

SUBCHAPTER H—CLAUSES AND FORMS

PART 352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 352.2—Texts of Provisions and Clauses

- Sec.
- 352.202-1 Definitions.
- 352.215-12 Restriction on disclosure and use of data.
- 352.215-71 [Reserved]
- 352.215-72 Pre-proposal conference.
- 352.216-70 Negotiated overhead rates—fixed.
- 352.216-72 Additional cost principles.
- 352.224-70 Confidentiality of information.
- 352.228-7 Insurance—Liability to third persons.
- 352.232-9 Withholding of contract payments.
- 352.232-71 Cost sharing.
- 352.232-73 Method of payment—letter of credit.
- 352.232-74 Estimated cost and fixed fee—incrementally funded contract.
- 352.232-75 Incremental funding.
- 352.233-70 Litigation and claims.
- 352.237-70 Consulting services reporting.
- 352.242-71 Final decisions on audit findings.
- 352.242-72—352.242-79 [Reserved]
- 352.249-14 Excusable delays.
- 352.270-1 Accessibility of meetings, conferences, and seminars to persons with disabilities.
- 352.270-2 Indian preference.
- 352.270-3 Indian preference program.
- 352.270-4 Pricing of adjustments.
- 352.270-5 Key personnel.
- 352.270-6 Publication and publicity.
- 352.270-7 Paperwork Reduction Act.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 14031, Apr. 9, 1984, unless otherwise noted.

Subpart 352.2—Texts of Provisions and Clauses

352.202-1 Definitions.

Insert the following clause in all solicitations and resultant contracts instead of the clause in FAR 52.202-1 except when contemplating (a) a fixed price research and development contract that is expected to be \$2,500 or less or (b) a purchase order.

DEFINITIONS (APR 1984)

(a) The term *Secretary or Head of the Agency* (also called *Agency Head*) means the Secretary, Under Secretary, or any Assistant Secretary, Administrator or Commissioner,

of the Department of Health and Human Services; and the term "his/her duly authorized representative" means any person, persons, or board authorized to act for the Secretary.

(b) The term *Contracting Officer* means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(c) The term *Project Officer* means the person representing the Government for the purpose of technical monitoring of contract performance. The Project Officer is not authorized to issue any instructions or directions which effect any increases or decreases in the scope of work or which would result in the increase or decrease of the price of this contract or a change in the delivery dates or performance period of this contract.

(d) The term *Department* means the Department of Health and Human Services.

(e) Except as otherwise provided in this contract, the term *subcontract* includes purchase order under this contract.

(End of clause)

Alternate I (APR 1984). For cost-reimbursement contracts other than purchase orders, delete paragraph (c) above and replace with the following paragraph (c):

(c) The term *Project Officer* means the person representing the Government for the purpose of technical monitoring of contract performance. The Project Officer is not authorized to issue any instructions or directions which effect any increases or decreases in the scope of work or which would result in the increase or decrease of the cost of this contract or a change in performance period of this contract. In addition, the Project Officer is not authorized to receive or act upon the Contractor's notification of a revised cost estimate pursuant to the Limitation of Cost or Limitation of Funds clause of this contract.

[49 FR 14031, Apr. 9, 1984, as amended at 53 FR 15564, May 2, 1988]

352.215-12 Restriction on disclosure and use of data.

Insert the following provision in all requests for proposals, and all requests for quotations other than those for information or planning purposes. This

provision shall be used in lieu of the provision in FAR 52.215-12.

RESTRICTION ON DISCLOSURE AND USE OF
DATA (APR 1984)

The proposal submitted in response to this request may contain data (trade secrets; business data, e.g., commercial information, financial information, and cost and pricing data; and technical data) which the offeror, including its prospective subcontractor(s), does not want used or disclosed for any purpose other than for evaluation of the proposal. The use and disclosure of any data may be so restricted; *provided*, that the Government determines that the data is not required to be disclosed under the Freedom of Information Act, 5 U.S.C. 552, as amended, and the offeror marks the cover sheet of the proposal with the following legend, specifying the particular portions of the proposal which are to be restricted in accordance with the conditions of the legend. The Government's determination to withhold or disclose a record will be based upon the particular circumstances involving the record in question and whether the record may be exempted from disclosure under the Freedom of Information Act:

Unless disclosure is required by the Freedom of Information Act, 5 U.S.C. 552, as amended, (the Act) as determined by Freedom of Information (FOI) Officials of the Department of Health and Human Services, data contained in the portions of this proposal which have been specifically identified by page number, paragraph, etc. by the offeror as containing restricted information shall not be used or disclosed except for evaluation purposes. The offeror acknowledges that the Department may not be able to withhold a record (data, document, etc.) nor deny access to a record requested pursuant to the Act and that the Department's FOI Officials must make that determination. The offeror hereby agrees that the Government is not liable for disclosure if the Department has determined that disclosure is required by the Act.

If a contract is awarded to the offeror as a result of, or in connection with, the submission of this proposal, the Government shall have the right to use or disclose the data to the extent provided in the contract. Proposals not resulting in a contract remain subject to the Act.

The offeror also agrees that the Government is not liable for disclosure or use of unmarked data and may use or disclose the data for any purpose, including the release of the information pursuant to requests under the Act.

The data subject to this restriction are contained in pages (insert page numbers, paragraph designations, etc. or other identification).

In addition, the offeror should mark each page of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this page is subject to the restriction on the cover sheet of this proposal or quotation.

Offerors are cautioned that proposals submitted with restrictive legends or statements differing in substance from the above legend may not be considered for award. The Government reserves the right to reject any proposal submitted with a nonconforming legend.

(End of provision)

352.215-71 [Reserved]

352.215-72 Pre-proposal conference.

If a pre-proposal conference is to be held as indicated in FAR 15.409, insert the following provision in the affected solicitation:

PRE-PROPOSAL CONFERENCE (APR 1984)

A pre-proposal conference will be held with prospective offerors at (insert local prevailing time) on (insert date) in room (insert room number) at (insert name and location of building).

