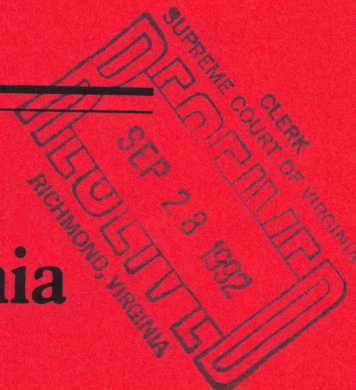


245 Va 241

IN THE
Supreme Court of Virginia
AT RICHMOND



RECORD NO. 920639

TECHDYN SYSTEMS CORPORATION,

Appellant,

v.

WHITTAKER CORPORATION,

Appellee.

**JOINT APPENDIX
VOLUME I**

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TABLE OF CONTENTS

Page

VOLUME I

A. Basic Initial Pleadings as Finally Amended

1. TechDyn's Amended Motion for Judgment; dated August 21, 1990..... 0001
2. Whittaker's Amended Counterclaim; dated March 5, 1990..... 0016
3. TechDyn's Answer and Affirmative Defenses to Whittaker's Amended Counterclaim; dated November 6, 1990..... 0077

B. Final Judgment and Memoranda or Opinions Related Thereto

1. Final Judgment Order; dated January 31, 1992.... 0082
2. Opinion Letter by The Honorable J. Howe Brown; dated January 14, 1992..... 0086
3. Letter by The Honorable J. Howe Brown re TechDyn's Motion for Reconsideration; dated November 25, 1991..... 0088
4. Order Vacating and Setting Aside October 31, 1991 Order of Final Judgment; dated November 21, 1991..... 0089
5. Judgment Order; dated October 31, 1991..... 0090

C. Assignments of Error

1. Assignments of Error 1, 2, and 5 through 8..... 0093

D. Testimony and Other Incidents of the Case Germane to the Questions Presented

1. Transcripts of Testimony and Proceedings:
 - a. Leo S. Morrison, Jr. - July 1, 2 & 3, 1991.. 0094

VOLUME II

- b. Donald Ellis - July 3 & 8, 1991..... 0359
- c. Rufus Thornton - July 8 & 9, 1991..... 0562

d.	John Michitson - July 9, 1991.....	0635
e.	Greg Crider - July 9, 1991.....	0684
f.	Herbert Rountree - July 9, 1991.....	0722

VOLUME III

g.	William C. Hise - July 10, 1991.....	0786
h.	Max Steven Rosen - July 10, 1991.....	0885
i.	Edward H. Ripper - July 10, 1991.....	0894
j.	Scott Douglas Gray - July 10, 1991.....	0927
k.	Whittaker's Motions to Strike - July 11, 1991.....	0976
l.	Michael Perry McCune - July 11, 1991.....	1018
m.	Marie Raymond - July 11 & 15, 1991.....	1101

VOLUME IV

n.	Alfred Johnson - July 15, 1991.....	1146
o.	Gerald J. Thompson - July 16, 1991.....	1274
p.	Joel H. Sells - July 16, 1991.....	1307
q.	Claudia Justis - July 16, 1991.....	1319
r.	Rufus Thornton - Recalled - July 16, 1991...	1372
s.	Max Steven Rosen - Recalled - July 17, 1991.....	1409
t.	Thomas A. Brancati - July 17, 1991.....	1423
u.	Steven Jones - July 17, 1991.....	1485

VOLUME V

n.	Marie Raymond - Recalled - July 17 & 18, 1991.....	1493
w.	Jack R. Cannady - July 18, 1991.....	1604
x.	Marie Raymond-Recalled - July 18, 1991.....	1635

	<u>Page</u>
y. Jack R. Cannady-Recalled - July 18, 1991....	1668
z. Joseph A. Nocera - July 18, 1991.....	1686
aa. Proceedings of July 29, 1991.....	1709
bb. Proceedings of July 30, 1991.....	1817
cc. Proceedings of August 1, 1991.....	1835
2. Proffers of Evidence	
a. Plaintiff's Objections and Proffered Testimony in Opposition to Trial Court's Ruling Precluding and Striking Plaintiff's Evidence (re: TechDyn's Claim for Lost Profits); dated July 17, 1991.....	1840

VOLUME VI

E. Other Pleadings

1. Whittaker's Memorandum of Law in Support of Whittaker Corporation's Motion to Strike Evidence Relating to Count One of TechDyn Systems Corporation's Amended Motion for Judgment; dated July 10, 1991.....	1886
2. TechDyn's Motion to Strike Counts One and Two of Defendant's Amended Counterclaim for Defendant's Failure to Give Proper Notice Under the Contract; dated July 22, 1991.....	1890
3. TechDyn's Motion to Strike and for Summary Judgment on Defendant's Damages for Failing to Apportion Liability, for Being Speculative and Uncertain and for Seeking Costs Not Recoverable in Virginia; dated July 22, 1991.....	1895
4. Whittaker's Memorandum in Support of Whittaker Corporation's Renewed Motion to Strike the Evidence Relating to Count One of TechDyn Systems Corporation's Amended Motion for Judgment; dated July 23, 1991.....	1906
5. TechDyn's Motion to Set Aside the Jury's August 1, 1991 Verdict on Count I and Count III of Defendant's Amended Counterclaim; dated August 21, 1991.....	1912

6. Whittaker's Motion to Set Aside the Jury's Verdict as to TechDyn Systems Corporation's Count One Because TechDyn Allegedly Failed to Provide any Basis for Allocating Responsibility for its Unreimbursed Delay Costs Among Whittaker and Non-Whittaker Causes (without Appendix of Evidence); dated August 21, 1991.....	1927
7. TechDyn's Opposition to Defendant's Motions to Set Aside the Verdict for Plaintiff on Count 1 of Plaintiff's Motion for Judgment and Defendant's Motion for a New Trial on the Quantum of Damages Under Count One of Defendant's Counterclaim; dated September 5, 1991.....	1943
8. Whittaker Corporation's Opposition to TechDyn Systems Corporation's Post-Verdict Motion; dated September 5, 1991.....	1965
9. TechDyn's Motion for Reconsideration; dated November 8, 1991.....	1974
10. TechDyn's Memorandum of Points and Authorities in Support of its Motion for Reconsideration; dated November 14, 1991.....	1976
11. Whittaker's Opposition to TechDyn Systems Corporation's Motion for Reconsideration; dated November 14, 1991.....	2257
12. Whittaker Corporation's Supplemental Opposition to TechDyn's Motion for Reconsideration; dated December 9, 1991.....	2263
13. TechDyn's Response to Whittaker's Supplemental Opposition to TechDyn's Motion for Reconsideration; dated December 11, 1991.....	2279
14. TechDyn's Notice of Appeal; dated February 3, 1991	2291
15. Jury Instructions	
a. Jury Instructions 12, 68, 68(a), 76, 76(a) and 76.5.....	2293
b. Plaintiff/Appellant's Proposed Jury Instructions LL and NN.....	2299
c. Defendant/Appellee's Proposed Jury Instructions 31, 32 and 33.....	2301

16. Verdict Forms

- a. Verdict Form for Count 1 of TechDyn's Action
Against Whittaker..... 2304
- b. Verdict Forms for Counts 1 and 3 of
Whittaker's Action Against TechDyn..... 2305

VOLUME VII

F. Exhibits that Reasonably Can Be Reproduced

1. Plaintiff/Appellant's Exhibits Admitted into
Evidence:

11	Memorandum to Moeller from Johnson re assessment of ICCE program.....	2307
22A-1	Subcontract 125-001 between TechDyn and 4C; Cover Page, Table of Contents and pages 1 to 63.....	2318
22A-2	Subcontract 125-001; Tab 3 (Modification No. 3); 2-page letter dated Nov. 27, 1985; 95-page System Specification for ICCE; 44-page Statement of Work for ICCE.....	2364
22A-4	Supply Line Item Data Sheets.....	2521
32	Raymond letter to Hatchett 1/16/86 re ICCE Contract signature.....	2538
65	Minutes of Interim IADS Working Group Meeting #18; Agenda Item 2 - Test Status/System Trouble Reports.....	2539
66	Bohler letter to Rosen 2/9/89 re status of System Trouble Reports.....	2547
85A	Chart of ICCE Project.....	2548
152	Air Force ICCE RFP to TechDyn; March 20, 1985 (2 page letter).....	2549
153	Four-page Hise letter to Sutherland 3/23/85, re RFP, plus Statement of Work for Front-End Effort.....	2551
161	Two-page Yenowine letter to Sutherland 4/30/85; re RFP, plus Attachment I, Statement of Work....	2596
181	Raymond telex to Yenowine 9/13/85, re confirmation of price for CLINS.....	2670

210	Raymond letter to Yenowine 2/5/86, re RCE Specification.....	2671
378	Bohler letter to Hise 7/8/88, re WES work stoppage on RCE.....	2696
385	Bohler letter to Hise 7/18/88, re WES request to TechDyn to remove test bed.....	2698
394	Bohler letter to Hise 8/5/88, re WES demand that TechDyn immediately remove test bed.....	2699
413	Rosen letter to Bohler 1/12/89, re 10 day Cure Notice to WES for RCE.....	2700
416	Rosen letter to Bohler 1/23/89, re Partial Termination for Default to WES for RCE.....	2702
426	Rosen letter to Bohler 3/3/89 with attachment re ICCE program meeting with ESD re WES inaccuracies.....	2704
501-505	TechDyn's Proposals (cover pages only).....	2711
506A	RFP Routing Slips and attachments.....	2718
572	McKenna letter to Hise 4/3/90, re Formal Verification Test Report results; first 8 pages.....	2728
646	Smith letter to Hise 10/16/86, comments to PDFa B5 specification updates, with attachments.....	2736

VOLUME VIII

852	Smith letter to Hise 10/22/86, re Software Quality Assurance meeting - 4C's methods lacking.....	2741
912	Summary of Damages - related to Alaska & PACAF options.....	2742
950	Summary of Damages - claim amounts.....	2743
951	Summary of Whittaker-caused PDFa Damages.....	2744
952	Calculation of TechDyn's Delay Damages Attributable to Whittaker.....	2745
953	Calculation of TechDyn's Delay Damages Per Day..	2746
954	Summary of TechDyn's Recorded Time-Related Costs.....	2747

955	TechDyn's Program Management Direct Labor Costs.....	2748
956	TechDyn's Systems Engineering & Testing Labor Costs.....	2751
957	TechDyn's Logistics Direct Labor Dollars.....	2754
958	TechDyn's Field Maintenance Direct Labor Dollars.....	2757
959	TechDyn's Contract Management Direct Labor Dollars.....	2760
960	TechDyn's Cost Analysis Direct Labor Dollars....	2763
961	TechDyn's Secretarial Direct Labor Costs.....	2766
962	TechDyn's Time-Related Travel Costs.....	2770
963	TechDyn's Time-Related Consultant Costs.....	2783
964	TechDyn's Time-Related Contract Labor Costs.....	2787
965	TechDyn's Time-Related Other Direct Costs.....	2790
966	TechDyn's Budget Time-Related Costs for Contract Modifications.....	2792
967	Summary of Time-Related Costs for RCE Reprocurement.....	2793
968	Calculation of Excess On-Site Overhead.....	2794
968A	TechDyn's Control Budget for Job 125.....	2795
969	TechDyn's Calculation of Actual On-Site Overhead Rate 1986-1991.....	2796
970	TechDyn's On-Site Overhead Costs 1986-1990.....	2797
971	TechDyn's Calculation of Actual General and Administrative Costs Rate 1986-1991.....	2798
972	TechDyn's General & Administrative Costs 1986-1990.....	2799
973	TechDyn's Summary of Claim Costs for Relocation of Test Bed.....	2800
974	TechDyn's Calculation of Claim Costs for Test Bed Relocation.....	2801

	<u>Page</u>
975	TechDyn's Labor, Consultant & Travel Costs to Relocate Test Bed..... 2802
976	Invoice for Test Bed Rental..... 2803
977	Summary of Damages for Replacement of Keyboard and Printer..... 2806
978	Purchase Order/Subcontract for Keyboard and Printer..... 2807
979	Calculation of Interest on Delay Damages..... 2809
980	Calculation of Interest on Damages Associated with Relocation of Test Beds..... 2810
981	Calculation of Interest on Damages Associated with Replacement of Keyboard and Printer..... 2811
982	Summary of Pre-termination and Reprocurement Costs for the Remote Control Element..... 2812
983	Direct Labor and Consulting Costs related to RCE Reprocurement..... 2813
984	Travel Costs for Remote Control Element Reprocurement..... 2815
985	Rosen letter to VEDA 7/19/89, re RCE work..... 2816
986	Materials Costs for Remote Control Element Reprocurement..... 2818
987	Calculation of Interest on RCE Damages..... 2819
988	Summary of TechDyn's Time-Related Costs and Delay Claim..... 2820
1010	Smith letter to Hise 6/17/86; B level specification delays..... 2821
1017	Hise letter to Raymond 11/5/86, TechDyn's Show Cause Notice to 4C..... 2823
1030	Hise letter to Lamberth 9/15/87, re outstanding STRs and Test Readiness Review, with attachment..... 2824
1036	Raymond letter to Hise 11/2/87, re open STRs, with attachments..... 2826
1043	Rosen letter to Raymond 4/26/88, re SQT Report for PDFA not accepted, with attachment..... 2880

VOLUME IX

1046	Rosen letter to Bohler 7/11/88 re TAF Certification Status of Trouble Reports, with attachment.....	2890
1049	Rosen letter to Bohler 1/24/89 with attachment re status of STRs.....	2894
1073	Rosen letter to Raymond 9/13/89, re correction of STRs, with attachment.....	2896
1098	Rosen letter to Raymond 3/3/90; comments from Technical Order Validation of PDFA O&M manual, with attachment.....	2900
1131	Hise letter to Glowacki 8/10/90 with attachment; response to Cure Notice/agreements reached between TechDyn and WES.....	2903
1136	Rosen letter to Raymond 9/17/90; deficiencies related to RSSF software acceptance test.....	2906
1141	Rosen letter to Raymond 10/16/90 with attachment; delivery of ICCE software and PCA software.....	2908
1251	Whittaker News Release 10/3/85; re 4C merger with Whittaker.....	2912
1252	Raymond letter to Hise 10/29/85; 4C acquired by Whittaker, Hatchett now president.....	2913
1253	Raymond letter to Yenowine 2/9/87; 4C proposal delayed due to recent merger.....	2914
1254	Raymond letter to Yenowine 2/19/87; responses to correspondence delayed due to reorganization....	2915
1256	Raymond letter to Yenowine 2/26/87; critical design review response delayed due to reorganization; working on C5 specs.....	2916
1257	Raymond letter to Yenowine 2/26/87; responses to open action items delayed due to management changes.....	2917
1258	Raymond letter to Fourney 3/6/87; responses to open action items delayed by reorganization....	2918
1259	Raymond letter to Fourney 3/20/87; responses to status delayed by reorganization.....	2920
1260	Raymond letter to Fourney 5/6/87; 4C name change.....	2921

1261	Raymond letter to Fournery 8/26/87; change in program management for subcontract.....	2928
1264	Raymond letter to Rosen 7/5/88; merger of WCCS with WES.....	2929
1265	Bohler memo to TDS 8/24/88; change of address...	2930
1266	Three-page Raymond letter to Hise 8/26/88; novation/change of name agreements.....	2931
1373	Bohler letter to Hise 7/21/88; WES stoppage of work.....	2934
1560	Yenowine letter to Raymond 7/9/85; test bed facilities.....	2935
1601	Raymond transmittal of Monthly Program Schedule.....	2936
1616	Hise letter to Raymond 1/9/91 with attachment; Technical Order Verification stopped due to many problems with O&M manual.....	2941
1634	Khan letter to Raymond 3/6/91 with attachment; WES to complete manuals as required by contract.....	2944
1635	Khan letter to Raymond 3/6/91 with attachment; WES directed to forward software items immediately.....	2947

2. Plaintiff/Appellant's Exhibits Refused:

901	TechDyn Revenues Chart.....	2951
2006	Subcontract Changes Clause.....	2952

3. Defendant/Appellee's Exhibits Admitted into Evidence:

3N	Hise letter to S. Smith, 5/19/86; re technical manuals and provisioning requirements.....	2955
4H	Paschall letter to Morrison, 5/21/86; comments from program management review.....	2956
10G	Bohler letter to Hise, 8/5/88; WES stoppage of work; responses to TechDyn's contentions.....	2958

10L	Rosen letter to Bohler, 7/26/88; response to WES stoppage of RCE work.....	2963
20K	Rosen letter to Bohler, 1/12/89; Bohler letter to Rosen, 1/18/89; 10 day Cure Notice for RCE and response.....	2965
20NN	Ellis memorandum to Morrison, 1/11/89; no adverse action by ESD if WES RCE efforts terminated.....	2975
23F	Rosen letter to Chilson, 10/27/89; request Government define software test procedures.....	2976
30G	Letter of 7/18/89 from Rosen to Bohler; Subcontract/SOW requirements.....	2977
41N	Excerpt from Al Johnson's notes, 7/25/85.....	2978
42D	Fourney letter to Raymond, 4/30/87; items needed for claim negotiations.....	2979
43E	Hatchett memorandum to Freitag, 12/22/86; contract status/stoppage of progress payments due to unsatisfactory performance.....	2983
48E	Hise letter to Raymond, 11/20/86; stoppage of progress payments due to delays by 4C.....	2985
53	Excerpts from TechDyn Claims 01 and 02, 2/10/87 and 4/25/88.....	2986
60K	Rosen memorandum to Hise, 3/27/89; meeting minutes discussing Partial Default Termination of WES.....	3196
61B	Morrison letter to Johnson, 1/7/88; cost control and reduction on ICCE project.....	3206
108	Summary of Whittaker's Counterclaims.....	3208
108A	Amended Summary of Whittaker's Counterclaims....	3209

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

TECHDYN SYSTEMS CORPORATION
6564 Loisdale Court
Springfield, Virginia 22150

Plaintiff,

v.

WHITTAKER CORPORATION
10880 Wilshire Boulevard
Los Angeles, California 90024

Defendant.

AT LAW NO. 94144

AMENDED MOTION FOR JUDGMENT

COMES NOW, the Plaintiff, TechDyn Systems Corporation (hereinafter "TechDyn") and for its Amended Motion for Judgment against Defendant Whittaker Corporation (hereinafter "Whittaker") states as follows:

I. Parties

1. TechDyn is a Delaware corporation with its principal place of business located at 6564 Loisdale Court, Springfield, Virginia 22150.

2. Whittaker, together with its unincorporated division Whittaker Electronic Systems (hereinafter collectively referred to as "Whittaker"), is a Delaware corporation with its principal place of business located at 10880 Wilshire Boulevard, Los Angeles, California 90024.

II. Jurisdiction and Venue

3. This Court has jurisdiction over this matter pursuant to §17-123 of the Code of Virginia.

4. Venue is proper in this Court pursuant to §8.01-262 of the Code of Virginia because the causes of action complained of in this Motion for Judgment arose in Fairfax County, Virginia, because Whittaker has regularly and systematically conducted business in Fairfax County, Virginia, and because TechDyn's principal place of business is Fairfax County, Virginia.

III. Background Facts

5. During early 1985, the United States Air Force was considering installing an air-to-ground tactical aircraft warning and control system in Iceland. The system was and is now known as the Iceland Command and Control Enhancement ("ICCE") Project.

6. During 1985, the Air Force had extensive discussions with a company called Command, Control and Communications Corporation (hereinafter "4C") during which the Air Force expressed its desire to award the ICCE Project to 4C in the form of a sole source procurement.

