment is being requested.

ITEM 5 - INVOICE NUMBER AND DATE - Enter the number and date of the invoice for the progress payments requested herein. If no invoice is submitted herewith, enter "none".

ITEM 6a - Enter the number assigned to this request. All requests under a single contract must be numbered consecutively beginning with 1. Each subsequent request under the same contract must continue in sequence the same series of numbers without omission or duplication.

ITEM 6b - Enter the date of this request.

ITEM 6c - Enter the amount of progress payment requested herein, which should not exceed the amount shown in item 11c.

SECTION II - GENERAL INSTRUCTIONS - DATES - Spaces are provided in the heading of Section II for the entry of two dates. In the first space, enter the date of the first incurrence of costs of performance of the kind eligible for progress payments under the contract. In the second space, enter the date through which such costs have been accumulated for inclusion in this request and are therefore shown individually, as applicable item entries in Sections II and III.

LIMITED COSTS BASIS - Certain contracts limit the progress payment base to incurred costs of direct labor and/or direct material or other specified costs which are less than incurred "Total costs". When the contract includes such limitations only those costs eligible for progress payments under the contract are to be identified and reported in Section II.

TOTAL COST BASIS - Certain contracts provide that the progress payment base will be total incurred costs. In such cases total costs include all expenses incurred for performance of the contract which are reasonable, allocable to the contract, consistent with sound and generally accepted accounting principles and practices, and which are not otherwise excluded by the contract. (For exclusions, see the progress payment clause of the contract.)

MANUFACTURING AND PRODUCTION EXPENSE; GENERAL AND ADMINISTRATIVE EXPENSE - Under certain conditions, eligible incurred costs include manufacturing and production expenses and general and administrative expenses which have been incurred for performance of the contract which are reasonable, allocable to the contract, and consistent with sound and generally accepted accounting principles and practices.

(NOTE: In connection with the first progress payment request on a contract, attach an explanation of the method, bases and period used in determining the amount of each of these two types of expenses. If the method, bases or periods used for computing these expenses differ in subsequent requests for progress payments under the contract, attach an explanation of such changes to the progress payment request involved.)

INCURRED COSTS INVOLVING SUBCONTRACTORS - If the incurred costs eligible for progress payments under the contract include costs shown on invoices of subcontractors, suppliers and others that portion of the costs computed on the basis of such invoices can only include costs for: (1) completed work to which the prime contractor has acquired title; (2) materials delivered to which the prime contractor has acquired title; (3) services rendered; and (4) costs billed under cost reimbursement or time and material subcontracts for work to which the prime contractor has acquired title.

SECTION II - SPECIFIC INSTRUCTIONS

ITEM 7 - COSTS ELIGIBLE UNDER PROGRESS PAYMENT CLAUSE - Costs to be shown in items 7a through 7g are not to include advance payments, down payments, deposits, or progress payments made or to be made to subcontractors, suppliers or others.

ITEM 7 - a and b - If applicable, enter the direct material and direct labor costs.

ITEM 7 - c - If applicable, enter the rate used in computing manufacturing and production expenses and the computed dollar amount.

ITEM 7 - d - Enter the total of all other direct costs. Attach a separate statement identifying each such cost and the amount thereof.

ITEM 7 - e - Self-explanatory.

ITEM 7 - f - If applicable, enter the rate used in computing general and administrative expenses and the computed dollar amount.

ITEM 7 - g - Self-explanatory.

ITEM 8 - Enter the percentage figure for progress payments stated in the contract (Paragraph (a)(1)(i) of the uniform progress payment clause) and the computed dollar amount based on that percentage, i.e., the computed dollar amount of the entry in item 7g.

ITEMS 9 AND 10 - Make no entry unless the contract requires progress payments to the contractor on account of progress payments to subcontractors. Include only progress payments on subcontracts which conform to the progress payment provisions of the prime contract.

ITEM 9 - a - Enter only progress payments actually paid.

ITEM 9 - b - Enter total progress payments recouped from subcontractors.

ITEM 9 - c - Self-explanatory.

ITEM 9 - d - Make no entry unless the prime contract specifies progress payments on account of unpaid subcontract progress payment billings which have been approved for current payment in the ordinary course of business. Include only such approved unpaid billings.

ITEM 10 - Self-explanatory.

ITEM 11 - a - Self-explanatory.

ITEM 11 - b - Enter the percentage stated in the contract which limits aggregate progress payments (Paragraph (a)(4) of the uniform progress payment clause) which can be made and compute the dollar amount based on that percentage, i.e., the computed dollar amount of the entry in item 3a.

ITEM 11 - c - Self-explanatory.

ITEMS 12 AND 13 - Self-explanatory.

SECTION III - GENERAL INSTRUCTIONS - This section is to be completed only when specifically requested by Government personnel responsible for administration of the contract. Completion of this section will be requested when the rate or quality of contract performance is not satisfactory, or when there is reason to believe that: (a) the contract may involve a loss to the contractor; or (b) insufficient costs have been allocated to delivered items; or (c) outstanding progress payments may exceed (1) the fair value of the work accomplished on the undelivered portion of the contract or (2) the applicable percentage of cost properly allocated to unfinished work.

SECTION III - SPECIFIC INSTRUCTIONS

ITEM 14 - Of the costs reported in item 7g, compute and enter only costs which are applicable to items delivered, invoiced and accepted to the applicable date. In order of preference, these costs are to be computed on the basis of one of the following: (a) the actual unit cost of items delivered, giving proper consideration to the deferral of the starting load costs; (b) projected unit costs (based on experienced costs, plus estimated costs to complete the contract), where the contractor maintains cost data which will clearly establish the reliability of such estimates; and (c) the total contract price of items delivered.

ITEM 15 - Self-explanatory.

ITEM 16 - Enter the percentage stated in the contract limiting unliquidated progress payments in relation to eligible costs (Paragraph (a)(3)(i) of the uniform progress payment clause). Compute and enter the dollar amount based on that percentage, i.e., the percentage of the entry in item 15.

ITEM 17 - Enter the total billing price, as adjusted, of items delivered, accepted and invoiced to the applicable date.

ITEMS 18 AND 19 - Self-explanatory.

ITEM 20 - This entry is to be completed from the contractor's records. It is the total of all amounts which have been or are to be applied from previous billings to reduce outstanding progress payments, including amounts, if any, of payments OTHER than those applied from previous billings. (NOTE: If the entry includes reductions affected by means other than through previous billings, attach a statement showing details thereof.)

ITEM 21 - Self-explanatory.

ITEM 22 - a - Self-explanatory.

ITEM 22 - b - Enter the percentage stated in the contract, limiting unliquidated progress payments to that percentage of the contract price of items which have not been delivered and accepted (Paragraph (a)(3)(ii) of the uniform progress payment clause).

ITEM 22 - c - Self-explanatory. (NOTE: If the entry in this item is less than the entry in item 21, there has been an overpayment which requires adjustment.)

ITEM 23 - Self-explanatory.

Figure 1—Reverse

agreement or by unilateral determination pursuant to the price redetermination provision of the contract, the last sentence of E-510.1(b) and E-510.2(b) requires adjustments so that the amount of unliquidated progress payments and the amounts paid or payable for supplies or services accepted will give effect to the price reduction. In this situation, the retroactive price reduction means that too much has been paid or billed for deliveries, and that from those delivery billings too much has been applied as a reduction of the unliquidated progress payment balance. The necessary adjustments would be (1) recomputation of total cash delivery payments on the basis of the reduced billing price resulting from the retroactive price reduction, and repayment by the contractor of the difference between the total recomputed payments and the total cash delivery payments that had been made, and (2) increase of the unliquidated progress payment balance by the excess of the total amounts previously applied to reduce the unliquidated progress payment balance over the amounts that would have been applied to reduce the unliquidated progress payment balance if the reduced delivery prices had been in effect from the date from which the redetermination is applicable. This same principle of upward adjustment of the unliquidated progress payment balance is also applicable in connection with interim refunds made by contractors pursuant to the provisions of incentive and price redetermination contracts, and in connection with voluntary refunds on such contracts.

E-523 Maximum Unliquidated Amount. In all cases where the contract price is sufficient to cover all costs of complete performance, and liquidation of progress payments is effected in accordance with E-510.1(b) or E-510.2(b) the amount of unliquidated progress payments will never exceed the maximum limit provided by E-510.1(a)(3)(i) or E-510.2(a)(3)(i), unless liquidation percentages have been based on cost estimates that are less than actual costs. In such cases, if the contract involves a profit to the contractor, the actual unliquidated progress payment amount will always be less than the maximum limit stated in E-510.1(a)(3)(i) and E-510.2(a)(3)(i) after the first delivery payment unless liquidation percentages have been based on cost estimates that are less than actual costs. So long as performance is satisfactory and there is no reason to believe that the contract will involve a loss to the contractor or that a liquidation rate fixed pursuant to E-512.2 or E-510.2(b) is too low, there will be no need or reason to verify the relationship of the amount of unliquidated progress payments to the maximum limit prescribed by E-510.1(a)(3)(i) and E-510.2(a)(3)(i). However, when the rate or quality of performance is unsatisfactory, or the rate of rejections is unduly high, or there is excessive wastage or spoilage, or it appears that unduly low costs have been attributed by the contractor to delivered items, or a loss to the contractor is otherwise indicated, or that the liquidation rate is too low, careful examination should be made to determine whether or not the unliquidated progress payments exceed the maximum amount permitted by E-510.1(a)(3)(i) or E-510.2(a)(3)(i). The services of the cognizant audit agency should be utilized to the fullest extent available, together with the services of qualified cost analysis and engineering personnel as required. See E-519, Section III, General Instructions, DD Form 1195; and E-524.6.