The pre-proposal conference will be held for the purpose of providing information concerning the Government's requirements which may be helpful in the preparation of proposals and for answering any questions which you have regarding this solicitation.

The success of this type of conference depends largely on the leadtime available to the Government for research in connection with questions submitted by prospective offerors. Therefore, you are requested to mail written questions concerning any areas of uncertainty which, in your opinion, require clarification or correction, in sufficient time to be received on or before (insert date).

Your questions should be submitted to the Contract-Officer, (insert name of Contracting Officer), and the envelope should be marked "Pre-Proposal Conference, RFP No. (insert number of RFP)." A set of questions and answers will be furnished to all prospective offerors whether or not they are in attendance.

Because of space limitations, each prospective offeror will be limited to a total of (insert number) representatives.

Attendance at the pre-proposal conference is recommended; however, attendance is not a prerequisite for proposal submission and will not be considered a factor in proposal evaluation.

(End of provision)

352.216-70 Negotiated overhead rates—fixed.

Insert the following clause in all cost-reimbursement contracts with educational institutions and nonprofit organizations when fixed rates subject to carryforward adjustments are used.

NEGOTIATED OVERHEAD RATES—FIXED (APR 1984)

(a) Notwithstanding the provisions of the clause entitled "Allowable Cost and Payment," the allowable indirect costs under this contract shall be obtained by applying negotiated fixed overhead rates for the applicable period(s) to bases agreed upon by the parties, as specified below. A negotiated fixed rate(s) is based on an estimate of the costs which will be incurred during the period for which the rate(s) applies. When the application of the negotiated fixed rates against the actual bases during a given fiscal period produces an amount greater or less than the indirect costs determined for such period, such greater or lesser amount(s) will be carried forward to a subsequent period.

(b) The Contractor, as soon as possible but no later than six months after the close of its fiscal year, or such other period as may be specified in the contract, shall submit to the Secretary or the duly authorized representative, with a copy to the cognizant audit activity, a proposed fixed overhead rate or rates based on the Contractor's actual cost experience during the fiscal year, including adjustment, if any, for amounts carried forward, together with supporting cost data. Negotiation of fixed overhead rates, including carryforward adjustments, if any, by the Contractor and the Secretary, or the duly authorized representative, shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Part 31 of the Federal Acquisition Regulation (FAR) as in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in an amendment to this contract, which shall specify: (1) The agreed fixed overhead rates, (2) the bases to which the rates apply, (3) the fiscal year, unless the parties agreed to a different period, for which the rates apply, and (4) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs.

(e) Pending establishment of fixed overhead rates for any fiscal year or different period agreed to by the parties, the Contractor shall be reimbursed either at the rates fixed for the previous fiscal year or other period or

at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that fiscal year or other period are established.

(f) Any failure of the parties to agree on any fixed overhead rate or rates or to the amount of any carryforward adjustment under this clause shall not be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract. If for any fiscal year or other period specified in the contract, the parties fail to agree to a fixed overhead rate or rates, it is agreed that the allowable indirect costs under this contract shall be obtained by applying negotiated final overhead rates in accordance with the terms of the "Allowable Cost and Payment" clause set forth in FAR 52.216-7, as in effect on the date of this contract.

(g) Submission of proposed fixed, provisional, and/or final overhead rates, together with appropriate data in support thereof, to the Secretary or the duly authorized representative and agreements on fixed, provisional, and/or final overhead rates entered into between the Contractor and the Secretary or the duly authorized representative, as evidenced by Negotiated Overhead Rate Agreements signed by both parties, shall be deemed to satisfy the requirements of paragraphs (b), (d), and (e), of this clause.

(End of clause)

352.216-72 Additional cost principles.

As prescribed in 316.307(j), insert the following clause in all solicitations and resultant cost-reimbursement contracts with nonprofit organizations, as identified in OMB Circular A-122.

ADDITIONAL COST PRINCIPLES (OCT 1990)

(a) *Bid and proposal costs.* (1) Bid and proposal costs are the immediate costs of preparing bids, proposals, and applications for potential Federal and non-Federal contracts, grants, and agreements, including the development of scientific, cost, and other data needed to support the bids, proposals, and applications.

(2) Bid and proposal costs of the current accounting period are allowable as indirect costs.

(3) Bid and proposal costs of past accounting periods are unallowable in the current period. However, if the organization's established practice is to treat these costs by some other method, they may be accepted if they are found to be reasonable and equitable.

(4) Bid and proposal costs do not include independent research and development costs covered by the following paragraph, or

preaward costs covered by paragraph 33 of Attachment B to OMB Circular A-122.

(b) *Independent research and development costs.* (1) Independent research and development is research and development conducted by an organization which is not sponsored by Federal or non-Federal contracts, grants, or other agreements.

(2) Independent research and development shall be allocated its proportionate share of indirect costs on the same basis as the allocation of indirect costs to sponsored research and development.

(3) The costs of independent research and development, including its proportionate share of indirect costs, are unallowable.

(End of clause)

[55 FR 42197, Oct. 18, 1990]

352.224-70 Confidentiality of information.

The following clause is covered by the policy set forth in subpart 324.70 and is to be used in accordance with the instructions set forth in 324.7004.

CONFIDENTIALITY OF INFORMATION (APR 1984)

(a) Confidential information, as used in this clause, means (1) information or data of a personal nature about an individual, or (2) proprietary information or data submitted by or pertaining to an institution or organization.

(b) In addition to the types of confidential information described in (a)(1) and (2) above, information which might require special consideration with regard to the timing of its disclosure may derive from studies or research, during which public disclosure of preliminary unvalidated findings could create erroneous conclusions which might threaten public health or safety if acted upon.

(c) The Contracting Officer and the Contractor may, by mutual consent, identify elsewhere in this contract specific information and/or categories of information which the Government will furnish to the Contractor or that the Contractor is expected to generate which is confidential. Similarly, the Contracting Officer and the Contractor may, by mutual consent, identify such confidential information from time to time during the performance of the contract. Failure to agree will be settled pursuant to the "Disputes" clause.