7. Upon learning that a sole source procurement to 4C was impossible, the Air Force decided to award the contract for the ICCE Project to a qualified small business through the Small Business Administration's 8(a) program and to direct the

successful contractor to sublet a substantial portion of the contract work to 4C.

8. The Air Force selected TechDyn as a qualified small business and on April 2, 1985 the Air Force awarded Contract No. F19628-85-C-0079 to the SBA. The SBA then designated TechDyn as the prime contractor for the ICCE Project under SBA Contract No. 3-85-2-6605 (hereinafter the "Prime Contract").

9. Paragraph 3 of the "Other Special Contract Requirements" of the Prime Contract specified that certain portions of the ICCE Project be subcontracted to 4C. Paragraph 3 of the "Other Special Contract Requirements" of the Prime Contract reads as follows:

3. DIRECTED SUBCONTRACT

The contractor is hereby required to obtain all hardware, software and related documentation for the Processing and Display Functional Area (PDFA) as defined in the statement of work and specifications from Command, Control and Communications Corporation (4Cs) of Torrance, California.

10. Consistent with the requirements of the Prime Contract, on or about April 5, 1985, TechDyn entered into Subcontract No. 125-001 (hereinafter the "Subcontract") with 4C.

11. Among other things, the Subcontract required that 4C perform the Processing and Display Functional Area (PDFA) portion of the ICCE Project.

12. Shortly after Subcontract award, 4C was acquired by Whittaker Command and Control Systems (hereinafter "WCCS"). WCCS

assumed all of 4C's responsibilities and liabilities under the Subcontract.

13. In or about May, 1988, Whittaker, acting by and through its division Whittaker Electronic Systems (hereinafter "Whittaker") assumed all of WCCS's responsibilities and liabilities under the Subcontract.

14. In addition to subcontracting the PDFA aspect of the ICCE Project to Whittaker, TechDyn also subcontracted with Whittaker to design the hardware configuration and to design, develop, test, and integrate the software of the Remote Control Element (RCE) portion of the ICCE Project.

COUNT 1
BREACH OF CONTRACT
Whittaker's Failure to Perform PDFA Obligations

15. Paragraphs 1 through 13 of this Motion for Judgment are incorporated herein by reference.

16. Under the Subcontract, Whittaker was required to provide the expertise, supervision, coordination, labor, and materials necessary to satisfactorily and timely complete the PDFA portion of the ICCE Project.

17. Whittaker breached the Subcontract by failing to provide the expertise, supervision, coordination, labor, and materials necessary to satisfactorily and timely complete the PDFA portion of the ICCE Project, thereby causing project delays and additional costs to TechDyn.

18. Under the Subcontract, Whittaker was required to employ and maintain competent management and technical personnel to satisfactorily perform the Subcontract work.

19. Whittaker breached the Subcontract by conducting frequent corporate organizational changes which caused loss of competent management and technical personnel and eroded Whittaker's ability to perform, thereby causing project delays and additional costs to TechDyn.

20. Under the Subcontract, Whittaker was required to timely develop and provide PDFA software.

21. Whittaker breached the Subcontract by failing to timely develop and provide PDFA software, thereby causing project delays and additional costs to TechDyn.

22. Under the Subcontract, Whittaker was required to pass all Air Force administered Critical Design Reviews (CDRs), Computer Program Test and Evaluations (CPT&Es), and Software Qualification Tests (SQTs).

23. Whittaker breached the Subcontract by repeatedly failing to pass Air Force administered Critical Design Reviews (CDRs), Computer Program Test and Evaluations (CPT&Es) and Software Qualification Tests (SQTs), thereby causing project delays and additional costs to TechDyn.

24. Under the Subcontract, Whittaker was required to timely and adequately remedy problems identified by the Air Force in Air Force Systems Trouble Reports (STRs).

25. Whittaker breached the Subcontract by repeatedly failing to timely and adequately remedy problems identified by the Air Force in Air Force Systems Trouble Reports (STRs), thereby preventing PDFA software from achieving Air Force certification, causing project delays and additional costs to TechDyn.

26. Under the Subcontract, Whittaker was required to produce and provide acceptable software documentation.

27. Whittaker breached the Subcontract by failing to timely produce and provide software documentation acceptable to the Air Force or TechDyn, thereby causing project delays and additional costs to TechDyn.

28. Under the Subcontract, Whittaker was required to produce PDFA Operator and Maintenance Manuals, the PDFA Positional Handbook, the Computer Program User's Manual, the Computer Programming Manual, and the Systems Level Manual.

29. Whittaker breached the Subcontract by failing to produce, or make adequate progress in producing, PDFA Operator and Maintenance Manuals, the PDFA Positional Handbook, the Computer Program User's Manual, the Computer Programming Manual, and the Systems Level Manual, thereby causing additional In-process Reviews, Technical Interchange Meetings, other meetings with the Air Force, project delays and additional costs to TechDyn.

30. Under the Subcontract, Whittaker had an obligation to diligently and continuously perform its work consistent with established project schedules to a successful conclusion.

31. Whittaker breached the Subcontract by unjustifiably stopping all work under the Subcontract from July 21, 1988 through September 29, 1988, thereby causing project delays and additional costs to TechDyn.

32. Under the Subcontract, Whittaker was responsible to timely provide monthly input into Contract Data Requirements List Deliveries as they relate to the PDFA.

33. Whittaker breached the Subcontract by repeatedly failing to provide monthly input into Contract Data Requirements List Deliveries as they relate to the PDFA, thereby causing project delays and causing additional costs to TechDyn.

34. Under the Subcontract, Whittaker was required to timely make delivery of Data Terminal Sets (DTSS) to TechDyn and the Air Force.

35. Whittaker breached the Subcontract by failing to make delivery of Data Terminal Sets (DTSS) as required by the Subcontract, thereby causing project delays and additional costs to TechDyn.

36. Under the Subcontract, Whittaker was required to perform Contractor Technical Support (CTS) services in support of PDFA equipment in Iceland.

37. Whittaker breached the Subcontract by failing to perform Contractor Technical Support (CTS) services in support of

PDFA equipment in Iceland, thereby causing project delays and additional costs to TechDyn.

38. As a result of Whittaker's breaches of the PDFA portion of the Subcontract as described in paragraphs 16 through 37 above, TechDyn has suffered and continues to suffer unreimbursed damages under its Contract with the Air Force/Small Business Administration in the amount of at least \$7,300,000.

39. As a result of Whittaker's breaches of the PDFA portion of the Subcontract as described in paragraphs 16 through 37 above, Whittaker has extended TechDyn's completion on the ICCE Project by at least 34 months and has directly caused TechDyn to lose and otherwise be deprived of at least \$8,000,000 worth of new or other business and profits therefrom during this period.

WHEREFORE, TechDyn demands judgment against Whittaker in the amount of at least \$15,300,000, together with prejudgment interest, costs, expenses, attorneys' fees, and such other relief as this Court may deem appropriate.

COUNT 2
BREACH OF CONTRACT
Whittaker's Failure to Perform RCE Obligations

40. Paragraphs 1 through 14 of this Motion for Judgment are incorporated herein by reference.

41. Under the Subcontract, Whittaker was required to provide the expertise, supervision, coordination, labor, and materials necessary to satisfactorily and timely complete the Remote Control Element (RCE) portion of the ICCE Project.

42. Whittaker breached the Subcontract by failing to provide the expertise, supervision, coordination, labor, and materials necessary to satisfactorily and timely complete the RCE portion of the ICCE Project.

43. Whittaker breached the RCE portion of the Subcontract by failing to make timely progress on the RCE software, thereby causing project delays, endangering overall project completion, and causing TechDyn additional costs.

44. As a result of Whittaker's breach of the RCE portion of the Subcontract, TechDyn was forced to default terminate the RCE portion of Whittaker's work, and reprocure this same work at an increased cost of at least \$750,000.

WHEREFORE, TechDyn demands judgment against Whittaker in the amount of at least \$750,000, together with prejudgment interest, costs, expenses, attorneys' fees, and such other relief as this Court may deem appropriate.

COUNT 3
TORTIOUS INTERFERENCE WITH BUSINESS
Whittaker's Tortious Interference With
TechDyn's Business Relations With The Air Force
Regarding Alaska and PACAF Option

45. Paragraphs 1 through 14 of this Motion for Judgment are incorporated herein by reference.

46. Under TechDyn's Prime Contract, TechDyn had an option to perform substantial additional work for the Air Force in Alaska and the Pacific Region (hereinafter the "Alaska and PacAF Option").

47. During the course of the Subcontract, Whittaker intentionally, maliciously, and wrongfully deprived TechDyn of the right and opportunity to perform the Alaska and PacAF Option work for the Air Force.

48. Whittaker, in violation of its obligations to TechDyn as a subcontractor, supplied inaccurate and inflated price information to TechDyn for the Alaska and PacAF Option with the full intention and understanding that TechDyn was submitting that inflated price information to the Air Force in TechDyn's effort to gain the work called for by the Alaska and PacAF Option. Simultaneously, however, and without TechDyn's knowledge or consent, Whittaker was wrongfully quoting a lower price for the same work directly to the Air Force in an effort by Whittaker to obtain the Alaska and PacAF Option work for Whittaker's own account.

49. As a direct result of Whittaker's intentional, malicious, and wrongful actions described in paragraphs 45 through 48 above, the Air Force removed the Alaska PacAF Option from TechDyn's Prime Contract and awarded that work directly to Whittaker.

50. As a result of the removal of the Alaska and PacAF Option from TechDyn's Contract, Whittaker intentionally, maliciously, and wrongfully deprived TechDyn of that work and caused TechDyn to incur direct damages of at least \$800,000.

WHEREFORE, TechDyn demands judgment against Whittaker in the amount of at least \$800,000, punitive damages in the amount

of \$2,000,000, together with prejudgment interest, costs, expenses, attorneys' fees, and such other relief as this Court may deem appropriate.

COUNT 4
BREACH OF CONTRACT
Whittaker's Breach Of AAC And PACAF Obligations

51. Paragraphs 1 through 14 of this Amended Motion for Judgment are incorporated herein by reference.

52. Under TechDyn's Prime Contract, TechDyn had an option to perform substantial additional work for the Air Force in Alaska and the Pacific Regions (hereinafter "The AAC and PACAF Options").

53. Pursuant to Paragraph 3 "Other Special Contract Requirements" of the Prime Contract, TechDyn was "... required to obtain all hardware, software and related documentation for the Processing and Display Functional Area (PDFA)..." for the AAC and PACAF Option work from Whittaker.

54. On May 15, 1987, TechDyn requested Whittaker to submit a proposal to TechDyn pursuant to their Subcontract under which Whittaker would perform certain PDFA work as a Subcontractor to TechDyn for the AAC and PACAF Options.

55. On May 29, 1987, the Air Force transmitted a Request for Proposal (hereinafter "RFP") to TechDyn for the AAC and PACAF Options.

56. On June 1, 1987, TechDyn forwarded the RFP to Whittaker and requested a quote from Whittaker for the PDFA portion of the AAC and PACAF Options.

57. After negotiations and an exchange of correspondence between TechDyn and Whittaker regarding technical questions related to the RFP, on July 7, 1987, Whittaker submitted a quote of \$3,566,492.00 to TechDyn to perform the PDFA portion of the the AAC and PACAF Options.

58. On September 21 and 22, 1987, TechDyn, Whittaker and the Air Force met for a "Redlining Session" to make changes to reduce the cost of the AAC and PACAF Options.

59. On October 5, 1987, Whittaker submitted a revised proposal to TechDyn for the PDFA work called for by the AAC and PACAF Options.

60. On October 8, 1987, TechDyn rejected Whittaker's October 5, 1987 proposal and directed Whittaker to resubmit a proposal after incorporating the matters discussed in the September 21 and 22 "Redlining Sessions" into the proposal.

61. On November 13, 1987, Whittaker provided TechDyn another proposal for the AAC and PACAF Option work including a complete cost breakdown and technical description of the work to be performed. The total cost of this proposal was \$2,702,651.00.

62. In its November 13, 1987 proposal, Whittaker affirmatively certified to TechDyn in writing that: "This proposal is submitted in response to the RFP, Contract Modification, etc. in Item 1 and reflects our best estimates and/or actual costs as of this date."

63. At the time that Whittaker submitted its November 13, 1987 proposal to TechDyn, Whittaker knew and intended that

TechDyn use and rely on Whittaker's proposal in an effort to obtain award of the AAC and PACAF work from the Air Force.

64. On November 25, 1987, TechDyn submitted its AAC and PACAF proposal to the Air Force which included Whittaker's November 13, 1987 proposal for the PDFA portion of the work.

65. Subsequent to November 25, 1987, TechDyn expended considerable effort and expense in negotiations with the Air Force to obtain the AAC and PACAF Option work.

66. On or before January 25, 1988, which was subsequent to TechDyn's proposal, but before the time that TechDyn's AAC and PACAF Options were to expire on January 31, 1988, Whittaker secretly and without advising TechDyn provided the Air Force a proposal for the same AAC and PACAF work which Whittaker had quoted to TechDyn on November 13, 1987.

67. Whittaker's January 25, 1988 written proposal to the Air Force contained numerous material discrepancies from its November 13, 1987 proposal to TechDyn related to price, schedule and items of work for the AAC and PACAF Options.

68. On February 16, 1988, the Air Force informed TechDyn that the AAC and PACAF Options were not going to be awarded to TechDyn. Instead, all of the AAC and PACAF Option work was awarded to Whittaker based upon Whittaker's January 25, 1988 proposal to the Air Force.

69. As set forth above, by simultaneously providing TechDyn and the Air Force inconsistent price and scheduling

information for the AAC and PACAF Option work, Whittaker breached its contract with TechDyn.

WHEREFORE, TechDyn demands judgment against Whittaker in the amount of at least \$800,000, together with prejudgment interest, costs, expenses, attorneys' fees, and such other relief as this Court may deem appropriate.

DATED: August 21, 1990.

Respectfully submitted,

TECHDYN SYSTEMS CORPORATION

By: 

Garry R. Boshert

By: 

Douglas C. Proxmire

WATT, TIEDER, KILLIAN & HOFFAR
7929 Westpark Drive, Suite 400
McLean, Virginia 22102
(703) 749-1000

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Amended Motion for Judgment was hand-delivered this 21st day of August, 1990 to:

William L. Carey, Esquire
Brian F. Kenney, Esquire
Miles & Stockbridge
11350 Random Hills Road
Suite 500
Fairfax, VA 22030

and

Jean-Pierre Swennen, Esquire
Robert T. Deyling, Esquire
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505



Garry R. Boehlert

RECEIVED

MAR 05 1990

WATT, TIEDER,
KILLIAN & HOFFAR

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TECHDYN SYSTEMS CORPORATION

PLAINTIFF

v.

WHITTAKER CORPORATION

DEFENDANT

At Law No. 94144

WHITTAKER CORPORATION

COUNTERCLAIM
PLAINTIFF,

v.

TECHDYN SYSTEMS CORPORATION

COUNTERCLAIM
DEFENDANT.

AMENDED COUNTERCLAIM

COMES NOW Defendant/Counterclaim Plaintiff, Whittaker Corporation, by counsel, and for its Counterclaim against Plaintiff/Counterclaim Defendant, TechDyn Systems Corporation, states as follows:

Parties

1. Whittaker Corporation ("Whittaker") is a corporation existing under the laws of the State of Delaware. Whittaker's principal place of business is located at 10880 Wilshire Boulevard, Los Angeles, California 90024. Whittaker operates an unincorp-

orated division, Whittaker Electronic Systems. Whittaker Corporation, Whittaker Electronic Systems and entities now part of Whittaker Electronic Systems shall hereinafter be referred to as "WES".

2. Plaintiff/Counterclaim Defendant TechDyn Systems Corporation ("TechDyn") is a corporation existing under the laws of the State of Delaware, with its principal place of business located at 6564 Loisdale Court, Springfield, Virginia 22150.

Jurisdiction and Venue

3. This Court has jurisdiction over this matter pursuant to §§ 17-123 of the Code of Virginia.

4. Venue is proper in this Court pursuant to § 8.01 - 262 of the Code of Virginia. The cause of action of which WES complains arose in Fairfax County Virginia and TechDyn regularly conducts its affairs and business activities, and has its principal place of business, in Fairfax County.

Factual Background

5. In 1985, The United States Air Force ("Air Force") began installing an air/ground tactical aircraft warning and control system in Iceland. The system is known as the Iceland Command and Control Enhancement ("ICCE") project.

6. In order to meet its goals of contracting with small, minority businesses, in 1985 the Air Force sought out a participant under Section 8(a) of the Small Business Act, 15 U.S.C. Section 637(a), with which to contract for the development and installation of the ICCE project. Participants under the Section 8(a) program

are small businesses--which have been certified as socially and economically disadvantaged. Under the program, a federal agency wishing to procure services and/or products from a participant qualified under Section 8(a) contracts with the United States Small Business Administration ("SBA") for the services and/or products. The SBA in turn contracts with the designated Section 8(a) participant to perform the contractual requirements under the contract between the SBA and the procuring federal agency. The Section 8(a) participant is permitted in turn to subcontract up to 50 percent of its obligations under the contract to non-Section 8(a) firms.

7. The Air Force selected TechDyn, a Section 8(a) participant, to perform the ICCE project and directed TechDyn to subcontract with an entity now part of WES for a portion of the work because of that entity's prior experience with similar projects.

8. The contract between TechDyn and the SBA requires TechDyn to develop the hardware and software for the ICCE project.

9. TechDyn and WES thereafter executed a Subcontract whereby WES would develop certain design specifications, the software and a portion of the hardware for the ICCE project. The Subcontract, known as Subcontract 125-001 ("the Subcontract"), was prepared by TechDyn. A copy of the basic Subcontract document is attached as Exhibit "A".

10. There was adequate consideration for both parties to support the Subcontract.

11. Since entering into the Subcontract, TechDyn has failed to manage and direct the prime contract by repeatedly changing, increasing, decreasing and otherwise modifying WES's obligations under the Subcontract by directing and requiring WES to perform acts outside the scope of the Subcontract. TechDyn has also refused to accept WES's reasonable solutions to technical problems. In addition, TechDyn has failed to make available hardware necessary for WES to perform its obligations.

12. WES properly and timely performed its duties under the Subcontract.

13. For the reasons described herein, there is an actual controversy between WES and TechDyn concerning, among other things, the amount owed WES for its services and products, and the parties' interpretation of the Subcontract.

COUNT I

(Breach of Contract -- Failure to Equitably Adjust Contract Costs)

14. WES repeats and realleges each and every allegation contained in the paragraphs of the Counterclaim numbered "1" through "13" as fully and with the same force and effect as if herein at length set forth.

15. Under the Subcontract, TechDyn was, among other things, to reasonably supervise WES's activities in connection with the delivery of all labor and materials necessary to satisfactorily and timely complete WES's duties under the Subcontract within the time and cost prescribed by the Subcontract. TechDyn failed to meet its obligation under the Subcontract and continually directed WES to perform redundant, additional and different tasks causing WES to

be entitled to an equitable adjustment of costs for changes and additional work required by TechDyn out of the scope of the Subcontract as more specifically described below.

16. WES was to undertake a limited amount of software engineering design, code, and integration. However, due to TechDyn's repetitive and uncoordinated review and "redline" sessions, WES incurred significant delays and additional costs in the preparation of the final design. Moreover, the final design far exceeded the design changes envisioned and documented at program inception.