E-523.1 Quarterly Statements on Price Revision Contracts. Many price

revision contracts now contain the payment limitation provisions required by Department of Defense Directive No. 4105.7 and substantially as set forth in 7-108 and 7-109. Quarterly statements submitted by contractors pursuant to those contract provisions should be compared from time to time with the Contractor's Request for Progress Payments in order to assure so far as reasonably possible that costs attributed to delivered items on the quarterly statements are excluded from the costs set forth as the basis for unliquidated progress payments on the DD Form 1195 (or on other request forms so long as other forms are in use). If there is apparent disparity, request for completion of Section III of the DD Form 1195 (E-519) would be appropriate.

E-524 Suspension or Reduction of Payments—General. In the process of reviewing individual progress payments already existing or hereafter established, action to reduce or slow down progress payments or to increase liquidation rates (unless justified on other grounds, such as overpayments or unsatisfactory performance) should be consistent with contract provisions, and never taken precipitately or arbitrarily. Any such reduction of progress payments on active contracts (other than normal liquidation pursuant to the contract) should be effected only after notice to and discussion with the contractor, and after full exploration of the contractor's financial condition, existing or available credit arrangements, projected cash requirements, effect of progress payment reduction on the contractor's operations, and generally on the equities of the particular situation. Where contract performance is satisfactory, and there is neither overpayment nor anticipated loss, proper progress payments, adequately verified, will be paid promptly when earned and billed in accordance with contract provisions, even though the terms of the particular contract may make the payment discretionary rather than mandatory, and such proper payments will not be held up or denied because of the contractor's lack of need for the payment. E-510.1(c) and E-510.2(c) provide that progress payments may be suspended or their rate of liquidation may be increased, whenever any of the circumstances there described are found to exist. The rights reserved to the Government by those paragraphs are for the purpose of protecting the interests of the Government, fostering satisfactory contract performance, and guarding against overpayments and losses. Those paragraphs will be administered with these purposes in mind. Action taken pursuant to those paragraphs will be fair and reasonable under the circumstances of particular cases, and supported by substantial evidence. Findings made under those paragraphs will be in writing.

E-524.1 Failure to Comply With Contract. Except for the purpose of correcting overpayments or obtaining amounts due from the contractor, action will not be taken pursuant to E-510.1(c)(i) or E-510.2(c)(i) for failure to comply with a requirement of the contract, if such failure has resulted solely from causes beyond the control and without the fault or negligence of the contractor. For examples of such causes, see paragraph (c) of the Default clause in 8-707(c). Compliance with the material requirements of the contract, within the meaning of E-510.1(c)(i) and E-510.2(c)(i) includes compliance with all provisions of the Progress Payment clause.

E-524.2 Unsatisfactory Financial Condition. If unsatisfactory financial condition, or failure to make progress, endangering contract performance, as described in E-510.1(c)(ii) or E-510.2(c)(ii), is found to exist, arrangements

PROGRESS PAYMENTS BASED ON COSTS

reasonably assuring contract completion without loss to the Government will be required in connection with the making of further progress payments and the making of other payments so long as progress payments are unliquidated. Within the meaning of E-510.1(c)(ii) and E-510.2(c)(ii), performance of the contract includes full liquidation of progress payments. Further payments will be withheld so long as any progress payments remain unliquidated, only upon full consideration of all pertinent facts, and upon concluding that further payments will serve to increase the probable loss to the Government.

E-524.3 *Excessive Inventory.* When inventory allocated to the contract is found substantially to exceed reasonable requirements (E-510.1(c)(iii) and E-510.2(c)(iii)), the simplest form of adjustment to correct or avoid overpayment will be to eliminate the costs of such excess inventory from the costs shown in item 7 of the contractor's request set out in E-519. If that is not regarded as sufficient in a particular case, or if the adjustment in item 7 of the request will not accomplish full correction, additional deductions, to the extent necessary for the correction, should be made, to liquidate progress payments, incident to billings for payments other than progress payments. Transfer of such excess inventory from the contract should also be required. The expression "reasonable requirements" includes a reasonable accumulation of inventory for future use to assure continuity of operations.

E-524.4 *Delinquency in Payment of Costs of Performance.* The contractor's delinquency in payment of costs of contract performance in the ordinary course of business (E-510.1(c)(iv) or E-510.2(c)(v)) may be an indication of unsatisfactory financial condition or other circumstances endangering contract performance and involving probability of loss to the Government. If such delinquency is not connected with poor financial condition that is so unsatisfactory as to endanger contract performance or to involve reasonably foreseeable loss to the Government, further progress payments and other payments will not necessarily be denied to protect the unliquidated progress payments and minimize risks of additional losses, and payments may be continued at the contract rate, or in reduced amounts, in connection with appropriate arrangements to (1) cure the contractor's delinquencies in payment of his costs of contract performance, (2) avoid further delinquencies, and (3) reasonably assure completion of the contract without loss to the Government. (See also, E-524.3.) Amounts claimed by subcontractors, suppliers and others, but disputed in good faith by the contractor, should not be considered delinquent until determined due by a court (or by arbitration if applicable). However, any such disputed amounts shall be excluded from costs of performance so long as they are disputed.

E-524.5 *Fair Value of Undelivered Work.* In connection with determining the relation of the amount of unliquidated progress payments to the fair value of the work accomplished on the undelivered portion of the contract (E-510.1(c)(v) or E-510.2(c)(vi)) the principles stated in E-523 are applicable. In determining action, if any, to be taken, the contracting officer (utilizing available audit, engineering, inspection, and cost analyst services) will give full consideration to the degree of completion of contract performance, the quality and amount of work performed on the undelivered portion of the contract, the amount of work remaining to be done and the estimated costs of completion

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of performance, and the amount remaining unpaid under the contract. If the contracting officer finds that the fair value of the work done under the undelivered portion of the contract, in relation to the contract price, is less than the unliquidated progress payments, his actions will be governed by the principles stated in E-524.2 and E-524.4. This fair value could not exceed the contract price of undelivered work under the contract, less the estimated total future costs of completion of the contract. When this fair value is found to be less than the amount of the unliquidated progress payments, all further payments on the contract will be controlled in such a manner as to hold the unliquidated progress payments within the fair value of the work done on the undelivered portion of the contract. See also E-525.1.

E-524.6 *Erroneous Cost Estimates.* When liquidation percentages (E-510.1(b) and E-510.2(b)) lower than those called for by E-512.1 are established pursuant to E-512.2, it may occur that actual costs and future costs of performance are higher than the estimated costs used to establish liquidation rates. In such cases (E-510.1(c)(vi) and E-510.2(c)(iv)) appropriate increase of the liquidation percentage will be necessary to adjust for any under-liquidation that may have occurred, to bring the amount of unliquidated progress payments within the limits of E-510.1(a)(3) or E-510.2(a)(3), and to assure the adequacy of future liquidations. Increase of the liquidation percentage will also become necessary even though E-512.2 has not been applied in fixing the liquidation percentage, when progress payments are based on costs of direct labor and material only (E-510.2) or any limited cost base (E-511.5), and actual costs forming the base for progress payments are higher than the estimated eligible costs used in establishing the liquidation percentage.

E-525 *Government Title.* Since the clauses in E-510 give the Government title to all of the materials, work in process, and finished goods under contracts, care should be taken to assure, to the extent reasonably necessary, that the title to the Government will be free of all encumbrances. The procedure in this respect will necessarily vary with the particular circumstances of individual cases. Ordinarily, in the absence of reason to believe that the Government title may be subject to encumbrance, the contractor's certificate will be relied on. If any arrangements or conditions are found that would impair the contractor's right of disposition of the property affected by the progress payments, appropriate arrangements should be made to establish and protect the Government title. The existence of any such encumbrance is a violation of the contractor's obligations under the contract.

E-525.1 *Loss, Theft, Destruction, or Damage.* E-510.1(e) and E-510.2(e) are not intended to apply to normal spoilage. The risk of loss as to property affected by the Progress Payment clause is on the contractor, except to the extent that by some special provision of the contract (such as that relating to aircraft in the open) the Government shall have expressly assumed the risk of loss. Such express assumption of risk by the Government is not made in the Progress Payment clause, the Default clause, or the Termination clause. Because of problems of administering the contract, especially those connected with property responsibility and inventory control, the risk of loss on property to which the Government holds title because of progress payments must be

on the contractor to the same extent that it would be if the contractor held title to the property. This risk of loss carries with it the accompanying duty to repay to the Government the amount of unliquidated progress payments based on cost allocable to lost, stolen, or destroyed property or to the damaged portion of the property. If the Government has expressly assumed particular risks of loss, then, to the extent of such express assumption of risk by the Government, the contractor would not be obligated to repay to the Government the amount of unliquidated progress payments based on costs allocable to such lost, stolen, destroyed, or damaged property. See, however, E-510.1(c)(v) and E-510.2(c)(vi), as to future payments on the contract after such loss, damage, theft, or destruction.

E-525.2 *Government-Furnished Property.* Contract provisions referring to or defining liability for Government-furnished property do not apply to property to which the Government shall have acquired title solely pursuant to the provisions of the Progress Payment clause (E-510.1(d) or E-510.2(d)). Property to which the Government has acquired title solely pursuant to the Progress Payment clause is not subject to Appendixes B and C of this Regulation.

E-525.3 *Special Tooling.* When the contractor furnishes special tooling, as defined in 13-101.5, pursuant to a special tooling clause (*e.g.*, 13-504), and such special tooling is not to be delivered to the Government as an end item under the contract, the handling and disposition of such special tooling will be governed by the Special Tooling clause of the contract, even though title to such special tooling is held by the Government pursuant to the progress payment clause of the contract.

