Norm Latker

DOD EFFORTS TO CURB WASTE, FRAUD AND ABUSE

CONTRACT AUDITS:

- Estimated savings $9.0 billion

INTERNAL AUDIT OF DOD ACTIVITIES:

- DOD, IG estimated savings (since FY 1982, 700 reports) $4.8 billion

INVESTIGATIVE ACTIVITIES:

- Recoveries, restitutions, fines, and penalties $100 million

EXCERPTS FROM PROPOSED DFARS PROVISIONS ON RIGHTS IN TECHNICAL DATA

227.471 Definitions.

"Commercial computer software", as used in this subpart, means computer software which is used regularly for other than Government purposes and is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices.

"Computer", as used in this subpart, means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the data.

"Computer data base", as used in this subpart, means a collection of data in a form capable of being processed and operated on by a computer.

"Computer program", as used in this subpart, means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs

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such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or be designed to satisfy the requirements of a particular user.

"Computer software", as used in this subpart, means computer programs and computer data bases.

"Computer software documentation", as used in this subpart, means technical data, including computer listings, and printouts, in human-readable form which (a) documents the design or details of computer software, (b) explains the capabilities of the software, or (c) provides operating instructions for using the software to obtain desired results from a computer.

"Data", as used in this subpart, means recorded information, regardless of form or characteristic.

"Detailed manufacturing or process data", as used in this subpart, means technical data necessary to enable manufacture of end-items, components and modifications, or to enable the performance of processes.

"Developed," as used in this subpart, means that the item, component or process exists and works as intended. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component or process has been analyzed and/or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of testing is required in addition to analysis depends on the nature of the item, component, or process and the state of the art. To be considered "developed" the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market.

"Form, fit, or function data", as used in this subpart, means technical data pertaining to items, components, or processes for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements (e.g., specification control drawings, catalog sheets, envelope drawings, qualification requirements, etc.).

"Government purpose license rights", as used in this subpart, means rights to use, duplicate, or disclose technical data (or in the SBIR Program only computer software), in whole or in part and in any manner, for Government purposes only and to have or permit others to do so for Government purposes only. Government license rights includes purposes of competitive procurement but do not grant to the Government the right to have or permit others to use technical data (or the SBIR Program only computer software) for commercial purposes.

"Limited rights", as used in this subpart, means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data be: released or disclosed in whole or in part outside the Government; used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software; or used by a party other other than the Government, except when:

(a) [illegible] Release, disclosure or use is necessary for emergency repair or overhaul; provided that such release, disclosure, or use thereof outside the Government shall be made subject to a prohibition against further use, release, or disclosure and that the party furnishing the data be notified by the contracting officer of such release, disclosure or use;

(b) [illegible] Release or disclosure of to a foreign government, that is in the interest of the United States and is required for evaluational or informational purpose under the conditions of (i) above, except that such release or disclosure may not include detailed manufacturing or process data, or

(c) (3) Any other purposes specifically stated in the contract or separate license agreement.

"Private Expense", as used in this subpart, means that the cost of development has not been paid in whole or in part by the Government and that such development was not sponsored by or required as an element of performance under a Government contract or subcontract; provided, however, independent research and development and bid and proposal costs are deemed to be at private expense.

"Restricted rights", as used in this subpart, means rights that apply only to computer software, and include, as a minimum, the right to--

(a) Use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(b) Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(c) Copy computer programs for safekeeping (archives) or backup purposes; and (d) modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights. In addition, restricted rights include any other specific rights not inconsistent with the minimum rights in (1)-(4) above that are listed or described in a contract or described in a license or agreement made a part of a contract.

"Technical data", as used in this subpart, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). Such term does not include computer software or data incidental to contract administration, such as financial and/or management information.

"Unlimited rights", as used in this subpart, means rights to use, duplicate, release, or disclose, technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or to permit others to do so.

"Unpublished", as used in this subpart, means that technical data or computer software which has not been released to the public nor been furnished to others without restriction on further use or disclosure. For the purpose of this definition, delivery of limited rights technical data to or for the Government under a contract does not, in itself, constitute release to the public.

227.472-5 Standard Rights In Technical Data. The data rights to which the Government is entitled are determined as follows:

(a) If the Government has funded or will fund the entire development of the item, component, or process, then the Government is entitled to and will normally obtain unlimited rights in the technical data.

(b) If the Government has funded or will fund a part of the development of the item, component, or process, then the Government is entitled to unlimited rights in the technical data. However, the Government should not acquire more data rights than it needs. Therefore, unless the contracting officer determines, during the identification of needs process, that unlimited rights are required, the Government will obtain Government Purpose License Rights if the contractor has or will contribute more than fifty percent of the development cost of the item, component or process or if the contractor is a small business firm or nonprofit organization that agrees to commercialize the technology. The Government will normally obtain unlimited rights in all other cases.

(c) If the item, component, or process is developed by a

contractor or subcontractor exclusively at private expense, the Government is entitled to limited rights. Such data must be unpublished and identified as limited rights data. However, if the Government determines that it needs rights in technical data greater than limited rights, the contracting officer may negotiate, pursuant to 227.472-6, with a contractor or subcontractor to acquire additional rights necessary to meet the Government's needs, provided that the additional rights are necessary to enhance competition by developing alternative sources of supply and manufacture. As an alternative, the contracting officer may consider alternate proposals from the contractor or subcontractor to enhance competition.

(d) Notwithstanding (a), (b) and (c) above, the Government is entitled to unlimited rights in the technical data in the following categories:

(1) Technical data prepared or required to be delivered under any Government contract or subcontract and constituting corrections or changes to Government-furnished data;

(2) Form, fit or function data pertaining to end-items, components or processes, prepared or required to be delivered under any Government contract or subcontract;

(3) Manuals or instructional materials (other than detailed manufacturing or process data) prepared or required to be delivered under a Government contract or subcontract necessary for installation, operation, maintenance or training purposes; and

(4) Technical data which is otherwise publicly available or has been released or disclosed by the contractor or subcontractor without restriction on further release or disclosure.

227.472-6 Obtaining Greater Rights In Technical Data. If the Government determines that it needs rights in technical data greater than limited rights, the contracting officer may negotiate with a contractor or subcontractor to acquire additional rights necessary to meet the Government's needs, provided that the additional rights are necessary to develop alternative sources of supply and manufacture (See 227.473-2). As an alternative to acquiring additional rights, the contracting officer may consider other proposals from the contractor or subcontractor as to how to achieve the same objectives.

227.472-7 Waiving Unlimited Rights in Technical Data. In those cases under 227.472-5 where the Government would normally obtain unlimited rights, the Government may agree to waive these unlimited rights, provided that, in accordance with 10 U.S.C. 2320(a)(2)(G)(ii), the United States receives, as a minimum, a royalty-free license to use, release, or disclose the data for purposes of the United States ,including purposes of competitive procurement (i.e. Government Purpose License Rights). However, such lesser rights may only be obtained under this paragraph after a determination by the contracting officer that the Government does not need unlimited rights and that the contractor agrees to commercialize the technology.

227.472-8 Subcontracts. It is the policy of the Department of Defense that prime contractors and higher-tier subcontractors shall not use their power to award subcontracts as economic leverage to acquire rights in the technical data of their subcontractors for themselves. Accordingly, a subcontractor, who would have the right pursuant to 227.472-5 to furnish technical data with limited rights, may furnish such limited rights data

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directly to the Government rather than through the prime contractor.

227.473 General Procedures.

227.473-1 Early Identification of Government Rights.

(a) (i) Prenotification of Government Rights.

In order for the Government to make informed judgments concerning the competitive reprocurement potential of items, components, processes or computer software developed at private expense that an offeror intends to delivery under a resultant contract, offerors shall identify to the maximum practicable extent in their responses to solicitations such privately developed items, components, processes, or computer software and the technical data which they:

(1) (i) intend to deliver with limited rights;

(2) (ii) intend to deliver with Government purpose or unlimited rights; or

(3) (iii) have not yet determined which rights should apply.

If delivery of technical data under a resultant contract is expected, the provision at 252.227-7035, Prenotification of Rights in Technical Data, shall be included in the solicitation. If an offeror asserts limited rights to any technical data in its proposal responding to this requirement, Government failure to object to or reject any such assertion shall not be construed to constitute agreement to any such data rights assertion. Offerors will furnish, at the written request of the contracting officer, evidence supporting any such rights contention when the criteria governing rights in technical data, as set forth in the clause at 252.227-7013, are applied.

(b) (ii) Notification of Government Rights.

Because continuing information is needed under a contract about a contractor's intention to use in the performance of the contract any items, components, processes or computer software for which technical data would be subject to limited rights or computer software would be subject to restricted rights, the contractor will be required to advise the contracting officer of this fact promptly prior to committing to the use of the privately developed item, component or process. If possible, the schedule should indicate the specific areas to which limited or restricted rights are of concern and the notice requirements should only address those areas.

(1) (i) Under the clause at 252.227-7013, the contractor is not required to advise the contracting officer as to items, components, processes or computer software for which notice was previously given in the same contract pursuant to the prenotification procedure, or with respect to standard commercial items that are manufactured by more than one source of supply. Also, the contractor need not obtain contracting officer approval to use any item, component, process or computer software in the performance of the contract. If Government control on the contractor's use of privately developed items, components, processes or computer software is desired, special provisions must be included in the contract.

(2) (ii) Subsequent to contractor notification, if the contracting officer agrees that certain technical data would be subject to limited rights, the contracting officer may then determine whether to negotiate for a licensing arrangement, the purchase of additional rights, or to adopt another suitable alternative. Such alternatives may include modifying the specifications so as not to require or permit use of the privately developed items, components, processes or computer software.

227.473-2 Obtaining Greater Rights in "Private Expense" Data.

(a) (i) In accordance with DFARS 227.472-6, the Government may obtain greater rights or options for such rights in any technical data pertaining to items, components, or processes developed exclusively at private

expense for which the Government would otherwise only be entitled to limited rights. These greater rights may be obtained by negotiation of a lump sum fee, royalty, or other consideration and where appropriate, should also include access to such technical assistance as may be necessary to qualify additional sources. These negotiations may be conducted either by the Government, or upon Government request by the prime contractor or higher-tier subcontractor. Such greater rights shall be stated in the contract schedule as a separate item with a specific price and shall not be obtained under this paragraph unless it is determined after a finding upon a documented record that—

(1) ~~(i)~~ there is a need or requirement for disclosure of "Private Expense" technical data outside the Government for purposes such as for reprocurement or evaluation of the item, component, or process to which the technical data pertains; and

(2) ~~(ii)~~ If the specific rights obtained are for reprocurement, then the anticipated net savings in competitive reprocurements from additional sources will likely exceed the acquisition cost of the technical data and rights therein.

(b) ~~(2)~~ In contracts for major systems or major subsystems, it may be in the best interest of the Government to acquire repair parts or components directly from a subcontractor, rather than obtaining greater rights in technical data. In such cases, the clause at 252.227-7017, Rights in Technical Data—Major System and Subsystem Contractor, may be used. Also, the Government's right to purchase such items directly from subcontractors shall be without the payment of any fee or royalty by the Government or subcontractor for the use of the prime contractor's technical data.

227.473-3 Certifications. Reserved.

227.473-4 Marking and Identification Requirements.

(a) ~~(1)~~ Technical data delivered to the Government pursuant to any contract requirement shall be marked with the number of the prime contract, and the name of the contractor and any subcontractor who generated the technical data. Each piece of technical data submitted with limited rights shall also be marked with—

(1) ~~(i)~~ the authorized restrictive legend; and

(2) ~~(ii)~~ an indication (for example, by circling, underscoring, or a note) of that portion of the piece of technical data to which the legend is applicable. The Government shall include such identifying markings on all reproductions thereof.