(d) If it is established elsewhere in this contract that information to be utilized under this contract, or a portion thereof, is subject to the Privacy Act, the Contractor will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. 552a, and implementing regulations and policies, with respect to systems of

records determined to be subject to the Privacy Act.

(e) Confidential information, as defined in (a)(1) and (2) above, that is information or data of a personal nature about an individual, or proprietary information or data submitted by or pertaining to an institution or organization, shall not be disclosed without the prior written consent of the individual, institution, or organization.

(f) Written advance notice of at least 45 days will be provided to the Contracting Officer of the Contractor's intent to release findings of studies or research, which have the possibility of adverse effects on the public or the Federal agency, as described in (b) above. If the Contracting Officer does not pose any objections in writing within the 45-day period, the Contractor may proceed with disclosure. Disagreements not resolved by the Contractor and the Contracting Officer will be settled pursuant to the "Disputes" clause.

(g) Whenever the Contractor is uncertain with regard to the proper handling of material under the contract, or if the material in question is subject to the Privacy Act or is confidential information subject to the provisions of this clause, the Contractor should obtain a written determination from the Contracting Officer prior to any release, disclosure, dissemination, or publication.

(h) Contracting Officer determinations will reflect the results of internal coordination with appropriate program and legal officials.

(i) The provisions of paragraph (e) of this clause shall not apply when the information is subject to conflicting or overlapping provisions in other Federal, State or local laws.

(End of clause)

352.228-7 Insurance—Liability to third persons.

As prescribed in 328.311-2, contracting officers shall include the following clause in all cost-reimbursement contracts, in lieu of the clause at FAR 52.228-7:

INSURANCE—LIABILITY TO THIRD PERSONS
(DEC 1991)

(a)(1) Except as provided in subparagraph (2) immediately following, or in paragraph (h) of this clause (if the clause has a paragraph (h)), the Contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting Officer may require under this contract.

(2) The Contractor may, with the approval of the Contracting Officer, maintain a self-

insurance program; *Provided That*, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

(3) All insurance required by this paragraph shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with insurers approved by the Contracting Officer.

(b) The Contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other insurance that is maintained by the Contractor in connection with performance of this contract and for which the Contractor seeks reimbursement.

(c) Except as provided in paragraph (h) of this clause (if the clause has a paragraph (h)), the Contractor shall be reimbursed—

(1) For that portion (i) of the reasonable cost of insurance allocable to this contract, and (ii) required or approved under this clause; and

(2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise within the funds available under the Limitation of Cost or the Limitation of Funds clause of this contract. These liabilities must arise out of the performance of this contract, whether or not caused by the negligence of the Contractor or of the Contractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by the Government. These liabilities are for—

(i) Loss of or damage to property (other than property owned, occupied, or used by the Contractor, rented to the Contractor, or in the care, custody, or control of the Contractor); or

(ii) Death or bodily injury.

(d) The Government's liability under paragraph (c) of this clause is limited to the amounts reflected in final judgments, or settlements approved in writing by the Government, but in no event to exceed the funds available under the Limitation of Cost or Limitation of Funds clause of this contract. Nothing in this contract shall be construed as implying that, at a later date, the Government will request, or the Congress will appropriate, funds sufficient to meet any deficiencies.

(e) The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities)—

(1) For which the Contractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the contract;

(2) For which the Contractor has failed to insure or to maintain insurance as required by the Contracting Officer; or

(3) That result from willful misconduct or lack of good faith on the part of the Contractor's directors, officers, managers, super-

intendents, or other representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(iii) A separate and complete major industrial operation in connection with the performance of this contract.

(f) The provisions of paragraph (e) of this clause shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required in accordance with this clause: *Provided*, That such cost is allowable under the Allowable Cost and Payment clause of this contract.

(g) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall—

(1) Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;

(2) Authorize Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and

(3) Authorize Government representatives to settle or defend the claim and to represent the Contractor in or to take charge of any litigation, if required by the Government, when the liability is not insured or covered by bond. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)

Alternate I (APR 1984). If the solicitation includes the provision at 52.228-6, Insurance-Immunity from Tort Liability, and the successful offeror represents in the offer that the offeror is partially immune from tort liability as a State agency or as a charitable institution, add the following paragraph (h) to the basic clause:

(h) Notwithstanding paragraphs (a) and (c) of this clause—

(1) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract; and

(2) The contractor need not provide or maintain insurance coverage as required by paragraph (a) of this clause; *provided*, that the Contractor may obtain any insurance coverage deemed necessary, subject to approval by the Contracting Officer as to form, amount, and duration. The Contractor shall be reimbursed for the cost of such insurance and, to the extent provided in paragraph (c) of this clause, to liabilities to third persons for which the contractor has obtained insurance coverage as provided in this paragraph, but for which such coverage is insufficient in amount.

(End of clause)

Alternate II (APR 1984). If the solicitation includes the provision at 52.228-6, Insurance-Immunity from Tort Liability, and the successful offeror represents in the offer that the offeror is totally immune from tort liability as a State agency or as a charitable institution, substitute the following paragraphs (a) and (b) for paragraphs (a) through (g) of the basic clause:

(a) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract.

(b) If any suit or action is filed, or if any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, the Contractor shall immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received by the Contractor. The Contractor shall, if required by the Government, authorize Government representatives to settle or defend the claim and to represent the Contractor in or take charge of any litigation. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)

[56 FR 58316, Nov. 19, 1991]

352.232-9 Withholding of contract payments.

Insert the following clause in all solicitations and contracts other than purchase orders:

WITHHOLDING OF CONTRACT PAYMENTS (APR 1984)

Notwithstanding any other payment provisions of this contract, failure of the Contractor to submit required reports when due or failure to perform or deliver required work, supplies, or services, will result in the withholding of payments under this contract unless such failure arises out of causes beyond the control, and without the fault or negligence of the Contractor as defined by the clause entitled "Excusable Delays" or "Default", as applicable. The Government shall promptly notify the Contractor of its intention to withhold payment of any invoice or voucher submitted.