17. TechDyn also required changes to the single test concept originally bid by WES based on the February 1985 Statement of Work. TechDyn required that WES continually reschedule tests, and failed to provide WES with guidance requested by WES regarding the capabilities of the E3 simulator, thereby necessitating additional changes and out-of-scope costs.

18. TechDyn was required to provide Contractor Technical Services for the preoperational inter-operational capacity system. In recognition of this, TechDyn on several occasions purchased technician training services from WES by separate purchase order. Subsequently, TechDyn reversed its position and demanded that WES provide such support services under the Subcontract. WES is entitled to payment for providing this out-of-scope support.

19. WES had prepared to perform in accordance with the original requirements of the ICCE RFP to provide parts for the

Processing and Display Functional Area ("PDFA") system. Modification 003 significantly expanded this requirement, and the expanded tasks were duly performed by WES. The additional tasks were outside the scope of the Subcontract, and WES is entitled to reimbursement for the additional monies expended.

20. The requirement that WES modify Data Terminal Sets ("DTS") for use in Iceland was dropped at the request of TechDyn and the Government, as the DTS were to be procured from another source. WES was later asked by TechDyn to analyze the impact of the delay in receiving the DTS from the other source. WES is entitled to reimbursement for this additional work which is out-of-scope.

21. The hardware provided by TechDyn for use in the Remote Control Element ("RCE") proved inadequate to the requirements of the Subcontract and delayed the development of the software, which was WES's sole responsibility. WES expended many man-hours identifying and analyzing the hardware problems and is entitled to reimbursement for these costs which are out-of-scope.

22. TechDyn delayed in analyzing and providing comments in response to WES's logistics deliverables. This delay caused WES to incur additional costs with its subcontractor, Ocean Technology, Inc. WES is entitled to reimbursement of these costs which are out-of-scope.

23. TechDyn failed to timely manufacture or procure either the Communication Functional Area ("CFA") cables intended to connect the CFA components to the PDFA or the packaging for the

DTS/Crypto units. TechDyn thereafter first requested a proposal from WES to provide these items, then "directed" WES to provide them at no cost. WES is entitled to the costs it incurred in manufacturing and delivering the cables and packaging which is out-of-scope.

24. After causing delays to WES's use of the development of the test bed then situated at WES's facility, TechDyn technicians removed the equipment, leaving WES with no equipment with which to complete the RCE software task. TechDyn further directed that WES pack and ship the RADIL to Iceland, leaving no equipment to correct Software Trouble Reports. WES is entitled to the additional costs it incurred as a result of the removal, and for this out-of-scope work.

25. WES was further subject to contradictory direction, requests for proposals, and other changes in TechDyn's position, review of which required time and effort on the part of WES's management. These costs are more fully set forth in its claim for equitable adjustment. WES incurred additional costs including the cost of claim preparation as a result of these actions and the attendant schedule delays.

26. Under Section I of the Subcontract, the terms of Federal Acquisition Regulation 52.243-1 ("Changes") were specifically incorporated into the terms of the Subcontract. Section 52.243-1(b) provides as follows:

If any such change [in contract performance requirements] causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order,

the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

Because of the Subcontract relationship, TechDyn's contracting officer is in the position of the "Contracting Officer" as set forth in the FAR; TechDyn must therefore make an equitable adjustment to the Subcontract for out-of-scope work performed by WES.

27. WES performed all out-of-scope tasks in reliance on TechDyn's representation that it would comply with the FAR and Subcontract as to an equitable adjustment so that WES would be paid for its out-of-scope work.

28. WES initially submitted a claim for equitable adjustment of Subcontract costs in accordance with FAR 52.243-1(b) as incorporated in the Subcontract and Article 2-9 in late May, 1987. The May, 1987, submission was updated on April 15, 1988, and again on February 6, 1989.

29. WES's claim for equitable adjustment has not been resolved by agreement between the parties and involves a claim for compensation because of constructive changes in the work performed under the Subcontract.

30. TechDyn has breached the terms of Subcontract 125-001 as set forth in FAR 52.243-1(b) by refusing and failing to substantively analyze the claim and pay WES the sums due in full as an equitable adjustment to the Subcontract price. Moreover, TechDyn breached the Subcontract by failing to properly supervise and coordinate between WES and the Air Force for delivery of labor

and materials necessary to satisfactorily complete the Subcontract.

31. As a direct and proximate result of TechDyn's breach of contract, WES has sustained damages in excess of \$3,000,000.00 for out-of-scope work covered by the equitable adjustment claim and for work done within the scope of the Subcontract, which damages continue to accrue, plus interest.

COUNT II
QUANTUM MERUIT CLAIM

32. WES repeats and realleges each and every allegation contained in the paragraphs of this Counterclaim numbered "1" through "31" as fully and with the same force and effect as if herein at length set forth.

33. WES rendered services to TechDyn at TechDyn's request as specifically set forth in Count I above.

34. TechDyn has received benefits for out-of-scope work WES performed that it should not justly retain.

35. TechDyn has an obligation to pay WES a reasonable compensation for the services rendered TechDyn.

36. As a result of the services rendered TechDyn by WES, TechDyn has been unjustly enriched at the expense of WES.

COUNT III
(Breach of Contract -- Improper Termination for Default)

37. WES repeats and realleges each and every allegation contained in the paragraphs of this Counterclaim numbered "1" through "36" as fully and with the same force and effect as if herein at length set forth.

38. The RCE portion of the ICCE project is supposed to allow

the operation of various radios in remote locations in Iceland. Under the Subcontract, WES is to develop software for the RCE, and TechDyn is to provide the hardware.

39. TechDyn failed to provide workable hardware for the RCE. The failure of TechDyn to meet its obligation to provide workable hardware for the RCE prevented WES from developing software for the RCE by April 1987, the date originally set for the completion of the RCE.

40. Neither TechDyn nor the Air Force has ever established a new date for completion of the RCE.

41. On or about late August, 1989, TechDyn unilaterally removed the RCE test bed consisting of personal computers, switch control devices and radio connections from WES's Carlsbad facility. This action prevented WES from further activity on the RCE.

42. By letter dated January 12, 1989, TechDyn requested that WES show cause why WES's performance on the RCE component of the Subcontract should not be terminated for default under FAR 52.249-8, due to WES's failure to make progress. FAR 52.249-8, as incorporated in the Subcontract, allows the government/TechDyn to terminate a contractor's performance when the contractor is not making substantial progress in its performance.

43. By letter dated January 18, 1989, WES advised TechDyn of the specific factual and legal reasons why WES had not "failed to make progress" on the RCE component and why the issuance of a default by TechDyn would be improper and in violation of law.

44. By letter dated January 23, 1989, TechDyn indicated that

because of WES's "failure to make progress" on the RCE component of the Subcontract, TechDyn was entering a "termination for default" against WES on the RCE component of the ICCE project.

45. Because it was TechDyn, not WES, that was responsible for the delay of the RCE because of TechDyn's failure to provide a workable RCE hardware system upon which compatible RCE software could be developed by WES, and because no new date for completion of the work has been set, TechDyn's finding that WES "failed to make progress" so as to delay the RCE component was improper under FAR 52.249-8, as incorporated into the Subcontract, and in breach of the Subcontract.

46. TechDyn's action in entering a "termination for default" because of the inability of WES to complete the RCE software was thus improper both factually and legally.

47. The Subcontract incorporates Federal Acquisition Regulation 52.249-8(g) which mandates that in the event a default is improperly issued, "the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the government" (emphasis added). Despite WES's repeated requests, TechDyn has failed to withdraw the "termination for default" and enter a "termination for convenience" of the RCE component in accordance with FAR 52.249-8(g) and to pay WES for the RCE work completed both within scope and out-of-scope.

48. As a direct and proximate result of TechDyn's willful failure to comply with FAR 52.249-8(g) and intentional breach of the Subcontract, WES has sustained damages in the form of loss of

compensation for services rendered, materials acquired, and costs incurred to cancel commitments related to the RCE component of the Subcontract.

COUNT IV

(Breach of Contract -- Failure to Make Payment of Amounts Due and Owing Under Subcontract 125-001 and Purchase Orders)

49. WES repeats and realleges each and every allegation contained in paragraphs of this Counterclaim numbered "1" through "48" as fully and with the same force and effect as if herein at length set forth.

50. Article 2-2 of Subcontract 125-001, entitled "Payment", provides as follows:

As invoice shall be rendered monthly by the Subcontractor. Promptly upon receipt of each duly Certified invoice, with supporting data satisfactory to the Contractor, the Contractor shall promptly process the Subcontractor's invoice for payment and within sixty (60) days, shall pay the Subcontractor. The payment above shall be subject to such readjustments as may be determined to be necessary for interim or final audits.

51. On August 25, 1986, WES presented an invoice to TechDyn in the amount of \$152,526.00 for services rendered under the Subcontract and described as Contract Line Item Number ("CLIN") 0048. TechDyn has totally failed to pay \$113,927.00 of this invoice, in violation of Article 2-2 and in breach of the Subcontract. TechDyn's payment of \$38,598.00 on November 12, 1986 represented a late payment, also in violation of Article 2-2 and in breach of the Subcontract.

52. On June 4, 1987, WES presented an invoice to TechDyn in the amount of \$118,474.00 for services rendered under the Subcontract and described as CLIN No. 0004AA. TechDyn has failed to

make the required payment in the amount of \$118,474.00 within the period specified, in violation of Article 2-2 and in breach of the Subcontract.

53. On May 24, 1988, WES presented an invoice to TechDyn under Purchase Order No. 11902 in the amount of \$11,990.12 for services rendered in connection with the ICCE project. TechDyn has failed to make the required payment in the amount of \$11,990.12, in breach of the agreement contained in Purchase Order No. 11902.

54. On December 15, 1988, WES presented an invoice to TechDyn under Purchase Order No. 12362 in the amount of \$7,140.77 for services rendered in connection with the ICCE project. TechDyn has failed to make the requested payment in the amount of \$7,140.77, in breach of the agreement contained in Purchase Order No. 12362.

55. As a direct and proximate result of TechDyn's failure to make payments in connection with the above work performed in accordance with Subcontract 125-001 and Purchase Order Nos. 11902 and 12362, WES has sustained damages in the amounts set forth above, and for any additional amounts for invoices that continue to accrue plus interest.

PRAYER FOR RELIEF

WHEREFORE, the Counterclaim Plaintiff respectfully requests that the Court grant:

1. On COUNT I, compensatory damages in excess of \$3,000,000.00 on the equitable adjustment claim for work done out-of-scope and within scope, which damages continue to accrue, plus interest.

2. On COUNT II, reasonable compensation for TechDyn's unjust enrichment at WES's expense;

3. On COUNT III, compensatory damages in the form of loss of compensation for services rendered, materials acquired, and costs incurred to cancel commitments related to the RCE component of the Subcontract, in an amount subject to proof at trial.

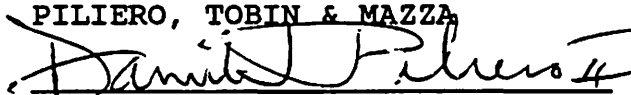
4. On COUNT IV, compensatory damages in the amount of \$251,531.89 for TechDyn's failure to pay outstanding invoices and Purchase Orders, which amounts continue to accrue plus interest;

5. Attorneys' fees to WES;

6. The costs and disbursements of the action to WES; and

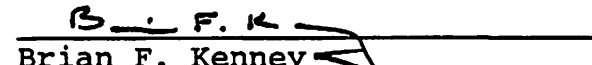
7. Such other and further relief as the Court may deem just and proper.

Respectfully submitted,

PILIERO, TOBIN & MAZZA
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Dated: 3/5/90

Attorneys for Counterclaim Plaintiff
Whittaker Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Whittaker Corporation's Counterclaim was hand-delivered/mailed this 5th day of March 1990 to:

Douglas C. Proxmire, Esq.
Garry Boehlert, Esq.
WATT, TIEDER, KILLIAN & HOFFAR
7929 Westpark Drive
Suite 400
McLean, Virginia 22102


Brian F. Kenney

SUBCONTRACT
NO. 125-001

between

TECHDYN SYSTEMS CORPORATION

and

COMMAND, CONTROL and COMMUNICATIONS
CORPORATION

Issued Under
Prime Contract F19628-85-C-0079

0031

EXHIBIT

A

ALL-STATE LEGAL SUPPLY CO.

TABLE OF CONTENTS

PAGE NO.

RECITALS	1
PURPOSE OF AGREEMENT	1

ARTICLE OF AGREEMENT

ARTICLE 1-1	Statement of Work	1
ARTICLE 1-2	Financial Terms and Conditions	2
ARTICLE 1-3	Effective Date and Duration	2
ARTICLE 1-4	Allotted Sum	3
ARTICLE 1-5	Delivery Requirements	3
ARTICLE 1-6	Place for Notices	3

GENERAL PROVISIONS

ARTICLE 2-1	Changes	4
ARTICLE 2-2	Payment	4
ARTICLE 2-3	Inspection	5
ARTICLE 2-4	Subcontracts	5
ARTICLE 2-5	Books and Records	5
ARTICLE 2-6	Examination of Records	6
ARTICLE 2-7	Material and Workmanship	6
ARTICLE 2-8	Termination	6
ARTICLE 2-9	Disputes	7
ARTICLE 2-10	Property	7
ARTICLE 2-11	Liability for Government-Owned Property	8
ARTICLE 2-12	Liability for Damage to Persons and Property	9
ARTICLE 2-13	Renegotiation	10
ARTICLE 2-14	Notice and Assistance Regarding Patent Infringement	10
ARTICLE 2-15	Patents	10
ARTICLE 2-16	Copyright	11
ARTICLE 2-17	Products, Methods and Manufacturing Processes	12
ARTICLE 2-18	Compliance with Laws	12
ARTICLE 2-19	Buy American Act	12
ARTICLE 2-20	Officials Not to Benefit	13
ARTICLE 2-21	Covenant Against Contingent Fees	13
ARTICLE 2-22	Security Requirements	13
ARTICLE 2-23	Drawings and Specifications	13
ARTICLE 2-24	Disclosure of Information	14
ARTICLE 2-25	Contingencies Relieving Subcontractor from Meeting Delivery Requirement	14
ARTICLE 2-26	Taxes	15
ARTICLE 2-27	Safety, Health and Fire Protection	15
ARTICLE 2-28	Assignment and Set-up	15
ARTICLE 2-29	Notices	15
ARTICLE 2-30	Construction	16
ARTICLE 2-31	Independent Contractor	16
ARTICLE 2-32	Third Party Beneficiary	16
ARTICLE 2-33	FAR Clauses	16
ARTICLE 2-34	Written Consent	16
ARTICLE 2-35	Attachments	16

SUBCONTRACT NO. 125-001

RECITALS

This Subcontract No. 125-001 between TechDyn Systems Corporation, a Delaware Corporation, with its principal office at 6564 Midvale Court, Suite 600, Springfield, Virginia 22150 (hereinafter referred to as the "Contractor") and Command, Control and Communications Corporation organized and existing under the laws of the state of California, with its principal offices at 23670 Hawthorne Blvd., Torrance, California 90505 (hereinafter referred to as the "Subcontractor") consists of the Recitals, the Purpose of Agreement, the Articles of Agreement pages 1 through 3, and the General Provisions pages 3 through 16.

PURPOSE OF AGREEMENT

The Contractor acting under Contract F19628-85-C-0079 (called the "Prime Contract") with the United States of America (called the "Government") acting through the Small Business Administration and directed by the United States Air Force Solicitation No. F19628-85-R-0076 to use certain services and equipment of the Subcontractor, desires to enter into an agreement with the Subcontractor for the said equipment and services.

NOW THEREFORE, the parties agree as follows:

ARTICLES OF AGREEMENT

ARTICLE 1-1 STATEMENT OF WORK

(a) Subject to the provisions and limitations of this agreement, the Subcontractor shall perform the following tasks as stated below. The work shall be performed in accordance with the Statement of Work that was provided to the Subcontractor in the solicitation for this effort dated 23 March 1985. The number of labor hours, the hourly rates, and the dollar amount allotted for travel are listed below for each task that is to be performed under this agreement.

TASK 1 SITE SURVEY

Technical	144 Hours	\$ 55.95 Hourly Rate
Travel		5,154.00

TASK 2 IOC DESIGN

Sr. Technical	1,360 Hours	94.58 Hourly Rate
Program Mgr.	85 Hours	100.03 Hourly Rate
Admin. Support	85 Hours	38.75 Hourly Rate
Travel		5,824.00

TASK 4 LOGISTICAL SUPPORT ANALYSIS

Sr. Technical	340 Hours	\$ 94.58 Hourly Rate
Travel		2,912.00

TASK 5 TECHNICAL REVIEWS

Admin. Support	184 Hours	38.75 Hourly Rate
Sr. Technical	144 Hours	94.58 Hourly Rate
Sr. Test/Field Mgr.	48 Hours	62.16 Hourly Rate
Program Mgr.	96 Hours	100.03 Hourly Rate
Travel		4,248.00

TASK 7 PROPOSAL EFFORT

Sr. Technical	240 Hours	94.58 Hourly Rate
Technical	40 Hours	55.95 Hourly Rate
Admin. Support	80 Hours	38.75 Hourly Rate
Travel		2,950.00

(b) The Labor Hours set forth in (a) above are on a Fixed Price Level of Effort basis. The Cost of Travel will be reimbursed at cost through General & Administrative (G&A) expense with no profit.

TASK 6 PME

This task may be added to this Subcontract, at the option of the Contractor. If the Contractor choses to add Task 6, the Price will not exceed \$428,055.

ARTICLE 1-2 FINANCIAL TERMS AND CONDITIONS

(a) The Contractor will pay the Subcontractor net 60 days from receipt by the Contractor of an acceptable invoice from the Subcontractor and provided the work has been accepted by the Contractor.

(b) Payment of compensation as hereinbefore provided shall be understood as including all charges for direct and indirect expenses, including profit. The rates and basis specified in this Article shall be the sole and exclusive basis for any and all charges for which the Contractor shall be liable and no separate charge shall be made for any other expense.

ARTICLE 1-3 EFFECTIVE DATE AND DURATION

(a) Effective Date - The effective date of this Subcontract shall be the date of the Notice of Award which was given by the Contractor on 5 April 1985 via telex no. 85-020.

(b) Duration - This Subcontract shall expire one hundred and twenty (120) days after its effective date, unless extended in writing by mutual agreement of both parties and approved by the Contracting Officer.

ARTICLE 1-4 ALLOTTED SUM

The sum allotted for this Subcontract is \$263,100.38. The Contractor will be liable to the Subcontractor only for such actual costs incurred, plus compensation for services performed, in accordance with the provisions of this Subcontract and the Subcontractor will not exceed the amount specified in this paragraph unless additional funding is provided for in writing by mutual agreement of both parties and approved by the Contracting Officer.

ARTICLE 1-5 DELIVERY REQUIREMENTS

The Subcontractor shall deliver all equipment, reports, services, and other data called for herein, F.O.B. Contractor's facilities at 6564 Loisdale Court, Springfield, VA 22150, or to such other locations as may be designated by the Contractor's Program Manager.

ARTICLE 1-6 PLACE FOR NOTICES

- (a) Contractor: TechDyn Systems Corporation
6564 Loisdale Court, Suite 600
Springfield, VA 22150
Attention: William C. Hise, Vice
President & Director
Management Support
Operations
- (b) Subcontractor: Command, Control and Communi-
cations Corporation
23670 Hawthorne Blvd.
Torrance, CA 90505
Attention: Marie F. Raymond
Manager of Contracts

GENERAL PROVISIONS

ARTICLE 2-1 CHANGES

(a) The Contractor's representative specified in Article 1-6 of this Agreement may at any time make changes in and/or direct the omission or cancellation of any or all work or services under this Agreement, by issuing a Contract Modification.