E-525.4 *Termination for Convenience of the Government.* After the giving of notice of termination under contract provision for Termination for the Convenience of the Government, the property to which the Government has title pursuant to the Progress Payment clause and which is a part of termination inventory will be acquired or disposed of in accordance with the provisions of the Termination clause of the contract and of applicable laws and regulations. The acquisition or disposition of such termination inventory shall be governed by the Termination clause, even though title to all or a portion of such inventory is in the Government pursuant to the Progress Payment clause of the contract.

E-525.5 *Scrap—Excess Property.*

(a) In the course of proper performance of contracts, contractors are permitted to sell or otherwise dispose of current production scrap in the ordinary course of business, notwithstanding the Government's title under the Progress Payment clause. Permission of the contracting officer for such disposal of scrap is not required. With the permission of the contracting officer and on terms approved by him, contractors may also acquire or dispose of materials, inventories, or work in process to which the Government has acquired title pursuant to the Progress Payment clause of the contract, including transfer of such property to other work of the contractor. Proceeds of scrap disposal will be credited against the costs of contract performance. Costs allocable to property, other than scrap, so transferred from the contract will be eliminated from the costs of contract performance, and the contractor shall be required to repay to the Government (by cash credit memorandum) an amount equal to

the unliquidated progress payments allocable to the property so transferred from the contract.

(b) When (1) the contractor has completed all work called for by the contract, and (2) such work has been delivered to and accepted by the Government, and (3) progress payments made under the contract have been fully liquidated, and (4) the contractor has fully performed all his obligations under the contract (including the making of any payments to which the Government may be entitled under the contract, and including compliance with any other provisions of the contract, such as the Termination clause or the special tooling clause or the Government-furnished property clause), any excess property remaining is to be regarded as having not been allocated or properly chargeable to the contract under sound and generally accepted accounting principles and practices, and thus outside the scope of the Progress Payment clause which would have vested title in the Government. Accordingly, the contractor holds title to such excess property and may deal with it as he desires.

E-526 Consideration for Progress Payments—Awards. When a Progress Payment clause is included at the inception of a contract, no separate consideration is charged for the Progress Payment clause, and there shall be no provision for interest or other specific charge for progress payments, or for a reduction in payments (other than any agreed discount for prompt payment) by reason of the making of progress payments. The worth of the Progress Payment clause to the contractor is expected to be reflected in one or both of (i) a bid or negotiated price that will be lower than such price would have been if provision had not been made for progress payments, or (ii) contract terms and conditions, other than price, that are more beneficial to the Government than they would have been if provision had not been made for progress payments.

E-527 Amendments to Provide Progress Payments. There should be ordinarily no occasion to amend contracts to provide for progress payments unless there has been material change from the circumstances contemplated by the parties when invitations for bids were issued or the contract was entered into without progress payment provision. However, cases do occur (i) in which the actual lead time or preparatory period between the beginning of work and the first delivery substantially exceeds the estimated lead time and in fact runs or will run over six months (E-503), or (ii) in which unusual circumstances bring about unexpected substantial accumulation of predelivery costs having material impact on the contractor's working funds (E-505). These cases may arise from occurrences such as (i) uncertainties or errors in specifications, (ii) contract change notices, (iii) Government delays in testing, inspection, furnishing of material or equipment, furnishing of stock numbers, packaging or shipping instructions or shipping documents, or completion of contract supplements, (iv) stretch-outs or stop-work orders, (v) performance difficulties of subcontractors or suppliers, and (vi) causes beyond the control and without the fault or negligence of the contractor, of the kinds mentioned in 8-707(c). In these kinds of cases, requests of contractors for amendments to provide progress payments should be considered promptly, in the light of the circumstances then existing. If the circumstances then existing approximate

conditions under which progress payments would have been properly provided in conformity with these regulations at contract inception, if the new circumstances had been foreseen, progress payments should be provided by amendment. In this connection, see particularly E-202, E-204, E-205, E-206, E-207, E-210, E-210.1, and E-528.

E-528 Consideration for Amendments Providing for Progress Payments.

Contracts may not be modified except in the interest of the Government. Contracts which do not provide for progress payments may be amended (E-516.5) to provide for progress payments only when the amendment provides new and valuable consideration moving to the Government. Appropriate price reduction may provide this consideration. In the varying circumstances of individual cases, the consideration for progress payments need not necessarily be monetary. Agreements by the contractor, incorporated in such an amendment, for the benefit of and substantially advantageous to the Government, may constitute sufficient consideration for an amendment providing for progress payments. When estimated financing costs have been included as an element (whether or not identified) in the contract price of a contract not providing for progress payments, it is fair to expect elimination of the applicable portion of that element of the price when progress payments are provided by amendment. The fair and reasonable consideration for the progress payment amendment should approximate in value as nearly as practically ascertainable the amount by which the contract price would have been smaller if a Progress Payment clause had been contained in the contract in the first instance. In the absence of definite information on this point, pertinent factors for estimating the fair and reasonable amount of consideration would include (i) the amounts of progress payments expected to be outstanding for estimated periods of time, (ii) the cost of equivalent working funds to the contractor, and (iii) the estimated profit rate expected to be earned by contract performance. If not accomplished by a contract price reduction, other concessions or agreement by the contractor, advantageous to the Government and incorporated in the amendment, may be fairly evaluated and accepted as being of value reasonably equivalent to a price reduction. This consideration should be such as is fair, equitable and reasonable in the light of the circumstances of each case. See E-527. This consideration should be for the progress payment amendment, and there shall be no provision for interest or other specific charge for progress payments, or for a reduction in payments after the progress payment amendment (other than any agreed discount for prompt payment) by reason of the making of progress payments.

[Next page is E81]

Part 6—Contract Debts—Interest—Deferred Payments

E-600 Scope. This Part provides uniform policies and procedures for the ascertainment and collection of contract debts, for the charging of interest thereon, and for deferral of payments. It applies to all indebtedness arising in connection with contracts for procurement of property or services, contracts for sale or use of Government property, and from charges for Government services.

E-600.1 Exclusion and Limitation. This Part does not apply to claims of the Government against military or civilian employees or their dependents, arising in connection with current or past employment by the Government. Its provisions concerning interest and deferral of payments do not apply to indebtedness resulting from statutory renegotiation.

E-600.2 Subcontractors. Insofar as possible, this Part 6 shall be applied to subcontractors who are indebted to the Government, the same as to prime contractors. Accordingly, for the purpose of this Part 6 (except E-620 and E-604.1) the terms "contract" and "contractor" include subcontracts and subcontractors, and the terms "debt" and "indebtedness" include the debts of subcontractors to the Government.

E-600.3 Purchasers, Lessees, Bailees and Others. For the purpose of this Part 6, the term "contract" includes agreements or arrangements for the sale or use of Government property of any kind, or for the receipt of Government services, and the term "contractor" includes the parties to such arrangements or agreements relating to Government property or services.

E-601 Examples. Indebtedness to the Government occurs in various ways. Examples include:

- (i) Damages or excess costs incident to defaults in performance;
- (ii) Breach of contract obligations concerning progress payments, advance payments, or Government-furnished property or material;
- (iii) Delinquency in rentals;
- (iv) Delinquency in payment of price of property purchased from the Government;
- (v) Expense of correction of defects;
- (vi) Overpayments incident to errors in quantity, deficiencies in quality, or errors in billing;
- (vii) Retroactive price reductions resulting from contract provisions for price redetermination or for determination of prices under incentive type contracts;
- (viii) Delinquency in payment of charges for Government services;
- (ix) Transportation overcharges by carriers;
- (x) Freight or cargo loss or damage;
- (xi) Delinquency in payment called for by agreement or arrangement for deferral or postponement of payments;
- (xii) Statutory renegotiation. See E-600.1.

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E-602 Contracting Officer and Disbursing Officer. Primary responsibility for determination and collection of a contract debt is on the contracting officer (ASPR 1-201.3), except in those instances in which a disbursing officer has this primary responsibility. A disbursing officer has such primary responsibility whenever erroneous payments or overpayments have been made by the disbursing officer, in excess of the amounts to which the contractor was entitled under the terms of the contract at the time of such payment. The disbursing officer also has such primary responsibility when the amounts due and dates for payment are fixed by the terms of the contract itself, and copy of such contract has been furnished to the disbursing officer with notice to collect as amounts become due.

For the purposes of this Part 6, disbursing officers are those officers or officials designated to make payments under a contract, or to receive payments of amounts due under the contract, including finance and accounting officers at installations where integrated accounting is in effect.

E-602.1 Cooperation and Assistance. The utmost cooperation is required among auditing, contracting and disbursing officers, and by all of them with the contract financing offices (E-212), in order to protect the public interest by the proper and effective use of all available means for the timely discovery and ascertainment, and full and prompt collection of indebtedness.

E-602.2 Assistance to Contract Financing Office. It is necessary that audit personnel, disbursing officers and contracting officers, including contract administration personnel, comply promptly and effectively with requests of the contract financing office (E-212) for information pertaining to debts, for local collection assistance, and for assistance in the establishment and administration of debt deferment agreements.

E-602.3 Requests for Withholding. Before a debt is placed on the Hold-up List (E-623), or before distribution of a new listing, it is expected that the office undertaking to effect collection may sometimes request other offices having dealings with the contractor on other contracts, whether contracting officers or disbursing officers, to withhold payments on contracts, for application on the debt. Government personnel are expected to cooperate and assist in the fulfillment of such requests, giving due regard, however, to the effect of abrupt cessation of payments on the operations of the contractor, performance of the contracts, and the interest of the United States in such contracts. In the making of these requests to other offices, and in complying with such requests, care will be taken at all times to avoid overcollection or duplicate collection. Each check to liquidate indebtedness pursuant to such requests will be drawn payable to "(contractor's name) or Treasurer of the United States", and transmitted to the disbursing officer on the contract under which the indebtedness arose, and will be accompanied by a statement sufficient to identify the indebtedness to which it is to be applied. Appropriate notice of the deduction will be given to the contractor concerned, by the agency making the deduction.