(End of clause)

352.232-71 Cost sharing.

The policy relative to cost sharing is set forth in 335.070.

(a) In contracts for which cost-sharing has been individually negotiated, the clause set forth in FAR 52.232-20 shall be used. Also, an article reading substantially as follows, which includes a cost-sharing formula agreed upon by the contracting officer and the contractor that provides for the ratio of cost-sharing for both the originally established estimated cost and any increase pursuant to the FAR clause, shall be included in the contract.

COST SHARING (APR 1984)

The Contractor agrees to share in the cost of the work hereunder to the extent of not less than (indicate percent of the total cost or dollar amount, etc.) and shall maintain records of all costs so contributed, as well as costs to be paid by the Government. Such records shall be subject to audit. Costs contributed by the Contractor shall not be charged to the Government under any other grant or contract (including allocation to other grants or contracts as part of an independent research and development program).

(End of clause)

(b) In contracts for which cost-sharing will be in accordance with a previously negotiated institutional agreement, the clause set forth in FAR 52.232-20 shall also be used. However, instead of specifying a cost-sharing formula, the following shall be included as a special provision.

COST SHARING UNDER INSTITUTIONAL
AGREEMENT (APR 1984)

This contract is subject to an Institutional Cost-Sharing Agreement which became effective with respect to HHS research contracts on (date), and the Contractor agrees that the Government shall not bear the entire cost of the work hereunder.

(End of clause)

352.232-73 Method of payment—letter of credit.

When authorized by an individual or blanket determination, findings, and authorization for advance payment, under a letter of credit, the following clause shall be used: (See 332.406 for further instructions regarding use of the clause.)

METHOD OF PAYMENT—LETTER OF CREDIT
(APR 1984)

(a) The Contractor shall be paid with funds made available under the Federal Reserve Letter of Credit No. _____, established by _____ Department of Health and Human Services, against which the Contractor will withdraw funds pursuant to Federal Reserve Letter of Credit procedures contained in Treasury Department Circular 1075 (31 CFR part 205).

(b) At the request of the Contractor and subject to the following conditions, the Government shall make an advance payment, or advance payments, from time to time, to the Contractor. No advance payment shall be made: (1) Without the approval of the office administering advance payments (hereinafter called the "Administering Office" and designated in paragraph (g)(2)) as to the financial necessity therefor (except in the case of educational institutions); (2) in an amount which, together with all advance payments made, exceeds the contract amount; and (3) without a properly certified invoice. The Contractor shall (1) initiate cash drawdowns only when actually needed for its disbursements, (2) report timely the case disbursements and balances as required by the Administering Office, and (3) impose the same standards of timing and amount upon any subcontractors including the furnishing of reports of cash disbursements and balances. Failure to adhere to these material provisions will be considered an event under paragraph (f) of this clause.

(c) The funds drawn by the Contractor against the Federal Reserve Letter of Credit shall be only for current allowable expenditures necessary for the performance of this contract.

(d) When requested in writing by the Contracting Officer, the Contractor shall repay to the Government such part of the unliqui-

dated balance of the advance payments as shall, in the opinion of the Contracting Officer, be in excess of the Contractor's current needs or in excess of the contract price.

(e) If, upon completion or termination of this contract, all amounts obtained by the Contractor under this letter of credit have not been fully liquidated by authorized charges under the contract, the balance thereof shall be deducted from any sums otherwise due to the Contractor from the Government, and any excess funds shall be repaid by the Contractor to the Government upon demand.

(f) Upon the happening of any of the following events of default: (1) A finding by the Administering Office that the Contractor (i) has failed to observe any of the covenants, conditions, or warranties of these provisions or has failed to comply with any material provisions of this contract, or (ii) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, or (iii) has allocated inventory to this contract substantially exceeding reasonable requirements, or (iv) is delinquent in payment of taxes or of the costs of performance of this contract in the ordinary course of business; (2) 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; (3) service of any writ of attachment, levy of execution, or commencement of garnishment proceedings; or (4) the commission of an act of bankruptcy; the Government, without limiting any rights it may otherwise have, may, in its discretion and upon written notice to the Contractor, withhold further withdrawals under the Letter of Credit and withhold further payments on this contract. Payment can also be stopped for lack of submission of timely and accurate reports in accordance with contract requirements. 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:

(1) Charge interest on advance payments outstanding during the period of any such default at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 80 Stat. 97 for the Renegotiation Board;

(2) Demand immediate repayment of the unliquidated balance of advance payments hereunder; and/or

(3) Take possession of and, with or without advertisement, sell at public sale at which the Government may be 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.

(g)(1) No interest shall be charged for advance payments made hereunder, except interest during a period of default as provided in paragraph (f)(2). The Contractor shall charge interest at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41 85 Stat. 97 for the Renegotiation Board on subadvances or downpayments to subcontractors and such interest will be credited to the account of the Government. However, interest need not be charged on subadvances on subcontracts with educational or research institutions provided such subcontracts are awarded without profit or fee for research, development or experimental work.

(2) The office administering advance payments is designated as

(End of clause)

352.232-74 Estimated cost and fixed fee—incrementally funded contract.

The following clause, or one reading substantially as it, shall be included in the Special Provisions of an incrementally funded contract:

CONSIDERATION—ESTIMATED COST AND FIXED FEE (APR 1984)

(a) It is estimated that the total cost to the Government for full performance of this contract will be \$ _____, of which the sum of \$ _____ represents the estimated reimbursable costs and \$ _____ represents the fixed-fee.

(b) Total funds currently available for payment and allotted to this contract are \$ _____, of which \$ _____ represents the estimated reimbursable costs and \$ _____ represents the fixed-fee. For further provisions on funding, see the Limitation of Funds clause.