(b) ~~(2)~~ The contractor has the responsibility to assure that no restrictive markings are placed on technical data except in accordance with the "Rights in Technical Data and Computer Software" clause at 252.227-7013. Copyright notices as specified in Title 17 United States Code, Sections 401 and 402, are not considered "restrictive markings". When the clause at 252.227-7013, "Rights in Technical Data and Computer Software", is required, the clause at 252.227-7018, "Restrictive Markings on Technical Data", shall also be included in the contract. The contractor's procedures required by this clause shall be reviewed by the Contract Administration Office. In addition to the rights afforded to the Government by the clause at 252.227-7018, "Restrictive Markings on Technical Data", the following actions are available to insure proper marking of technical data:

(1) ~~(i)~~ Failure to establish, maintain and follow such marking procedures may be deemed to render technical data nonconforming and subject to FAR Section 46.102 and to withholding of payments under the "Technical Data—Withholding of Payments" clause.

(2) ~~(ii)~~ When a pre-award survey is requested by the purchasing office, the quality assurance review shall include as an item of special inquiry an examination of the prospective contractor's procedures for

complying with the "Restrictive Markings on Technical Data" clause.

(3) ~~(iii)~~ The contractor's procedures for complying with the "Restrictive Markings on Technical Data" clause shall be reviewed when holding post-award conferences pursuant to FAR Subpart 42.

(c) ~~(3)~~ Unmarked or Improperly Marked Technical Data.

Pursuant to the Validation Procedures of 227.473-5 and the clause at 252.227-7037, Validation of Restrictive Markings on Technical Data, the Government has the right to require the contractor or subcontractor to furnish sufficient evidence to justify the propriety of any restrictive markings used by the contractor on technical data delivered to the Government under a contract or subcontract.

Technical data received without a restrictive legend shall be deemed to have been furnished with unlimited rights. However, within six months after delivery of such data the contractor may request permission to place restrictive markings on such data at his own expense and the Government may so permit if the contractor—

(1) ~~(i)~~ demonstrates that the omission of the restrictive marking was inadvertent,

(2) ~~(ii)~~ justifies that the use of the markings is authorized, and

(3) ~~(iii)~~ relieves the Government of any liability with respect to the use of disclosure of such technical data.

(d) ~~(4)~~ If technical data is received with restrictive markings which the Government believes are improper, the Government will nevertheless honor the restrictive legend until the issue is resolved in accordance with the Validation procedures.

(e) ~~(5)~~ If technical data which the contractor is authorized by the contract to furnish with restrictive markings is received with improper markings, the technical data shall be used according to the proper restriction and the contractor shall be required by written notice to correct the markings to conform with those specified in the contract. If the contractor fails to correct the markings within 60 days after notice, Government personnel may correct the markings at the contractor's expense, notify the contractor in writing, and will thereafter use the technical data accordingly.

227.473-5 Validation of Restrictive Markings on Technical Data.

(a) Policy and Procedures.

(1) General. 10 U.S.C. 2321 sets forth rights and procedures pertaining to the validation of restrictive markings asserted by contractors and subcontractors on the use, duplication, or disclosure by the Government and others of technical data delivered under contracts or subcontracts for supplies or services. 10 U.S.C. 2320 provides authority for the Department of Defense to establish remedies when data delivered or made available under a contract is found to not satisfy the requirements of the contract (e.g., contains improper or unauthorized restrictive legends). The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the contractor or subcontractor. Such review should be accomplished, if possible, before acceptance of the technical data. During the period within three years of final payment on a contract or within three years of delivery of the technical data, whichever is later, the contracting officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data (i) is publicly available; (ii) has been furnished to the United States without restriction; or, (iii) has been otherwise made available without restriction. Whenever the contracting officer

finds it appropriate to question the validity of restrictive markings on data provided by contractors or subcontractors, the contracting officer shall follow the procedures set forth below. Only the contracting officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes "validation" as addressed in 10 U.S.C. 2321. A decision by the Government, or a determination by the contracting officer, to not challenge the restrictive marking or asserted restriction shall not constitute "validation".

(2) Prechallenge Request for Information.

(i) Prior to making a written determination to challenge, and to assure that the formal challenge process is not unduly or prematurely invoked, the contracting officer should request the contractor or subcontractor to furnish information explaining the basis for any restriction asserted by the contractor or subcontractor on the right of the United States or others to use technical data developed, delivered, or to be delivered, under a contract. In this regard, if the information provided is incomplete, the contracting officer may request the contractor or subcontractor to furnish additional information in the records of, or otherwise in the possession of or available to, the contractor or subcontractor to justify the validity of the restrictive marking (e.g., a statement of facts accompanied by supporting documentation). Such requests from the contracting officer should be in writing and should state a reasonable time for submission of the required data.

(ii) The contracting officer should also request information and advice from the cognizant Government activity having interest in, or control of, the data regarding the validity of the markings. If the contracting officer receives advice that the validity of restrictive markings on technical data is questionable, the contracting officer shall request that the individual or office raising the question provide written rationale for the assertion.

(iii) If the contracting officer, after reviewing the information provided pursuant to (a)(2)(i) and (ii) above, and any other available information, determines that reasonable grounds exist to question the current validity of a restrictive marking, and that continued adherence to the marking would make impracticable subsequent competitive acquisition of the item, component, or process to which the technical data relates, the contracting officer shall proceed in accordance with paragraph (a)(3) of this section. If, when requesting information under (a)(2)(i) above, the contractor or subcontractor fails to respond to the contracting officer's written request within a reasonable period, the contracting officer shall proceed in accordance with paragraph (3) of this section.

(3) Challenge.

(i) If the contracting officer determines that a challenge to the restrictive marking is warranted, the contracting officer shall promptly send a written challenge notice to the contractor or subcontractor. The contracting officer's determination to challenge shall be in writing and shall be made within the three year period cited in paragraph (a)(1) above. The challenge to the restrictive legend shall be issued by the contracting officer in a written notice to the contractor that shall:

(A) state the specific grounds for challenging the asserted restrictions;

(B) require a response within 60 days justifying and providing appropriate evidence as to the current validity of the asserted restriction;

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(C) state that a DoD contracting officer's final decision, issued pursuant to paragraph (f) of the clause at 252.227-7037, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same contractor or subcontractor (or any licensee of such contractor or subcontractor) to which such notice is being provided;

(D) state that a response will be considered a claim within the meaning of the Contract Disputes Act of 1978 and must be certified in the form prescribed in FAR 33.207, regardless of dollar amount; and

(E) state that failure to respond to the challenge notice will constitute agreement by the contractor or subcontractor with Government action to strike or ignore the restrictive legends.

(ii) The contracting officer shall extend the time for response as appropriate if the contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(iii) Any written response from the contractor or subcontractor shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.), and must be certified in the form prescribed by FAR 33.207, regardless of dollar amount.

(iv) If a contractor or subcontractor has received challenges to the same restrictive markings from more than one contracting officer, the contractor or subcontractor is to notify each contracting officer of the existence of more than one challenge. This notice shall also indicate which unanswered challenge was received first in time by the contractor or subcontractor. The contracting officer who initiated the first in time unanswered challenge is the contracting officer who will take the lead in establishing a schedule for the resolution of the challenge to the restrictive markings. This contracting officer shall coordinate with all the other contracting officers, formulate a schedule for responding to each of the challenge notices, and distribute such schedule to all interested parties. The schedule shall provide to the contractor or subcontractor a reasonable opportunity to respond to each challenge notice. All parties must agree to be bound by this schedule.

(4) Final Decision.

(i) Final Decision When Contractor Fails to Respond. If the Contractor or subcontractor fails to respond to the challenge notice, the contracting officer will then issue a final decision that the restrictive markings are not valid and that the Government will either strike or ignore the invalid restrictive markings. The final decision shall be issued as a final decision under the Disputes clause at FAR 52.233-1. This final decision is to be issued as soon as possible but not later than 60 days after the expiration of the time period of (a)(3)(i) or (ii) above. Following the issuance of the final decision, the contracting officer may then strike or ignore the invalid restrictive markings in accordance with FAR 52.227-7037.

(ii) Final Decision When Contractor or Subcontractor Responds.

(A) If, after reviewing the response from the contractor or subcontractor, the contracting officer determines that the contractor or subcontractor has justified the validity of the

restrictive marking, the contracting officer shall issue a final decision to the contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive markings. The final decision shall be issued within 60 days after receipt of the contractor's or subcontractor's response to the challenge notice, or within such longer period that the contracting officer has notified the contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within 60 days after receipt of the response to the challenge notice.

(B)(1) If, after reviewing the response from the contractor or subcontractor, the contracting officer determines that the validity of the restrictive marking is not justified, the contracting officer shall issue a final decision to the contractor or subcontractor in accordance with the Disputes clause at FAR 52.233-1. Notwithstanding paragraph (e) of the Disputes clause, the final decision shall be issued within 60 days after receipt of the contractor's or subcontractor's response to the challenge notice, or within such longer period that the contracting officer has notified the contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within 60 days after receipt of the response to the challenge notice. Such a final decision shall advise the contractor or subcontractor of the rights of appeal under the Contract Disputes Act.

(2) The Government will continue to be bound by the restrictive marking for a period of 90 days from the issuance of the contracting officer's final decision under (4)(ii)(B)(1) of this section. The contractor or subcontractor, if it intends to file suit in the United States Claims Court, must provide a notice of intent to file suit to the contracting officer within 90 days from the issuance of the contracting officer's final decision under (4)(ii)(B)(1) of this section. If the contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the contracting officer within the 90-day period, the Government may cancel or ignore the restrictive markings, and the failure of the contractor or subcontractor to take the required action constitutes agreement with such Government action.

(3) The Government will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the contracting officer within 90 days from the issuance of the final decision under (4)(ii)(B)(1) of this section. The Government will no longer be bound and may strike or ignore the restrictive markings if the contractor or subcontractor fails to file its suit within one year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances significantly affecting the interest of the United States will not permit waiting for the filing of a suit in the United States Court, the agency may, following notice to the contractor or subcontractor, cancel and ignore such restrictive markings as an interim measure pending filing of the suit or expiration of the one-year period without filing of the suit. However, such agency head determination does not affect the contractor's or subcontractor's right to damages against the United States where

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its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(4) The Government will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes Act until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances significantly affecting the interest of the United States will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the agency may, following notice to the contractor or subcontractor, cancel and ignore such restrictive markings as an interim measure pending final adjudication. However, such agency head determination does not affect the contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(5) Appeal or Suit.

(i) If the contractor or subcontractor appeals or files suit and if upon final disposition the contracting officer's decision is sustained, the restrictive markings on the technical data shall be cancelled, corrected, or ignored. If upon final disposition it is found that the restrictive marking was not substantially justified, the contracting officer shall determine the cost to the Government of reviewing the restrictive marking and the fees and other expenses incurred by the Government in challenging the marking. The contractor is then liable to the Government for payment of these costs unless the contracting officer determines that special circumstances would make such payment unjust.

(ii) If the contractor or subcontractor appeals or files suit and if upon final disposition the contracting officer's decision is not sustained, the Government shall continue to be bound by the restrictive markings. Additionally, if the challenge by the Government is found not to have been made in good faith, the Government shall be liable to the contractor or subcontractor for payment of fees or other expenses incurred by the contractor or subcontractor in defending the validity of the marking.

(6) Privity of Contract.

These procedures for reviewing the validity of restrictive markings on technical data do not create or imply a privity of contract between the Government and subcontractors.

227.474 Alternative Methods of Obtaining Greater Rights.

227.474-1 Reserved.

227.474-2 Reserved.

227.474-3 Direct Licenses.

Direct licensing is another approach to enhance competition in privately developed items, components, or processes. In this approach an acquisition strategy is used that calls for a contractor to transfer data and technology directly to another source. While this approach has the advantage of allowing the contractor to maintain direct control over the use of its limited rights data, it may not be useful when the Government needs to maintain direct control over the data to support the competitive procurement. Such direct licensing arrangements are most useful in special situations such as in leader company contracting in accordance with FAR Part 17.4. For this reason, direct licenses are generally not appropriate for the acquisition of items, components, or processes having an estimated total acquisition cost of less than $50 million of RDT&E funds or $200 million of production funds.

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227.471-4 Expiration of Restrictive Rights Legends.