(b) All changes beyond the general scope of this Subcontract to be binding on the parties hereto will require a modification of this Agreement signed by the Subcontractor and Contractor and approved in writing by the Contracting Officer.

ARTICLE 2-2 PAYMENT

(a) Subject to the provisions of this Subcontract, the Contractor will pay to the Subcontractor those charges which are allowable and appropriate to this Subcontract, upon submission to the Contractor of an invoice (in triplicate) supported by data satisfactory to the Contractor and the Government and certified by a duly authorized representative of the Subcontractor as follows:

"I certify that the above bill is correct and just, that payment thereof has not been received, that all applicable requirements of law and regulations as to American production and labor standards have been complied with."

(b) An invoice shall be rendered monthly by the Subcontractor. Promptly upon receipt of each duly certified invoice, with supporting data satisfactory to the Contractor, the Contractor shall promptly process the Subcontractor's invoice for payment and within sixty (60) days, shall pay the Subcontractor. The payment above shall be subject to such readjustments as may be determined to be necessary for interim or final audits.

(c) Prior to final payment, and as a condition thereof, the Subcontractor shall furnish the Contractor with; (1) all reports, property accounting, patent disclosures and clearances required hereunder, (2) a Release From All Claims against the Contractor and the Government arising under and by virtue of this Subcontract, other than such claims, if any, as may be specifically excepted by the Subcontractor with concurrence of the Contractor from the operation of the Release in stated amounts to be set forth therein, or in estimated amounts where the amounts are not susceptible of exact statement.

(d) Monthly invoices must be broken out by tasks with the number of hours expended, by task, for each labor classific-

ation, and any travel expense incurred, by task shown on the invoice.

ARTICLE 2-3 INSPECTION

(a) All material and workmanship shall be subject to inspection and test by representatives of the Contractor and the Government, who shall be provided with adequate facilities and permitted to have free access, at all reasonable times, to the Subcontractor's plant and facilities for the purpose of making such inspection or test.

(b) Where appropriate, the Contractor and Government representatives shall severally have the right to require replacement or revisions of deliverables under this Subcontract which are not found satisfactory. The passing as satisfactory of any particular deliverable under this Agreement, by the a Contractor or Government representative does not relieve the Subcontractor from any responsibility regarding faulty workmanship or material which may be subsequently discovered prior to final acceptance.

ARTICLE 2-4 SUBCONTRACTS

The Subcontractor is not permitted to sub-subcontract any of the work under this Agreement without the expressed written permission of the Contractor.

ARTICLE 2-5 BOOKS AND RECORDS

(a) The Subcontractor agrees to keep records and books of account and other financial records showing the cost of all items of labor and material and other expenditures of whatever nature for which reimbursement or payment is authorized under this Subcontract. The method of keeping such records shall be subject to the approval of the Government but no material change will be made in the Subcontractor's method if it conforms to generally accepted industrial accounting practice consistently applied and adequately records the financial operations under the Subcontract.

(b) Subcontractor shall preserve the papers herein described, except such documents as are submitted in support of payment or reimbursement vouchers, at a location or locations selected by the Subcontractor and approved by the Contractor, without additional compensation therefor for a period of five (5) years after final payment of this Subcontract. Upon expiration of the five (5) year period, the Subcontractor shall be free to retain or dispose of said records as it sees fit; provided that the Contractor and the Government will be given 60 days written notice of any such contemplated disposition and the Contractor or

the Government shall have the right within 60 days of such notice — to require the Subcontractor to pack and snip all or any part of such records to any designated location, and provided further that any such disposal of classified records shall be as directed by the Contractor or the Government. The Contractor or the Government or both shall have the right at any time to have microfilms made of any such records under this Article or by mutual agreement, Subcontractor may at any time transfer any or all of such records to the Contractor or the Government Subcontractor may, with the approval of the Government, destroy during the term of this Subcontract or after termination or completion of the Subcontract such papers as are deemed to be of no potential value to the Subcontractor, the Contractor and the Government.

ARTICLE 2-6 EXAMINATION OF RECORDS

(a) The Government shall at all reasonable times have the right to audit Subcontractor's accounts and other financial records relating to the performance of this Subcontract at the place or places where such records and accounts are located. Subcontractor shall afford the Government proper facilities for such work.

(b) The Subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall have access to and the right to examine any pertinent books, documents, papers and records of the Subcontractor involving transactions related to this Subcontract until the expiration of three (3) years after final payment under this Subcontract unless the Government authorizes their prior disposition.

ARTICLE 2-7 MATERIAL AND WORKMANSHIP

(a) The work hereunder shall be executed in the best and most workmanlike manner by qualified, careful and efficient workers, in strict conformity with the best standard practices.

ARTICLE 2-8 TERMINATION

The Contractor may, at any time, by written or telegraphic notice, terminate this Subcontract in whole or in part. Such termination shall be effective in the manner and to the extent and upon the date specified in such notice. In the event of termination, payments will be made for services rendered, materials

acquired and cancellation costs of commitments made, in accordance with these provisions and Article 1-2.

ARTICLE 2-9 DISPUTES

Except as otherwise provided in this Subcontract, any dispute concerning a question of fact arising under this Subcontract which is not disposed of by agreement shall be decided by a representative of the Government authorized to supervise and administer performance of the work under the Prime Contract between the Contractor and the Government who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Subcontractor and the Contractor. Within thirty (30) days from the date of receipt of such copy, the Subcontractor or the Contractor may appeal by mailing or otherwise furnishing the Government representative a written appeal addressed to the Government, and the decision of the Government is taken, the decision of the Government representative, to whom the dispute was first submitted, shall be final. In connection with any appeal proceeding under this clause, the Subcontractor and Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Subcontractor shall proceed diligently of the Government's representative.

ARTICLE 2-10 PROPERTY

(a) Adequate property records and such special records as may be required by the Contractor will be maintained by the Subcontractor for all materials purchased for work in connection with this Subcontract for which the Subcontractor has been or is entitled to be reimbursed hereunder or which have been furnished by the Contractor.

(b) Title to all materials for which the Subcontractor shall be entitled to reimbursement under this Subcontract shall vest in the Government whenever title passes to the Subcontractor from the vendor, and the Government's title shall not be affected by an attachment thereof to real property owned by the Subcontractor. Title to other property, the cost of which is reimbursable to the Subcontractor, shall pass to any vest in the Government upon (i) issuance for use of such property in the performance of this Subcontract; or (ii) commencement of processing or use of such property in the performance of this Subcontract; or (iii) reimbursement of the cost thereof by the Contractor, whichever first occurs.

(c) Property of the Government in the possession or control of the Subcontractor and acquired by or furnished to the Subcontractor under this Subcontract (which property shall hereafter be called Government property) shall only be for the use of

the Subcontractor in the performance of the work prescribed in this Subcontract.

(d) The Subcontractor agrees to do everything reasonable and proper in order to protect all Government property in its possession from becoming lost, stolen or damaged, and further, to keep said property in good condition, ordinary wear and tear excepted.

(e) Upon completion of this Subcontract or upon demand the Subcontractor shall, subject to paragraph (f) of this Article, return all unexpended Government property to the Contractor. The Contractor shall remove or direct removal, authorize storage or authorize transfer to another contract of all items of unexpended Government property not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contractor, not later than 90 days after the Subcontractor submits to the Contractor an acceptable list showing quantity and quality. Upon the Subcontractor's compliance with said instructions its liability to account for items removed will cease.

(f) With the approval in writing of the Contractor, the Subcontractor may transfer or otherwise dispose of such Government-owned property to such parties and upon such terms and conditions as the Contractor and the Government may approve, or, with like approval by the Contractor and the Subcontractor itself may acquire title to such property or any of it at a price mutually agreeable. The proceeds of any such transfer or disposal shall be applied in reduction of payments to be made by the Contractor to the Subcontractor under this Subcontract, or shall otherwise be paid in such manner as the Contractor may direct.

ARTICLE 2-11 LIABILITY FOR GOVERNMENT-OWNED PROPERTY

(a) Except as otherwise specifically provided, the Subcontractor shall not be liable for loss or destruction of or damage to property of the Government in the possession or control of the Subcontractor in connection with this Subcontract (hereinafter called "Government Property") unless such loss, destruction or damage results from willful misconduct or failure to exercise good faith on the part of the subcontractor's corporate officers or other representatives having supervision or direction of the operation of the whole of the Subcontractor's business in the performance of this Subcontract.

(b) Special measures shall be taken by the Subcontractor in the protection of and accounting for source and special nuclear materials, reactor and special research materials, and such other materials as may be designated and/or supplied by the Contractor, in accordance with applicable regulations and policies of the Government.

(c) The Subcontractor represents that it is not maintaining and agrees that it will not hereafter maintain insurance (including self-insurance funds or reserves) covering loss or destruction of or damage to Government property acquired by or furnished to the Subcontractor under this Subcontract.

(d) In the event the Subcontractor is reimbursed or compensated for any loss or destruction of or damage to Government property, it shall equitably reimburse the Government.

(e) The Contractor and the Government shall at all reasonable times have access to the premises wherein any Government property is located.

ARTICLE 2-12 LIABILITY FOR DAMAGE TO PERSONS AND PROPERTY

(a) Subject to the provisions of Article 2-11, the Subcontractor assumes entire responsibility and liability for losses, expenses, damages, demands and claims in connection with or arising out of any injury or alleged injury (including death) or damage or alleged damage to property, sustained or alleged to have been sustained during the performance of the work done by the Subcontractor, its agents, servants, and employees, including losses, expenses, or damages sustained by the Contractor or the Government, except such as may be due to the fault or negligence of the Contractor or the Government, and shall indemnify and hold harmless the Contractor and the Government, and the agent, servants, and employees of each of the foregoing, from any and all such losses, expenses, damages, demands and claims, and shall defend any suit or action brought against them, or any of them, based on any such alleged injury or damage, and shall pay all damages, costs and expenses, including attorney's fees, in connection therewith or resulting therefrom.

(b) The Subcontractor shall procure and maintain such bonds and insurance as are required by law or by written direction of the Contractor. The terms of any such bond or insurance shall be submitted to the Contractor for approval. In view of the provision of Article 2-11 hereof, entitled "Liability for Government-Owned Property", the Subcontractor shall not procure or maintain for its own protection any insurance (including self-insurance or reserves) covering loss, destruction of or damage to Government-owned property acquired by or furnished to the Subcontractor under this Subcontract. The reasonable costs of property approved bonds or insurance shall be a reimbursable expense under this Subcontract.

ARTICLE 2-13 RENEGOTIATION

(a) This Subcontract shall be subject to any act of the Congress, whether heretofore or hereafter enacted and to the extent indicated wherein, providing for the renegotiation of said Subcontract and shall be deemed to contain all the provisions required by any such act without subsequent amendment of this Subcontract specifically incorporating such provisions.

(b) The Subcontractor hereby agrees to insert the provisions of this Article, including this paragraph (b), in all sub-subcontracts hereunder as defined in Section 103 (g) of the Renegotiation Act of 1951 (Pub. Law 9, 82nd Cong.), except any sub-subcontracts of a class or type described in Section 106 (a) of the Renegotiation Act of 1951.

(c) Nothing contained in this clause shall impose any renegotiation obligation with respect to the Subcontract or any sub-subcontract hereunder which is not imposed by an act of the Congress, heretofore or hereafter enacted.

ARTICLE 2-14 NOTICE AND ASSISTANCE REGARDING PATENT INFRINGEMENT

(a) The Subcontractor agrees to promptly submit a written detailed report to the Contractor and the Government covering each claim of patent infringement asserted against the Subcontractor or against any of its sub-subcontractors involving transactions related to this Subcontract.

(b) In the event of litigation against the Government on account of any claim of infringement arising out of this performance of this Subcontract or out of the use of any supplies furnished or construction work performed hereunder, the Subcontractor agrees that it will furnish to the Government, upon request, all evidence and information in its possession pertaining to the defense of such litigation. Such information shall be furnished at the expense of the Government except in those cases in which the Subcontractor has agreed to indemnify the Government against the claim being asserted.

ARTICLE 2-15 PATENTS

(a) Whenever any invention or discovery is made or conceived by the Subcontractor or its employees in the course of, in connection with, or under the terms of this Subcontract, the Subcontractor shall furnish both the Contractor and the Government with complete information thereon; and the Government shall have the sole power to determine whether or not and where a patent application shall be filed, and to determine the disposition of the title to and the rights under any application or patent that may result. The judgement of the Government on these matters

(b) No claim for pecuniary award or compensation shall be asserted by the Subcontractor or its employees with respect to any invention or discovery made or conceived in the course of any of the work under this Subcontract.

(c) Except as otherwise authorized in writing by the Government, the Subcontractors will obtain patent agreements to effectuate the purpose of paragraphs (a) and (b) of this Article from all persons who perform any part of the work under this Subcontract, except such clerical and manual labor personnel as will not have access to technical data.

(d) Patent Indemnity - The Subcontractor agrees to indemnify the Contractor and the Government, their officers, servants and employees against liability of any kind (including costs and expenses incurred) for the use of Code prior to the issuance of Letter Patent) occurring in the performance of this Subcontract or arising by reason of the use of disposal by or for the account of the Contractor of items manufactured or supplied under this Subcontract.

ARTICLE 2-16 COPYRIGHT

(a) The Subcontractor agrees to and does hereby grant to the Contractor and the Government and to its officers, agents and employees acting within the scope of their official duties, (i) a royalty-free, non-exclusive and irrevocable license to reproduce, translate, publish, use, and disclosure of, and to authorize others so to do, all copyrightable material first produced or composed and delivered to the Contractor under this Subcontract by the Subcontractor, its employees or any individual or concern specifically employed or assigned to originate and prepare such material; and (ii) a license as aforesaid under any and all copyrighted or copyrightable work not first produced or composed by the Subcontractor in the performance of this Subcontract but which is incorporated in the material furnished under the Subcontract, provided that such license shall be only to the extent the Subcontractor now has, or prior to completion or final settlement of the Subcontract may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(b) The Subcontractors agrees that it will exert all reasonable efforts to advise the Contractor, and the Government, at the time of delivering any copyrightable or copyrighted work furnished under this Subcontract, of any adversely held copyrighted or copyrightable material incorporated in any such work and of any invasion of the right of privacy therein contained.

(c) The Subcontractor agrees to report to the Contractor and the Government promptly and in reasonable written detail, any

notice or claim of copyright infringement received by the Subcontractor to any material delivered under this Subcontract.

ARTICLE 2-17 PRODUCTS, METHODS AND MANUFACTURING PROCESSES

Any patented or unpatented knowledge or information concerning Subcontractor's products, methods or manufacturing processes or other data which Subcontractor may disclose to Contractor incident to the performance of this Subcontract shall, unless otherwise specifically agreed in writing, be deemed to have been disclosed as a part of the consideration for this Subcontract, and Subcontractor agrees not to assert any claim against Contractor or Government by reason of Contractor's or the Government's use or alleged use thereof; provided, however, that nothing contained in this paragraph shall be deemed directly, or by implication to grant any license under any patent now or hereafter issued.

ARTICLE 2-18 COMPLIANCE WITH LAWS

Subcontractor shall comply with all applicable Federal, State and local laws, rules and regulations.

ARTICLE 2-19 BUY AMERICAN ACT

The Subcontractor agrees that in the performance of the work under this Subcontract, the Subcontractor, sub-subcontractors and suppliers shall use only such unmanufactured articles, materials and supplies (which term "articles, material, and supplies" is hereinafter referred to in this clause as "Supplies") as have been mined or produced in the United States substantially all from supplies mined, produced, or manufactured, as the case may be in the United States. The foregoing provisions shall not apply (i) with respect to supplies exempted by the Commission from the application of the Buy American Act (41 U.S.C. 10 a-d), (ii) with respect to supplies for use outside the United States, or (iii) with respect to the supplies to be used in the performance of work under this Subcontract which are of a class or kind determined by the Commission not to be mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (iv) with respect to such supplies from which the supplies to be used in the performance of work under this Subcontract are manufactured, as are of a class or kind determined by the Commission to be mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, provided that this exception (v) shall not permit the use, in the performance of work under this Subcontract of supplies manufactured outside the United States if such supplies are manufactured in the United States in sufficient and reasonable available commercial quantities and of a satisfactory quality.

ARTICLE 2-20 OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this Subcontract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Subcontract made with a corporation for its general benefit.

ARTICLE 2-21 COVENANT AGAINST CONTINGENT FEES

The Subcontractor warrants that no personnel or selling agency has been employed or retained to solicit or secure this Subcontract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Subcontractor for the purpose of securing business. For breach or violation of this warranty, the Contractor shall have the right to annul this Subcontract without liability or in its discretion to deduct from the Subcontract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 2-22 SECURITY REQUIREMENTS

(a) Subcontractor's Duty to Safeguard Restricted Data, Etc. - In the performance of the work under this Subcontract the Subcontractor shall, in accordance with the Contractor and the Government's security regulations and requirements, be responsible for safeguarding restricted data and other classified matter and protecting against sabotage, espionage, loss and theft, the classified documents, materials, equipment, processes, etc., as well as such other material of high intrinsic or strategic value as may be in the Subcontract. Except as otherwise expressly provided in the specifications, the Subcontractor shall, upon completion or termination of this Subcontract, transmit to the Contractor any classified matter in the possession of the Subcontractor or any person under the Subcontractor's control in connection with the performance of this Subcontract.

(b) Regulations - The Subcontractor agrees to conform to all security regulations and requirements of the Contractor and the Government.

ARTICLE 2-23 DRAWINGS AND SPECIFICATIONS

(a) All drawings, designs, specifications, notebooks, tracing, photographs, negatives, reports, findings, recommendations, data and memoranda of every description and all copies of the foregoing, subject to paragraph (b) below, relating to the work or any art thereof, shall be the property of the Contractor or

Government and shall be delivered to the Contractor, or otherwise disposed of by the Subcontractor either as the Contractor may from time to time direct during the progress of the work or in any event as the Contractor shall direct upon completion or termination of this Subcontract.

(b) Subject to provisions of the sections on Security, Patents, and Copyrights, the Subcontractor will be permitted to retain copies of such materials.

ARTICLE 2-24 DISCLOSURE OF INFORMATION

Except as otherwise may be mutually agreed, all information and data specifically relating to the work under this Subcontract which the Subcontractor desires to release or publish shall be submitted to the Contractor for clearance.

Any information or data relating to the work under this Subcontract which has been cleared by the Contractor may be released or published by the Subcontractor and the Contractor through their respective channels. It is agreed by both parties that it is desirable in public releases to acknowledge fully the contributions of all parties to the work thus reported.

ARTICLE 2-25 CONTINGENCIES RELIEVING SUBCONTRACTOR FROM MEETING DELIVERY REQUIREMENTS

The Subcontractor shall not be liable for any delay in the performance of this Subcontract which results without fault or negligence on the part of the Subcontractor and which is due to cause beyond its control, including without being limited to, acts of God or of the public enemy, any preference priority or allocation order issued by the Government or any other act of the Contractor or the Government, fires, floods, epidemics, quarantines restrictions, strikes, freight embargoes and unusually severe weather, and, unless material or supplies to be furnished under this Subcontract with results without fault or negligence of the part of the Subcontractor, and which is due to causes beyond the control of the Subcontractor, including without being limited to the types of cause above enumerated; provided that the Subcontractor shall notify the Contractor shall, prior to the date of final settlement of this Subcontract, grant for the giving of such notice. The facts and the extent of the delay shall then be ascertained and the parties shall agree upon an equitable adjustment in the prescribed time of performance when the facts justify such action. If the parties cannot agree upon the adjustment provided for under this Article, the dispute shall be determined as provided in the Article hereof entitled "Dispute". Delay in the performance of this Subcontract resulting from the loss of a substantial number of skilled employees through being drafted or volunteering for service in the armed forces and inability of the

Subcontractor despite due diligence to replace such employees, shall each be considered a delay, "which is due to causes beyond its control" within the meaning of this paragraph.