(c) It is estimated that the amount currently allotted will cover performance of Phase I which is scheduled to be completed by (date) _____.

(d) The Contracting Officer may allot additional funds to the contract without the concurrence of the Contractor.

(End of clause)

352.232-75 Incremental funding.

The following provision shall be included in all requests for proposals

whenever the use of incremental funding is contemplated:

INCREMENTAL FUNDING (APR 1984)

(a) Sufficient funds are not presently available to cover the total cost of the complete multiple year project described in this solicitation. However, it is the Government's intention to negotiate and award a contract using the incremental funding concepts described in the clause entitled Limitation of Funds. Under that clause, which will be included in the resultant contract, initial funds will be obligated under the contract to cover the first year of performance. Additional funds are intended to be allotted to the contract by contract modification, up to and including the full estimated cost of the contract, to accomplish the entire project. While it is the Government's intention to progressively fund this contract over the entire period of performance up to and including the full estimated cost, the Government will not be obligated to reimburse the Contractor for costs incurred in excess of the periodic allotments, nor will the Contractor be obligated to perform in excess of the amount allotted.

(b) The Limitation of Funds clause to be included in the resultant contract shall supersede the Limitation of Cost clause found in the General Provisions.

(End of provision)

352.233-70 Litigation and claims.

Insert the following clause in all solicitations and resultant cost-reimbursement contracts:

LITIGATION AND CLAIMS (APR 1984)

The Contractor shall give the Contracting Officer immediate notice in writing of (a) any action, including any proceeding before an administrative agency, filed against the Contractor arising out of the performance of this contract, including, but not limited to the performance of any subcontract hereunder; and (b) any claim against the Contractor the cost and expense of which is allowable under the clause entitled "Allowable Cost and Payment." Except as otherwise directed by the Contracting Officer, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action or claim. To the extent not in conflict with any applicable policy of insurance, the Contractor may, with the Contracting Officer's approval, settle any such action or claim. If required by the Contracting Officer, the Contractor shall (a) effect an assignment and subrogation in favor of the Government of all the Contractor's rights and claims (except those against the

Government) arising out of any such action or claim against the Contractors; and (b) authorize representatives of the Government to settle or defend any such action or claim and to represent the Contractor in, or to take charge of, any action. If the settlement or defense of an action or claim is undertaken by the Government, the Contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the Contractor is not covered by a policy of insurance, the Contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith. The Government shall not be liable for the expense of defending any action or for any costs resulting from the loss thereof to the extent that the Contractor would have been compensated by insurance which was required by law or regulation or by written direction of the Contracting Officer, but which the Contractor failed to secure through its own fault or negligence.

In any event, unless otherwise expressly provided in this contract, the Contractor shall not be reimbursed or indemnified by the Government for any liability loss, cost or expense, which the Contractor may incur or be subject to by reason of any loss, injury, or damage, to the person or to real or personal property of any third parties as may accrue during, or arise from, the performance of this contract.

(End of clause)

352.237-70 Consulting services reporting.

The contracting officer shall include the following clause in every contract for consulting services, as defined in the General Administration Manual Chapter 8-15 and as required by 337.270.

CONSULTING SERVICES REPORTING (APR 1984)

The Contractor shall set forth on the cover of every report submitted pursuant to this contract the following information: (a) Name and business address of the Contractor; (b) Contract number; (c) Contract dollar amount; (d) Whether the contract was competitively or noncompetitively awarded; (e) Name of the Department's project officer and complete office identification and address; and (f) Names of the managerial and professional personnel responsible for the content and preparation of the report.

(End of clause)

352.242-71 Final decisions on audit findings.

Insert the following clause in all solicitations and resultant cost-reimbursement contracts.

FINAL DECISIONS ON AUDIT FINDINGS (APR 1984)

For the purpose of issuing final decisions under the Disputes clause of this contract concerning monetary audit findings, the Contracting Officer shall be that person with ultimate responsibility for making that decision in accordance with Chapter 1-105, Resolution of Audit Findings, of the Department's Grants Administration Manual.

(End of clause)

352.242-72—352.242-79 [Reserved]

352.249-14 Excusable delays.

Insert the following clause in all solicitations and resultant contracts other than purchase orders which do not have either a default or excusable delays clause.

EXCUSABLE DELAYS (APR 1984)

(a) Except with respect to failures of subcontractors, the Contractor shall not be considered to have failed in performance of this contract if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor.

(b) Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the failure of a subcontractor to perform, and if such failure arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be deemed to have failed in performance of the contract, unless: (1) The supplies or services to be furnished by the subcontractor were obtainable from other sources, (2) The Contracting Officer shall have ordered the Contractor in writing to procure such supplies or services from such other sources, and (3) The Contractor shall have failed to comply reasonably with such order. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of such failure and, if he/she shall determine that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Government under the termination clause hereof. (As used in this clause, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.)

(End of clause)

352.270-1 Accessibility of meetings, conferences, and seminars to persons with disabilities.

The following clause is to be used in accordance with 370.102:

ACCESSIBILITY OF MEETINGS, CONFERENCES, AND SEMINARS TO PERSONS WITH DISABILITIES (APR 1984)

The Contractor agrees as follows:

(a) *Planning.* The Contractor will develop a plan to assure that any meeting, conference, or seminar held pursuant to this contract will meet or exceed the minimum accessibility standards set forth below. This plan shall include a provision for ascertaining the number and types of disabled individuals planning to attend the meeting, conference, or seminar. The plan shall be submitted to the project officer for approval prior to initiating action. (A consolidated or master plan for contracts requiring numerous meetings, conferences, or seminars may be submitted in lieu of separate plans.)

(b) *Facilities.* Any facility to be utilized for meetings, conferences, or seminars in performance of this contract shall be accessible to persons with disabilities. The Contractor shall determine, by an on-site inspection if necessary, that the following minimum accessibility requirements are met, or suitable modifications are made to meet these requirements, before the meeting:

(1) *Parking.* (i) Where parking is available on or adjacent to the site, one 12' wide space must be set aside for the care of each mobility impaired attendee. The space need not be permanently striped but may be temporarily marked by signs, ropes, or other means satisfactory to carry out this provision.