(1) As an alternative to obtaining greater rights in limited rights technical data, the Government may negotiate a time limitation on such data. Time limits shall be negotiated on a case-by-case basis and shall balance the contractor's economic interest in the data with the Government's need for competition and an enhanced defense industrial base. The negotiation objective will not exceed seven years. At the expiration point, the Government will normally obtain Government purpose license rights.

(2) If a decision is made to establish a time period for the expiration of limited rights legends, the clause at 252.227-7013, Rights in Technical Data and Computer Software, with its Alternate I, shall be included in solicitations and any resultant contract. The time period, the expiration data of the legends and the rights to be obtained by the Government shall be specified in the contract. Each piece of data furnished under the contract with limited rights shall be marked with the special legend and expiration date set forth in Alternate I to the basic clause at 252.227-7013, Rights in Technical Data and Computer Software.

(3) If it is determined that only a portion of the limited rights data delivered under a contract will be acquired with a time period for the expiration of the special legends, the contract shall specifically identify that portion of the data, and Alternate I to the basic clause 252.227-7013, Rights in Technical Data and Computer Software, may be appropriately modified to limit its application only to that portion.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. (Moved from pages 7 and 8)

5. Part 252 is amended by revising sections 252.227-7013, 252.227-7018 and 252.227-7025, and by adding sections 252.227-7035 and 252.227-7037 to read as follows:

252.227-7013 Rights in Technical Data and Computer Software. As prescribed at 227.482(a)(1), insert the following clause:

RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE (MAY 1987)

(a) Definitions.

The terms used in this clause are defined in 227.471 of the Department of Defense Supplement to the Federal Acquisition Regulation (DFARS).

(b) Rights in Technical Data.

(1) Limited rights. The Government shall have limited rights in:

(i) technical data, listed or described in an agreement incorporated into the Schedule of this contract, which the parties have agreed will be furnished with limited rights in accordance with 227.472-6; and

(ii) unpublished technical data pertaining to items, components, or processes developed exclusively at private expense, and unpublished computer software documentation related to computer software that is acquired with restricted rights, other than such data included in (b)(3)(i), (iii), or (iv), below. Limited rights shall be effective provided that only the portion or portions of each piece of data to which limited rights are to be asserted are identified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below:

(A.) the number of the prime contract under which the technical data is to be delivered;

(B.) the name of the contractor and any subcontractor by whom the technical data was generated;

LIMITED RIGHTS LEGEND

Contract No. _____.

Contractor: _____.

_____ _____ _____ _____

_____ _____ _____ _____

The restrictions governing the use of technical data marked with this legend are set forth in the definition of "Limited Rights" in DFARS 227.471 and other limitations as specifically agreed to in writing in accordance with DFARS 227.473-2. A copy of the agreed to limitations shall be affixed to all data subject to such limitations. This legend, together with the indications of the portions of this data which are subject to such limitations, shall be included on any reproduction hereof which includes any part of the portions subject to such limitations. The limited rights legend shall be honored only as long as the data continues to meet the definition of limited rights.

(2) Government Purpose License Rights. The Government shall have Government purpose license rights in:

(i) unpublished technical data pertaining to items, components, or processes for which the Government has funded, or will fund, a part of the development cost, unless the contracting officer has determined that the Government requires unlimited rights, and:

(A) the contractor has or will contribute more than 50 percent of the development cost of the item, component, or process; or

(B) the contractor is a small business firm or nonprofit organization that agrees to commercialize the technology; and

(ii) unpublished technical data listed or described in an agreement incorporated into the Schedule of the contract, which the parties have agreed will be furnished with Government purpose license rights in accordance with DFARS 227.472-6 or 227.472-7.

Government purpose license rights shall be effective provided that only the portion or portions of each piece of data to which such rights are to be asserted are identified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below:

(A) the number of the prime contract under which the technical data is to be delivered,

(B) the name of the contractor and any subcontractor by whom the technical data was generated, and

GOVERNMENT PURPOSE LICENSE RIGHTS LEGEND

Contract No. _____.

Contractor: _____.

_____ _____ _____ _____

_____ _____ _____ _____

The restrictions governing the use of technical data marked with this legend are set forth in the definition of "Government Purpose License Rights" in DFARS 227.471. This legend, together with the indications of the portions of this data which are subject to such limitations, shall be included on any reproduction hereof which includes any part of the portions subject to such limitations and shall be honored only as long as the data continues to meet the definition of Government purpose license rights.

(3) Unlimited rights. Unless other rights have been agreed to in writing in accordance with DFARS 227.472-7, the Government shall have unlimited rights in:

(i) technical data prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software;

(ii) form, fit, or function data pertaining to items, components, or processes prepared or required to be delivered under this or any other Government contract or subcontract;

(iii) manuals or instructional materials (other than detailed manufacturing or process data) prepared or required to be delivered

under this contract or any subcontract hereunder necessary for installation, operation, maintenance, or training purposes.

(iv) technical data, which is otherwise publicly available, or has been, or is normally released or disclosed by the contractor or subcontractor, without restriction on further release or disclosure;

(v) technical data in which the Government has funded, or will fund, the entire development of the item, component, or process.

(vi) technical data in which the Government has funded, or will fund, a part of the development cost of the item, component, or process, and the contractor has not or will not contribute more than 50 percent of the development cost;

(vii) technical data in which the Government has funded, or will fund, a part of the development cost of the item, component, or process, and the contractor is a small business firm or nonprofit organization that does not agree to commercialize the technology; and

(viii) technical data in which the Government has funded, or will fund, a part of the development cost of the item, component, or process, and, notwithstanding (b)(3)(vi) and (vii) above, the contracting officer has determined, in accordance with DFARS 227.472-5(ii), that the Government requires unlimited rights.

(c) Rights in Computer Software.

(1) Restricted Rights.

(i) The Government shall have restricted rights in computer software, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, Provided, however, notwithstanding any contrary provision in any such license or agreement, the Government shall have the rights included in the definition of "restricted rights" in paragraph (a) above. Such restricted rights are of no effect unless the computer software is marked by the contractor with the following legend.

RESTRICTED RIGHTS LEGEND

Use, duplication, or disclosure is subject to restrictions stated in Contract No. _____ with _____ (Name of Contractor)_____

and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The contractor may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth in a license or agreement made a part of this contract prior to the delivery date of the software. Failure of the contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.

(ii) Notwithstanding subdivision (i) above, commercial computer software and related documentation developed at private expense and not in the public domain may, if the contractor so elects, be marked with the following legend:

RESTRICTED RIGHTS LEGEND

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subdivision (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at 52.227-7013.

(Name of contractor and address)

When acquired by the Government, commercial computer software and related documentation so legended shall be subject to the following:

(A) Title to, and ownership of, the software and documentation shall remain with the contracter.

(B) User of the software and documentation shall be limited to the facility for which it is acquired.

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(C) The Government shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the contractor. Third parties do not include prime contractors, subcontractors and agents of the Government who have the Government's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the Government to use software, documentation, or information therein, which the Government may already have or obtain without restrictions.

(D) The Government shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; and to modify the software and documentation or combine it with other software, Provided, that the unmodified portions shall remain subject to these restrictions.

(2) Unlimited Rights in Computer Software. The Government shall have unlimited rights in:

(i) computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any Government contract or subcontract;

(ii) computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(iii) computer data bases, prepared under a Government contract, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain;

(iv) computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished computer software; and

(v) computer software, which is otherwise publicly available, or has been, or is normally released, or disclosed by the contractor or subcontractor without restriction on further release or disclosure.

(d) Technical Data and Computer Software Previously Provided Without Restriction. Contractor shall assert no restrictions on the Government's rights to use or disclose any data or computer software which the contractor has previously delivered to the Government without restriction. The limited or restricted rights provided for by this clause shall not impair the right of the Government to use similar or identical data or computer software acquired from other sources.

(e) Copyright.

(1) In addition to the rights granted under the provisions of paragraphs (b) and (c) above, the contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world, of the scope set forth below, under any copyright owned by the contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies or phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes. With respect to technical data and computer software in which the Government has unlimited rights, the license shall be of the same scope as the rights set forth in the definition of "unlimited rights" in DFARS 227.471. With respect to technical data in which the Government has limited rights, the scope of the license is limited to the rights set forth in the definition of

"limited rights". With respect to computer software which the parties have agreed will be furnished with restricted rights, the scope of the license is limited to such rights.

(2) Unless written approval of the Contracting Officer is obtained, the contractor shall not include in technical data or computer software prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified herein.

(3) As between the contractor and the Government, the contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authority under Section 201(b) of Title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also include the following statement which shall be placed thereon by the contractor, or should the contractor fail, by the Government:

> This material may be reproduced by or for the U.S. Government pursuant to the copyright license under the clause at 252.227-7013 (date).

(f) Removal of Unauthorized Markings.

(1) Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may, at the contractor's expense, correct, cancel, or ignore any marking not authorized by the terms of this contract on any technical data furnished hereunder in accordance with the clause of this contract entitled "Validation of Restrictive Markings on Technical Data", DFARS 252.227-7037.

(2) Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any computer software furnished hereunder, if:

(i) the contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the markings; or

(ii) the contractor's response fails to substantiate, within sixty (60) days after written notice, the propriety of restricted rights markings by identification of the restrictions set forth in the contract.

In either case, the Government shall give written notice to the contractor of the action taken.

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

(h) Limitation on Charges for Data and Computer Software. The contractor recognizes that it is the policy of the Government not to pay, or to allow to be paid, any charges for data or computer software which the Government has a right to use and disclose to others without restriction and contractor agrees to refund any such payments. This policy applies to contracts that involve payments by subcontractors and those entered into through the Military Assistance Program, in addition to US Government prime contracts. However, it does not apply to reasonable reproduction, handling, mailing, and similar administrative costs.

(i) Acquisition of Data and Computer Software from Subcontractors.

(1) Whenever any technical data or computer software is to be obtained from a subcontractor under this contract, the contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or

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the contractor's rights in the subcontractor data or computer software which is required for the Government.

(2) technical data required to be delivered by a subcontractor shall normally be delivered to the next higher-tier contractor. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor, then said subcontractor may fulfill its requirement by submitting such data directly to the Government, rather than through the prime contractor.

(3) The contractor and higher-tier subcontractors will not use their power to award subcontract as economic leverage to obtain rights in technical data or computer software from their subcontractors.

(j) Notice of Government Rights.

(1) Unless the Schedule provides otherwise, and subject to (2) below, the contractor will promptly notify the Contracting Officer in writing of the intended use by the contractor or a subcontractor in performance of this contract of any item, component, or process for which technical data would contain any restrictions on the Government's right to use, disclose, or have others use such data.

(2) Such notification is not required with respect to:

(i) standard commercial items which are manufactured by more than one source of supply; or

(ii) items, components, or processes for which such notice was given pursuant to prenotification of rights in technical data in connection with this contract.

(3) Unless the schedule provides otherwise, Contracting Officer approval is not necessary under this clause for the contractor to use the item, component, or process in the performance of the contract.

(End of Clause)

ALTERNATE I (May 1987). As prescribed at DFARS 227.474-4, add the following paragraph to the basic clause:

( ) (i) Notwithstanding any other provision of this contract, the Government shall have (specify additional Government rights here, i.e., reprocurement) rights in restrictive rights technical data furnished under this contract, effective on the day immediately following the date specified in the contract for, the expiration of the restrictive rights legends. Such expiration date shall be marked on each piece of data subject to expiring restrictions furnished under the contract.

(ii) Technical data subject to the expiration of restrictive rights shall be marked with the limited rights legend set forth in paragraph (b)(2)(i) above with the title of the legend modified to read:

RESTRICTIVE RIGHTS LEGEND (SUBJECT TO EXPIRATION)

Contract No. _____

Contractor: _____

The following statement shall also be added to the legend:

Restrictive rights shall become (specify additional Government rights here i.e., reprocurement) rights on (insert expiration date).

The modified legend shall be included on any reproduction of the restrictive rights data, in whole or in part.