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E-603 Prompt Ascertainment and Collection—Controls—Records. Delays in determining definitely the amounts payable by contractors to the Government, or delays in collection may result in losses to appropriations, or difficulty in effecting later repayment, or loss to the Government from later inability to collect. Delays in determining amounts due, or in obtaining timely payment, are in effect extensions of credit to contractors.

The amount of all indebtedness to the Government must be ascertained promptly and collected expeditiously. Responsible personnel shall utilize vigorously all proper means available to them for collection of indebtedness as rapidly as possible. Practices for ascertainment and collection of debts shall be comprehensive, dynamic, and as uniform as practicable. Collection practices will give full recognition to the need for internal coordination and cooperation, and the need for timely, aggressive and persistent demand processes, including personal contacts and telephone calls, all giving consideration to such factors as (a) utilization of all collection resources available to the agencies, (b) the tone, frequency and number of demands, (c) points of diminishing return, and (d) determination of uncollectibility and action pursuant thereto. In the absence of deferment agreement made by the contract financing office (E-611), report of indebtedness will be made to the General Accounting Office upon failure to effect collection within a reasonable period, generally not to exceed 180 days from the date the debt is established.

E-603.1 Accounting Controls. Adequate accounting controls must be maintained.

E-603.2 Debt Records. At the time a debt is established or determined, the office with primary responsibility (E-602) shall establish an appropriate control record for each debt, to insure that the debt is collected within not more than 45 days or appropriately transferred to the contract financing office. (E-611).

E-603.3 Outline of Records. The minimum information to be shown by the contract debt record should be:

- (a) Name and address of contractor.
- (b) Contract number, if any.
- (c) Description of debt.
- (d) Amount of debt, and appropriation to be credited.
- (e) Date debt determined.
- (f) Date of first demand for payment.
- (g) Scheduled date for next demand.
- (h) Date of supplemental demand(s).
- (i) Amounts and dates of payments.
- (j) Date appeal filed under Disputes clause.
- (k) Status of collection, such as:
 - (i) Reported to disbursing officer (name, location, and date).
 - (ii) Request made to disbursing officer for withholding (or for temporary non-withholding).
 - (iii) Withholding requested of other offices (date and office).
 - (iv) Deferred payment arrangement requested.
 - (v) Deferral request reviewed.
 - (vi) Supplemental information requested to support deferral request.

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(vii) Transferred to contract financing office.

E-603.4 *Records After Transfer.* Upon transfer of a case to the contract financing office (E-611), the debt record maintained by a contracting officer shall be closed by appropriate reference to the date of transfer.

When a disbursing officer is primarily responsible for collection (E-602), he should maintain his record of the debt until he receives payment or is advised of collection.

In all cases transferred to a contract financing office (E-611), that office shall establish and maintain an accounts receivable record showing all pertinent information relating to the debt, including an indebtedness and payment record reflecting current status, to be closed upon collection or referral of the case to the General Accounting Office or to the Department of Justice.

E-603.5 *Deferral Request Records and Copies.* When the contract financing office enters into a deferral agreement (E-611), it will furnish copies to the appropriate contracting officer and disbursing officer when deemed necessary. When the contract financing office denies a deferral request, or does not reach agreement with a contractor on a deferment, it will give timely notice to the appropriate contracting officer and disbursing officer when deemed necessary.

E-604 Cash Collection—Non-Postponement. Except as expressly authorized in this Part (E-614, E-615, E-616, E-623), there shall be no postponement of payment of indebtedness, and amounts due shall be paid in one sum upon demand, in cash or by credit against existing unpaid billings due to the contractor.

E-604.1 *Tax Credits.* Applicable tax credits to which contractors are entitled under the Internal Revenue Code (presently Section 1481 of the Internal Revenue Code of 1954) will be taken into account in the collection of indebtedness. Any applicable tax credit under the Internal Revenue Code will be treated as having been applied in reduction of the amount of the debt as of the date when interest first began to accrue upon the debt. The amount of applicable tax credit, if any, is as shown by tax credit certificate issued by a District Director of Internal Revenue upon application therefor by the contractor. For purposes of calculation of the amount to be collected or withheld for collection, whether or not the debt or the amount thereof is disputed, the contractor's estimate of the tax credit that will be applicable will ordinarily be accepted, pending issuance of the tax credit certificate. Verification of contractors' estimates of the tax credit, including evaluation of any questions with regard to applicability of tax credit to the circumstances of particular cases, will be accomplished by the contract financing office when and to the extent deemed prudent.

Except as required in connection with statutory renegotiation, there shall be no agreement or arrangement for tax credits in connection with debts arising under subcontracts.

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E-604.2 Price Revision Contracts—Quarterly Statements. For price-revision (redetermination or incentive) contracts containing a "Limitation on Payments" clause (ASPR 7-108, ASPR 7-109), the quarterly statements called for by that clause are an important means of ascertaining and collecting interim refunds of overpayments. The furnishing of proper quarterly statements in conformity with contract provisions is a material obligation of contractors and a significant element of contract performance. Procedural arrangements must be established and maintained for each such case to insure that the required quarterly statements are received when due, that those statements conform to the requirements of the applicable contract clause, that refunds shown by those statements are promptly collected, and that there is sufficient review of those statements from time to time to identify and bring about appropriate correction of inaccuracies. Whenever a required quarterly statement is not submitted when due, notice of the delinquency should be given at once to the contractor, and further payments on the contract should be suspended until the contractor corrects the delinquency by furnishing satisfactory quarterly statements and making such refund, if any, as may be appropriate.

For the purpose of determining accuracy of these quarterly statements, the statements should be compared from time to time with contractors' requests for progress payments (E-519, DD Form 1195). At any given time, costs attributed to work that has not been delivered and accepted (to support outstanding progress payments), cannot properly be attributed also to delivered and accepted items for the purposes of these quarterly statements. See E-523.1.

E-605 Merits of Claims. In determining an amount due to the Government under a contract, full and fair consideration will be given to the merits of the Government's claim and of all known claims of the contractor that may serve to reduce the amount to which the Government is fairly entitled.

E-606 Negotiations. Negotiations to determine indebtedness must not be unduly prolonged.

E-606.1 Unilateral Determinations. The responsible officer or official will promptly make a proper finding and determination, consistent with the contract and supported by sufficient evidence, if the contractor (1) is delinquent in the furnishing of pertinent information required from it pursuant to the contract, or (2) fails to negotiate expeditiously in accordance with a contract provision, or (3) fails to agree on fair and reasonable prices within a reasonable time after the beginning of price revision negotiations, or (4) fails promptly to sign an interim memorandum evidencing a negotiated pricing agreement involving refund, or (5) fails expeditiously to execute an appropriate supplemental agreement reflecting the result of negotiations. See E-608.

E-606.2 Amount Fixed Unilaterally. The amount of indebtedness fixed unilaterally shall be such as is proper under the circumstances, and must not exceed the amount which would have been considered acceptable for a negotiated agreement fixing the amount of the indebtedness.

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E-607 Memorandum of Pricing Agreement—Refunds. When prices that involve refunds have been agreed upon in negotiations under price revision types of contracts, the agreed prices shall be evidenced contemporaneously by interim memorandum signed by the authorized negotiators for the Government and for the contractor. Such memorandum will be made without prejudice to final pricing if the negotiated price is subject to review by higher authority of the Government or of the contractor. Computation of the amount of refund resulting from such pricing agreement shall be done speedily, without awaiting itemization of adjustments of past billings, accounting adjustments, or the furnishing of adjusted invoices. Demand for payment shall be made as soon as the amount of refund due has been computed, and will conform to E-608 below. After negotiations, appropriate supplemental agreements shall be prepared expeditiously and executed without delay.

E-608 Demand. The office which first determines an amount to be due shall make immediate demand for payment. This demand should (1) appropriately explain the indebtedness, (2) inform the contractor that any amount not paid within 30 days from the date of the demand will bear interest at the rate of 6 percent per annum from the date of the demand (or any earlier date established pursuant to the contract), to be adjusted only when and as provided by this Part 6, and (3) notify the contractor that it may submit a proposal for postponement of payments if immediate payment is not practicable or if the amount is disputed.

E-608.1 Routine Offset. When a disbursing officer with primary responsibility for collection (E-602) determines an amount to be due, and has on hand for payment at the time bills payable to the contractor and available for offset against the amount due from the contractor, the disbursing officer should make appropriate offset. In these cases, explanatory notice to the contractor would take the place of demand (E-608) on the contractor, to the extent the debt has been reduced or eliminated by the offset. Similar withholding and offset is also expected when a debt is reported to the disbursing officer by a contracting officer, except as provided in E-610.2.

E-608.2 Special Demand by Contract Financing Office. If no demand made before the effective date of this Part 6 has given notice of interest charge, the first demand made by the contract financing office (E-212) will give notice of interest charge to be effective from the initial demand previously made, on amounts not paid before the expiration of 30 days after the date of the first contract financing office demand.

E-608.3 Excess Costs for Default. For procedures in connection with default, see ASPR Section VIII, Part 6. As indicated by ASPR 8-602.6(e), indebtedness for excess costs occurs when repurchase is effected at a price in excess of the price of the supplies terminated. The demand for payment (E-608) shall be made as soon as the repurchase contract has been entered into. The possible necessity for furnishing payment data under the replacement contract, in the event that the excess cost debt is later referred to the General Accounting Office as administratively uncollectible, must not be permitted to delay actions pursuant to this Part 6.

