Government shall not be liable for the performance or nonperformance of the new contract. Disputes which cannot be resolved by the parties to the new contract may be litigated in any State or Federal court with jurisdiction over the parties, applying Federal procurement law, including statutes, regulations and case law, and, if pertinent, the Uniform Commercial Code. To the extent authorized by law, parties to this new contract are encouraged to resolve disputes through Alternative Dispute Resolution. Likewise, a Blanket Purchase Agreement (BPA), although not a contract, is an agreement that may be entered into by the Contractor with such an entity and the Federal Government is not a party.

(2) Where contract clauses refer to action by a Contracting Officer or a Contracting Officer of GSA, that shall mean the individual responsible for placing the order for the ordering activity (e.g., FAR 52.212–4 at paragraph (f) and FSS clause I-FSS-249 B.)

(3) As a condition of using this contract, eligible ordering activities agree to abide by all terms and conditions of the Schedule contract, except for those deleted clauses or portions of clauses mentioned in paragraph (a)(1) of this clause. Ordering activities may include terms and conditions required by statute, ordinance, regulation, order, or as otherwise allowed by State and local government entities as a part of a statement of work (SOW) or statement of objective (SOO) to the extent that these terms and conditions do not conflict with the terms and conditions of the Schedule contract. The ordering activity and the Contractor expressly acknowledge that, in entering into an agreement for the ordering activity to purchase goods or services from the Contractor, neither the ordering activity nor the Contractor will look to, primarily or in any secondary capacity, or file any claim against the United States or any of its agencies with respect to any failure of performance by the other party.

(4) The ordering activity is responsible for all payments due the Contractor under the contract formed by acceptance of the ordering activity's order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(5) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(6) The supplies or services purchased will be used for governmental purposes only and will not be resold for personal use. Disposal of property acquired will be in accordance with the established procedures of the ordering activity for the disposal of personal property.

(b) If the Schedule Contractor accepts an order from an entity identified in paragraph (d) of the clause at 552.238–78, Scope of Contract (Eligible Ordering Activities), the Contractor agrees to the following conditions:

(1) The ordering activity is responsible for all payments due the Contractor for the contract formed by acceptance of the order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(2) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall decline the order using the same means as those used to place the order. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(c) In accordance with clause 552.238–74, Industrial Funding Fee and Sales Reporting, the Contractor must report the quarterly dollar value of all sales under this contract. When submitting sales reports, the Contractor must report two dollar values for each Special Item Number:

(1) The dollar value for sales to entities identified in paragraph (a) of the clause at 552.238–78, Scope of Contract (Eligible Ordering Activities), and

(2) The dollar value for sales to entities identified in paragraph (d) of clause 552.238–78.

(End of clause)

[68 FR 24381, May 7, 2003, as amended at 68 FR 41289, July 11, 2003; 69 FR 28066, May 18, 2004]

552.242–70 Status Report of Orders and Shipments.

As prescribed in 542.1107, insert the following clause:

STATUS REPORT OF ORDERS AND SHIPMENTS (APR 1992)

(a) The Contractor shall furnish to the Administrative Contracting Officer (ACO) a report covering orders received and shipments made during each calendar month of contract performance. The information required by the Government shall be reported on GSA Form 1678, Status Report of Orders and Shipments, in accordance with instructions on the form. The information required by the GSA Form 1678 may also be submitted in an automated printout form if authorized by the ACO. Alternatively, the required information may be reported by electronic data

interchange using ANSI standards. For further information, contact GSA, Contract Administration Division [*Insert appropriate telephone number of FQC*] Reports shall be forwarded to the ACO no later than the seventh workday of the succeeding month.

(b) An initial supply of GSA Form 1678 will be forwarded to the Contractor with the contract. Additional copies of the form, if needed, may be obtained from the ACO, or reproduced by the Contractor.

(End of clause)

552.243–70 Pricing of Adjustments.

As prescribed in 543.205(a)(1), insert the following clause:

PRICING OF ADJUSTMENTS (APR 1989)

When costs are a factor in any determination of a contract price adjustment, such costs shall be in accordance with the contract cost principles and procedures in Part 31 of the Federal Acquisition Regulation (48 CFR Part 31) in effect on the date of this contract.

(End of clause)

552.243–71 Equitable Adjustments.

As prescribed in 543.205(a)(2), insert the following clause:

EQUITABLE ADJUSTMENTS (APR 1984)

(a) The provisions of the ''Changes'' clause prescribed by FAR 52.243–4 are supplemented as follows:

(1) Upon written request, the Contractor shall submit a proposal, in accordance with the requirements and limitations set forth in the ''Equitable Adjustments'' clause, for work involving contemplated changes covered by the request. The proposal shall be submitted within the time limit indicated in the request or any extension of such time limit as may be subsequently granted. The Contractor's written statement of the monetary extent of a claim for equitable adjustment shall be submitted in the following form:

(i) Proposals totaling $5,000 or less shall be submitted in the form of a lump sum proposal with supporting information to clearly relate elements of cost with specific items of work involved to the satisfaction of the Contracting Officer, or his/her authorized representative.

(ii) For proposals in excess of $5,000, the claim for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following detail:

Direct Costs

Material quantities by trades and unit costs
(Manufacturing burden associated with material fabrication performed will be considered to be part of the material costs of the fabricated item delivered to the job site)
Labor breakdown by trades and unit costs
(Identified with specific item of material to be placed or operation to be performed)
Construction equipment exclusively necessary for the change
Costs of preparation and/or revision to shop drawings resulting from the change
Workers' Compensation and Public Liability Insurance
Employment taxes under FICA and FUTA
Bond Costs—when size of change warrants revision

Overhead, Profit and Commission

(2) The allowable overhead shall be determined in accordance with the contract cost principles and procedures in Part 31 of the Federal Acquisition Regulation (48 CFR part 31) in effect on the date of this contract. The percentages for profit and commission shall be negotiated and may vary according to the nature, extent and complexity of the work involved, but in no case shall exceed the following unless the Contractor demonstrates entitlement to a higher percentage:

	Overhead	Profit (percent)	Commission (percent)
To Contractor on work performed by other than his own forces	.....	.....	10
To first tier subcontractor on work performed by his subcontractors	.....	.....	10
To Contractor and/or the subcontractors for that portion of the work performed with their respective forces.	To be Negotiated	10	.....

Not more than four percentages will be allowed regardless of the number of tier subcontractors. The Contractor shall not be allowed a commission on the commission received by a first tier subcontractor. Equitable adjustments for deleted work shall include credits for overhead, profit and commission. On proposals covering both increases and decreases in the amount of the contract, the application of overhead and profit shall be on the net change in direct