ALTERNATE II (MAY 1981). As prescribed at 227.480, add the following paragraph to the basic clause:

( ) Publication for sale. If, prior to publication for sale by the Government and within the period designated in the contract or task order, but in no event later than 24 months after delivery of such data, the contractor publishes for sale any data (1) designated in the contract as being subject to this paragraph and (2) delivered under this contract, and promptly notifies the Contracting Officer of these publications, the Government shall not publish such data for sale or authorize others to do so. This limitation on the Government's rights to publish for sale any such data so published by the Contractor, shall continue as long as the data is protected as a published work under the

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copyright law of the United States and is reasonably available to the public for purchase. Any such publication shall include a notice identifying this contract and recognizing the license rights of the Government under this clause. As to all such data not so published by the Contractor, this paragraph shall be of no force or effect.

52.227-7018 Restrictive Markings on Technical Data. As prescribed at 27.473-4(2) insert the following clause:

RESTRICTIVE MARKINGS ON TECHNICAL DATA (May 1987)

(a) The contractor shall have, maintain, and follow throughout the performance of this contract, procedures sufficient to assure that restrictive markings are used on technical data required to be delivered hereunder only when authorized by the terms of the "Rights in Technical Data and Computer Software" clause of this contract. Such procedures shall be in writing. The contractor shall also maintain a quality assurance system to assure compliance with this clause.

(b) As part of the procedures, the contractor shall maintain (1) records to show how the procedures of paragraph (a) above where applied in determining that the markings are authorized, as well as (2) such records as are reasonably necessary demonstrate that any restrictive markings on technical data delivered under this contract are authorized.

(c) The contractor shall, within sixty (60) days after award of this contract, identify in writing to the Contracting Officer by name or title the person(s) having the final responsibility within contractor's organization for determining whether restrictive markings are to be placed on technical data to be delivered under this contract. The contractor hereby authorizes direct contact between the Government and such person(s) in resolving questions involving restrictive markings.

(d) The Contracting Officer may evaluate or verify the contractor's procedures to determine their effectiveness. Upon request, a copy of such written procedures shall be furnished. The failure of the Contracting Officer to evaluate or verify such procedures ahll not relieve the contractor of the responsiblity for complying with paragraphs (a) and (b) above.

(e) If the Contracting Officer should give written notification of any failure to maintain or follow the established procedures, or of any material deficiency in the procedures, the corrective action shall be accomplished within the time specified by the contracting officer.

(f) This clause shall be included in each subcontract under which technical data is required to be delivered. When so inserted, "Contractor" shall be changed to "Subcontractor."

(end of clause)

252.227-7025 Rights in Technical Data and Computer Software (SBIR Program). As prescribed at 227.479, insert the following clause:

RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE (SBIR Program) (MAY 1987)

(a) Definitions.

The terms used in this clause are defined in 227.471 of the Department of Defense Supplement to the Federal Acquisition Regulation (DFARS).

(b) Rights in Technical Data.

(1) Limited rights. The Government shall have limited rights in:

(i) technical data, listed or described in an agreement incorporated into the Schedule of this contract, which the parties have agreed will be furnished with limited rights in accordance with 227.472-6; and

(ii) unpublished technical data pertaining to items, components, or processes developed exclusively at private expense, and unpublished computer software documentation related to computer software that is acquired with restricted rights, other than such data included in (b)(3)(i), (iii), or (iv), below. Limited rights shall be effective provided that only the portion or portions of each piece of data to which limited rights are to be asserted are identified (for example, by

circling, underscoring, or a note), and that the piece of data is marked with the legend below:

(A) the number of the prime contract under which the technical data is to be delivered;

(B) the name of the contractor and any subcontractor by whom the technical data was generated;

LIMITED RIGHTS LEGEND

Contract No. _____.

Contractor: _____.

_____ _____ _____ _____
_____ _____ _____ _____

The restrictions governing the use of technical data marked with this legend are set forth in the definition of "Limited Rights" in DFARS 227.471 and other limitations as specifically agreed to in writing in accordance with DFARS 227.473-2-6 and 227.473-2. A copy of the agreed to limitations shall be affixed to all data subject to such limitations. This legend, together with the indications of the portions of this data which are subject to such limitations, shall be included on any reproduction hereof which includes any part of the portions subject to such limitations. The limited rights legend shall be honored only as long as the data continues to meet the definition of limited rights.

(2) Government Purpose License Rights. For a period of two (2) years (or such other period as may be authorized by the Contracting Officer for good cause shown) after the delivery and acceptance of the last deliverable item under the contract, the Government shall have limited rights and, after the expiration of the two-year period, shall have Government purpose license rights in:

(i) technical data prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software.

(ii) form, fit, or function data pertaining to items, components, or processes prepared or required to be delivered under this or any other Government contract or subcontract,

(iii) manuals or instructional materials (other than detailed manufacturing or process data) prepared or required to be delivered under this contract or any subcontract hereunder necessary for installation, operation, maintenance or training purposes,

(iv) technical data, which is otherwise publicly available, or has been, or is normally released or disclosed by the contractor or subcontractor, without restriction on further release or disclosure, and

(vi) any other technical data prepared or required to be delivered under this contract or subcontract hereunder, which is not otherwise subject to limited or unlimited rights pursuant to subparagraph (b)(1) or (b)(3), herein; or any "private expense" technical data in which the Government may have obtained such greater rights in accordance with DFARS 227.472-7.

Government purpose license rights shall be effective provided that only the portion or portions of each piece of data to which such rights are to be asserted are identified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below:

(A) the number of the prime contract under which the technical data is to be delivered,

(B) the name of the contractor and any subcontractor by whom the technical was generated, and

GOVERNMENT PURPOSE LICENSE RIGHTS (SBIR Program)

Contract No. _____.

Contractor: _____.

_____ _____ _____ _____
_____ _____ _____ _____

For a period of two years after delivery and acceptance of the last deliverable item under this contract, this technical data shall be subject to the restrictions contained the definition of "Limited" rights in DFARS 227.471. After the two year period, the data shall be subject to the restrtictions contained in the definition of "Government purpose license" rights in DFARS 227.471. The Government assumes no liability for unauthorized use or disclosure by others. This legend, together with the indications of the portions of the data which are subject to such limiitations, shall be included on any reproduction hereof which contains any portions subject to such limitations and shall be honored only as long as the data continues to meet the definition on Government purpose license rights.

(3) Unlimited Rights. The Government shall have unlimited rights in:

(i) technical data required to be prepared or delivered under this contract or any subcontract hereunder that was previously delivered to the Government with unlimited rights; and

(ii) technical data that is publicly available or has been or is normally released or disclosed by the contractor without restriction on further use or disclosure.

(c) Rights in Computer Software.

(1) Restricted Rights.

(i) The Government shall have restricted rights in computer software, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, Provided, however, notwithstanding any contrary provision in any such license or agreement, the Government shall have the rights included in the definition of "restricted rights" in paragraph (a) above. Such restricted rights are of no effect unless the computer software is marked by the contractor with the following legend.

RESTRICTED RIGHTS LEGEND

Use, duplication, or disclosure is subject to restrictions stated in Contract No. _____ with _____ (Name of Contractor)_____

and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The contractor may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth in a license or agreement made a part of this contract prior to the delivery date of the software. Failure of the contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.

(ii) Notwithstanding subdivision (c)(i) above, commercial computer software and related documentation developed at private expense and not in the public domain may, if the contractor so elects, be marked with the following legend:

RESTRICTED RIGHTS LEGEND

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subdivision (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at 52.227-7013.

_____
(Name of contractor and address)

When acquired by the Government, commercial computer software and related documentation so legended shall be subject to the following:

(A) Title to, and ownership of, the software and documentation shall remain with the contracter.

(B) User of the software and documentation shall be limited to the facility for which it is acquired.

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(C) The Government shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the contractor. Third parties do not include prime contractors, subcontractors and agents of the Government who have the Government's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the Government to use software, documentation, or information therein, which the Government may already have or obtain without restrictions.

(D) The Government shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; and to modify the software and documentation or combine it with other software, Provided, that the unmodified portions shall remain subject to these restrictions.

(2) Government Purpose License Rights. For a period of two (2) years (or such other period as may be authorized by the Contracting Officer for good cause shown) after the delivery and acceptance of the last deliverable item under the contract, the Government shall have limited rights and, after the expiration of the two-year period, shall have Government purpose license rights in:

(i) computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any Government contract or subcontract;

(ii) computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract; and

(iii) any other computer software prepared or required to be delivered under this contract or subcontract hereunder, which is not otherwise subject to restricted or unlimited rights pursuant to subparagraph (c)(1) or (c)(3), herein.

Government purpose license rights shall be effective provided that each unit of software is marked with an abbreviatd license rights legend reciting that the use, duplication, or disclosure of the software is subject to the same restrictions included in the same contract (identified by number) with the same contractor (identified by name). The Government assumes no liability for unauthorized use, duplication, or disclosure by others.

(3) Unlimited Rights. The Government shall have unlimited rights in:

(i) computer software required to be prepared or delivered under this or any subcontract hereunder that was previously delivered or previously required to be delivered to the Government under any contract or subcontract with unlimited rights;

(ii) computer software that is publicly available or has been or is normally released or disclosed by the contractor without restriction on further use or disclosure; and

(iii) computer data bases, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain.

(d) Technical Data and Computer Software Previously Provided Without Restriction. Contractor shall assert no restrictions on the Government's rights to use or disclose any data or computer software which the contractor has previously delivered to the Government without restriction. The limited or restricted rights provided for by this clause shall not impair the right of the Government to use similar or identical data or computer software acquired from other sources.

(e) Copyright.

(1) In addition to the rights granted under the provisions of paragraphs (b) and (c) above, the contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world, of the scope set forth below, under any copyright owned by the contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies or phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes. With respect to technical data and computer software in which the Government has unlimited rights, the license shall be of the same scope as the rights set forth in the definition of "unlimited rights" in DFARS 227.471. With respect to technical data in which the Government has limited rights, the scope of the license is limited to the rights set forth in the definition of "limited rights". With respect to computer software which the parties have agreed will be furnished with restricted rights, the scope of the license is limited to such rights.

(2) Unless written approval of the Contracting Officer is obtained, the contractor shall not include in technical data or computer software prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified herein.

(3) As between the contractor and the Government, the contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authority under Section 201(b) of Title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also include the following statement which shall be placed thereon by the contractor, or should the contractor fail, by the Government:

> This material may be reproduced by or for the U.S. Government pursuant to the copyright license under the clause at 252.227-7025 (date).

(f) Removal of Unauthorized Markings.

(1) Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may, at the contractor's expense, correct, cancel, or ignore any marking not authorized by the terms of this contract on any technical data furnished hereunder in accordance with the clause of this contract entitled "Validation of Restrictive Markings on Technical Data", DFARS 252.227-7037.

(2) Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any computer software furnished hereunder, if:

(i) the contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the markings; or

(ii) the contractor's response fails to substantiate, within sixty (60) days after written notice, the propriety of restricted rights markings by identification of the restrictions set forth in the contract.

In either case, the Government shall give written notice to the contractor of the action taken.

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

(h) Limitation on Charges for Data and Computer Software. The

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contractor recognizes that it is the policy of the Government not to pay, or to allow to be paid, any charges for data or computer software which the Government has a right to use and disclose to others without restriction and contractor agrees to refund any such payments. This policy applies to contracts that involve payments by subcontractors and those entered into through the Military Assistance Program, in addition to US Government prime contracts. However, it does not apply to reasonable reproduction, handling, mailing, and similar administrative costs.

(i) Acquisition of Data and Computer Software from Subcontractors.

(1) Whenever any technical data or computer software is to be obtained from a subcontractor under this contract, the contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or the contractor's rights in the subcontractor data or computer software which is required for the Government.

(2) technical data required to be delivered by a subcontractor shall normally be delivered to the next higher-tier contractor. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor, then said subcontractor may fulfill its requirement by submitting such data directly to the Government, rather than through the prime contractor.

(3) The contractor and higher-tier subcontractors will not use their power to award subcontract as economic leverage to obtain rights in technical data or computer software from their subcontractors.

(j) Notice of Government Rights.