(ii) Where parking is not available on or adjacent to the site, valet parking or other alternative means to assist a person who has a mobility impairment may be used. Alternate means must be satisfactory in the judgment of the Government project officer.

(2) *Entrances.* (i) "Entrances" shall include at least one accessible entrance from the street/sidewalk level, and at least one accessible entrance from any available parking facility.

(ii) The entrance shall be level or accessible by ramp with an incline that allows independent negotiation by a person in a wheelchair. In general, the slope of the incline shall be no more than 1" rise per foot of ramp length (1:12).

(iii) Entrance doorways shall be at least 30" in clear width and capable of operation by persons with disabilities. Revolving doors, regardless of foldback capability, will not meet this requirement.

(3) *Meeting Rooms.* (i) Meeting room access from the main entrance area must be level or

at an independently negotiable incline (approximately 1:12) and/or served by elevators from the main entrance level. All elevators shall be capable of accommodating a wheelchair 29" wide by 45" long.

(ii) Meeting rooms shall be on one level or, if on different levels, capable of being reached by elevators or by ramps that can be independently negotiated by a person in a wheelchair. Doorways to all meeting rooms shall be at least 30" in clear width.

(iii) The interior of the meeting room shall be on one level or ramped so as to be independently negotiable for a person in a wheelchair.

(iv) Stages, speaker platforms, etc. which are to be used by persons in wheelchairs must be accessible by ramps or lifts. When used, the ramps may not necessarily be independently negotiable if space does not permit. However, any slope over 1:12 must be approved by the project officer. Each case is to be judged on its own merits.

(v) If a meeting room with fixed seating is utilized, seating arrangements for persons in wheelchairs shall be made so that these persons are incorporated into the group rather than isolated on the perimeter of the group.

(4) *Restrooms.* (i) Restrooms shall have level access, signs indicating accessibility, and doorways at least 30" in clear width.

(ii) Sufficient turning space within restrooms shall be provided for independent use by a person in a wheelchair 29" wide by 45" long. A space 60" by 60" or 63" by 56" of unobstructed floor space as measured 12" above the floor is acceptable by standard; other layouts will be accepted if it can be demonstrated that they are usable as indicated.

(iii) There will be a restroom for each sex or a unisex restroom with at least one toilet stall capable of accommodating a wheelchair 29" wide by 45" long (by standard, the minimum is 3'-0" by 4'-8") with outswinging doors or privacy curtains. Wall mounted grab bars are required.

(iv) When separate restrooms have been set up for mobility impaired persons, they shall be located adjacent to the regular restrooms and shall be fully accessible.

(5) *Eating Facilities.* (i) Eating facilities in the meeting facility must be accessible under the same general guidelines as are applied to meeting rooms.

(ii) If the eating facility is a cafeteria, the food service area (cafeteria line) must allow sufficient room for independent wheelchair movement and accessibility to food for persons in wheelchairs, and cafeteria staff shall be available to assist disabled persons.

(6) *Overnight Facilities.* If overnight accommodations are required:

(i) Sufficient accessible guest rooms to accommodate each attendee who is disabled shall be located in the facility where the meeting, conference, or seminar is held, or in a facility housing the attendees which is

conveniently located nearby, whichever is satisfactory to the project officer.

(ii) Overnight facilities shall provide for the same minimum accessibility requirements as the facility utilized for the meeting, conference, or seminar. In addition, guest room access from the main entrance area shall be level, ramped at an independently negotiable incline (1:12), and/or served by elevators capable of accommodating a wheelchair 29" wide by 45" long.

(iii) Doorways to guest rooms, including the doorway to the bathroom, shall be at least 30" in clear width.

(iv) Bathrooms shall have wall mounted grab bars at the tub and water closet.

(v) Guest rooms for persons with a disability shall be provided at the same rate as a guest room for other attendees.

(7) *Water Fountains.* Water fountains shall be accessible to disabled persons, or have cup dispensers for use by persons in wheelchairs.

(c) *Provisions of Services for Sensory Impaired Attendees.* (1) The Contractor, in planning the meeting, conference, or seminar, shall include in all announcements and other materials pertaining to the meeting, conference, or seminar a notice indicating that services will be made available to sensory impaired persons attending the meeting, if requested within five (5) days of the date of the meeting, conference, or seminar. The announcement(s) and other material(s) shall indicate that sensory impaired persons may contact a specific person(s), at a specific address and phone number(s), to make their service requirements known. The phone number(s) shall include a teletype number for the hearing impaired.

(2) The Contractor shall provide, at no cost to the individual, those services required by persons with sensory impairments to insure their complete participation in the meeting, conference, or seminar.

(3) As a minimum, when requested in advance, the Contractor shall provide the following services:

(i) For hearing impaired persons, qualified interpreters. Provisions will also be made for volume controlled phone lines and, if necessary, transportation to local teletype equipment to enable hearing impaired individuals to receive and send meeting related calls. If local teletype equipment is not available, the Contractor shall provide on site teletype equipment. Also, the meeting rooms will be adequately illuminated so signing by interpreters can be easily seen.

(ii) For vision impaired persons, readers and/or cassette materials, as necessary, to enable full participation. Also, meeting rooms will be adequately illuminated.

(iii) Agenda and other conference material(s) shall be translated into a usable form for the visually and hearing impaired. Readers, braille translations, and/or tape recordings are all acceptable. These materials shall

be available to sensory impaired individuals upon their arrival.

(4) The Contractor is responsible for making every effort to ascertain the number of sensory impaired individuals who plan to attend the meeting, conference, or seminar. However, if it can be determined that there will be no sensory impaired person (deaf and/or blind) in attendance, the provision of those services under paragraph (c) for the nonrepresented group, or groups, is not required.