ARTICLE 2-26 TAXES

Except as may be otherwise provided in this Subcontract, the Subcontractor price includes all applicable Federal, state and foreign taxes.

ARTICLE 2-27 SAFETY, HEALTH AND FIRE PROTECTION

The Subcontractor shall take all reasonable precautions in the performance of the work under this Subcontract to protect the health and safety of employees and of members of the public and to minimize danger from all hazards to life and property and shall comply with all health, safety, and fire protection regulations and requirements (including reporting requirements of the Contractor and the Commission). In the event that the Subcontractor fails to comply with said regulations or requirements of the Contractor and/or the commission, the Contractor may without prejudice to any other legal or contractual rights of the Contractor, issue an order stopping all or any part of the work; thereafter a start order for resumption of work may be issued at the discretion of the Contractor. The Subcontractor shall make no claim for any extension of time or for compensation or damages by reason of or in connection with such work stoppage.

ARTICLE 2-28 ASSIGNMENT AND SET-UP

(a) This Subcontract is entered into upon the condition that the Subcontractor shall assign it or any interest therein, including any payment due or to become due with respect thereto, without the Contractor's prior written consent.

(b) This Subcontract is assignable by the Contractor to the Government. In the event of assignment to and acceptance by the Government the Subcontractor shall look solely to the Government for payment under this Subcontract.

ARTICLE 2-29 NOTICES

All notices or communications to the respective parties shall be in writing and mailed by registered mail to the Contractor or Subcontractor, as the case may be, addressed as set forth in the Articles of Agreement or to such other places as the Contractor or Subcontractor shall designate in writing.

ARTICLE 2-30 CONSTRUCTION

This Subcontract shall be construed and interpreted in accordance with the laws of the State of Virginia. In the event of any inconsistency between any of the parts of this Subcontract, the order of precedence shall be as follows: The Articles of Agreement, the General Provisions and any detailed specifications and general specifications incorporated by reference.

ARTICLE 2-31 INDEPENDENT CONTRACTOR

The Subcontractor is an independent contractor and not an agent or employee of the contractor in the performance of the work hereunder. The Contractor shall, however, have general direction of the work and the right to control the final result obtained.

ARTICLE 2-32 THIRD PARTY BENEFICIARY

Nothing contained in this Subcontract or its amendments shall be construed to grant, vest or allow any right to be given to any employee or other third party, or to the legal representative, heirs, assigns, or successors of any of them, as a third party beneficiary. This provision is not intended to limit the rights which any person may otherwise have under applicable Federal statutes.

ARTICLE 2-33 FAR CLAUSES

Attachment I contains FAR Clauses that are set forth in the Prime Contract and are applicable to this Subcontract as appropriate. These clauses have the same force and effect as though set forth in full text.

~~ARTICLE~~ 2-34 WRITTEN CONSENT

This Subcontract and all amendments and modifications thereof, are subject to written consent of the Contracting Officer and shall not be binding unless so approved.

IN WITNESS WHEREOF, the parties hereto have executed this Subcontract as of the dates indicated below:

ARTICLE 2-35 ATTACHMENTS

The below listed attachments are incorporated into this Subcontract:

Attachment I: FAR Clauses

- Attachment II: Contract Security Classified Specifications (DD254)
- Attachment III: Closing Documents
- a) Assignment of Refunds, Rebates and Credits
 - b) Release
 - c) Patent Report (DD 882)
- Attachment IV: Packaging and Marking

IN WITNESS WHEREOF, the parties hereto have executed this Subcontract as of the dates indicated below:

COMMAND, CONTROL and
COMMUNICATIONS CORPORATION

TECHDYN SYSTEMS
CORPORATION

By: Marie E. Raymond
Marie E. Raymond
Manager of Contracts

By: William C. Hise *CH*
William C. Hise, Vice
President & Director,
Management Support
Operations

Date: 12 July 1985

Date: ~~JUL 16 1985~~

1. 52.251-1 CLAUSES INCORPORATED BY REFERENCE (APR 1984)

This contract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

1. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

<u>REF</u>	<u>REF NO.</u>	<u>TITLE</u>	<u>DATE</u>
1.	52.246-2	INSPECTION OF SUPPLIES - FIXED-PRICE ALTERNATE I (Applies to CLINs 0043 - 0044 only)	APR 1984 APR 1984
2.	52.246-3	INSPECTION OF SUPPLIES - COST- REIMBURSEMENT (Applies to CLINs 0049, 0050, 0052 and 0053 only)	APR 1984
3.	52.246-4	INSPECTION OF SERVICES - FIXED-PRICE (Applies to CLINs 0010 - 0042)	APR 1984
4.	52.246-7	INSPECTION OF RESEARCH AND DEVELOPMENT- FIXED PRICE (Applies to CLINs 0001AB, 0002AB, 0003AC, 0046 and 0051).	APR 1984
5.	52.246-11	HIGHER-LEVEL CONTRACT QUALITY REQUIREMENT (GOVERNMENT SPECIFICATION) (Insert "Military Specification MIL-Q-9858A" in the blank space in paragraph (b) of the clause.)	APR 1984
6.	52.246-16	RESPONSIBILITY FOR SUPPLIES	APR 1984

Attachment I

SECTION B - SPECIAL CONTRACT REQUIREMENTS

A. IF FAR Sub Clauses in Full Text

1. 52.204-1 SECRETARIAL APPROVAL OF CONTRACT

APR 1984

The agency official designated to approve this contract as required by the clause entitled "Approval of Contract" is the Secretary or a duly authorized representative.

B. ESD FAR Sub Clauses in Full Text

1. 52.212-9500 - CONTRACTOR RESPONSIBILITY

Notwithstanding the right of the Government to review the Contractor's efforts and progress and particularly with reference to the design reviews, specifications, and data items, which may be provided for elsewhere in this contract, it is expressly understood that the Contractor is completely responsible for the compliance of contract end items with the provisions of this contract and any reviews and approvals given by the Government do not relieve the Contractor of this responsibility.

2. 52.215-9519 - ACQUISITION MANAGEMENT INFORMATION SYSTEM (AMIS) FORMS

Any reference in this contract to Standard Form 30 shall be considered interchangeable with AFSC Form 702 and any reference to DD Forms 1423 shall be considered interchangeable with AFSC Forms 707, 708 and 709.

3. 52.215-9520 - CONTRACTING OFFICER'S AUTHORITY

The Contracting Officer shall be the only individual authorized to direct and/or redirect the efforts or in any way amend any of the items of this contract other than those instances specifically delegated to an Administrative Contracting Officer or a Termination Contracting Officer by the Contract Clauses of this contract or in writing by the Contracting Officer. The terms "Procuring Contracting Officer" and "Principal Contracting Officer" as used throughout this contract and its attachments, is synonymous with the term "Contracting Officer."

4. 52.215-9521 - INCORPORATION BY REFERENCE

All specifications, exhibits, drawings or other documents which are referenced in this contract, but are not attached hereto, are hereby incorporated by reference.

5. 52.215-9522 - CONTRACT DATES

a. All periods of time referenced herein shall be measured by calendar days, weeks, months, as opposed to "work" days, weeks, months.

b. With regard to due dates for submission of reports, data, hardware, etc., called for in Section F hereof, the contractor will submit same in sufficient time to allow for their arrival at the specified destination on the due date indicated.

c. The "Contract Award Date" shall be synonymous with the mailing date.

d. The term "DAC" means days after contract award date and is calculated on the basis of calendar days.

e. The term "MAC" means months after contract award date and is calculated on the basis of calendar months.

6. 52.215-9523 - CONTRACT DATA REQUIREMENTS LISTS

For purposes of this contract, data requirements are set forth on DD Forms 1423 and/or AFSC Forms 707, 708 and 709.

7. 52.215-9524 - ORDER OF PRECEDENCE

In the event of an inconsistency in this contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the Specifications, Statement of Work, Contract Data Requirements Lists and selected portions of the Contractor's Technical Proposals); (b) Contract Clauses; (c) the Special Contract Requirements of the contract whether incorporated by reference or otherwise; (d) the Statement of Work; (e) the Specifications; and (f) the Contract Data Requirements List.

8. 52.215-9525 - ACKNOWLEDGEMENT OF SPONSORSHIP

a. The Contractor agrees that in the release of information relating to this contract such release shall include a statement to the effect that the project or effort depicted was or is sponsored by: the Air Force Systems Command.

b. For the purpose of this clause, "information" includes, but is not limited to, news releases, articles, manuscripts, brochures, advertisements, still and motion pictures, speeches, trade association meetings, symposia, etc.

c. Nothing in the foregoing shall affect compliance with the requirements of the clause of this contract entitled, "Military Security Requirements".

d. The Contractor further agrees to include this provision in any subcontract awarded as a result of this contract.

9. 52.215-9528 - SCIENTIFIC/TECHNICAL INFORMATION (STINFO)

The Contractor shall register for Defense Technical Information Center (DTIC) service as defined in AFR 80-44 using DD Form 1540. The Contractor shall research existing sources in the DTIC, including the Work Unit Data Bank (DD Form 1498), to determine the current state-of-the-art concepts, studies, etc., to avoid duplication of effort and conserve scientific and technical resources.

10. 52-215-9529 - PASSPORTS, VISAS, LICENSES, AND PERMITS

The Contractor shall be responsible for timely and complete submittal of the necessary information and forms directly to the appropriate Government agency for the required passports, visas, licenses, or permits.

(Military Assistance and Sales Manual (MASM), part III, p. D-31, para 1, "Passports, Visas, Licenses, and Permits")

11. 52.216-9500 - LEVEL OF EFFORT (CLINs 0048 and 0051, and CLINs 0023 - 0026, if options exercised)

- a. These are Firm Fixed-Price Level of Effort Term Contract Line Items pursuant to FAR 16-207.
- b. The Contractor shall furnish all the necessary qualified personnel, materials, facilities and management resources to develop/fabricate the supplies and furnish the services set forth in the Statement of Work within the terms specified and at the price(s) stated in Article 1-1.
- c. The in Article 1-1 rates are comprised of the basic salary rate plus all burden and profit computed in accordance with the Contractor's approved accounting procedures in effect as of the date of this agreement. These rates will be used for payment purposes and will be used as a means of reducing the total contract price in the event the Contractor does not furnish the level of effort specified. Payment will be made not more frequently than monthly.
- d. At the completion of this Contract, the Contractor shall furnish to the Contracting Officer the total number of hours and categories of labor used in the performance of this Contract, certified by an authorized representative of the Contractor.

e. Notwithstanding any other Contract provision, the Contractor shall maintain sufficient accounting records for verification of the hours and categories of labor incurred in the performance of this Contract. It is further understood and agreed that these accounting records shall be available for Government review during the performance of the Contract and until three years after final payment of the Contract. In the event Subcontract labor is included in the labor effort contained in Article 1-1, the foregoing records provisions shall be included in all applicable Subcontracts.

g. Payment under this contract shall be in accordance with FAR 52.232-1 (Payments). The invoice which the contractor submits to the ACO for payment shall contain a breakdown of monthly labor hours expended which separately identifies the total hours to be charged, labor classification, and hours worked for each contributing employee. A copy of each such invoice shall be provided directly to the Contracting Officer. Prior to payment, an authorized representative of the contractor shall certify, on the monthly invoice, the accuracy of the information contained on the invoice. An invoice shall not be considered complete and eligible for payment until such certification is provided.

h. If the employee identified in the invoice is paid at a rate lower than the basic hourly labor rate identified above, then the loaded rate for that labor category shall be subject to renegotiation. That renegotiation shall be based on the employee's actual hourly labor rate loaded with the appropriate overhead and G&A with 11% profit. The renegotiated labor rate shall then apply to the hours expended by the employee.

12. 52.217-9501 - OPTION FOR INCREASED QUANTITY - SEPARATELY PRICED LINE ITEM

The Government may increase the quantity of supplies (or services) called for herein by requiring the delivery of the numbered-line item identified in the Schedule as an option item, in the quantity and at the price set forth therein. The Contracting Officer may exercise this option, at any time within the period specified in the Schedule by giving written notice to the Contractor. Delivery of the items added by the exercise of this option shall be as set forth in Section F.

13. 52.219-9504 - SMALL BUSINESS ADMINISTRATION SPECIAL PROVISION

a. The Small Business Administration (SBA) certifies that it is competent and responsible to perform the requirement as stated in the contract.

b. The SBA agrees to furnish all labor, materials and equipment for the performance of the work as stated in this contract and according to contract specifications by subcontracting pursuant to the provisions of Section 8(a) of the Small Business Act, as amended.

c. The parties agree that the Subcontractor, Tech Dvn Systems Corporation, shall for and in the stead of the SBA fulfill and perform all of the requirements of the prime contract for the consideration stated therein. Whenever the term "Contractor" appears in this contract, it shall be construed to mean Subcontractor.

d. It is understood and agreed that in the event SBA does not award subcontracts for the performance for all or a part of the work hereunder, this contract may be terminated in whole or in part without cost to either party.

e. The SBA delegates to the Defense Contract Administration Services/Management Area (DCASMA) responsibility for administering its subcontract hereunder. This includes issuance of orders, inspection and acceptance of materials/services by its authorized representatives, and direct payment to the Subcontractor.

f. The provisions of the "Termination for Convenience", "Disputes", "Default" and "Price Reduction" clauses which are included in the contract between SBA and its Contractor shall be invoked ~~in accordance with~~ when requested by the DOD Contracting Officer. If SBA does not agree with the DOD Contracting Officer's request, the case shall be referred to the Secretary or his designee for decision. For the purposes of Section 8(d) of the Contract Disputes Act of 1978, Public Law 95-652, the agency board designated as having the jurisdiction to decide appeals from decisions of the Contracting Officer relative to disputes relating to this contract is the Armed Services Board of Contract Appeals.

g. The SBA's subcontractor shall have the right of appealing decisions of the Contracting Officer cognizable under the "Disputes" clause of said subcontract.

h. It is further agreed that SBA will be continuously apprised by the Contracting Officer administering the subcontract as to the progress and performance of the subcontractor. No action that could possibly lead to the termination of the contract for "default" or for "convenience of the Government" will be taken by the Contracting Officer or his/her authorized representative without prior consultation with SBA.

14. 52.227-9501 - RIGHTS IN DATA

Pursuant to the clause in Section I hereof entitled "Rights in Technical Data and Computer Software", the parties hereto agree that all technical data and computer software deliverable, or subject to delivery, to the Government under the contract shall be furnished with unlimited rights.

15. 52.227-9506 - DATA/SOFTWARE ACCESSION LIST

The Contractor agrees to make available upon request, copies of any and all data/software generated during the performance of work hereunder. Based upon the Data Accession List required by DI-A-3027, the Contracting Officer may order such data/software and shall notify the Contractor of data desired. The Contractor shall make available two (2) copies of the requested data/software within five (5) working days from date of receipt of the request. The cost of furnishing such ordered data/software shall be subject to payment as set forth in the "Deferred Ordering of Technical Data or Computer Software" clause, General Provision DOD FAR Sup 52.227-7027.

16. 52.227-9507 - MODIFICATION OF DATA REQUIREMENTS

a. From time to time during the performance of this contract, the Contracting Officer unilaterally may change the place of delivery and the technical office for any data item of the Contract Data Requirements List (CDRL) hereto, at no change in contract price, notwithstanding the provisions of the clause hereof, entitled "Changes".

1-A. 12.217-9000 - EXPIRATION OF LIMITED/RESTRICTED RIGHTS CLAUSE

Notwithstanding any other provision of this contract, it is the intent of both the Government and Contractor that 60 months after the first delivery of production items under this contract, the Government shall have unlimited rights as defined in paragraph (A) of the Rights in Technical Data and Computer Software clause included in this contract, in all technical data and computer software used by the Contractor, including subcontractors and suppliers at any tier, in all phases of the development and manufacture of modules, assemblies or parts thereof. For the purposes of this clause, the Government shall have the right at any time during the performance of this contract or within three (3) years after either acceptance of all items (other than data or computer software) to be delivered under this contract or termination of this contract, to direct the Contractor to deliver all technical data and computer software, in a format prescribed by the Contracting Officer, necessary to reproduce from another contractor(s) either an entire production item or any component, module, assembly or part thereof, in a configuration specified by the Contracting Officer. When the Contracting Officer directs delivery of technical data and computer software under this clause, to the extent not otherwise previously compensated for delivery of such data and software, the Contractor shall be compensated for converting the technical data and computer software into the prescribed form, for reproduction and delivery.

b. From time to time during the performance of this contract, the Contracting Officer, unilaterally may increase or decrease the number of addressees and/or increase or decrease the number of copies (regular or reproducible) specified for any addressee of any data item of any CDRL hereto, at no change in contract price, provided, that, the increase in the total number of copies (regular and reproducible) for an individual data item shall not be greater than fifty percent (50%) of the total number of copies (regular and reproducible) initially specified nor shall the decrease in the total number of copies (regular and reproducible) for an individual data item be greater than fifty percent (50%) of the total number of copies (regular and reproducible) initially specified. In the event of an increase greater than such 50% or of a decrease greater than such 50%, the parties will negotiate any equitable adjustments in accordance with the procedures of the "Changes" clause.

c. Unilateral action pursuant to a. and b. above shall be by the issuance of a Modification to this contract which will reference this Provision as its authority and include the revised CDRL pages. Any action directed by this Provision shall be effected by the Contractor beginning with the first submission of the particular data item or items after receipt by the Contractor of the Modification directing such action.

17. 52.128-9500 - INSURANCE

The following minimum kinds and amounts of insurance are applicable in the performance of the work under this contract.

a. Workmen's Compensation and Employers' Liability Insurance. Contractor's are required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a contractor's commercial operations that it would not be practical to require this coverage. Employer's liability coverage of at least \$100,000 shall be required, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers (Nevada, North Dakota, Ohio, Washington, West Virginia and Wyoming).

b. General Liability Insurance. (1) Bodily injury liability insurance coverage in the minimum limits of \$500,000 per occurrence shall be required on the comprehensive form of policy; however, property damage liability shall be required.

c. Automobile Liability Insurance. This insurance shall be required on the comprehensive form of policy and shall provide bodily injury liability and property damage liability covering the operation of all automobiles used in connection with the performance of the contract. At least the minimum limits of \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage shall be required.

d. Aircraft Public and Passenger Liability Insurance. When aircraft are used in connection with the performance of the contract, such insurance is considered required coverage. The minimum limits of \$200,000 per person and \$300,000 per occurrence for bodily injury, other than passenger liability, and a limit of \$200,000 per occurrence for property damage shall be required. Passenger liability bodily injury limits of \$200,000 per passenger with an aggregate equal to total number of seats or number of passengers, whichever is greater, shall also be required.

18. 52.231-9502 EXECUTIVE ESTIMATE OF COST AT COMPLETION

A corporate level "line" official shall provide directly to Hq ESD/SC, Hanscom AFB, MA 01731, an executive level estimate of the contract cost at completion on 31 March, 30 June, 30 September, and 31 December of each year during the performance of this contract. This should be a brief, but not more than one page, letter presenting the executive's view of cost at completion.