(1) Unless the Schedule provides otherwise, and subject to (2) below, the contractor will promptly notify the Contracting Officer in writing of the intended use by the contractor or a subcontractor in performance of this contract of any item, component, or process for which technical data would contain any restrictions on the Government's right to use, disclose, or have others use such data.

(2) Such notification is not required with respect to:

(i) standard commercial items which are manufactured by more than one source of supply; or

(ii) items, components, or processes for which such notice was given pursuant to prenotification of rights in technical data in connection with this contract.

(3) Unless the schedule provides otherwise, Contracting Officer approval is not necessary under this clause for the contractor to use the item, component, or process in the performance of the contract.

(End of Clause)

252.227-7035 Prenotification of Rights in Technical Data.

As prescribed iat DFARS 227.482(t), insert the following provision:

~~252.227-7035~~ PRENOTIFICATION OF RIGHTS IN TECHNICAL DATA (MAY 1987)

(a) Prenotification of Government Rights.

In order for the Government to make informed judgments concerning the competitive reprocurement potential of items, components, processes or computer software developed at private expense that an offeror intends to deliver under a resultant contract, offerors shall identify to the maximum practicable extent in their responses to this solicitation such privately developed items, components, processes, or computer software and the technical data which they:

(i) intend to deliver with limited rights;

(ii) intend to deliver with Government purpose or unlimited rights; or

(iii) have not yet determined which rights should apply.

This requirement does not apply to standard commercial items which are manufactured by more than one source of supply. If an offeror asserts limited rights to any technical data in its proposal responding to this requirement, Government failure to object to or reject any such

assertion shall not be construed to constitute agreement to any such data rights assertion. Offerors will furnish, at the written request of the contracting officer, evidence to support any such rights contention.

(End of Provision)

252.227-7037 Validation of Restrictive Markings on Technical Data.

As prescribed in 227.482(v), insert the following clause:

VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA

(a) Definition. "Technical data", as used in this clause, means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer software documentation) relating to supplies acquired or to be acquired by the Government. Such term does not include computer software or financial, administrative, cost or pricing, or management data, or other information incidental to contract administration.

(b) Justification. The contractor or subcontractor at any tier is responsible for maintaining records adequate to justify the validity of markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under the contract or subcontract, and shall be prepared to furnish to the contracting officer a written justification for such restrictive markings in response to a challenge under (d) below.

(c) Prechallenge Request for Information.

(1) The contracting officer may request the contractor or subcontractor to furnish a written explanation for any restriction asserted by the contractor or subcontractor on the right of the United States or others to use technical data. If, upon review of the explanation submitted, the contracting officer remains unable to ascertain the basis of the restrictive marking, the contracting officer may further request the contractor or subcontractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the contractor or subcontractor to justify the validity of any restrictive marking on technical data delivered or to be delivered under the contract or subcontract (e.g., a statement of facts accompanied with supporting documentation). The contractor or subcontractor shall submit such written data as requested by the contracting officer within the time required or such longer period as may be mutually agreed.

(2) If the contracting officer, after reviewing the written data furnished pursuant to (c)(1) above, and any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking and that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the contracting officer may formally challenge the validity of the marking as described in (d) below.

(3) If the contractor or subcontractor fails to respond to the contracting officer's request for information under (c)(1) above, and the contracting officer determines that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the contracting

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officer may formally challenge the validity of the marking as described in (d) below.

(d) Challenge.

(1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the contracting officer determines that a challenge to the restrictive marking is warranted, the contracting officer shall send a written challenge notice to the contractor or subcontractor. Such challenge shall:

(i) state the specific grounds for challenging the asserted restriction;

(ii) require a response within 60 days justifying, and providing appropriate evidence as to, the current validity of the asserted restriction; and

(iii) state that a DoD contracting officer's final decision, issued pursuant to (f) below, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same contractor or subcontractor (or any licensee of such contractor or subcontractor) to which such notice is being provided.

(2) Failure to respond to the challenge notice will constitute agreement by the contractor or subcontractor with Government action to cancel, correct, or ignore the restrictive legends.

(3) The contracting officer shall extend the time for response as appropriate if the contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(4) The contractor's or subcontractor's written response shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.), and shall be certified in the form prescribed by FAR 33.207, regardless of dollar amount.

(5) A contractor or subcontractor receiving challenges to the same restrictive markings from more than one contracting officer shall notify each contracting officer of the existence of more than one challenge. The notice shall also state which contracting officer initiated the first in time unanswered challenge. The contracting officer initiating the first in time unanswered challenge after consultation with the contractor or subcontractor and the other contracting officers, shall formulate and distribute to all interested parties a schedule for responding to each of the challenge notices. The schedule shall afford the contractor or subcontractor an equitable opportunity to respond to each challenge notice. All parties agree to be bound by this schedule.

(e) Final Decision When Contractor or Subcontractor Fails to Respond. Upon a failure of a contractor or subcontractor to submit any response to the challenge notice, the contracting officer shall issue a final decision to the contractor or subcontractor in accordance with the Disputes clause at FAR 52.233-1, pertaining to the validity of the asserted restriction. This final decision shall be issued within sixty (60) days after the expiration of the time period of (d)(1)(ii) or (2) above. Following the issuance of the final decision, the contracting officer may then strike or ignore the invalid restrictive marking.

(f) Final Decision When Contractor or Subcontractor Responds.

(1) If the contracting officer determines that the contractor or subcontractor has justified the validity of the restrictive marking, the contracting officer shall issue a final decision to the contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive marking. This final decision constitutes validation as addressed in 10 U.S.C. 2321. The final decision shall be issued within sixty (60) days after receipt of the contractor's or subcontractor's response to the challenge notice, or within such longer period that the contracting officer has notified the contractor or subcontractor that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(2)(i) If the contracting officer determines that the validity of the restrictive marking is not justified, the contracting officer shall issue a final decision to the contractor or subcontractor in accordance with the Disputes clause at FAR 52.233-1. Notwithstanding paragraph (e) of the Disputes clause, the final decision shall be issued within sixty (60) days after receipt of the contractor's or subcontractor's response to the challenge notice, or within such longer period that the contracting officer has notified the contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(ii) The Government agrees that it will continue to be bound by the restrictive marking for a period of ninety (90) days from the issuance of the contracting officer's final decision under (f)(2)(i) of this clause. The contractor or subcontractor agrees that, if it intends to file suit in the United States Claims Court it will provide a notice of intent to file suit to the contracting officer within ninety (90) days from the issuance of the contracting officer's final decision under (f)(2)(i) of this clause. If the contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the contracting officer within the ninety (90)-day period, the Government may cancel or ignore the restrictive markings, and the failure of the contractor or subcontractor to take the required action constitutes agreement with such Government action.

(iii) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the contracting officer within ninety (90) days from the issuance of the final decision under (f)(2)(i) of this clause. The Government will no longer be bound, and the contractor or subcontractor agrees that the Government may strike or ignore the restrictive markings, if the contractor or subcontractor fails to file its suit within one (1) year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances significantly affecting the interest of the United States will not permit waiting for the filing of a suit in the United States Claims Court, the contractor or subcontractor agrees that the agency may,

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following notice to the contractor or subcontractor, cancel and ignore such restrictive markings as an interim measure, pending filing of the suit or expiration of the one (1) year period without filing of the suit. However, such agency head determination does not affect the contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(iv) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes Act until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, following notice to the contractor that urgent or compelling circumstances significantly affecting the interest of the United States will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the contractor or subcontractor agrees that the agency may cancel and ignore such restrictive markings as an interim measure pending final adjudication. However, such agency head determination does not affect the contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(g) Final Disposition of Appeal or Suit.

(1) If the contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the contracting officer's decision is sustained--

(i) The restrictive marking on the technical data shall be cancelled, corrected, or ignored; and

(ii) If the restrictive marking is found not to be substantially justified, the contractor or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.

(2) If the contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the contracting officer's decision is not sustained--

(i) The Government shall continue to be bound by the restrictive marking; and

(ii) The Government shall be liable to the contractor or subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the contractor or subcontractor in defending the marking, if the challenge by the Government is found not to have been made in good faith.

(h) Duration of Right to Challenge. The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the contractor or subcontractor. During the period within three years of final payment on a contract or within three years of delivery of the technical data, whichever is later, the contracting officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data (i) is publicly available; (ii) has been furnished to the United States without

restriction; or (iii) has been otherwise made available without restriction. Only the contracting officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes "validation" as addressed in 10 U.S.C. 2321. A decision by the Government, or a determination by the contracting officer, to not challenge the restrictive marking or asserted restriction shall not constitute "validation".

(i) Privity of Contract. The contractor or subcontractor agrees that the contracting officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings. However, this clause neither creates or implies privity of contract between the Government and subcontract.

(j) Flowdown. The contractor or subcontractor agrees to insert this clause in subcontracts at any tier requiring the delivery of technical data.

(End of Clause)

DRAFT OF THE "PROMPT PAYMENT ACT AMENDMENTS OF 1987," TO BE INTRODUCED BY SENS. SASSER AND TRIBLE

Section 1. This Act may be cited as the "Prompt Payment Act Amendments of 1987".

CONGRESSIONAL FINDINGS

Sec. 2. The Congress finds that —

(1) the billpaying practices of most Federal Government agencies generally have improved, with certain exceptions, after four years of experience under the Prompt Payment Act (codified in chapter 39 of title 31, United States Code);

(2) the improvement in such billpaying practices has resulted in fairer treatment of contractors who furnish supplies, services, or construction to the Federal Government, especially small businesses;

(3) nonetheless, many contractors who deal with the Federal Government continue to experience persistent problems of untimely Government payments as a result of —

(A) the failure to implement the provisions of the Prompt Payment Act through the Government-wide Federal Acquisition Regulation;

(B) the implementation of the provisions of the Prompt Payment Act in a manner that denies the Act's protections in cases of certain contract payments, such as progress payments for work satisfactorily performed under construction contracts and payment of amounts which have been retained by a Federal Government agency during the performance of construction contracts and are to be released upon final acceptance of the construction work by the agency;

(C) the unlimited time presently afforded Federal Government agencies formally to accept supplies delivered or services performed by contractors, which may be improperly used by such agencies to deny late payment interest penalties to contractors delivering such supplies or performing such services in a timely manner as prescribed by the contract;

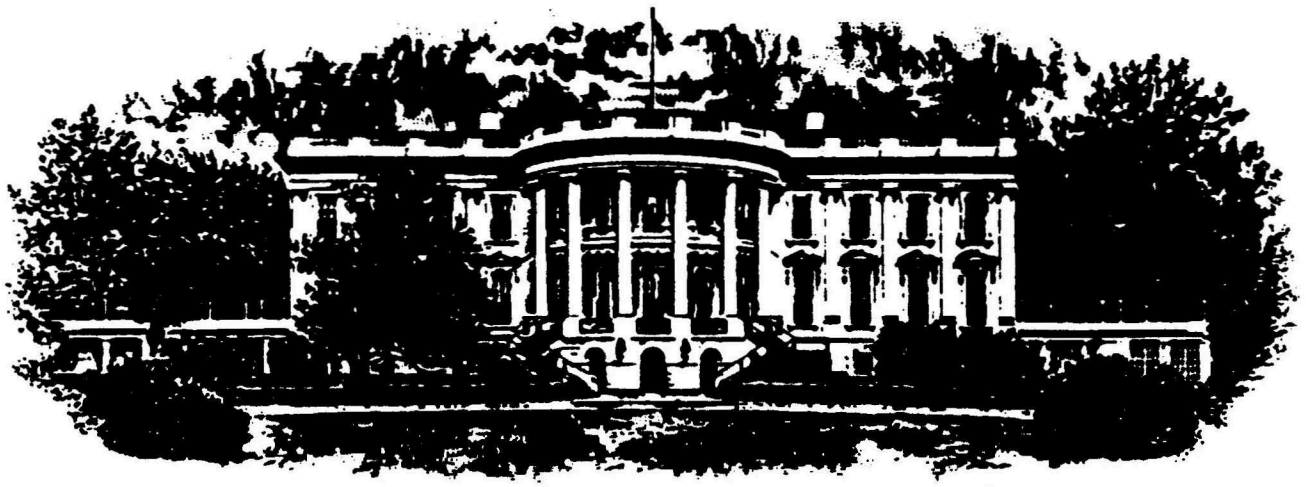
(D) the implementation of the provisions of such Act in a manner which has permitted Federal Government agencies to take discounts for early payment months after the expiration of the discount period specified in the contractor's invoice;

(E) the failure of the Act explicitly to require Federal Government agencies automatically to pay late payment interest penalties due to contractors;

(F) the absence of incentives effectively to dissuade Government employees from attempting to withhold late payment interest penalties which contractors are entitled to receive;

(G) the continued availability of certain payment grace periods which affords Federal Government agencies the opportunity to pay their bills late without incurring any late payment interest penalty and, thus, unilaterally to extend the payment due date upon which the contractors have based their contract prices;

(H) the failure of Federal Government agencies to implement the requirement in the Act to pay, during the contract period, for the periodic delivery of supplies or the periodic performance of services if permitted by the contract; and



THE WHITE HOUSE

Conference on Small Business

FINAL RECOMMENDATIONS

FINAL RECOMMENDATIONS

THE WHITE HOUSE CONFERENCE ON SMALL BUSINESS

August 17-21, 1986

1. Because the liability insurance crisis in the United States has not only become a life and death sentence to many small businesses, but also is changing adversely our way of life, we must pursue a four pronged effort at reform: civil justice reform; uniform standards for product, professional and commercial liability; regulation of the insurance and re-insurance industries; and viable affordable alternatives to liability coverage.