E-609 Reduction of Amount—Interest. When, after demand giving notice of interest charge, the amount demanded is reduced to a lesser amount,

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or the debt demanded is replaced by a lesser debt, interest shall be charged on the reduced or substituted lesser amount at 6 percent per annum from the date of the first demand made for payment of the higher amount. No agreement may be made to the contrary.

E-610 Withholdings—Information Exchange—Assignments. Incident to the first demand, and pending the establishment of an agreement for deferment, withholdings of amounts otherwise payable to the contractor may be effected to the extent deemed appropriate to the circumstances of each case. See E-608.1.

E-610.1 Disbursing Officer. When a disbursing officer has primary responsibility (E-602), withholdings will be effected or not as deemed best by him, during the first 30 days after demand. See E-608.1.

E-610.2 Contracting Officer. Whenever a debt is established by a contracting officer (E-602) notice thereof will be given to the appropriate disbursing officer at the same time that demand (E-608) is made for payment. That notice will also inform the disbursing officer as to the wishes of the contracting officer with regard to the withholding or non-withholding of payments during the ensuing 30 days.

E-610.3 Deferment Requests—Withholdings. Pending their action on a request received for deferment of collection (E-611, E-617), the cognizant contracting officer or disbursing officer (E-602), until transfer of the case to the contract financing office (E-611), will arrange for withholding of payments or continuation of payments as deemed appropriate. Upon transfer of a deferment proposal to the contract financing office (E-611), withholding or continuation of payments will be accomplished as deemed best by the contract financing office. Ordinarily, upon such transfer, payments will be suspended until the disbursing officer receives guidance from the contract financing office.

E-610.4 Information. The contracting officer, the disbursing officer, and the contract financing office must at all times keep each other appropriately informed.

E-610.5 Withholdings after 30 days. If payment is not completed within 30 days, and deferment is not requested, withholdings will be effected at once, for principal and interest, to the extent consistent with the rights of assignees under the Assignment of Claims Act of 1940, as amended.

E-610.6 Rights of Assignees. In all cases the rights of assignees under the Assignment of Claims Act of 1940, as amended, and under contract provisions pursuant thereto, will be scrupulously respected and withholding of payments under such contracts avoided where contrary to the rights of the assignee.

E-610.7 Assignments—Provision Against Set-Off—Limitations. When a contract contains a clause permitting assignment, with provision against reduction or setoff as set out in the last sentence of paragraph (a) of ASPR 7-103.8, and the contractor's claims under the contract have been assigned to a financing institution under the Assignment of Claims Act of 1940, as amended, and the assignment has not been released by the assignee, the effect of the statute mentioned is ordinarily to prevent application of payments due under the assigned contract to liquidate or reduce indebtedness of the contractor to the Government arising independently of the assigned contract. However,

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it is sometimes proper to effect collection despite such an assignment, as for example, when there is no loan outstanding in connection with the assignment and the arrangements between the contractor and the assignee are such that no loan is contemplated, or when there is no firm commitment for financing, or when the amount of the loan secured and expected to be secured by the assignment pursuant to a firm commitment of the financing institution is less than the amount due and payable on the contract. Diligent effort should be made to ascertain the pertinent facts, from the assignee, the debtor, or otherwise. When appropriate, there should be withholding and application in reduction of the debt, to the extent that the assigned payments are not necessary to cover the loans or advances secured by the assignment, or to be secured incident to projected need for borrowings, and pursuant to a firm commitment of the financing institution. In doubtful cases the question as to the amount, if any, to be withheld should be referred to higher authority, or to the General Accounting Office when appropriate.

E-610.8 *Assignments—Absence of Provision Against Set-Off.* In some cases the contractor's claims have been assigned to a financing institution under the Assignment of Claims Act of 1940, as amended, but without the contract provision against reduction or setoff set out in paragraph (a) of ASPR 7-103.8, or equivalent provision. In such cases despite the assignment, net amounts due under the assigned contract should be withheld and applied to liquidate indebtedness of the contractor to the Government even though arising independently of the assigned contract, to the extent that such other indebtedness existed at the time written notice of the assignment was received by the Government, even though such debt was not matured so as to be due and payable at the time of such notice.

E-611 **Transfer to Contract Financing Office.** Transfer of the case will be made to the contract financing office (i) upon receipt of a contractor's request for deferral, or (ii) whether or not postponement is requested, upon the expiration of 45 days without full collection after the date of demand, as herein provided.

Deferment requests, with appropriate supporting information will be sent forward as speedily as possible to the contract financing office (E-212) of the military department concerned for appropriate action. In connection with transmittal of a deferment request, or if payment is not made and withholdings have not resulted in full collection within 45 days after the date of demand (except the demands mentioned in E-607 above) the case file, and accountability, will be transferred to the contract financing office (E-212) of the military department which established the debt. The case file submitted shall contain adequate identifying and explanatory information, including relevant memoranda and correspondence, accounting data, amounts and dates of any collections, name and location of disbursing officer and of assignee, date of filing of appeal, if any, information on hand concerning financial condition of the contractor, contractor's deferment proposal, if any, and recommendations for action on the deferment proposal. After this transfer, the contract financing office will have full responsibility for collection action, but this transfer shall not operate to relieve a certifying or disbursing officer of liability for overpayments or illegal payments as fixed under applicable law.

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Such transfer will be accomplished by the office having primary responsibility regarding the debt (E-602).

When a debt has been transferred to the contract financing office by the office having primary responsibility, all subsequent debts of the same contractor, for which that same office has primary responsibility, shall also be transferred immediately by that office to the contract financing office, unless there is assurance of prompt payment in full.

E-611.1 *Small Amounts.* The transfers required by E-611 above, will not be made for amounts less than \$25.00 (or less than \$10.00 if due from carriers). However, it is incumbent on contracting officers and disbursing officers to effect collection whenever and by such means as are practicable. (See E-603.)

E-612 *Deferment Request Data—Appeal Pending.* The information to support a request for deferment of payment when the debt is disputed and timely appeal has been filed pursuant to the "Disputes" clause may be confined to material sufficient to provide understanding of the contractor's financial condition.

E-613 *Deferment Request Data—No Appeal Pending.* The information to support a request for deferment of payment when there is no appeal pending pursuant to the "Disputes" clause should be sufficient to provide understanding of the contractor's financial condition, and should also cover the contractor's contract backlog, projected cash receipts and requirements, the feasibility of immediate payment, and the probable effect of enforcement of full immediate payment on the contractor's operations.

E-614 *Deferment Standards—Appeals.* Appeals by contractors will not suspend or delay collection action. However, pending the resolution of appeals, deferments will be governed exclusively by the special standards set out in this paragraph E-614. In order to minimize the possibility of overcollections, requested deferments pending the outcome of appeals should be freely granted by the contract financing office (E-212), when the contractor enters into agreement acceptable to the contract financing office as reasonably assuring diligent prosecution of the appeal and full payment of any amount determined due upon decision of the appeal or upon further negotiations without such decision, with interest on such amount at the rate and for the period mentioned in E-608 (2) above. Agreement on interest may include the adjustment provisions authorized by E-618, below. Collateral security, or other provisions to assure payment, shall be consistent with the circumstances of each case. To avoid possible undue hardship to small business concerns or those contractors who are financially weak, deferments pending the outcome of appeals should be granted on such terms and conditions as may be deemed reasonable by the contract financing office, notwithstanding financial weakness of the contractor and notwithstanding its inability to furnish good collateral security. These deferments shall provide for termination of the deferment by the contract financing office upon violation of the agreement or upon failure of the contractor diligently to pursue its appeal.

E-615 *Deferment Standards—No Appeal Pending.* When appeal is not pending, or has been resolved, the contract financing office (E-212) may make

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arrangements for deferral of payments when the contractor cannot pay at once in full, or when full immediate collection would seriously impair the contractor's ability to continue operations or to perform contracts or subcontracts for the national defense. Such agreements shall include such covenants and security as may be prudent and feasible under the circumstances, shall be limited to the shortest practicable maturities, and shall require the payment of interest at the rate and for the period mentioned in E-608 (2) above, subject only to the adjustment specifically authorized by E-618 below.

E-616 Deferment Approval Authority. There shall be no arrangement or agreement for deferral or postponement of payment of indebtedness, and no acquiescence in payment delay, except as approved by the contract financing office (E-212) pursuant to this Part 6.

E-616.1 Inconsistent Contract Provisions. Except for the deferral arrangements contemplated by this Part 6, no contract may provide and no arrangement may be made to the effect that a claim of the Government under a contract will not become due and payable until there has been mutual agreement on that amount, or until decision on appeal, or in litigation, in matters of dispute.

E-617 Processing of Deferment Requests—Information—Agreements. When deferment request is made to the disbursing officer or contracting officer (E-602), the recipient office should make prompt review of the request and any supporting information. If the supporting information appears deficient (E-612, E-613), the contractor should be asked immediately to supply any needed additional relevant information and explanations. For guidance as to financial information and analysis, see E-213 and E-214.

E-617.1 Proposed Agreement—Review. In the light of available information, the contractor's letter request or other proposed agreement for deferral should also be reviewed by the recipient office, and the contractor should be informed as to such changes as may be regarded as desirable. Contractor failure to make suggested changes, and related contractor comments, should be noted in the recommendations included with the transfer of the case (E-611) to the contract financing office.

E-617.2 Minimum Agreement—Appeal Pending. When appeal is pending, the contractor's proposed deferment agreement should at least include provisions for the following:

- (a) Description of the claim;
- (b) Date of first demand for payment;
- (c) Diligent prosecution of appeal;
- (d) Full payment upon decision on appeal, or upon agreement on amount;
- (e) Interest charge, inconformity with E-608(2), E-609, and E-618;
- (f) Payments to contract financing office (identified);
- (g) Submission of periodic financial statements by contractor (as appropriate), submission of such other pertinent reports and information as may be required by the Government, and reasonable access by the Government to the records and property of the contractor;
- (h) Termination by Government, and acceleration of maturity upon default by the contractor or institution of insolvency proceedings by or against the contractor.