19. 52.232-9504 - SEGREGATION OF COSTS

The Contractor shall segregate all costs associated with CLINs 0002AA, 0004, 0005, 0006, 0007, 0008, 0009, 0010 - 0042, 0045, 0046, 0054AA and 0054AB (if ordered) (3080 funded CLINs) from 0001AB, 0002AB, and 0002AC, (3600 funded CLINs) and segregate those CLINs from CLIN 0043 (if ordered), (FFIF CLIN) and from CLINs 0048 and 0051 (and CLINs 0023 - 0026, if ordered) (FFICE CLINs) and segregate those CLINs from CLINs 0049, 0050, 0052, and 0053 (CR and CFF CLINs).

All such segregations of costs shall be done in such a manner such that at any time the costs incurred with that group of CLINs shall be readily ascertainable.

20. 52.245-9000 - MILSTRIP REQUISITIONING

a. The Contractor will MILSTRIP requisition all NSN items of material required to support GFE or modified GFE in accordance with the Federal Acquisition Regulation (FAR), Appendix H and AFSCR 170-6, incorporated herein by reference, on a "do not backorder", non-substitute basis, showing need date as Contractor requisition/production lead time prior to program need date.

b. For stock fund items, the Contractor will utilize the Program Office (PO) provided Alpha Code in CC-40, Signal Code in CC-51 and Fund Code in CC-52 and 53 of the DD Form 1348. The Contractor will submit one (1) priced copy, with extended cost in the remarks column, of each requisition to ESD (ACFC-2) simultaneously with submission to DSA/AFLC-IM for supply action. The Contractor will notify ESD (ACFC-2) of requisitions revised or cancelled to assure currency of funds obligations. The Contractor will advise ESD (ACFC-2) of receipt of requisitioned material within five (5) days of such receipt. The fact that the items are not available in the Government inventory in time to satisfy contractor need dates does not relieve the contractor of his responsibility for meeting established contract program schedules.

c. Rejected or unavailable NSN items will be added to Contractor-furnished items, in which event the contractor shall promptly notify the Contracting Officer and the contract price shall be subject to equitable adjustment.

d. The Contractor shall comply with policy and procedures contained in DOD 4100.38X, Provisioning and other Preprocurement Screening Manual, to obtain item identification and management data. Results of the Preprocurement Screening shall be incorporated into the property records prepared and maintained in accordance with provisions of FAR Appendix B.

e. The Contractor will control, maintain, and effect disposition of property furnished by the Government or acquired for the account of the Government in accordance with the Government Property clause of this contract and FAR Appendix B. The Contractor will maintain usage data in a manner which will enable him to prepare the stock balance and consumption listing required. Government furnished spare/repair parts, spare/repair parts acquired for the account of the Government under the Government Property clause, and spare/repair parts which are contractor-furnished, the costs of which have been allocated to this contract on a direct charge basis, will be maintained so as to be serviceable and of current configuration with the contract end article and shall be delivered to the Government upon contract completion at no increase to contract price.

21. 52.245-9501- GOVERNMENT FURNISHED PROPERTY

Pursuant to the clause hereof entitled "Government Property (Fixed-Price Contracts)", the Government shall furnish the Contractor the Government property identified below on or before the date(s) specified. If materials are to be furnished, the Contractor shall prepare the requisitioning documentation. Additionally, the Contractor shall comply with AFSCR 170-6, incorporated herein by reference, when using MILSTRIP procedures to requisition Government-furnished material.

<u>Description</u>	<u>Qty</u>	<u>Availability Date</u>
<u>Iceland:</u>	-	
Lateral-Tell Software		1 MAC
TSEC/KG-40 Encryption Device	1	2 MAC
TSEC/KY-65 Encryption Device	2	2 MAC
AN/USQ-76 Data Terminal Set	2	2 MAC
Icelandic Postal and Telecommunication Telephone Circuits	TED	5 MAC
RNCS Circuits (Military)	TED	5 MAC
HF Antenna Pads	2	Contract Award
<u>CENAF:</u> AN/USQ-76 Data Terminal Set	1	7 MAC
TSEC/KG-40 Encryption Device	1	2 MAC
<u>AAC/PACAF:</u> TSEC/KG-40 Encryption Device	1 each	2 MAC

22. 52.245-9504 - DETERMINATION OF BASE SUPPORT Applies to CLINs 0001, 0002, 0003, 0004, 0005 and 0006.

Pursuant to the "Base Support" clause hereof, the contemplated items of base support presently agreed to by the parties, and considered in the pricing of this contract, are as listed below. Unless otherwise stipulated for any particular listed item, such base support shall be furnished by the Government in such quantities and at such times as may reasonably be required in the performance of this contract.

To Be Determined

23. 52.246-9500 - REQUIREMENTS FOR DATA ACCEPTANCE

The Contractor shall prepare and submit a DD Form 250 on a one-time basis collectively accounting for all completed Exhibit Line/Subline Items which called for submission of data with a letter of transmittal. Each periodic DD Form 250 shall include a list and an account of all data submitted and approved by the Government during the reporting period.

24. 246-9501 - REQUIREMENTS FOR DATA ACCEPTANCE

The Contractor shall prepare and submit a final DD Form 250 on a one time basis for each attachment collectively accounting for all completed Items on each of Attachments 1 through 13 which called for submission of data with a letter of transmittal. This DD Form 250 will be submitted at the time of delivery of last data/report Item.

C. Other Special Contract Requirements

1. DEFINITIONS

Wherever the term "clause" or "provision" or "special provision" appears throughout this contract, it shall be deemed to read "special contract requirement". Wherever the term "general provision" appears throughout this contract it shall be deemed to read "contract clause".

2. PRODUCTIVITY SAVINGS REWARD (PSR) SHARING FACTOR

(a) Purpose. The purpose of this clause is to permit a contractor to be paid Productivity Savings Rewards (PSR) via a sharing factor in accordance with the terms and conditions of an Industrial Modernization Incentives Program (IMIP) business agreement. PSR constitutes the contractor's share of the total DoD net benefits (savings/cost avoidances) resulting from a signed IMIP agreement establishing appropriate provisions for calculation and payment of the PSR. An IMIP business agreement is an arrangement whereby incentives are provided to a contractor to modernize, improve productivity, and reduce acquisition costs. Detailed analysis of the DoD benefits to be derived and verification of savings are described in the business agreement. The sharing factor methodology is intended to be used in a multi-program or factory-wide modernization situation.

PART II - CONTRACT CLAUSES

SECTION 1 - CONTRACT CLAUSES

Contract clauses in this section from the FAR, DOD FAR Sup, Air Force FAR Sup, and Air Force Systems Command FAR Sup, are current through the following updates:

FAR: FAC 84-1; DOD FAR Sup: DAC 84-4; AF FAR Sup: BASIC; AFSC FAR Sup: BASIC

A. 52.252-2 CLAUSES INCORPORATED BY REFERENCE (APR 1984)

This contract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the contracting officer will make their full text available. The clauses apply to all CLINs/SUBCLINs except as indicated herein. * = Not Applicable to CR CLINs; ** = Applicable to CR CLINs.

1. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

<u>REF</u>	<u>REF NO</u>	<u>TITLE</u>	<u>DATE</u>
1	52.202-1	DEFINITIONS	APR 1984
2	52.203-1	OFFICIALS NOT TO BENEFIT	APR 1984
3	52.203-3	GRATUITIES	APR 1984
4	52.203-5	COVENANT AGAINST CONTINGENT FEES	APR 1984
5	52.204-1	APPROVAL OF CONTRACT	APR 1984
6	52.206-1	REQUIRED SOURCES FOR JEWEL BEARINGS AND RELATED ITEMS	APR 1984
7	52.210-5	NEW MATERIAL	APR 1984
8	52.210-7	USED OR RECONDITIONED MATERIAL, RESIDUAL INVENTORY, AND FORMER GOVERNMENT SURPLUS PROPERTY	APR 1984
9	52.212-6	PRIORITIES, ALLOCATIONS, AND ALLOTMENTS	APR 1984
10	52.215-1	EXAMINATION OF RECORDS BY COMPTROLLER GENERAL	APR 1984
11	52.215-2	AUDIT - NEGOTIATION	APR 1984
12	52.215-22	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA	APR 1984
13	52.215-24	SUBCONTRACTOR COST OR PRICING DATA	APR 1985
14	52.215-30	FACILITIES CAPITAL COST OF MONEY	APR 1984
15	52.215-31	WAIVER OF FACILITIES CAPITAL COST OF MONEY	APR 1984
**16	52.216-7	ALLOWABLE COST AND PAYMENT	APR 1984
**17	52.216-11	COST CONTRACT - NO FEE (Applicable to 0050 and 0053)	APR 1984
*18	52.216-16	INCENTIVE PRICE REVISION - FIRM TARGET ALTERNATE 1: (See Section 3, paragraph 3 for implementation of this clause.)	APR 1984 APR 1984
19	52.217-7	OPTION FOR INCREASED QUANTITY - SEPARATELY PRICED LINE ITEM	APR 1984
20	52.219-6	NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE	APR 1984

SECTION 1 - CONTRACT CLAUSES (CONT'D)

<u>REF</u>	<u>REF NO</u>	<u>TITLE</u>	<u>DATE</u>
21	52.219-6	UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS	APR 1984
22	RESERVED		
23	52.219-13	UTILIZATION OF WOMEN-OWNED SMALL BUSINESSES	APR 1984
24	52.220-3	UTILIZATION OF LABOR SURPLUS AREA CONCERNS	APR 1984
25	52.220-4	LABOR SURPLUS AREA SUBCONTRACTING PROGRAM	APR 1984
26	52.222-1	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES	APR 1984
**27	52.222-2	PAYMENT FOR OVERTIME PREMIUMS (Insert "zero" in the blank space in para (a) of the clause.)	APR 1984
28	52.222-20	WALSH-HEALEY PUBLIC CONTRACTS ACT	APR 1984
29	52.222-26	EQUAL OPPORTUNITY	APR 1984
30	52.222-28	EQUAL OPPORTUNITY FORWARD CLEARANCE OF SUBCONTRACTS	APR 1984
31	52.222-29	NOTIFICATION OF VISA DENIAL	APR 1984
32	52.222-25	AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS	APR 1984
33	52.222-36	AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS	APR 1984
34	52.223-2	CLEAN AIR AND WATER	APR 1984
35	52.225-11	CERTAIN COMMUNIST AREAS	APR 1984
36	52.227-1	AUTHORIZATION AND CONSENT ALTERNATE 1	APR 1984
37	52.227-2	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT	APR 1984
38	52.227-8	REPORTING OF ROYALTIES (FOREIGN)	APR 1984
39	52.227-11	PATENT RIGHTS - RETENTION BY THE CONTRACTOR (SHORT FORM)	APR 1984
*40	52.228-5	INSURANCE - WORK ON A GOVERNMENT INSTALLATION	APR 1984
**41	52.228-6	INSURANCE—IMMUNITY FROM TORT LIABILITY	APR 1984
**42	52.228-7	INSURANCE—LIABILITY TO THIRD PERSONS	APR 1984
**43	52.228-8	TAXES—FOREIGN COST-REIMBURSEMENT CONTRACT	APR 1984
*44	52.228-4	FEDERAL, STATE AND LOCAL TAXES (NON-COMPETITIVE CONTRACT)	APR 1984
*45	52.228-5	TAXES - CONTRACTS PERFORMED IN U.S. POSSESSIONS OR PUERTO RICO	APR 1984
*46	52.228-6	TAXES - FOREIGN FIXED-PRICE CONTRACTS	APR 1984
*47	52.232-1	PAYMENTS (Pursuant to DOD FAR Sup 32.111(a), the guidance set forth in Defense Acquisition Circular (DAC) 76-42, Item I thereto, applies to the authorized- modifications to "payment due dates".)	APR 1984

SECTION 1 - CONTRACT CLAUSES CONT'D.

<u>REF</u>	<u>REF NO</u>	<u>TITLE</u>	<u>DATE</u>
*48	52.232-2	PAYMENTS UNDER FIXED-PRICE RESEARCH AND DEVELOPMENT CONTRACTS (CLINs/SUBCLINs 0001AB, 0002AB, 0002AC, 0048, and 0051, and 0043 and 0044, if exercised)	APR 1984
*49	52.232-6	DISCOUNTS FOR PROMPT PAYMENT (Pursuant to DOD FAR Sup 32.111(a), the guidance set forth in Defense Acquisition Circular (DAC) 76-42, Item I thereto, applies to the authorized modifications to "payment due dates".)	APR 1984
50	52.232-9	LIMITATIONS ON WITHHOLDING OF PAYMENTS (Pursuant to DOD FAR Sup 32.111(a), the guidance set forth in Defense Acquisition Circular (DAC) 76-42, Item I thereto, applies to the authorized modifications to "payment due dates".)	APR 1984
*51	52.232-11	EXTRAS (Pursuant to DOD FAR Sup 32.111(a), the guidance set forth in Defense Acquisition Circular (DAC) 76-42, Item I thereto, applies to the authorized modifications to "payment due dates".)	APR 1984
*52	52.232-16	PROGRESS PAYMENTS ALTERNATE I (Change progress payment rate to 90%).	APR 1984
53	52.232-17	INTEREST	APR 1984
**54	52.232-20	LIMITATION OF COST	APR 1984
55	52.232-23	ASSIGNMENT OF CLAIMS	APR 1984
56	52.233-1	DISPUTES	APR 1984
57	52.237-2	PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION	APR 1984
58	52.242-1	NOTICE OF INTENT TO DISALLOW COSTS (CLINs 0049, 0050, 0052, 0053, and CLINs 0043 and 0044, if option exercised)	APR 1984
59	52.242-12	REPORT OF SHIPMENT (REPSHIP)	APR 1984
*60	52.243-1	CHANGES - FIXED-PRICE (0002AA, 0003AB, 0003AC, 0004-0009, 0045-0047, 0052) ALTERNATE V	APR 1984
		(SUBCLINs 0001AB, 0002AB, 0002AC, CLINs 0048, 0051 and CLINs 0043 and 0044, if exercised)	
**61	52.243-2	CHANGES-COST-REIMBURSEMENT ALTERNATE V	APR 1984
61	52.243-6	CHANGE ORDER ACCOUNTING	APR 1984
62	52.243-7	NOTIFICATION OF CHANGES (Insert "15" in the blank space in paragraphs (b) and (d))	APR 1984

SECTION I - CONTRACT CLAUSES PART 1

<u>REF</u>	<u>REF NO</u>	<u>TITLE</u>	<u>DATE</u>
*63	52.244-1	SUBCONTRACTS UNDER FIXED-PRICE CONTRACTS	APR 1984
**64	52.244-2	SUBCONTRACTS UNDER COST-REIMBURSEMENT AND LETTER CONTRACTS	APR 1984
65	52.244-3	COMPETITION IN SUBCONTRACTING	APR 1984
66	52.245-1	GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS)	APR 1984
		ALTERNATE I	APR 1984
*67	52.246-18	WARRANTY OF SUPPLIES OF A COMPLEX NATURE	APR 1984
		ALTERNATE II (CLINs 0043 and 0044)	APR 1984
		(a)(1) Para (b). Insert "one (1) year"	
		(2) Lines 8 and 9 - Change "will conform with all requirements" to "will conform to the design and manufacturing requirements delineated in the contract"	
		(c)(3) Insert "30 days after discovery of the defect"; "30 days"; "30 days"	
		(c)(4) Insert "30 days"; "30 days"	
68	52.246-23	LIMITATION OF LIABILITY	APR 1984
69	52.246-24	LIMITATION OF LIABILITY - HIGH-VALUE ITEMS	APR 1984
		(ALTERNATE I)	
		(Insert "CLINs 0001, 0002, 0004, 0006 and 0008")	APR 1984
70	52-247-63	PREFERENCE FOR U.S. - FLAG AIR CARRIERS	APR 1984
71	52.248-1	VALUE ENGINEERING	APR 1984
*72	52.249-2	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE)	APR 1984
**73	52.249-6	TERMINATION (COST-REIMBURSEMENT)	APR 1984
*74	52.249-8	DEFAULT (FIXED-PRICE SUPPLY AND SERVICE)	APR 1984
*75	52.249-9	DEFAULT (FIXED-PRICE RESEARCH AND DEVELOPMENT)	APR 1984
		(SubCLINs 0001AB, 0002AB, 0002AC, 0048 and 0051, and CLINs 0043 and 0044, if exercised)	
**76	52.249-14	EXCUSABLE DELAYS	APR 1984
		(0050 and 0053 are excluded)	
**77	52.250-1	INDEMNIFICATION UNDER PUBLIC LAW 85-604	APR 1984

II. DEPARTMENT OF DEFENSE SUPPLEMENT (48 CFR CHAPTER 2) CLAUSES

<u>REF</u>	<u>REF NO</u>	<u>TITLE</u>	<u>DATE</u>
1	52.204-7000	CONTRACT SCHEDULE SUBLINE ITEMS NOT SEPARATELY PRICED - WITHHOLDING OF BILLING AND PAYMENT	NOV 1970
2	52.204-7005	OVERSEAS DISTRIBUTION OF DEFENSE SUBCONTRACTS	JUN 1982
3	52.208-7000	REQUIRED SOURCES FOR MINIATURE AND INSTRUMENT BALL BEARINGS	JUL 1971
4	52.208-7001	REQUIRED SOURCES FOR PRECISION	AUG 1971

SECTION 1: CONTRACT CLAUSES (cont'd)

*67A 50.246-15

WARRANTY OF SUPPLIES OF A COMPLEX NATURE APR 1954

(CLINs 0001-0042, 0043-0053)

(a)(1) Para (b). Insert "one (1) year"

(2) Lines 8 and 9 - Change "will conform with all requirements" to "will conform to the design and manufacturing requirements delineated in the contract"

(c)(3) Insert "30 days after discovery of the defect"; "30 days"; "30 days"

(c)(4) Insert "30 days"; "30 days"

SECTION 1 - CONTRACT CLAUSES CONT'D

<u>REF</u>	<u>REF NO</u>	<u>TITLE</u>	<u>DATE</u>
5	52.206-7002	COMPONENTS FOR MECHANICAL TIME DEVICES	
6	52.206-7003	REQUIRED SOURCES FOR HIGH-PURITY SILICON	JUN 1983
		REQUIRED SOURCES FOR HIGH CARBON	AUG 1984
		FERROCHROME	
7	52.225-7000	AGGREGATE PRICING ADJUSTMENT	APR 1985
8	52.225-7001	BUY AMERICAN ACT AND BALANCE OF PAYMENTS	APR 1985
		PROGRAM	
9	52.225-7002	QUALIFYING COUNTRY SOURCES AS	OCT 1980
		SUBCONTRACTORS	
10	52.225-7004	IDENTIFICATION OF EXPENDITURES IN THE	OCT 1966
		UNITED STATES	
11	52.225-7008	DUTY-FREE ENTRY — QUALIFYING COUNTRY	AUG 1984
		END PRODUCTS AND SUPPLIES	
12	52.225-7009	PREFERENCE FOR CERTAIN DOMESTIC	OCT 1980
		COMMODITIES	
13	52.225-7012	PREFERENCE FOR DOMESTIC SPECIALTY METALS	OCT 1980
14	52.227-7013	RIGHTS IN TECHNICAL DATA AND COMPUTER	MAY 1981
		SOFTWARE	
		ALTERNATE 1	MAY 1981