We, therefore, strongly urge the President, the Congress, and the state legislatures, to implement the following action as a vitally important step in alleviating the problems of availability and affordability of liability insurance to small business in America:

A. Civil Justice Reform:

1. Return to a fault based standard of liability.
2. Base causation findings on credible scientific and medical evidence and opinions.
3. Eliminate joint and several liability in cases where defendants have not acted in concert.
4. Limit non-economic damages (such as pain and suffering, mental anguish or punitive damages) to a fair and reasonable maximum dollar amount, not to exceed $250,000 in any case.
5. Restrict punitive damage awards to cases of willful and malicious conduct. The amount awarded shall go to a governmental trust fund, not the plaintiff.
6. Limit attorneys' contingency fees to reasonable amounts on a sliding scale.
7. Reduce awards in cases where a plaintiff can be compensated by certain collateral sources to prevent windfall double recovery.
8. The prevailing party in a legal action should have a statutory right to recover its costs and attorneys' fees from the non-prevailing party.
9. Impose a uniform, reasonable statute of limitations and repose in all tort actions; and hold defendants to the state-of-the-art in existence at the time the product was manufactured or the service was performed.
10. Provide for periodic instead of lump sum payments for future medical care or lost income.
11. Encourage use of alternative dispute resolution mechanisms to resolve cases out of court.

B. Federal Standards for Product, Professional and Commercial Liability:

Establish a uniform standard of fault based product, commercial, and professional liability which incorporates provisions cited in "Civil Justice Reform" above.

C. Availability and Affordability of Liability Insurance and Re-Insurance:

1. Review McCarran-Ferguson Act of 1945 as it applies to state regulation of insurance and the industry's limited exemption from anti-trust laws.
2. Promote the establishment of joint underwriting associations

and assigned risk pools.

3. A minimum of 60 days notice should be required for an insurer to non-renew a policy or to increase its unit premium by more than 25 percent. Mid-term cancellations should be prohibited and premiums should be based on experience ratings.

4. Promote tax deductible self-insurance through risk pooling and other group arrangements, including the expansion of The Risk Retention Act of 1981.

5. Legislate a self-insurance system that would allow small businesses to pay premiums into a fund with pre-tax dollars which could be used for no other purpose than the payment of claims, with the fund being regulated in the same manner as any other insurance company.

6. Require the insurance industry to make complete financial disclosures by lines of insurance, so that Congress, state legislatures, and state insurance commissioners may call on it at any time.

D. Education:

Realizing that the most effective long-term solution to the liability insurance problem is a knowledgeable citizenry, we urge an on-going education program to develop an awareness that:

1. The litigious nature of the American public will profoundly affect our way of life as the cost of public and private facilities becomes unaffordable.

2. There is no such thing as a riskless society, so each of us must assume some responsibility for his/her own safety and the normal hazards of everyday living. [R.A. 180, Liability Insurance; 1419 votes of 1715 ballots cast]

2. There should be no government mandated employee benefits, such as employer-paid health benefits, parental leave, disability leave, etc. Specific actions should include, but not be limited to:

a. Congress should prohibit the states from mandating employee benefits;

b. Congress should reject parental and disability leave legislation, such as H.R. 4300 and S. 2278;

c. Congress should reject proposals to mandate medical coverage. Business supports creative efforts in the private sector to identify new and voluntary approaches to enable working parents to fulfill their job and family responsibilities. [R.A. 203, Payroll Costs; 1360 votes]

3. Because government at all levels has failed to protect small businesses from damaging levels of unfair competition, federal, state and local laws, regulations and policies should:

a. Prohibit unfair competition in which non-profit tax-exempt organizations use their tax-exempt status and other advantages in selling products and services also offered by small businesses.

b. Prohibit direct, government-created competition in which government organizations perform commercial services.

These goals should be achieved by, but not limited to, the following ways: Non-profits: Tax-exempt entities should not be permitted to use their tax status or postal rates to compete with commercial providers of products and services. Non-profit organizations receiving government grants and contracts, including Federally Funded Research and Development Centers, should be prohibited from using federal dollars to

compete with products and services provided by the private sector. Non-profits engaging in commercial activities should be prohibited from doing so while enjoying exemption from government regulations such as anti-trust laws, worker's compensation, and health and safety rules.

Governments: New laws at all levels, particularly at the federal level, should require strict government reliance on the private sector for performance of commercial-type functions. When cost comparisons are necessary to accomplish conversion to private sector performance, laws must include provision for fair and equal cost comparisons. Funds controlled by a government entity must not be used to establish or conduct a commercial activity on U.S. property. Government regulated utilities should be prohibited from using their government favored position to compete in markets already served by small businesses.

A Federal Private Enterprise Review Committee shall be established as a permanent advisory group to the Chief Counsel for Advocacy of the Small Business Administration and the Director of the Office of Management and Budget for the purpose of reviewing federal government and non-profit actions that compete with small business. [R.A. 284, Regulation & Paperwork; 1267 votes]

4. Be it resolved, that the White House Conference on Small Business urges the President and the Congress to give top priority promptly to deficit reduction and a balanced budget. The White House Conference on Small Business urges immediate action on a balanced budget and a comprehensive plan, mandated by law, to reduce the federal deficit and control expenditures through legislation by implementing the following:

a. That the Congress should correct the constitutional defect in the Balanced budget and Emergency Deficit Control Act (Gramm-Rudman-Hollings) and adhere to its deficit reduction target until the budget is in balance.

b. Passage of a balanced budget amendment to the Constitution.

c. The President shall be granted by the Congress a budgetary line-item-veto. Should the President exercise the option of line-item-veto, the veto could be overridden by a simple majority vote of both houses of Congress. A two-thirds vote by both houses of the Congress will still be required to override the veto of an entire appropriation bill. If this cannot be accomplished by legislation, we support a constitutional amendment to create a presidential line-item-veto.

d. The federal government should be required to adopt rank-order budgeting to allow for analysis of the effectiveness of subdivisions within a department.

e. An interagency task force should be established by the President and the Congress to implement all recommendations of value from the Grace Commission Report.
All recommendations that need changes in law shall be presented to a bipartisan Congressional Committee for whatever actions are deemed necessary.

f. Income derived from the sale of government fixed assets must go to the reduction of debt and shall not be used to supplement operating income for budget expense purposes. [R.A. 01, Economic Policy; 1175 votes]

5. The international trade crisis mandates the creation of a Cabinet

level department of international trade (similar to that of our major trading competitors), which will coordinate and focus on existing activities of federal agencies to accomplish the following:

a. Coordinate the dissemination of information regarding business opportunities, export financing, education and training, licensing, trade missions, market-driven data bases, SIC Code updates, and other essential functions of international trade.

b. Represent small manufacturing, agriculture, service and other businesses, in national and international discussions and negotiations. Develop and execute fair, long-term policies regarding international trade.

c. The General Agreement on Trade and Tariffs (GATT) should be extended to include intellectual property rights, services, agriculture, aqua-culture, and agri-business products. [R.A. 142, International Trade; 1173 votes]

6. The federal government should encourage the advancement of entrepreneurial education and education of the free enterprise system, by establishing an early awareness of the free enterprise system beginning with primary education and continuing through all levels of education, which would include the teaching of foreign languages and intercultural practices, to increase our national awareness of global economics and their interaction; and to encourage a greater competitiveness by small business in international markets. This training should be taught by small business people or teachers with hands-on entrepreneurial experience and encouraged by curriculum with input by small business. [R.A. 38, Education & Training; 1161 votes]

7. Congress should repeal the Davis-Bacon Act and the Service Contract Act in their entireties. [R.A. 196, Payroll Costs; 1156 votes]

8. Congress should reform the Social Security System by taking the following steps:

1. Remove all non-retirement programs from the Social Security programs and pay them from the general fund.

2. Bring all workers, government and private, under the Social Security system.

3. Freeze employer FICA contribution wage base and tax rate at the 1986 rate.

4. Cap automatic indexing and C.O.L.A.'s on program benefits.

5. Fund the establishment of a broad-based Presidential commission to develop long-range alternatives to the present Social Security system which places an undue and inequitable escalating financial burden on business employees. This Presidential commission must submit its complete report within 24 months. The Social Security system needs to become actuarially sound on a defined contribution basis and not rely on automatic and regular increases in the tax rates and wage base. The following things need to be done;

a. Reduction of the Social Security taxes for employers and employees with alternative qualified retirement plans.

b. Extend the eligibility age of Social Security retirement and lift payroll earning restrictions for Senior Citizens by increasing what

they can earn without forfeiting Social Security benefits.

c. Create parity between self employment tax and employer/employee Social Security contributions.

d. Consider the possibility of a long-term phase-out of the present system to be replaced with an optional, actuarially sound, privatized system of retirement and health benefits. The privatization of the present system is considered to be a very desirable goal by the delegates to the 1986 White House Conference on Small Business. [R.A. 218, Payroll Costs; 1152 votes]

9. Enact S.B. 2760 with the Kasten-Lugar-Kassenbaum amendment to provide uniform fault defenses, and the Pressler amendment eliminating joint and several liability. [R.A. 174, Liability Insurance; 1146 votes]

10. Equal Access to Justice, Regulatory Flexibility and IRS procedural reform.

The IRS shall be subject to all the standards of the Equal Access to Justice Act as originally provided by the U.S. Senate in HR 3838 (as passed on June 24, 1986). The Senate bill provided that the burden of proof for substantial justification shall be borne by the agency.

Further, Congress shall enact legislation which shall include the Internal Revenue Service and all other agencies within the requirement of the Regulatory Flexibility Act of 1980. The action or inaction of all federal agencies shall be subject to judicial review, under the Regulatory Flexibility Act.

Further, Congress shall enact legislation which makes the Internal Revenue Service financially accountable for all costs incurred by taxpayers as a result of Internal Revenue Service errors.

The Equal Access to Justice Act shall be amended to define recoverable costs to include accounting, legal and other professional fees plus administrative costs.

Before going to court, a small business shall have the option to submit any matter pertaining to a dispute with any federal agencies (including the IRS and the (USPS) to binding arbitration. [R.A. 287, Regulation & Paperwork; 1137 votes]

11. The Congress and the Administration, in cooperation with state government and the private sector, should develop and implement new capital formation and retention vehicles for small business and there should be tax incentives for investment in small business such as the Small Business Investment Incentive Act (HR 1941). This would allow an opportunity for small business capital accumulation. [R.A. 55, Finance; 1109 votes]

12. That a federal capital gains tax be enacted which will provide savers and investors in an operating business with:

a. deferral of tax on gain if proceeds are reinvested in a qualified operating business within eighteen months or IRA account, or;

b. a normal capital gains tax rate of 75 percent of the regular income tax rate for the gain if held for two years or;

c. a special capital gains tax rate of 50 percent of the regular income tax rate if held for five years;

d. an entrepreneurial capital gains tax rate available only to a former or present founder, or full-time manager-owner who has held the investment for at least fifteen years with a step-rated favorable capital gains rate.