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E-617.3 Additional Provisions—Appeal Pending. If desired by the contractor, these deferment proposals may also include provision for partial payment(s) on account and without prejudice, for refund of overpayments, and for interest adjustment as authorized by E-618.

Other terms and conditions for consideration and establishment in these deferral agreements when consistent with the circumstances of the case, include provision for collateral security, and other protective provisions of the kinds mentioned in E-511.6 and outlined in E-414.2.

E-617.4 Deferral Agreement—No Appeal Pending. When no appeal is pending, the deferral agreement, conforming to the standards of E-615, should include:

- (a) The provisions outlined in E-617.2 (except E-617.2(d));
- (b) A definite schedule or plan for payments, with unrestricted rights of prepayment;
- (c) Additional security and protective covenants as may be prudent and feasible (E-617.3); and
- (d) In furtherance of attainment of the shortest practicable maturities, whenever feasible (i) provision for periodic review of the contractor's financial condition by the Government, and discretionary right of the Government to require prepayments deemed within the improved ability of the contractor to pay, and (ii) provision requiring stated or measurable prepayments on the occurrence of specified events or contingencies involving improvement in the contractor's ability to pay.

E-617.5 Final Action. Incident to its review and action on a deferment proposal, the contract financing office (E-611) may request additional information, as well as other assistance needed from the transmitting office (E-611). Such requested information and assistance will be furnished promptly so that final action on the proposed deferment may be taken by the contract financing office without unnecessary delay. Whenever deemed appropriate by it, the contract financing office may deal directly with the contractor concerning collection or deferment of the debt.

E-618 Adjustment of interest. When the contract under which the debt was established does not provide for interest and for adjustment of interest, and payment is not made within 30 days after demand conforming to E-608 or E-608.2, above, interest accrued before the making of a deferment agreement shall not be released or reduced. Deferment agreements may provide for adjustments for overcollections, to the effect that in addition to refund and release of overcollections, the contractor shall receive, from amounts collected or withheld for the amount of indebtedness and accrued interest thereon, a sum computed at the rate of 6 percent per annum on the amount of overcollection and excess withholding for the approximate periods thereof as deemed fair and reasonable by the contract financing office (E-212). The total refund and release to the contractor shall in no event exceed the total amount that has been collected or that has been withheld for the purpose of collection of the asserted indebtedness.

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E-618.1 *Guidelines for Overcollection Adjustments.* In determining the approximate day of the beginning of a period of overcollection or excess withholding, as authorized pursuant to E-618, the date of receipt of a check by the contract financing office, or by the appropriate disbursing office, if earlier, will ordinarily be regarded as the day on which the amount of that check was collected or withheld for the purpose of collection. For tax credits, see E-604.1.

The amount of overcollections and excess withholding, if any, would be the amount by which the total collections and withholdings for a particular asserted indebtedness have exceeded the sum of (1) the principal amount of the contractor's indebtedness to the Government, as finally determined in the particular case, and (2) interest thereon, computed from the date of the first demand or such earlier date as may be applicable.

In cases to which the first sentence of E-618 applies, the maximum limit on refund and release, specified by the last sentence of E-618, will be reduced by the amount of interest mentioned in the first sentence of E-618.

Whenever the amount of the debt may be subject to reduction in connection with an appeal, the deferment agreement will provide for the adjustment authorized by E-618.

E-619 Contract Interest Charge. When the contract under which the debt was established provides for interest and for adjustment of interest, those provisions of course will be followed. When a contract provides for interest and for adjustment of interest in accordance with applicable regulations (E-620), interest will be charged on the amount of the indebtedness at the rate of 6 percent per annum from the date of the first demand (or any earlier date established pursuant to the contract), and adjustments will be made in the same way as is herein authorized by E-618, above, for deferment agreements. In addition to those adjustments, and without duplication, the interest accruing pursuant to a provision for interest in a contract (other than a deferment agreement) shall be reduced as herein provided. That reduction of interest charge, not exceeding accrued interest, (and without duplication of adjustments on account of overcollections or overwithholdings) shall be an amount derived by application of a rate of 6 percent per annum in favor of the contractor on the amounts and for the periods for which the interested contract financing office (E-212) considers that the Government has unduly delayed the making of payments earned and properly billed and payable to the contractor on the same contract. Such reduction of interest charge can never exceed the total interest on the debt.

E-619.1 Contract Interest Charge Standards. Interest will be computed for the number of days involved, on the basis of a 365- or 366-day year as the case may be. Except as provided below, credits resulting from deductions from amounts otherwise payable to the contractor should be made as of the date of issue of the checks for such payments. Credits resulting from cash payments to the Government by the contractor should be made as of the date the funds or checks therefor are received by the appropriate disbursing officer, or by the contract financing office if the payment is made directly to that office. If the amount has been withheld or retained on a contract in conformity to a

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withholding or retention provision of that contract, and the amount or a part thereof is thereafter transferred for application in reduction of an interest bearing debt pursuant to this Part 6, credit toward reduction of the debt should be allowed as of the approximate time when such withheld or retained amount would have become payable to the contractor. If, for example, the contract on which amounts have been retained provides for release of retainages upon satisfactory completion of the work under the contract, credit for the amount of such retainage actually transferred for application in reduction of a debt should be allowed as of the date when the contract was satisfactorily completed. For timing of application of amount of tax credit, see E-604.1.

E-619.2 *Contract Interest Reduction Standards.* In arriving at an amount by which interest accruing on indebtedness under a contract should be reduced, as provided by E-619, the contract financing office should endeavor to attain a fair and equitable result, in the light of the circumstances of each case. In so doing, it should take into account the instances, if any, in which it is considered by that office that there has been undue delay by the Government in the making of payments earned by the contractor and payable to the contractor on the same contract, after proper billing by the contractor. Except to the extent that a payment delay may have resulted wholly or partly from errors or omissions on the part of the contractor, such delays should generally be considered as being undue delays, that is, delays that are unreasonable, unwarranted or excessive, if the time between the proper billing and the making of payment exceeded 30 days, and also exceeded the number of days ordinarily required for the processing of bills and making of payments in the ordinary course of business in substantially similar circumstances.

The contract financing office is not expected to undertake to review contract payment histories or to look into the circumstances that may lead to these interest reductions, except to such extent as may be appropriate in connection with a contractor's request for an interest reduction. Such requests by contractors should identify the payment delays asserted by the contractor and describe the known facts with sufficient particularity to enable the contract financing office readily to verify the extent and causes of the delay. Contractors will be expected to comply with reasonable requests of a contract financing office for additional information or documentation. In the absence of contractor request for interest reduction, it may be assumed that there were no undue payment delays by the Government that would warrant interest reduction adjustment pursuant to E-619. If full payment has been made by the contractor, or if full collection has been accomplished, before the contractor has made a request for interest reduction pursuant to E-619, it is expected that the contract financing office ordinarily will deny such request thereafter made, unless presented within such time after full collection or payment as is deemed reasonable by the contract financing office. The interest reduction pursuant to E-619 shall not exceed the amount determined by the contract financing office.

DEFENSE CONTRACT FINANCING REGULATIONS

E-620 Contract Clause—Interest. Except as provided in E-621 below, all contracts for procurement, or for sale or use of Government property or services, shall include the following clause:

INTEREST (FEB. 1962)

Notwithstanding any other provision of this contract, unless paid within 30 days all amounts that become payable by the contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code) shall bear interest at the rate of six percent per annum from the date due until paid, and shall be subject to the adjustments as provided by Part 6 of Appendix E of the Armed Services Procurement Regulation, as in effect on the date of this contract. Amounts shall be due upon the earliest one of (i) the date fixed pursuant to this contract, (ii) the date of the first demand for payment, (iii) the date of a supplemental agreement fixing the amount, or (iv) if this contract provides for revision of prices, the date of written notice to the contractor stating the amount of refund payable in connection with a pricing proposal or in connection with a negotiated pricing agreement not confirmed by contract supplement.

E-621 Exceptions to Interest Clause Requirement. Contract provision for interest need not be included in (1) small purchases (ASPR Section III, Part 6), (2) purchases described in ASPR 16-303, 16-304, 16-501, 16-504, or in ASPR Section V, (3) purchases under indefinite delivery type contracts existing before the effective date of this Part 6, (4) amendments of contracts existing before the effective date of this Part 6, or (5) contracts with agencies of the United States Government, foreign governments or agencies thereof, or nonprofit contracts with nonprofit educational or research institutions. Further exceptions may be established by the Contract Finance Committee (E-107.3), with the approval of the Assistant Secretary of Defense (Comptroller) or his representative.

E-622 Exemptions from Administrative Interest Charge. Contractors and contracts mentioned in E-621 (5) above, and other contractors in exceptional circumstances, may be exempted from the administrative interest charges required by this Part 6 when so agreed by the Contract Finance Committee (E-107.3) with the approval of the Assistant Secretary of Defense (Comptroller) or his representative.

E-623 Responsibilities. The contract financing office (E-212) of each military department, will take appropriate actions to effect collection of debts referred to it, including administration of deferment agreements, to cause debts to be listed on the consolidated list of contractors indebted to the United States, commonly known as the "Hold-up List," to remove names from the "Hold-up List," to determine administrative uncollectibility, and to refer debts to the General Accounting Office or the Department of Justice as appropriate. Within each Military Department, no arrangement for postponement or deferral of payments may be made without the approval of the contract financing office. Acting in conformity to the standards stated in this Part 6 those offices may approve or deny deferment proposals transmitted to them or made directly to them by contractors, or approve such proposals on prescribed conditions.