(End of clause)

352.270-2 Indian preference.

The following clause shall be used as prescribed in 370.202(a):

INDIAN PREFERENCE (APR 1984)

(a) The Contractor agrees to give preference in employment opportunities under this contract to Indians who can perform required work, regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation. To the extent feasible and consistent with the efficient performance of this contract, the Contractor further agrees to give preference in employment and training opportunities under this contract to Indians who are not fully qualified to perform regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation. The Contractor also agrees to give preference to Indian organizations and Indian-owned economic enterprises in the awarding of any subcontracts to the extent feasible and consistent with the efficient performance of this contract. The Contractor shall maintain statistical records as are necessary to indicate compliance with this paragraph.

(b) In connection with the Indian employment preference requirements of this clause, the Contractor shall provide opportunities for training incident to such employment. Such training shall include on-the-job, classroom or apprenticeship training which is designed to increase the vocational effectiveness of an Indian employee.

(c) If the Contractor is unable to fill its employment and training opportunities after giving full consideration to Indians as required by this clause, those needs may be satisfied by selection of persons other than Indians in accordance with the clause of this contract entitled "Equal Opportunity."

(d) If no Indian organizations or Indian-owned economic enterprises are available under reasonable terms and conditions, including price, for awarding of subcontracts in connection with the work performed under this contract, the Contractor agrees to comply with the provisions of this contract involving utilization of small business concerns, small business concerns owned and

controlled by socially and economically disadvantaged individuals, or labor surplus area concerns.

(e) As used in this clause:

(1) "Indian" means a person who is a member of an Indian Tribe. If the contractor has reason to doubt that a person seeking employment preference is an Indian, the Contractor shall grant the preference but shall require the individual to provide evidence within thirty (30) days from the Tribe concerned that the person is a member of that Tribe.

(2) "Indian Tribe" means an Indian Tribe, pueblo, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(3) "Indian organization" means the governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451); and

(4) "Indian-owned economic enterprise" means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than 51 percent of the enterprise, and that ownership shall encompass active *operation* and *control* of the enterprise.

(f) The Contractor agrees to include the provisions of this clause, including this paragraph (f), in each subcontract awarded at any tier under this contract.

(g) In the event of noncompliance with this clause, the Contracting Officer may terminate the contract in whole or in part or may impose any other sanctions authorized by law or by other provisions of the contract.

(End of clause)

352.270-3 Indian preference program.

The following clause shall be used as prescribed in 370.202(b):

INDIAN PREFERENCE PROGRAM (APR 1984)

(a) In addition to the requirements of the clause of this contract entitled "Indian Preference," the Contractor agrees to establish and conduct an Indian preference program which will expand opportunities for Indians to receive preference for employment and training in connection with the work to be performed under this contract, and which will expand the opportunities for Indian organizations and Indian-owned economic enterprises to receive a preference in the

awarding of subcontracts. In this connection, the Contractor shall:

(1) Designate a liaison officer who will (i) Maintain liaison with the Government and the Tribe(s) on Indian preference matters; (ii) Supervise compliance with the provisions of this clause; and (iii) Administer the Contractor's Indian preference program.

(2) Advise its recruitment sources in writing and include a statement in all advertisements for employment that Indian applicants will be given preference in employment and training incident to such employment.

(3) Not more than twenty (20) calendar days after award of the contract, post a written notice in the Tribal office of any reservations on which or near where the work under this contract is to be performed that sets forth the Contractor's employment needs and related training opportunities. The notice shall include the approximate numbers and types of employees needed; the approximate dates of employment; the experience or special skills required for employment, if any; training opportunities available; and other pertinent information necessary to advise prospective employees of any other employment requirements. The Contractor shall also request the Tribe(s) on or near whose reservation(s) the work is to be performed to provide assistance to the Contractor in filling its employment needs and training opportunities. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to contact in regard to the posting of notices and requests for Tribal assistance.

(4) Establish and conduct a subcontracting program which gives preference to Indian organizations and Indian-owned economic enterprises as subcontractors and suppliers under this contract. The Contractor shall give public notice of existing subcontracting opportunities and, to the extent feasible and consistent with the efficient performance of this contract, shall solicit bids or proposals only from Indian organizations or Indian-owned economic enterprises. The Contractor shall request assistance and information on Indian firms qualified as suppliers or subcontractors from the Tribe(s) on or near whose reservation(s) the work under the contract is to be performed. The Contracting Officer will advise the contractor of the name, location, and phone number of the Tribal officials to be contacted in regard to the request for assistance and information. Public notices and solicitations for existing subcontracting opportunities shall provide an equitable opportunity for Indian firms to submit bids or proposals by including:

(i) A clear description of the supplies or services required, including quantities, specifications, and delivery schedules which facilitate the participation of Indian firms; (ii) A statement indicating that preference will

be given to Indian organizations and Indian-owned economic enterprises in accordance with section 7(b) of Public Law 93-638 (88 Stat. 2205; 25 U.S.C. 450e(b)); (iii) Definitions for the terms "Indian organization" and "Indian-owned economic enterprise" as prescribed under the "Indian Preference" clause of this contract; (iv) A representation to be completed by the bidder or offeror that it is an Indian organization or "Indian-owned economic enterprise"; and (v) A closing date for receipt of bids or proposals which provides sufficient time for preparation and submission of a bid or proposal. If after soliciting bids or proposals from Indian organizations and Indian-owned economic enterprises, no responsive bid or acceptable proposal is received, the Contractor shall comply with the requirements of paragraph (d) of the "Indian Preference" clause of this contract. If one or more responsive bids or acceptable proposals are received, award shall be made to the low responsible bidder or acceptable offeror if the price is determined to be reasonable. If the low responsive bid or acceptable proposal is determined to be unreasonable as to price, the Contractor shall attempt to negotiate a reasonable price and award a subcontract. If a reasonable price cannot be agreed upon, the Contractor shall comply with the requirements of paragraph (d) of the "Indian Preference" clause of this contract. (5) Maintain written records under this contract which indicate: (i) The numbers of Indians seeking employment for each employment position available under this contract; (ii) the number and types of positions filled by Indians and non-Indians, and the total number of Indians employed under this contract; (iii) For those positions where there are both Indian and non-Indian applicants, and a non-Indian is selected for employment, the reason(s) why the Indian applicant was not selected; (iv) Actions taken to give preference to Indian organizations and Indian-owned economic enterprises for subcontracting opportunities which exist under this contract; (v) Reasons why preference was not given to Indian firms as subcontractors or suppliers for each requirement where it was determined by the Contractor that such preference would not be consistent with the efficient performance of the contract; and (vi) The number of Indian organizations and Indian-owned economic enterprises contacted, and the number receiving subcontract awards under this contract.