SECTION 1 - CONTRACT CLAUSES (cont'd)

<u>REF</u>	<u>REF NO</u>	<u>TITLE</u>	<u>DATE</u>
15	52.227-7016	CONTRACT SCHEDULE ITEMS REQUIRING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK (Insert *0001AB, 0002AB, 0002AC, 0048-0053, and 0043 and 0044 if option(s) exercised) in the blank space.)	MAR 1975
16	52.227-7018	RESTRICTIVE MARKINGS ON TECHNICAL DATA	MAR 1975
17	52.227-7027	DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE	NOV 1984
18	52.227-7029	IDENTIFICATION OF TECHNICAL DATA	MAR 1975
19	52.227-7030	TECHNICAL DATA — WITHHOLDING OF PAYMENT	JUL 1976
20	52.227-7031	DATA REQUIREMENTS	APR 1972
21	52.227-7034	PATENTS — SUBCONTRACTS	APR 1984
22	52.231-7000	SUPPLEMENTAL COST PRINCIPLES	APR 1984
23	52.233-7000	INVOICES	OCT 1982
24	52.233-7000	CERTIFICATION OF REQUESTS FOR ADJUSTMENT OR RELIEF EXCEEDING \$100,000.	FEB 1980
25	52.235-7002	RECOVERY OF NONRECURRING COSTS ON COMMERCIAL SALES	FEB 1980
26	52.235-7004	FREQUENCY AUTHORIZATION (Policy and procedures contained in AFM 100-31, as in effect on the date of the contract will be followed to obtain frequency allocation approval of electromagnetic devices and USAF Radio Frequency Authorization (RFA). Frequency allocation proposals (DD Form 1494, Application for Frequency Allocation) and frequency authorization requirements (AF Form 38, Radio Frequency Application) shall be prepared by the Contractor in accordance with procedures outlined in AFM 100-31 and an original and four (4) copies of each of the completed forms shall be forwarded to the Contracting Officer at ESD/PKS-3, Hanscom AFB, MA 01731.)	OCT 1966
27	52.243-7000	ENGINEERING CHANGE PROPOSALS ALTERNATE I (Insert "\$10,000" in the blank space in para (c) at the three asterisks.)	APR 1985 APR 1985
28	52.243-7001	PRICING OF ADJUSTMENTS	APR 1984
29	52.246-7000	MATERIAL INSPECTION AND RECEIVING REPORT	DEC 1969
30	52.246-7001	WARRANTY OF DATA ALTERNATE I	NOV 1974 NOV 1974
31	52.242-7003	CERTIFICATION OF OVERHEAD COSTS	MAR 1985

SECTION 1 - CONTRACT CLAUSES CONT 1

B. FAR Clause in Full Text

1. 52.219-12 SPECIAL 8(a) SUBCONTRACT CONDITIONS

APR 1984

(a) The Small Business Administration (SBA) has entered into Contract No. F19628-85-C-0079 with the Electronic Systems Division to furnish the supplies or services as described therein. A copy of the contract is attached hereto and made a part hereof.

(b) The Tech Dyn Systems, hereafter referred to as the subcontractor, agrees and acknowledges as follows:

(1) That it will, for and on behalf of the SBA, fulfill and perform all of the requirements of Contract No. F19628-85-C-0079 for the consideration stated therein and that it has read and is familiar with each and every part of the contract.

(2) That the SBA has delegated responsibility for the administration of this subcontract to the DCASMA Baltimore with complete authority to take any action on behalf of the Government under the terms and conditions of this subcontract.

(3) That it will not subcontract the performance of any of the requirements of this subcontract to any lower tier subcontractor without the prior written approval of the SBA and the designated Contracting Officer of the Electronic Systems Division.

(c) Payments, including any progress payments under this subcontract, will be made directly to the subcontractor by the DCASR Philadelphia.

C. AF FAR Sub Clauses in Full Text

1. 52.204-9000 NOTIFICATION OF GOVERNMENT SECURITY ACTIVITY

APR 1984

Thirty days before the date Contractor operations will begin on base, the Contractor shall notify the security policy activity shown in the distribution block of the DD Form 254, DOD Contract Security Classification Specification, as to—

(a) The name, address, and telephone number of this contract company's representative in the U.S. or overseas area, as appropriate;

(b) The contract number and military contracting command;

(c) The highest classification category of defense information to which Contractor employees will have access;

(d) The Air Force installations in the U.S. (in overseas areas identify only the APO number(s) where the contract work will be performed;

(d) The date Contractor operations will begin on base in the U.S. or in the overseas area;

(e) The estimated completion date of operations on base in the U.S. or in the overseas area; and

(f) Any changes to information previously provided under this clause.

1. 52.223-9004 SAFETY AND ACCIDENT PREVENTION

AFR 1964

(a) In performing work under this contract on a Government installation, the Contractor shall—

(1) Conform to the specific safety requirements established by this contract;

(2) Comply with the safety rules of the Government installation that concern related activities not directly addressed in this contract;

(3) Take all reasonable steps and precautions to prevent accidents and preserve the life and health of Contractor and Government personnel performing or in any way coming in contact with the performance of this contract; and

(4) Take such additional immediate precautions as the Contracting Officer may reasonably require for safety and accident prevention purposes.

(b) If this contract is performed on an Air Force installation, the Air Force Occupational Safety and Health Standards (AFOSH) developed in accordance with AFR 127-12, in effect on the date of this contract, apply. If contract performance is on other than an Air Force installation, the Contractor shall comply with the safety rules of that Government installation, in effect on the date of this contract.

(c) The Contracting Officer may, by written order, direct additional AFOSH and safety and accident standards as may be required in the performance of this contract and any adjustments resulting from such direction will be in accordance with the Changes clause of this contract.

(d) Any violation of these safety rules and requirements, unless promptly corrected as directed by the Contracting Officer, shall be grounds for termination of this contract in accordance with the Default clause of this contract.

2. AFSC FAR Sub Clauses in Full Text

1. 52.222-9000 EQUAL OPPORTUNITY PREAWARD CLEARANCE OF SUBCONTRACTS

MAR 1962

The prime contractor shall request its preaward clearances through the contracting officer at least 30 calendar days before the proposed award date, unless the cognizant Department of Labor compliance office agrees to a shorter time.

a. Of the total price of items 0048, 0051, and 0052 the sum of \$710,914.00 is presently available for payment and allotted to this contract. It is anticipated that from time to time additional funds will be allotted to this contract until the total price of these items is allotted.

(b) The contractor agrees to perform or have performed work on the items up to the point at which, in the event of termination of this contract pursuant to the Termination for Convenience of the Government clause of the contract, the total amount payable by the Government (including amounts payable in respect of subcontracts and settlement costs) pursuant to paragraph (e) of the clause would, in the exercise of reasonable judgment by the contractor, approximate the total amount at the time allotted to the contract. The contractor will not be obligated to continue performance of the work beyond that point. The Government will not be obligated in any event to pay or reimburse the contractor in excess of the amount from time to time allotted to the contract, regardless of anything to the contrary in the Termination for Convenience of the Government clause of this contract.

(c) It is contemplated that the funds presently allotted to this contract will cover the work to be performed, as limited by the provisions of (b) above until the 30th day of July 1985. If funds allotted are considered by the contractor to be inadequate to cover the work to be performed until the above date or an agreed substitute date, the contractor will notify the contracting officer in writing when, within the next 30 days, the work will reach a point at which, in the event of termination of this contract pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government (including amount payable in respect of subcontracts and settlement costs), pursuant to paragraph (e) of the clause, will approximate 85 percent of the total amount then allotted to the contract. The notice will state (i) the estimated date when that point will be reached, and (ii) the estimated amount of additional funds required to continue performance to the above date or an agreed substitute date, advise the contracting officer in writing as to the estimated amount of additional funds which will be required for the timely performance of the contract for a further period as may be specified in the contract or otherwise agreed to by the parties. If after such latter notification, additional funds are not allotted by the date above written, or by an agreed substitute date, the contracting officer will, upon written request of the contractor, terminate this contract on that date or the date set forth in the request, whichever is later, pursuant to the provisions of the Termination for Convenience of the Government clause of this contract.

(d) When additional funds are allotted from time to time for continued performance of the work under this contract, the parties will agree as to the applicable period of contract performance which will be covered by the funds. The provisions of (b) and (c) above will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be amended accordingly.

(e) If the contractor incurs additional costs or is delayed in performance of the work under this contract solely by reason of failure of the Government to allot additional funds in amounts sufficient for timely performance of this contract, and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the items or in the time of delivery or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause of this contract entitled, "Disputes."

(f) The Government may at any time prior to termination and, with the consent of the contractor, after notice of termination allot additional funds for this contract.

(g) The provisions of this clause with respect to termination will not be deemed to limit the rights of the Government under the clause entitled, "Default." The provisions of this clause are limited to the work on and allotment of funds for the items set forth in (a) above. This clause will become inoperative upon the allotment of funds for the total price of the work except for rights and obligations then existing under this clause.

(h) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the Termination for Convenience of the Government clause of this contract.

3. 52.243-9001 NOT-TO-EXCEED COST AGREEMENT

APR 1984

Prior to the issuance of a change order under this contract, the contracting officer may solicit from the contractor written agreement as to (1) the monetary adjustment (maximum increase or minimum decrease) to be made to the contract or (2) adjustment in the delivery schedule (or time of performance) by reason of the change. The contracting officer may also solicit such agreement on limitations to the adjustments of any other provisions of the contract which may be subject to equitable adjustment by reason of the change. Any such written agreement shall then be cited in the change order, and upon its issuance shall be a binding part of the contract. In no event shall the definitive equitable adjustment exceed the limitations so established. Except with respect thereto, nothing contained herein shall affect the rights of the parties to the equitable adjustment by reason of the change, pursuant to the Changes clause.

(b) With respect to changes for which the contract is to be adjusted, the contractor shall submit a not-to-exceed amount as required above.

4. 52.245-9000 BASE SUPPORT (Applies to CLINs 0001, 0002, 0004, 0006 and 0007)

APR 1984

Base support will be provided to the contractor by the Government only in accordance with the provisions of this clause. Failure of the contractor to comply with all provisions of this clause will result in releasing the Government without prejudice from its obligation to provide the required base support by the date(s) required. Failure of the Government to provide base support by the date(s) required (absent any contractor failure to comply with all the provisions of this clause) will, if otherwise warranted, result in an equitable adjustment in accordance with the changes clause."

a The contractor agrees that in the performance of this contract, or any major subcontract hereunder, that no direct or indirect costs will be incurred for the duplication of work or support capacity which the Government determines is available at, or through, any DOD installation where this contract will be performed, without prior written approval of the contracting officer. Accordingly, the contractor agrees to use or cause to be used, on subcontracts, if any, all Government or Government-controlled working space, equipment, supplies, materials, services (including automatic data processing) or other support (including communication services) which the Government determines can be made available at, or through, any DOD installation where this contract will be performed.

(b) Base support will be provided only at those installations listed in (g) below. The exact amount and character of support and other logistic details appropriate to the furnishing thereof, will be determined before contract award and set forth in an appendix to the contract and referenced in the schedule, by categories and installations, if determinable at that time.

(c) Where it cannot be determined before contract award, the appropriate air force installations where support is anticipated will be listed in (g) below, if known. During the contract, the contractor agrees to provide to the contracting officer a complete proposal supported by detailed documentation of all in-place base support requirements at each listed installation not later than 120 days before the planned required need date at each location. The contractor will, in each case, concurrently forward an identical copy of the proposal to the cognizant contract administration office. In this event, agreement concerning the exact amount and character of support and other logistic details appropriate to the furnishing thereof, will result in an amendment to the contract which provides an equitable adjustment to the contract price and other affected provisions of the contract in accordance with the changes clause.

(d) Any further additions, reductions, or changes in the specific support identified under this clause by amendment in accordance with (c) above, or to the contract already negotiated, will be fully documented by the contractor and normally submitted to the contracting officer within 90 days of required in-place date at the installation. When the requirement becomes known less than 90 days before in-place date, the contractor will immediately notify the contracting officer when required changes arise. If appropriate under the circumstances, a negotiated equitable adjustment will be made in the price, terms and/or conditions of the contract in accordance with the changes clause.

(e) Unless otherwise stipulated in the schedule of this contract, such support will be provided on a no-charge-for-use basis and the value thereof will be a part of the Government's consideration for this contract. If contractual coverage is pending, the contracting officer's written approval will be obtained before any base support will be furnished hereunder and the contractor agrees to request this approval no later than 90 days before the planned required need date for each DOD installation involved.

1. The contractor agrees to immediately report, with a copy to the cognizant SAC, inadequacies, defective GPP or nonavailability of support, stipulated by the contract schedule together with a recommended plan for obtaining the required support. The Government agrees to determine promptly (within 10 workdays) the validity and extent of the involved requirement and the method by which the requirement will be fulfilled (for example, purchase, rental lease, GPP). Items of a capital nature will not be purchased under this clause; additionally, the contractor will not purchase, or otherwise furnish any base support requirement provided by the clause, or authorize others to do so, without prior written approval of the contracting officer regarding the price, terms, and conditions of the proposed purchase, or approval of other arrangement.

(g) Following are installations where base support will be provided:

To be determined

2. ESD FAR Sub Clauses in Full Text

1. 52.205-9500 RELEASE OF INFORMATION

a. It is Air Force policy to encourage publication of scientific and technological advances and information developed under its contracts. One copy of each paper planned for publication will be submitted for review and comment to the Public Affairs Office, HQ ESD (PAM), Hanscom AFB, MA 01731 at least 30 days prior to submission for publication.

b. News releases and media contacts, including photographs and films, public announcements, or other forms of publicity concerning the technical content of this contract, will not be made without prior clearance from the Air Force. Requests for publicity approval should be addressed to HQ ESD (PAM), Hanscom AFB MA 01731 for the approval of the contracting officer.

2. 52.245-9505 PERFORMANCE OF WORK ON GOVERNMENT PREMISES

Any work under this contract which is performed by the Contractor or any of its subcontractors on premises under Government control is subject to all provisions of this contract governing such work and the following:

a. All Contractor and Subcontractor personnel shall, at all times, conspicuously display a distinctive badge provided by the Contractor, identifying such personnel as employees of the Contractor.

b. Except as may be otherwise specified in the Schedule of this contract, the Contractor shall furnish all supplies, material and equipment required for the work to be performed.

c. The Contractor shall provide direct supervision of its own employees but shall not supervise or accept supervision from any Government personnel.

d. The Contractor shall designate to the Contracting Officer in writing an on-the-premises representative to serve as point of contact for the Contractor with the Contracting Officer or his duly authorized representative.

e. Performance of work on Government premises shall be confined to the area(s) specified by the Contracting Officer or his duly authorized representative.

3. 52.295-9501 TECHNICAL REVIEW

A. The Government has contracted with The MITRE Corporation for the services of a technical group which, under the program management of the Electronic Systems Division, is responsible to the Government for overall technical review of certain Government programs, including the efforts under this contract.

B. Explanation of MITRE Role.

1. Technical Review is defined as the process of continually reviewing the technical efforts of contractors. It does not include any modification, reassignment or redirection of contractor efforts under this contract; such action may be effected only by the prior written direction of the Contracting Officer.

2. The purpose of the review is to:

a. Evaluate from a technical standpoint whether system concept and performance can be expected to be achieved on schedule and within cost.

b. Assure that the impact of new data, new developments and modified requirements is properly assessed and exploited.

c. Assure that The MITRE Corporation has available data on the status and technology of Government programs and projects to enable it to carry out its inter-system integration responsibilities to the Government.

3. The MITRE Corporation has agreed not to engage in the manufacture or the production of hardware, to abide by FAR Subpart 9.5 entitled, "Organizational Conflicts of Interest", to refrain from disclosing proprietary information to unauthorized personnel, and not to compete with any profit-seeking concern.

C. The Contractor agrees to cooperate with The MITRE Corporation by engaging in technical discussions with MITRE personnel, and permitting MITRE personnel access to information and data relating to technical matters (including cost and schedule) concerning this contract to the same degree such access is accorded Government project personnel.

D. It is expressly understood that the operation of this clause will not be the basis for an equitable adjustment.

4. 51.195-9501 TECHNICAL REVIEW

A. The Government has contracted with The Analytical Systems Engineering Corporation (ASEC) for the services of a technical group which, under the program management of the Electronic Systems Division, is responsible to the Government for technical review of certain Government programs, including the efforts under this contract.

B. Explanation of The ASEC role.

1. Technical Review is defined as the process of continually reviewing the technical efforts of contractors. It does not include any modification, realignment or redirection of contractor efforts under this contract; such action may be effected only by the prior written direction of the Contracting Officer.

2. The purpose of the review is to:

a. Evaluate from a technical standpoint whether system concept and performance can be expected to be achieved on schedule and within cost.

b. Assure that the impact of new data, new developments and modified requirements is properly assessed and exploited.

c. Assure that ASEC has available data on the status and technology of Government programs and projects to enable it to carry out its inter-system integration responsibilities to the Government.

3. The ASEC has agreed not to engage in the manufacture or production of hardware or software which is related to the program for which this contract is issued, to abide by FAR Subpart 9.5 entitled, "Organizational Conflicts of Interest", and to refrain from disclosing proprietary information to unauthorized personnel.

C. The Contractor agrees to cooperate with ASEC by engaging in technical discussions with ASEC personnel, and permitting ASEC personnel access to information and data relating to technical matters (including cost and schedule) concerning this contract to the same degree such access is accorded Government project personnel.

D. It is expressly understood that the operation of this clause will not be the basis for an equitable adjustment.

FILED

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

TECHDYN SYSTEMS CORPORATION

Plaintiff,

v.

WHITTAKER CORPORATION

Defendant.

AT LAW NO. 94144

PLAINTIFF'S ANSWER AND AFFIRMATIVE
DEFENSES TO DEFENDANT'S AMENDED COUNTERCLAIM

COMES NOW, the Plaintiff, TechDyn Systems Corporation (hereinafter "TechDyn") and sets forth herein its answer and affirmative defenses to Defendant Whittaker Corporation's (hereinafter "Whittaker") Amended Counterclaim.

ANSWER

1. TechDyn admits the allegations contained in Paragraphs 1, 2, 3, 4, 5, 10, 42 and 44 of Whittaker's Amended Counterclaim.

2. TechDyn is without sufficient knowledge to ascertain the truth or falsity of the allegations set forth in Paragraph 6 of Whittaker's Amended Counterclaim. Therefore, all allegations contained therein are denied.

3. TechDyn admits that the Air Force selected TechDyn as Prime Contractor on the ICCE Project and directed TechDyn to

subcontract with 4C Corporation for a portion of the work. TechDyn does not admit to Whittaker's contention in Paragraph 7 of its Amended Counterclaim why TechDyn was allegedly directed to use 4C as a subcontractor.

4. TechDyn denies the allegations contained in Paragraph 8 of Whittaker's Amended Counterclaim and states that TechDyn's Prime Contract speaks for itself.

5. TechDyn denies the allegations contained in Paragraph 9 of Whittaker's Amended Counterclaim and states that TechDyn's Subcontract with Whittaker speaks for itself.

6. TechDyn denies the allegations contained in Paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 of Whittaker's Amended Counterclaim.

7. TechDyn admits that FAR 52.243-1 "Changes" was incorporated by reference into the Subcontract. TechDyn states that said clause speaks for itself. TechDyn denies all other allegations in Paragraph 26 of Whittaker's Amended Counterclaim.