Responsibility for assuring effective administration in accordance with this Part 6 shall be in the Assistant Secretary of Defense (Comptroller). Responsi-

CONTRACT DEBTS—INTEREST—DEFERRED PAYMENTS

bility for effective administration under this Part 6 in each military department shall be in the Under or Assistant Secretary responsible for the comptroller function. The Contract Finance Committee (E-107.3) shall advise and assist the Assistant Secretary of Defense (Comptroller) in assuring proper application of policies and the development of procedures hereunder, and in the formulation of such further instructions on this subject as may appear desirable. That Committee is responsible for this Appendix E, and will develop and promulgate herein supplemental instructions on this subject.

Reports will be made by each department in connection with the subject matter of this Part 6 at such times and in such form as may be prescribed or approved by the Assistant Secretary of Defense (Comptroller).

[Next page is E97]

ANNEX 1

Form of September 27, 1950
(As amended to October 1, 1953)

V-LOAN GUARANTEE AGREEMENT

No.

The (herein called "Guarantor"), acting through
(Guaranteeing Agency)

the Federal Reserve Bank of as fiscal agent of the United States, pursuant to the Defense
Production Act of 1950, as amended, and Executive Order No. 10480, and the Financing Institution, as hereinafter defined,
hereby agree each with the other as follows:

Section 1. Definitions

As used in this agreement—

(A) The words "Financing Institution" shall mean

(B) The word "Borrower" shall mean

(Name)

of
(Address)

the said Borrower being engaged or about to engage in the performance of a contract or other operation deemed by the
Guarantor to be necessary to expedite production and deliveries or services under a Government contract for the procure-
ment of materials or the performance of services for the national defense.

(C) The words "the loan" shall mean a financing arrangement between the Financing Institution and the Borrower,
the terms and conditions of which are briefly described as follows:

(The description of the loan shall include the following items in the following order: Type of loan (straight loan or revolving credit), principal
amount (maximum amount of credit in the case of a credit), interest rate, and maturity (latest maturity in the case of a credit). Provisions as to
collateral and other protective provisions prescribed by the Guarantor should also be described here, or, if preferred, by referring to an annexed loan
agreement or other similar instrument; but the terms and the provisions of such agreement or instrument should not be made a part of or incorporated
in the guarantee agreement.)

(D) The word "obligation" shall mean the instrument or instruments evidencing the Borrower's indebtedness under
the loan and any renewals or extensions thereof.

(E) The term "guaranteed percentage" shall mean (1) per cent, or (2) the
percentage specified above as increased by an adjustment thereof under section 8 or section 9 of this agreement.

(F) The term "unguaranteed percentage" shall mean the difference between 100 per cent and the guaranteed
percentage.

(G) The words "collateral for the loan" shall mean all collateral or security specified in the description of the
loan under paragraph (C) of this section or taken or accepted in substitution for such specified collateral or security, and
any collateral or security hereafter taken or accepted for the specific protection of the loan.

(H) The words "interest in the obligation" shall mean the amount of the obligation owned by the Guarantor or by
the Financing Institution, as the case may be.

(I) The word "Holder" shall mean the party to this agreement which has possession of the obligation and shall be
determined in accordance with the provisions of sections 4 and 10 of this agreement.

[Agreement Continued on Next Page]

DEFENSE CONTRACT FINANCING REGULATIONS

(J) The words "Reserve Bank" shall mean the Federal Reserve Bank of _____ as fiscal agent of the United States acting on behalf of the Guarantor in accordance with the provisions of the Defense Production Act of 1950, as amended, and Executive Order No. 10480 of August 14, 1953, and applicable provisions of law.

(K) A "defense production contract" shall mean any contract made or order accepted by the Borrower for the sale or furnishing by the Borrower of materials, equipment, supplies, facilities, or services or for the processing or treatment by the Borrower of materials, which (1) constitutes (a) a prime contract with any guaranteeing agency designated by the Defense Production Act of 1950, as amended, or by Executive Order issued thereunder or with the Atomic Energy Commission or any other Government department or agency directly or indirectly and substantially concerned with the national defense as the term "national defense" is defined in section 702(d) of the Defense Production Act of 1950, as amended, or (b) a contract made or order accepted by the Borrower to aid directly or indirectly in the performance of any such prime contract, and (2) is related to the procurement of materials or the performance of services for the national defense.

Section 2. Guarantee as to Sharing of Losses and Expenses

(A) All losses of principal and interest on the loan, and all expenses as defined in paragraph (D) of this section, shall be shared ratably by the Guarantor and the Financing Institution in accordance with the guaranteed percentage and the unguaranteed percentage, respectively, as such losses, expenses and percentages exist on the date of settlement between the Financing Institution and the Guarantor, regardless of whether or not any purchase has been made under this agreement.

(B) The date of settlement between the Financing Institution and the Guarantor shall be such date as may be agreed upon by the parties or, if no such date is agreed upon, the thirtieth day after the date on which either party to this agreement receives from the other party a written request for such settlement, but no such request will be made by the Guarantor prior to maturity nor prior to the time when the amount of the ultimate losses and expenses appears to be determinable with reasonable certainty.

(C) In determining losses under paragraph (A) of this section, all amounts which, on the date of settlement, have not been paid shall be regarded as losses even though they may appear to be recoverable thereafter. All net recoveries realized after the date of settlement, from whatever source realized, shall be shared ratably by the Guarantor and the Financing Institution on the basis prescribed in this section.

(D) For the purposes of this section, expenses shall mean all reasonable out-of-pocket expenses (including reasonable counsel fees incurred by the Financing Institution or the Reserve Bank prior to but not after any purchase under this agreement) which relate to the enforcement of the loan or the preservation of the collateral and which are incurred during the period of any default in the payment of principal or interest, and which have not been recovered from the Borrower.

(E) Within the meaning of paragraphs (A) and (C) of this section a loss on the loan shall include any amounts which may have been received by the Financing Institution and applied by it to reduction of the loan but which are subsequently recovered from the Financing Institution, either before or after the date of settlement, by the United States or by any person lawfully entitled to such recovery.

Section 3. Agreement to Purchase

(A) Upon written demand or demands made by the Financing Institution on the Reserve Bank at any time prior to the date of settlement between the Guarantor and the Financing Institution, the Guarantor will purchase from the Financing Institution, on the tenth (10th) day after the receipt by the Reserve Bank of such a demand, the guaranteed percentage of the unpaid principal amount of the loan, less any amounts which have been previously purchased by the Guarantor under any provision of this agreement and have not been repaid. Such purchases will be made by the Guarantor from time to time either as a whole or in such portions as may be demanded in writing as above specified.

(B) Any purchase by the Guarantor pursuant to any provision of this agreement shall be made at the Reserve Bank, and the amount that the Guarantor shall pay shall be the face amount of the portion of the unpaid principal amount of the obligation so purchased, as of the date of the demand, plus all unpaid accrued interest on such portion, with appropriate adjustment for guarantee fees, computed as of the date of purchase. Such purchase shall be made for cash, except that if the Guarantor owns an interest in any obligation which has been issued under a revolving credit arrangement and if, at or before the maturity of such obligation, the Reserve Bank receives written demand from the Financing Institution for the purchase of the same or a lesser amount of a new obligation to be issued in place of such maturing obligation, payment for the portion of the new obligation purchased pursuant to such demand will be made by the Guarantor by surrendering, at or before maturity, its interest in the maturing obligation, in the amount of the demand by the Financing Institution and without regard to the ten-day period specified in paragraph (A) of this section.

Section 4. Administration of Loan and Possession of Obligation and Collateral

(A) Prior to any purchase under this agreement, the Financing Institution shall administer the loan and shall hold the obligation and the collateral for the loan. Whenever the Guarantor becomes the owner of any part of the loan under this agreement, the Financing Institution shall continue to administer the loan and to hold said obligation and collateral, and shall forthwith deliver to the Reserve Bank a certificate reciting that the Financing Institution holds said obligation and collateral for the account of the Guarantor to the extent of the Guarantor's interest therein. In any such case, however, upon written demand by the Reserve Bank, the Financing Institution shall forthwith endorse the obligation to the Reserve Bank without recourse or warranty and shall assign the collateral (or its interest therein if such collateral cannot be assigned because it is held for the account of more than one Financing Institution) to the Reserve Bank without recourse or warranty, except as to the genuineness of the signature of the Borrower to any instrument, and shall forthwith deliver to the Reserve Bank possession of the obligation and of the collateral (or an assignment of its interest therein as above provided). Thereupon the Reserve Bank shall issue to the Financing Institution a certificate reciting that the Reserve Bank holds said obligation and collateral for the account of the Financing Institution to the extent of the Financing Institution's interest therein. Thereafter the Guarantor, through the agency of the Reserve Bank shall administer the loan and shall hold said obligation and collateral for the account of the Guarantor and the Financing Institution as their interests in the obligation may appear. The Guarantor and the Financing Institution shall at all times during the existence of this agreement have the right to examine and inspect said obligation and collateral.

(B) Whenever the Guarantor becomes the Holder of the obligation, the Financing Institution will at any time at the written request of the Guarantor furnish to the Guarantor such instruments as may be reasonably necessary or appropriate to enable the Guarantor to administer the loan and enforce the obligation and collateral for the loan in accordance with the terms of the loan.

(C) Nothing contained in this or any other section of this agreement shall be construed to prevent the Financing Institution from offering the obligation as collateral for advances by a Federal Reserve Bank, if such obligation is otherwise eligible and acceptable as collateral for such advances.