Any gain resulting from the sale or liquidation of a small business should qualify for tax treatment similar to a "lump-sum" distribution from a qualified retirement plan (i.e., 10 year average--5 year average proposed in H.R. 3838 --or rollover to an IRA) or the tax on the gain may be deferred by reinvesting the proceeds of the gain in a qualified small business. The benefits of SEC 337 of the IRS code (otherwise known as the general utilities doctrine) should be retained.

Reason for proposal: Incurs a tax on the sale of its assets. Under the general utilities doctrine, the corporation avoids the tap on the sale or distribution of its assets to its owner in liquidation. A one time tax is incurred by the owner upon the receipt of the corporations property instead of a double tax at the corporate and individual level. [R.A. 403, Taxation; 1075 votes]

13. Resolved that the SBA should be maintained as an agency independent of any other federal department. The administrator should be elevated to a cabinet-level and the SBA programs should be continued as presently constituted. [R.A. 97, Future of an Agency for Small Business; 1051 votes]

14. The Senate and the President should join the House of Representatives in re-authorizing the Small Business Innovation Research (SBIR) Program by enacting H.R. 4260 before the present Congress adjourns. The next Congress should strengthen the program still further by:

a. Increasing each agency's share of R & D expenditures devoted to it by .25 per cent per year, until it is three percent of the total extramural R & D Funds;

b. Making the program permanent with a formal congressional review every ten years beginning in 1993;

c. Allocating a modest, but appropriate share of each agency's SBIR fund for administrative purposes for effective management, quality maintenance and the elimination of program delays;

d. Determining annually that each agency is clearly in full compliance with the law and that SBIR program funding is not being accompanied by parallel reductions in other small business programs, and

e. Creating pooled solicitations once or twice a year of subjects submitted by small agencies expending $20 million to $100 million in extramural R & D funds to facilitate their involvement in the SBIR program. [R.A. 125, Innovation; 1043 votes]

15. Protection of intellectual property in the form of patents, trademarks, copyrights, technical data and deliverables, is critical to the growth of small business. Federal government and their contractors should be required to honor confidentiality for protecting domestic intellectual property nationally and internationally. To that end,

modifications and additions to existing systems are necessary.

a. Implement a system by which a U.S. small business may elect an accelerated, short-term, patent filing and approval procedure by simple registration.

b. Make the tiered fee schedule within the patent office more equitable by charging fees for information and services as well as for filing and maintenance; and by setting fees which are lower for first filings of national patents than filings by foreign patentees.

c. Establish an accelerated judicial procedure within the district courts which utilizes patent and trademark expertise and thereby expedites litigation concerning patent and trademark infringement.

d. Recommend the President and Congress work toward the establishment of coordinated filing in the Western Hemisphere and Pacific Rim Countries.

e. Develop a set of verifiable and enforceable copyright procedures to strengthen enforcement of U.S. copyrights, in both domestic and international markets, through the joint efforts of the Copyright Office and the private sector, including representation by small business.

f. Laws and regulations regarding proprietary rights in technology and "rights in data" on government contracts shall be changed to allow small business to maintain its proprietary rights.

g. The Freedom of Information Act should be amended to shift the burden to the requestor for obtaining release of proprietary and confidential information.

h. Congress shall collect data and analyze new technologies being developed to assist them in enacting appropriate legislation for the expansion of the intellectual property law system to adequately cover these new technologies.

i. Establish a management oversight group, to include small business people, which ensures efficient and effective implementation of the intent of the patent office mandate to be a national resource. [R.A. 129, Innovation; 1034 votes]

16. The Investment Tax Credit (ITC) should be retained, or restored for new and used equipment for small business, defined as those businesses with fewer than 500 employees; but should be limited to end users of property purchased and should give added incentive to domestically produced products. [R.A. 323, Taxation; 972 votes]

17. The federal government; industry; school administrations and business should work together to solve the drug problem in our society by fighting international drug dealers and organized crime. The war on drugs should be fought in at least four areas:

a. By cutting the growth and production of illegal drugs abroad and in the U.S.

b. By educating Americans to say NO to drugs and to rehabilitate chemically-dependent people.

c. By stopping illegal drugs from entering our borders and U.S. dollars from leaving.

d. By working to have a "drug free" school system and "drug free" workforce in American business and industry. [R.A. 53, Education &

Training; 964 votes]

18. The federal government should increase its awards to small businesses to 35 percent of total contract dollars by FY 1990 and bring the percentage in line with small business' contribution to the Gross National Product by FY 1993. This shall be achieved through actions that:

a. Create a Congressionally appointed blue ribbon commission, to review and recommend changes in public policy, incentives and regulations to reshape procurement practices to achieve full participation by small business and to recommend model programs for small businesses to be tested by the Office of Federal Procurement Policy; further, the majority of the Members of the Commission are to be small business owners and the Commission will establish an advisory panel to monitor and report on the implementation of the Commission report.

b. Distribute set asides by each procurement agency evenly across all categories of goods and services for small businesses with significant percentages to minorities and women.

c. Simplify the procurement process and expedite the award process.

d. Require that all agencies annually publish a 2-year procurement plan that identifies known potential procurements and designates those to be set aside.

e. Mandate accountability and provide incentives for government procurement officials and prime contractors to increase their use of small businesses including women and minorities;

f. Retain the existing "Rule of Two" and enforce it strongly as a standard for small business set asides.

g. The federal government should develop a standard approach for setting size standards by SIC Codes based on sound economic data to ensure that size standards are equitable, rational, and consistent. Further, the government should develop procurement procedures that ease "graduation shock" for companies transitioning out of their small business size standards.

h. Public Law 95-507 and Executive Order 12138 should be strictly enforced and mandatory incentives and penalties should be established for compliance and noncompliance therewith. [R.A. 282, Procurement; 948 votes]

19. That Congress enact H.R. 1575 and/or S 1486 to ensure equal access to commercial credit for all small business and to ensure that women, and minorities are not discriminated against in granting commercial credit by eliminating the business credit exemption to the Equal Credit Opportunity Act. [R.A. 74, Finance; 931 votes]

20. To promote the retirement security of our nation's employees, Congress must support and promote the continued viability of the private retirement system in the small business community. In support of this goal, there must be a five year moratorium on further changes in our private retirement plan laws except for the following changes which we recommend:

a. Promote parity between large and small plans and between private and public sector plans;

b. To simplify filing requirements and paperwork; and

c. To increase contribution benefit limits, including 401(k) plans and IRAs to be at least as great as the pre-1986 Tax Reform Act limits; and

d. In the multi-employer sector, to reform Multi-Employer Pension laws (*Multi-Employer Pension Plan Amendments Act of 1980, MPPAA, subtitle E of Title IV of ERISA, sections 4201 through 4402) to curtail or eliminate withdrawal liability. [R.A. 239, Payroll Costs; 861 votes]

21. Eliminate governmental disincentives directed against home-based business owners. Specifically, Congress should:

a. Pass Senator Hatch's Freedom of Workplace Act;

b. Instruct the U.S. Secretary of Labor, by resolution, to repeal 29 Code of Federal Regulations 530; and

c. Instruct the IRS to remove the home-based business red flag from IRS Form 1040 Schedule C. [R.A. 311, Regulation & Paperwork; 858 votes]

22. Recommend the cash basis method of accounting for tax purposes should be permitted for all small businesses. The current tax code should not be changed regarding:

a. Use of a fiscal year and;

b. Completed contract method of accounting.

[R.A. 404, Taxation; 827 votes]

23. The current surtax exemption for corporations should be expanded to $200,000 per year, with a proportionate rate of tax, as applied under current law, to each expanded level thereunder and a similar lower individual tax rate should be applied to business income derived from sole proprietorships, subchapter S corporations and partnerships not engaged in passive income pursuits. These surtax exemption levels should be indexed to inflation and the direct expensing provision should be increased to $150,000, to help small businesses retain capital for expansion. Congress should expand the direct expensing provision of the tax code. It should be raised to $150,000 for small business. Also, inventories for small business should not include a requirement to capitalize wages, rents or other overhead items. [R.A. 349, Taxation; 788 votes]

24. Congress should eliminate estate and gift transfer taxes on the transfer of small business assets to a family member. A family member is defined in 26 USC 2032A, and the entity qualifies as a small business. [R.A. 325, Taxation; 774 votes]

25. Be it resolved that a commission be established to study the impact of services, information, and emerging technology sectors of the American economy, review existing Standard Industrial Classification (SIC) codes to ensure that they reflect the current state of the

respective industries, and make recommendations with regard to appropriate federal legislation and regulations that will promote further growth in this area and ensure proper classifications for all industries. Be it further resolved that Congress shall enact legislation directing the Executive Branch to create, as a successor to the Standard Industrial Classification (SIC) codes, a new data collection and dissemination system that will: 1) evolve with the continuing growth of the American economy; 2) allow for crosswalking between all major federal data systems, including but not limited to SIC codes, government procurement systems, contract tracking, management information systems and internationally traded goods and services, incorporating where possible all relevant international data systems; 3) identify the amount of commercial economic activity performed in the not-for-profit, franchise and similar sectors; 4) be updated as to data collection methodologies on a regularly scheduled basis; and 5), provide to the entire business community, through a specified governmental source, appropriate and timely access to the individual and aggregate information. [R.A. 19, Economic Policy; 766 votes]

26. Congress should not tax employee benefits above existing levels. [R.A. 199, Payroll Costs; 720 votes]

27. Adopt Small Business Participating Debentures (SBPD) as encompassed by Senate Bill 1498, which would permit the issuance of SBPDs, providing for a fixed rate of interest plus a participation redeemable at a predetermined price on a future date and involving no ownership interest, be enacted into Federal Law. The participating share of earnings would be taxed to the investor as a long-term capital gain, but deductible by the issuing company. Losses would be allowed as an ordinary deduction for the investor. SBPDs would combine the benefits of equity and debt financing which would make private investment in small business more desirable. [R.A. 66, Finance; 696 votes]

28. "A Bigger Slice of the Pie"

Insure that small business receives a larger and more equitable share of federal procurement funds;

Increase the opportunities for all small businesses to participate in federal procurement on a streamlined and equitable basis.

Promote cooperation and mutual support within the small business community as a whole; and

Preserve the opportunities and protection currently provided targeted minority groups.