(6) Submit to the Contracting Officer for approval a quarterly report which summarizes the Contractor's Indian preference program and indicates the number and types of available positions filled by Indians and non-Indians, and the dollar amounts of all subcontracts awarded to Indian organizations and Indian-owned economic enterprises, and to all other firms.

(7) Maintain records pursuant to this clause and keep them available for review by the Government until expiration of one (1) year after final payment under this contract, or for such longer period as may be required by any other clause of this contract or by applicable law or regulation.

(b) For purposes of this clause, the following definitions of terms shall apply:

(1) The terms "Indian," "Indian Tribe," "Indian Organization," and "Indian-owned economic enterprise" are defined in the clause of this contract entitled "Indian Preference."

(2) "Indian reservation" includes Indian reservations, public domain Indian Allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 et seq.)

(3) "On or near an Indian Reservation" means on a reservation or reservations or within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably be expected to commute to and from in the course of a workday.

(c) Nothing in the requirements of this clause shall be interpreted to preclude Indian Tribes from independently developing and enforcing their own Indian preference requirements. Such requirements must not conflict with any Federal statutory or regulatory requirement dealing with the award and administration of contracts.

(d) The Contractor agrees to include the provisions of this clause, including this paragraph (d), in each subcontract awarded at any tier under this contract and to notify the Contracting Officer of such subcontracts.

(e) In the event of noncompliance with this clause, the Contracting Officer may terminate the contract in whole or in part or may impose any other sanctions authorized by law or by other provisions of the contract.

(End of clause)

352.270-4 Pricing of adjustments.

Insert the following clause in all solicitations and resultant fixed-priced contracts other than purchase orders.

PRICING OF ADJUSTMENTS (APR 1984)

When costs are a factor in determination of a contract price adjustment pursuant to the "Changes" clause or any provision of this contract, such costs shall be determined in accordance with the applicable cost principles and procedures set forth below:

Principles	Types of organizations
(a) Subpart 31.2 of the Federal Acquisition Regulation.	Commercial.

Principles	Types of organizations
(b) Subpart 31.3 of the Federal Acquisition Regulation.	Education.
(c) Subpart 31.6 of the Federal Acquisition Regulation.	State or local governments.
(d) 45 CFR Part 74 Appendix E	Hospitals.
(e) Subpart 31.7 of the Federal Acquisition Regulation.	Other nonprofit institutions.

(End of clause)

[49 FR 14031, Apr. 9, 1984, as amended at 50 FR 38005, Sept. 19, 1985]

352.270-5 Key personnel.

Insert the following clause in all solicitations and resultant cost-reimbursement contracts.

KEY PERSONNEL (APR 1984)

The personnel specified in this contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the Contractor without the written consent of the Contracting Officer; *Provided*, that the Contracting Officer may ratify in writing such diversion and such ratification shall constitute the consent of the Contracting Officer required by the clause. The contract may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

(End of clause)

352.270-6 Publication and publicity.

Insert the following clause in all solicitations and resultant contracts.

PUBLICATIONS AND PUBLICITY (JUL 1991)

(a) Unless otherwise specified in this contract, the Contractor is encouraged to publish the results of its work under this contract. A copy of each article submitted by the Contractor for publication shall be promptly sent to the Project Officer. The Contractor shall also inform the Project Officer when the article or other publication is published, and furnish a copy of it as finally published.

(b) The Contractor shall include in any publication resulting from work performed

under this contract a disclaimer reading as follows:

The content of this publication does not necessarily reflect the views or policies of the Department of Health and Human Services, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.

(End of clause)

[56 FR 33882, July 24, 1991, as amended at 56 FR 57602, Nov. 13, 1991]

352.270-7 Paperwork Reduction Act.

Insert the following clause in all solicitations and contracts.

PAPERWORK REDUCTION ACT (APR 1984)

(a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answers to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is outside the scope of their employment, for use by the Federal government or disclosure to third parties, the Paperwork Reduction Act of 1980 (Pub. L. 96-511) shall apply to this contract. No plan, questionnaire, interview guide or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Assistant Secretary for Management and Budget (ASMB) within the Department of Health and Human Services (HHS) and the Office of Management and Budget (OMB). Contractors and Project Officers should be guided by the provisions of 5 CFR part 1320, Controlling Paperwork Burdens on the Public, and seek the advice of the HHS operating division or Office of the Secretary Reports Clearance Officer to determine the procedures for acquiring ASMB and OMB clearance.

(b) The Contractor shall obtain the required ASMB and OMB clearance through the Project Officer before expending any funds or making public contacts for the collection of data. The authority to expend funds and proceed with the collection of information shall be in writing by the Contracting Officer. The Contractor must plan at least 120 days for ASMB and OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the Contractor will be considered in accordance with the Excusable Delays or Default clause of this contract.

Pt. 353

(End of clause)

PART 353—FORMS

Subpart 353.3—Illustrations of Forms

Sec.
353.370-393 Form HHS 393, Purchase/Service/
Stock Requisition.

48 CFR Ch. 3 (10-1-99 Edition)

353.370-674 Form HHS 674, Structured Ap-
proach Profit/Fee Objective.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

**Subpart 353.3—Illustrations of
Forms**