Section 5. Ratable Application of Collections

All amounts at any time paid or credited on the obligation, from whatever source realized, shall be applied ratably for the benefit of the Financing Institution and the Guarantor according to their respective interests in the obligation. All amounts so paid or credited upon the obligation after the date of a demand by the Financing Institution or the

[Agreement Continued on Next Page]

ARMED SERVICES PROCUREMENT REGULATION

V-LOAN GUARANTEE AGREEMENT

Guarantor, as the case may be, for a purchase under this agreement and prior to the date of such purchase shall be applied as above provided according to such respective interests of the Guarantor and the Financing Institution as such interests exist immediately after such purchase. The Holder of the obligation and collateral shall receive all payments from the Borrower in connection with the obligation and shall promptly remit to the other party to this agreement such other party's share thereof.

Section 6. Application of Proceeds of Collateral and Other Assets

(A) There shall first be applied to the full payment of the loan before they are applied to the payment of other indebtedness of the Borrower to the Financing Institution: (1) All proceeds of any collateral for the loan; and (2) all proceeds of accounts receivable and of inventories (including finished products and work in process) arising under the Borrower's defense production contracts, to the extent that such accounts receivable or inventories are taken or appropriated by the Financing Institution, except defense production contracts under which claims may heretofore have been, or may with the written consent of the Guarantor hereafter be, specifically assigned to the Financing Institution as security solely for other indebtedness of the Borrower to the Financing Institution. If any funds on deposit, or other amounts payable to the Borrower by the Financing Institution, or other assets of the Borrower (except those described in clause (2) above) which are not specifically pledged as security for any indebtedness shall be taken or appropriated by the Financing Institution, the Financing Institution shall apply such funds and the proceeds of such other assets pro rata against the then unpaid balance of the loan and the then unpaid balance of such other indebtedness of the Borrower to the Financing Institution. Funds on deposit, amounts payable, and other assets shall not be considered to be specifically pledged for any indebtedness, within the meaning of this section, if the right of the Financing Institution to apply the proceeds thereof to such indebtedness exists only by virtue of the right of banker's lien or setoff or only by virtue of a "spreader," "overlap" or "cross-lien" provision in any note or loan agreement.

(B) There shall first be applied by the Guarantor to the full payment of the loan, before they are applied to the payment of other indebtedness of the Borrower to the Guarantor, all proceeds obtained by the Guarantor from: (1) accounts receivable and inventories (including finished products and work in process) arising under the Borrower's defense production contracts, and (2) any right of priority accruing to the Guarantor on account of any claim by the Guarantor against the Borrower, and (3) any right of setoff in respect of amounts due to the Borrower on any defense production contract (except a right of setoff arising out of a claim under the same contract); except that the foregoing shall not apply to any pledge, lien, or other security taken by the Guarantor as collateral for an advance payment or loan by the Guarantor to the Borrower.

Section 7. Actions as to Obligation or Collateral

The Holder shall not, without the prior written consent of the other party to this agreement, (a) make or consent to any material alteration in the terms of the loan or collateral for the loan; (b) make or consent to any release, sale, transfer, further pledge, subordination or substitution of any of said collateral for the loan; or (c) give any consent or waiver under any provision of the loan. However, the consent of the other party shall not be necessary with respect to any release or substitution of such collateral required or authorized by the terms of the loan as such terms are described in paragraph (C) of section 1 of this agreement or in any instrument referred to therein, and no notice of any such action need be given to the other party. The Holder, unless prior objection thereto shall have been made in writing by the other party, may extend the term of the loan, but, without the prior written consent of the other party, not more than once and for not more than sixty (60) days; but notice of any such extension shall be thereafter promptly transmitted to the other party. The taking of additional collateral or security shall not be considered a material alteration in the terms of the loan or collateral for the loan.

Section 8. Refusal of Guarantor to Consent to Accelerated Maturity

The Financing Institution, if it be the Holder, shall not exercise any option to accelerate the maturity of the obligation without the prior written consent of the Guarantor. If such an option exists (whether or not conditioned upon the giving of notice to the Borrower) on the part of the Holder to accelerate the maturity of the obligation and (a) the Guarantor fails to give its written consent, within ten (10) days after the Reserve Bank shall have received a written request from the Financing Institution to do so, to the acceleration of the maturity of the obligation or (b) if the Guarantor be the Holder and does not, within ten (10) days after the Reserve Bank shall have received a written request from the Financing Institution that the Guarantor do so, initiate appropriate action to accelerate the maturity of the obligation, the guaranteed percentage shall thereupon, in either event, effective ten (10) days after the receipt of such request, be 100 per cent. The Guarantor may, after giving notice to the Financing Institution, exercise any option to accelerate the maturity of the obligation without obtaining the consent of the Financing Institution, and the loan shall so provide.

Section 9. Failure to Sue or Consent to Suit

The Financing Institution, if it be the Holder, shall not, without the prior written consent of the Guarantor, bring suit to enforce payment of the obligation or any instalment thereof, or directly or indirectly institute bankruptcy, receivership or insolvency proceedings against the Borrower, or foreclose on or otherwise enforce realization of the collateral by exercise of a power of sale or by legal proceedings against the Borrower; but the Guarantor, if it be the Holder, after giving notice to the Financing Institution, may take any action specified in this sentence without obtaining the consent of the Financing Institution. If at any time all or any portion of the principal or interest of said obligation is due and unpaid and (a), while the Financing Institution is the Holder, the Guarantor fails to give its written consent within ten (10) days after the Reserve Bank shall have received a written request from the Financing Institution to do so, to the taking of any action specified in the preceding sentence or (b) if the Guarantor be the Holder and does not, within thirty (30) days after the Reserve Bank shall have received a written request from the Financing Institution that the Guarantor take action as aforesaid, take the action requested or one of the other steps specified in the preceding sentence, the guaranteed percentage shall thereupon in either event, effective ten (10) days or thirty (30) days, as the case may be, after the receipt of such request, be 100 per cent.

Section 10. Voluntary Purchase by Guarantor

Whenever the Guarantor elects, it may purchase, and the Financing Institution shall sell to it, the guaranteed percentage of the unpaid principal amount of the obligation, less any amounts which have been previously purchased by the Guarantor under any provision of this agreement and have not been repaid; but no such purchase shall be made except ninety (90) days or more after the original advance on the loan or shall become effective until ten (10) days (or such lesser period as the Guarantor may specify) after the Guarantor shall have sent to the Financing Institution a demand for such purchase by telegram or registered mail. In the event of any purchase under this section, the Guarantor shall, at the request of the Financing Institution, or may, at its own option, immediately become the Holder in the manner provided in section 4 without the written demand therein specified.

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ARMED SERVICES PROCUREMENT REGULATION

DEFENSE CONTRACT FINANCING REGULATIONS

Section 11. Reports as to Borrower's Condition

The Holder shall promptly notify the other party of any default in the payment of principal, or of any default which shall continue for ten (10) days in the payment of interest, on the part of the Borrower.

Section 12. Fees Payable to Guarantor

The Financing Institution shall pay to the Reserve Bank at the end of each monthly or quarterly period, as fixed by the Reserve Bank, (a) an amount equal to per cent of any interest payable by the Borrower on the average daily amounts of that part of the unpaid principal of the obligation which the Guarantor was obligated during such period to purchase upon demand of the Financing Institution, and also (b) an amount equal to the same per cent of the "guaranteed percentage" of any commitment fee payable by the Borrower to the Financing Institution during such period.

Section 13. Effect of Violation of Agreement

(A) If the Financing Institution shall violate, or fail to comply with, any of the terms of this agreement or any of the terms or conditions of the loan or shall through gross negligence make a material misrepresentation of fact in the application therefor, or in anything constituting a part of the application, it shall become liable to the Guarantor in an amount equal to the damages sustained by the latter by virtue of such violation, failure to comply, or misrepresentation; but the Guarantor shall not be relieved by such violation, failure to comply, or misrepresentation from any of its obligations to the Financing Institution under the terms of this agreement.

(B) In the absence of gross negligence on the part of the Financing Institution:

- (1) No invalidity or ineffectiveness of any collateral or of any assignment thereof accepted by the Financing Institution; and
(2) No action or omission to act on the part of the Financing Institution in reliance on a statement or certificate signed by an appropriate officer or member of the Borrower with respect to the financial condition, business or operations of the Borrower or the purpose for which funds of the Borrower have been or are intended to be used;

shall constitute a violation of, or failure to comply with, any of the terms of this agreement or any of the terms or conditions of the loan on the part of the Financing Institution. No invalidity of any provision of the loan agreement (or other similar instrument), if any, referred to herein, arising from statute or decision of any court, shall in any way relieve the Guarantor hereunder.

Section 14. Interpretation of Agreement

(A) This agreement constitutes the entire contract between the Guarantor and the Financing Institution, and no claim of waiver, modification, consent, or acquiescence with respect to any of the provisions of this agreement shall be made against either party except on the basis of a letter or other written instrument executed by or on behalf of such party.

(B) No provision of the loan agreement (or other similar instrument), if any, shall increase, limit or vary the rights or obligations of the Financing Institution, the Guarantor or the Borrower under this agreement.

Section 15. Prohibition Against Assignment

This agreement shall not be assignable by either party, but this shall not prevent the Financing Institution from granting to other financing institutions participations in the obligation, provided, however, that the Guarantor shall recognize and deal only with the Financing Institution.

Section 16. Officials Not to Benefit

No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed on their behalf by their duly authorized agents this day of, 196

[SEAL OF FINANCING INSTITUTION]

(Guarantor)
By Federal Reserve Bank of
As Fiscal Agent of the United States

By -----
(Name) (Title)

Attest: -----
(Financing Institution)

(Name) (Title) By -----
(Name) (Title)

APPENDIX E

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