Require that:

a. Not less than 40% of all government procurement monies be awarded to small businesses by each department and agency of the government. This should include not less than 40% of prime contract funds and not less than 40% of the subcontract funds provided by large business prime contractors via subcontracts including but not limited to the Surface Transportation Act.

b. Not less than 10% of all government procurement monies be awarded to currently targeted minority groups.

c. Not less than 5% of all government procurement monies be

awarded to women-owned businesses; and, women-owned businesses.

d. Not less than 25% of all government procurement monies be awarded to other small businesses, including those owned by veterans and physically challenged individuals.

e. Small business procurement be simplified and awards be made not later than 30 days after receipt of proposals.

f. OMB Circular A-76 be made to apply to all federal monies used directly or indirectly in provision of goods and services which are available in the private sector.

g. Congress should maintain and enforce the minority and women owned business set-aside programs under the Surface Transportation Assistance Act of 1982 (P.L. 97-424) Public Law (95-507) and 8A Program.

h. Distribute set-asides by each procurement agency evenly across all categories of goods and services for small businesses.

i. Of the total dollars spent by the federal government with small business collectively then:

-- 25% will be targeted to minorities

-- 12 1/2% will be targeted to women

-- and the balance of the total monies, 62 1/2% will be targeted to all small businesses. [R.A. 275, Procurement; 683 votes]

29. Congress should implement the recommendations of the Grace Commission, with priority attention to:

a. The 15-bill Brace Commission legislative package for 1986, introduced by the House and Senate Grace Commission caucuses in June of 1986, which have a combined cost savings potential of 32.8 billion dollars over three (3) years (S. 2620/H.R. 5125; S. 2619/H.R. 5129; S. 2621/H.R. 5116; S. 2628/H.R. 5117; S. 2624/H.R. 5113; S. 2629/H.R. 5106; S. 2623/H.R. 5099; S. 2625/H.R. 5130; S. 2630/H.R. 5114; S. 2633; S. 2631/H.R. 5128; S. 2622/H.R. 5105; S. 2626/H.R. 5115; S. 2632/H.R. 5100; and S. 2627/H.R. 5157);

b. Privatization of public services through the contracting out of sale of service and commercial operations to the private sector; and

c. Sale of excess (non-wilderness) federal lands.

d. Congress should act on all remaining Grace Commission recommendations by December, 1988. [R.A. 07, Economic Policy; 673 votes]

30. In order for American business to compete in foreign countries with other nations we need to clarify the Foreign Corrupt Practices Act. Congress should pass legislation similar to language in S. 1860, Title IX, Subtitle B:

a. The name of the act will be The Business Practices and Records Act.

b. Willful bribes to any foreign officials will remain prohibited.

c. United States companies will be liable if they corruptly pay a bribe directly or if they directed or authorized the bribe "expressly or by a course of conduct."

d. All exceptions will be codified including those that are explicitly stated as well as those which have been permitted under the present law.

e. Payments made "for the purpose of expediting or securing the performance of a routine governmental action" will not be unlawful.

f. Payments which are expressly permitted by law, custom or regulations of a foreign country will not be unlawful. [R.A. 154, International Trade; 666 votes]

31. Unemployment Insurance: amend the Federal Unemployment Tax Act and the Social Security Act and the Wagner-Peyser Act to achieve the following:

a. Prohibit strikers from collecting benefits.

b. Require claimants to actively seek work and accept the next best job after eight weeks of job search or lose benefits;

c. Eliminate FUTA and related taxes on wages of persons who do not qualify for benefits, (e.g., independent contractors, corporate officers, share-holders, retirees, etc.)

d. Allow surplus funds to be invested in the state which paid the taxes.

e. Cap FUTA tax at present levels.

f. The rate increase of .2% in FUTA taxes should be allowed to expire on January 1, 1988 as scheduled under current law. [R.A. 244, Payroll Costs; 654 votes]

32. Prompt pay legislation should be extended to cover postal service and federally assisted procurement and strengthened through an amendment to the 1982 Prompt Payment Act to eliminate the fifteen day grace period; require automatic payment of interest penalties; more clearly define that the entire payment process, including acceptance, must occur within 30 days; include progress payments and retainage; and require prime contractors to pay their sub-contractors within seven days after receiving payment from the government or incur interest payment penalties. In addition, when the government pays the prime contractors late, interest payments shall flow through from prime contractors to sub-contractors on a pro-rata basis. The prompt payment act shall vigorously enforced by all branches of government. [R.A. 277, Procurement; 652 votes]

33. Congress should institute a broad-based incentive program that would encourage the training and retraining of current and new employees by small business owners, and to further new employment opportunities. [R.A. 36, Education & Training; 628 votes]

34. A program should be developed by business and government in partnership on the state and federal levels for education in the free enterprise system that would include:

a. development of curricula of the role of small business in free enterprise

b. vocational training, with special emphasis on dropouts

c. pilot business training programs at the secondary level

d. professional training, management assistance, and internship programs for existing businesses

e. coordination and combination of existing federal job training programs by the federal government

f. a national conference for the development of this idea and

further conferences as necessary for ongoing development and review of the program

Grants and incentives would be made available to small businesses to enable them to participate in the entire program. Courses would be taught using state-of-the-art technology by qualified teachers with demonstrated hands-on business experience using known management efficiency practices. [R.A. 49, Education & Training; 614 votes]

35. "Export S.B.I.R."
Increase exports by small business by:

a. Creation of an annual, competitive small business export incentive program similar to the highly successful SBIR* Program, to be funded within existing International Trade Programs,

b. Retention and improvement of the current Small Business Foreign Sales Corporation tax incentives to further encourage exports of products and services, and

c. Aggressively market small business export trade programs using private sector organizations or businesses.

*The Small Business Innovation Research approach is a competitive annual program which solicits small business proposals to solve problems instead of responding to government solutions. It offers a significant multiplier effect, requires no new government funding, and requires a commitment of private sector funds. [R.A. 156, International Trade; 600 votes]

36. Transitional rules for tax legislation should be implemented and applied equally for all taxpayers. Legislation should not be retroactive if it would adversely affect prior transactions. [R.A. 354, Taxation; 597 votes]

37. Bankruptcy laws are too lenient! Federal bankruptcy laws should be modified with regard to:

a. restructuring the preferred payment rules;

b. placing strict controls on the financial dealings of Chapter 11 "Debtor-in-possession" cases;

c. create a review procedure for trustees to assure that creditors obtain timely financial reports of the bankruptcy operational reports and to avoid self-dealing and patronage;

d. providing equitable reimbursement to creditors from future earnings of debtor;

e. limit lawyers' participation to same as other creditors;

f. establish a bankruptcy ombudsman to make sure that small business creditors are treated fairly;

g. providing a first priority lien to an unpaid seller of a product or a right to recover the product. [R.A. 80, Finance; 584 votes]

38. To reduce payroll complexity and cost by:

a. Standardizing Federal payroll reporting onto one form with one due date and to provide incentives to include consolidation of state and local payroll information;

b. Increasing the threshold for requiring payment of payroll taxes

through Federal Depositories (i.e., allow mailing in of larger payments with quarterly filing... currently, the threshold is $500.00) and increasing the thresholds for determining the frequency of all payroll tax deposits (i.e., increase threshold for 3-day deposits which is currently $3,000). [R.A. 247, Payroll Costs; 576 votes]

39. Adopt a basic economic policy to continually improve our economic climate by removing obstacles to our free enterprise system and allow it to function with minimum government restraints. This national economic policy should be instituted to phase out all governmental pricing, production, and export controls currently imposed on U.S. business. Include deregulation of the energy industry by decontrolling natural gas, removing the foreign policy-based controls on the export of natural resources and oil field service equipment, and by reducing bureaucratic barriers to U.S. petroleum exploration and production efforts. And finally, deregulate the steel industry. [R.A. 22, Economic Policy; 560 votes]

40. Recommend that the nation's farm policies be changed to facilitate a phaseout of price supports and governmental production controls, within an established time frame, thereby returning agriculture to a market orientation, while bringing all pressures to bear in the General Agreement on Tariffs and Trade (GATT) deliberations to insure that other importing and exporting nations adhere to policies which promote free and fair trade in agricultural commodities. [R.A. 20, Economic Policy; 557 votes]

41. Congress should pass legislation for a Self Insurance system that would allow small businesses to pay premiums into a fund, with pre-tax dollars, which could not be used for any other purpose except to pay claims, with the fund being regulated in the same manner as any other insurance company. Approve the Risk Retention Act of 1981 as passed by the Senate and now before the House as H.R. 5225, at this date without further amendment. [R.A. 192, Liability Insurance; 543 votes]y

42. Federal or state legislative bodies shall encourage, authorize and approve the creative use of semi-public loan or guarantee corporations to meet the needs of small firms. This capital can be used for start-up, venture capital, business expansion, capital improvement, fixed asset financing, and or intangible collateral financing. These vehicles shall be many, or multi-faceted and self funded revenue neutral items. It should create a loan guarantee vehicle similar to Fannie Mae (FNMA) to meet the needs of small business.

There express purpose is to be the creation of secondary markets to encourage public and private investors. These loans would start at $10,000 and would require each participating lender to take a certain portfolio percentage of the smaller loans. The program will provide access to credit, not underwrite the costs thereof. [R.A. 86, Finance; 533 votes]

43. It is recommended that the "Rule of Two" be retained and strongly enforced as a standard for small business set-asides. This regulation prescribes the circumstances under which a contracting officer makes the determination to restrict a contracting opportunity to exclusive competition among eligible small business concerns. The contracting officer must set-aside a contracting opportunity if there is a reasonable expectation of receiving offers from at least two eligible small business concerns capable of meeting the Government's requirements at reasonable prices. [R.A. 273, Procurement; 531 votes]

44. The Congress must pass legislation creating a uniform national product and general liability law which bases liability on fault (no liability without responsibility) and which totally eliminates joint and several liability (no more deep-pocket liability). [R.A. 170, Liability Insurance; 487 votes]

45. The SBA should be retained and elevated to a Cabinet- level position whose mission should be to assist the small business community with the private sector having a stronger partnership role.

To ensure that SBA's mission remains focused on areas of greatest need:

a. The independent role of the Office of Advocacy must be maintained and strengthened.

b. The Congress should mandate a comprehensive review of all SBA programs to assess their efficiency and their appropriateness to the broad needs of the small business community. That review should be conducted with substantial input from the private sector with the leadership of the small business constituency.

c. In the delivery of lending and management assistance services, SBA should be directed to increase its reliance on the local resources in the private business sector which have expertise in its program areas. [R.A. 106, Future of an Agency for Small Business; 484 votey

46. The presence of a de facto common language in the U.S. has permitted unprecedented growth and stability in our history as a 210-year-old democracy. Now, recent changes in legislative and administrative law have had the effect of promoting bilingualism, which slows the assimilation process for immigrants (to their disadvantage) and threatens to add permanent social and economic costs to our society in general and to business in particular. These costs will fall disproportionately on small business.

English should be declared as the official language of the U.S., legally sufficient for all legislation and communication in this country. The federal government should print its publications, posters, signs and forms in English only. English usage should be encouraged through the phasing out of most bilingual programs and instead using the funds to promote English as a second language. Certain exceptions regarding diplomacy, international needs, demands of justice and safety signs at airports/highways should apply.

At the federal level, this should be done through Congressional action and Presidential order and also through the Department of Education. [R.A. 312, Regulation & Paperwork; 467 votes]

47. Presidential line-item-veto authority should be passed by Congress. [R.A. 06, Economic Policy; 453 votes]

48. Professional and technical services constitute a dynamic and fast emerging sector of the services industry. The current acquisition system was originally designed to procure hardware, and has not been effectively adapted to the challenging task of procuring sophisticated and unique professional and technical services. Moreover, the federal government personnel do not understand or appreciate the waste and problems created by policies of procuring sophisticated services on the basis of lowest cost rather than quality. In those cases where the government does advertise the fact that high technical quality is more important than cost or price, the procurement selection process--by engaging in technical leveling and auctioning--frustrates the offer of high quality. A new, simplified acquisition system is required for contractors to continue to be motivated to offer high-quality services and to insure the long-term benefits of high quality to the federal government. Therefore be it resolved that:

a. The GAO should conduct a study of professional and technical services. GAO should examine agency conduct with respect to cost and quality tradeoffs in professional and technical services contracts, and frequency of prohibited practices such as technical leveling and cost auctioning. GAO should report the results to Congress and the Office of Federal Procurement Policy (OFPP).

b. OFPP should develop and implement on a demonstration basis a simplified alternative acquisition process adapted to the procurement of professional and technical services, which would insure to the government the benefits of competitively procured professional and technical services, and increase access to the procurement system for businesses of all size, including small businesses.

c. Congress and OFPP should require technical training for federal program and contracting personnel concerning the acquisition of professional and technical services, to assure that high quality services are obtained in cases where quality is more important than cost.

d. Congress and OFPP should preclude federal agencies from establishing new federally funded Research and Development centers (now receiving more than $5 billion in sole source contracts per year), unless the agency has conclusively demonstrated that the private sector does not have the necessary capabilities. Further, Congress and OFPP should limit contracting with existing FFRDCs through oversight, preclude them from obtaining contracts outside their original charters, and sunset where appropriate. [R.A. 269, Procurement; 437 votes]

49. SBERC! Authorize the formation of small business reinvestment corporations (SBRCs) to obtain capital from private and public pension plans and invest that capital in small business. Federal enabling legislation will provide that such investments comply with the prudent man rule for pension plan trustees. [R.A. 72, Finance; 435 votes]

50. A White House Conference on Small Business should be scheduled for