8. TechDyn denies the allegations contained in Paragraphs 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 43, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54 and 55 of Whittaker's Amended Counterclaim.

9. TechDyn denies all allegations (including, but not limited to Paragraphs 1 through 7) contained in Whittaker's Prayer for Relief of its Amended Counterclaim.

AFFIRMATIVE DEFENSES

1. Whittaker's Amended Counterclaim fails to state a claim upon which relief can be granted.

2. Whittaker's Amended Counterclaim is barred by the doctrine of accord and satisfaction.

3. Whittaker's Amended Counterclaim is barred by the doctrine of waiver and estoppel.

4. Whittaker's Amended Counterclaim is barred by Whittaker's failure to institute this action within the applicable statutory and contractual periods of limitation.

5. Whittaker's amended Counterclaim is barred by Whittaker's failure to follow the dispute resolution provisions of Whittaker's Subcontract with TechDyn.

6. Whittaker's claims asserted in its Amended Counterclaim are barred because Whittaker failed to give TechDyn timely notice of its claims as required by the "Changes" and other applicable clauses of the parties' Subcontract.

7. Whittaker's Amended Counterclaim is barred by Whittaker's breaches of its Subcontract with TechDyn.

8. Whittaker's Amended Counterclaim is barred because Whittaker's losses and/or damages, if any, were not proximately or directly caused by any acts or omissions by TechDyn.

9. Whittaker's Amended Counterclaim is barred under the doctrine of "unclean hands."

WHEREFORE, having fully answered and otherwise responded to Whittaker's Amended Counterclaim, TechDyn respectfully requests that Whittaker's Amended Counterclaim be dismissed with prejudice and that TechDyn be awarded its costs, expenses and attorneys' fees expended in this matter.

DATED: November 6, 1990.

Respectfully submitted,

TECHDYN SYSTEMS CORPORATION

By: 

Garry R. Boehlert

By:

Douglas C. Proxmire
WATT, TIEDER, KILLIAN & HOFFAR
7929 Westpark Drive, Suite 400
McLean, Virginia 22102
(703) 749-1000

Counsel for Plaintiff

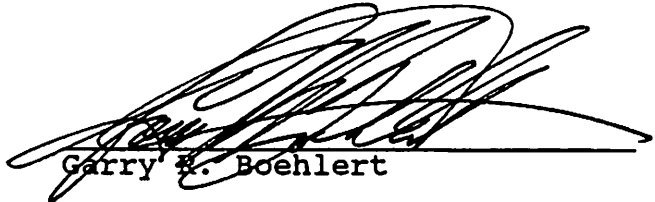
CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Plaintiff's Answer and Affirmative Defenses to Defendant's Amended Counterclaim was hand-delivered this 6th day of November, 1990, to:

Jean-Pierre Swennen, Esquire
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505

and

William L. Carey, Esquire
Miles & Stockbridge
11350 Random Hills Road
Suite 500
Fairfax, VA 22030



Garry R. Boehlert

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TECHDYN SYSTEMS CORPORATION,)

Plaintiff,)

v.)

AT LAW NO. 94144

WHITTAKER CORPORATION,)

Defendant.)

FINAL JUDGMENT ORDER

On October 31, 1991, the Court issued an Order setting aside the jury's August 1, 1991 verdict for TechDyn on Count One of its Amended Motion for Judgment. Thereafter, on November 8, 1991, TechDyn filed a motion requesting the Court to reconsider its October 31, 1991 Order. After consideration of TechDyn's motion, the supporting and opposing legal memoranda, and the entire record herein, the Court concludes that there is no evidence to support the jury's verdict for TechDyn on Count One of its Amended Motion for Judgment and therefore shall deny TechDyn's Motion for Reconsideration for the reasons set forth in its Letter Opinion of January 14, 1992, which is incorporated herein; and

IT APPEARING TO THE COURT that all post-trial motions should be denied with the exception of Whittaker's motion to set aside the jury's verdict on Count One of TechDyn's Amended Motion for Judgment; it is

ADJUDGED, ORDERED AND DECREED that Whittaker's motion to set aside the jury's verdict on Count One of TechDyn's Amended

Motion for Judgment is granted, the remainder of the parties' post-trial motions are denied, and the following Judgment is entered by the Court:


- 1) Defendant, Whittaker Corporation's motion to set aside the jury verdict on Count One of TechDyn's Amended Motion for Judgment is hereby granted and judgment entered thereon in favor of the Defendant;
- 2) TechDyn shall recover no damages from Whittaker on Count Two of TechDyn's Motion for Judgment in accordance with the jury's verdict for Whittaker on Count Two.
- 3) TechDyn shall recover no damages from Whittaker on Count Three of TechDyn's Motion for Judgment in accordance with the jury's verdict for Whittaker on Count Three;
- 4) TechDyn shall recover no damages from Whittaker on Count Four of TechDyn's Motion for Judgment in accordance with the jury's verdict for Whittaker on Count Four;
- 5) Whittaker shall recover from TechDyn Four Hundred Twenty-Two Thousand Six Hundred Seventy-Six (\$422,676) Dollars on Count One of Whittaker's Amended Counterclaim against TechDyn in accordance with the jury's verdict for Whittaker on Count One;
- 6) Whittaker shall recover One Hundred Forty-Two Thousand (\$142,000) Dollars from TechDyn on Count Three of Whittaker's Amended Counterclaim against TechDyn in accordance with the jury's verdict for Whittaker on Count Three; and
- 7) Whittaker shall recover no damages on Count Four of Whittaker's Amended Counterclaim against TechDyn in accordance with the jury's verdict for TechDyn on Count Four.

Based upon the foregoing, Whittaker shall recover from TechDyn a net payment of Five Hundred Sixty-Four Thousand Six Hundred Seventy-Six (\$564,676) Dollars plus lawful interest thereon, at the judgment rate, from the 1st day of August, 1991, and it is

FURTHER ADJUDGED, ORDERED AND DECREED that execution of the judgment against TechDyn is suspended during an appeal thereof, provided that TechDyn files an appeal bond, or an irrevocable letter of credit, in the amount of \$614,000.00 conditioned upon the performance or satisfaction of the judgment and payment of all damages incurred in consequence of such suspension.

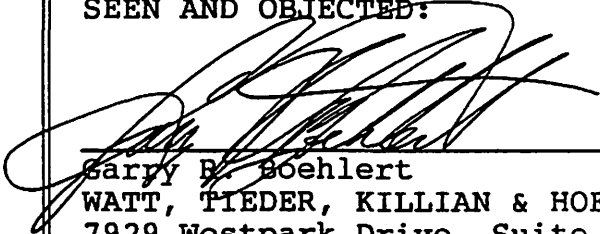
AND THIS ORDER IS FINAL.

ENTERED, this 31 day of January, 1992.



J. Howe Brown, Judge
Circuit Court of Fairfax County

SEEN AND OBJECTED:



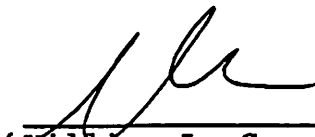
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Counsel for Plaintiff
TechDyn Systems Corporation

SEEN AND OBJECTED TO AS TO ALL ADVERSE RULINGS:



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Counsel for Defendant
Whittaker Corporation



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Judicial Center
4110 Chain Bridge Road
Fairfax, Virginia 22030

COUNTY OF FAIRFAX
Fax: (703) 385-4432

CITY OF FAIRFAX
(703) 246-2221

January 14, 1992

RICHARD J. JAMBORSKY
WILLIAM G. PLUMMER
THOMAS J. MIDDLETON
F. BRUCE BACH
QUINLAN H. HANCOCK
JOHANNA L. FITZPATRICK
J. HOWE BROWN
JACK B. STEVENS
THOMAS A. FORTKORT
MICHAEL P. McWEENY
ROSEMARIE ANNUNZIATA
THOMAS S. KENNY
MARCUS D. WILLIAMS
JUDGES

JAMES KEITH
LEWIS D. MORRIS
BURCH MILLSAP
BARNARD F. JENNINGS
LEWIS H. GRIFFITH
RETIRED JUDGES

Garry R. Boehlert, Esq.
Watt, Tieder, Killian & Hoffar
7929 Westpark Drive
Suite 400
McLean, Virginia 22102

Peter B. Work, Esq.
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505

William L. Carey, Esq.
Miles & Stockbridge
11350 Random Hills Road
Suite 500
Fairfax, VA 22030

Re: TechDyn Systems Corporation v. Whittaker Corporation - At Law No. 94144

Dear Counsel:

After further examination of this case, the memoranda and authorities, I am of the opinion that I properly set aside the verdict in favor of TechDyn. When I sent this case to the jury, it was my opinion that TechDyn had failed to present evidence which would allow the jury to allocate claimed damages for delay among various causes presented, for only some of which Whittaker could be responsible. I let the case go to the jury because a great deal of time, money and effort had been expended to try the case. After the jury verdict, viewing all the evidence, I am satisfied that the verdict of the jury is without evidence to support it. That Whittaker caused some delay and damages to TechDyn in performance of the contract is proven by the evidence. The evidence does not

OPINION LETTER

0086

TechDyn Systems Corporation
v. Whittaker Corporation
January 14, 1992
Page Two

support a conclusion as to how much delay and damage is caused by Whittaker, and how much by the Air Force and TechDyn itself and other causes. This burden of allocation, of presenting evidence of allocation, was upon TechDyn, and TechDyn failed to present that evidence. In fact it is in part from TechDyn's own evidence that the problem of allocation appears.

Having found that there was no evidence to support the verdict and that the verdict is plainly contrary to the evidence, I set aside the jury verdict on Count I of TechDyn's Amended Motion for Judgment. Mr. Carey should prepare an Order and submit it to Mr. Boehlert for approval as to form.

Very truly yours,

A handwritten signature in dark ink, appearing to read "J. Howe Brown", with a long horizontal flourish extending to the right.

J. Howe Brown

JHB/al



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Judicial Center
4110 Chain Bridge Road
Fairfax, Virginia 22030

COUNTY OF FAIRFAX
Fax: (703) 385-4432

CITY OF FAIRFAX
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JUDGES

November 25, 1991

JAMES KEITH
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Peter B. Work, Esq.
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1001 Pennsylvania Avenue, N.W.
Washington, D. C. 20004-2505

Re: Techdyn Systems Corporation v. Whittaker
Corporation - At Law No. 94144

Dear Counsel:

I have not had time fully to digest the Motion to Reconsider, so I have entered an order vacating the order of 31 October 1991. The point I am considering is what is the proper standard for review of the jury verdict and whether that standard is properly applied. Mr. Boehlert has fully addressed that in his authorities. Mr. Work may wish to supplement.

Very truly yours,

J. Howe Brown

JHB/al

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TECHDYN SYSTEMS CORPORATION,

Plaintiff,

v.

WHITTAKER CORPORATION,

Defendant

AT LAW NO. 94144

Q R D E R

The Order of 31 October 1991 is set aside and vacated in order to give the Court time to consider the Motion to Reconsider.

ENTERED 21 November 1991.

J U D G E

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TECHDYN SYSTEMS CORPORATION)

Plaintiff,)

v.)

AT LAW NO. 94144)

WHITTAKER CORPORATION)

Defendant.)

JUDGMENT ORDER

THIS MATTER came to be heard on the 31st day of October, 1991, upon the post-trial motions of both parties and for entry of a Judgment Order on the jury's August 1, 1991 verdict; and

IT APPEARING TO THE COURT that all post-trial motions should be denied with the exception of Whittaker's motion to set aside the jury's verdict on Count I of TechDyn's Amended Motion for Judgment; it is

ADJUDGED, ORDERED and DECREED that Whittaker's motion to set aside the jury's verdict on Count I of TechDyn's Amended Motion for Judgment is granted, the remainder of the parties' post-trial motions are denied, and the following Judgment is entered by the Court:

- 1) Defendant, Whittaker Corporation's motion to set aside the jury verdict on Count I of TechDyn's Amended Motion for Judgment is hereby granted and judgment entered thereon in favor of the Defendant.

- 2) TechDyn shall recover no damages from Whittaker on Count 2 of TechDyn's Motion for Judgment in accordance with the jury's verdict for Whittaker on Count 2;
- 3) TechDyn shall recover no damages from Whittaker on Count 3 of TechDyn's Motion for Judgment in accordance with the jury's verdict for Whittaker on Count 3;
- 4) TechDyn shall recover no damages from Whittaker on Count 4 of TechDyn's Motion for Judgment in accordance with the jury's verdict for Whittaker on Count 4;
- 5) Whittaker shall recover from TechDyn Four Hundred Twenty-Two Thousand Six Hundred Seventy-Six (\$422,676) Dollars on Count ~~I and II~~ of Whittaker's Amended Counterclaim against TechDyn in accordance with the jury's verdict for Whittaker on Count ~~I and II~~;
- 6) Whittaker shall recover One Hundred Forty-Two Thousand (\$142,000) Dollars from TechDyn on Count III of Whittaker's Amended Counterclaim against TechDyn in accordance with the jury's verdict for Whittaker on Count III; and
- 7) Whittaker shall recover no damages on Count IV of Whittaker's Amended Counterclaim against TechDyn in accordance with the jury's verdict for TechDyn on Count IV.

Based upon the foregoing, Whittaker shall recover from TechDyn a net payment of Five Hundred Sixty-Four Thousand Six Hundred Seventy-Six (\$564,676) Dollars plus lawful interest thereon, at the judgment rate, from the 1 day of August, 1991, and it is

EXECUTION

FURTHER ADJUDGED, ORDERED AND DECREED that if ~~TechDyn~~ ^{TECH DYN IS} ~~wishes execution of the judgment against it to be suspended~~ ^{provided Tech Dyn} during an appeal thereof, ~~TechDyn shall be, and hereby is,~~ ^{directed to file} an appeal bond, within days or an irrevocable letter of credit, in the amount of \$ 614,000.00 conditioned upon the performance or satisfaction of the judgment

JMB

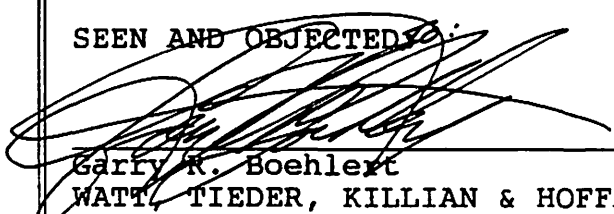
and payment of all damages incurred in consequence of such suspension.

AND THIS ORDER IS FINAL.

ENTERED, this 31 day of October, 1991.



J. Howe Brown, Judge
Circuit Court of Fairfax County

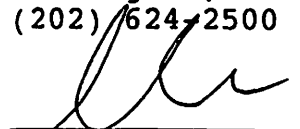
SEEN AND OBJECTED TO:


Garry R. Boehlert
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7929 Westpark Drive, Suite 400
McLean, Virginia 22102
(703) 749-1000

Counsel for Plaintiff
TechDyn Systems Corporation

SEEN AND OBJECTED TO AS TO ALL ADVERSE RULINGS:


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Counsel for Defendant
Whittaker Corporation

ASSIGNMENTS OF ERROR

1. The Trial Court erred in setting aside the jury's \$2,101,000 verdict for TechDyn on Count 1 of TechDyn's Amended Motion for Judgment;

2. The Trial Court erred in striking TechDyn's evidence regarding its \$2,314,338 claim for lost business and lost profits during TechDyn's case, after Defendant had presented evidence, and before TechDyn's demand could be presented to the jury;

3. The Trial Court erred by allowing Whittaker, over TechDyn's objection, to "establish" its damages by hearsay, opinion, and improper speculation;

4. The Trial Court erred by entering judgment for Whittaker on Counts I and III of its Amended Counterclaim because Whittaker failed to apportion its damages between TechDyn and non-TechDyn related causes for which the parties' Contract barred any recovery by Whittaker;

5. The Trial Court erred by preventing TechDyn from entering into evidence the changes clause of the parties' Contract, the very clause upon which Whittaker sued TechDyn, thereby wrongfully preventing TechDyn from establishing that Whittaker had not provided proper notice of its claims--a condition precedent to asserting a valid cause of action against TechDyn;

6. The Trial Court erred by allowing Whittaker to seek and obtain duplicative recovery in Counts I and III of Whittaker's action against TechDyn.

**TRIAL TESTIMONY OF
LEO S. MORRISON, JR.**

LEO S. MORRISON, JR. - DIRECT EXAMINATION

121

A F T E R N O O N S E S S I O N

1:45 p.m.

BAILIFF: This Honorable Court is again in session. Please be seated and come to order.

JUDGE BROWN: You can bring the jury in. You can call your first witness and when you go out there, scare up the other lawyer. Who is your first witness?

MR. RIDDLES: Mr. Leo Morrison, Your Honor.

JUDGE BROWN: Okay, come forward and be sworn, Mr. Morrison.

WHEREUPON

LEO MORRISON

having been first duly sworn, was called as a witness and was examined and tetsified as follows:

DIRECT EXAMINATION

JUDGE BROWN: Come right up here and have a seat. Okay, we're all present and accounted for. Go ahead.

BY MR. RIDDLES:

Q Will you please state your full name and your place of employment for the record.

A Leo S. Morrison, Jr., and I work for TechDyn Corporation.

Q Mr. Morrison, where is TechDyn Systems, located?

A Springfield, Virginia North Scale Road across from the Springfield Mall.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

122

1 Q And how long have you been employed by that
2 corporation, Sir?

3 A About 13 and one-half years.

4 Q What is your position with the TechDyn
5 Corporation?

6 A I'm the Chairman of the Board and President.

7 Q Are you also the owner, sir?

8 A I'm the foundering owner, yes.

9 Q Mr. Morrison, would you tell the jury about your
10 background beginning with your education, please, sir.

11 A I finished high school in Winston Salem, North
12 Carolina, Atkins High School and I attended Hampton
13 Institute, at the time, it's now called Hampton University
14 in Hampton, Virginia.

15 Q Did you graduate from Hampton?

16 A Yes, I did. I received a Bachelor of Science
17 degree in Physics and Mathematics with honors.

18 Q And after Hampton, did you continue your
19 education, sir?

20 A After Hampton I was an ROTC student at Hampton, I
21 was a graduate of the program. I received a regular Army
22 degree as a distinguished military graduate and at that time
23 I went into the Army and I went through the basic officer
24 course at Ft. Monmouth, New Jersey after being commissioned
25 in the Signal Corp.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

123

1 Q After you got commissioned into the Signal Corp,
2 what were your duties with respect to the Signal Corp?

3 A My duties were involved telecommunications in
4 systems engineering.

5 Q And can you give us some idea of the positions
6 that you held in your Army career?

7 A Yes I can. I was initially assigned, after
8 schooling, the telecommunications schooling at Ft. Monmouth,
9 I was assigned to the school again at Ft. Knox, Kentucky
10 where I studied Army communications. After that I was
11 assigned to the 82nd Airborne Division where I served in the
12 Signal Batalion, Telecommunications Systems Engineering
13 Division.

14 Q What did your duties there involve?

15 A My duties there involved planning, implementing,
16 designing tactical telecommunications systems for the 82nd
17 Airborne.

18 Q And where was that, sir?

19 A Ft. Bragg, North Carolina.

20 Q Now, after that, after your experience at Ft.
21 Bragg, North Carolina, what did you do?

22 A At Ft. Bragg, I was assigned to Germany to the 8th
23 Infantry Division and specifically to the 3rd Recon Squadron
24 of the Cavalry there where I was assigned as Communications
25 Officer in the 8th Infantry Division.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

124

1 Q And after that experience, then what did you do?

2 A After that experience, I was in school for three
3 years. I went back to the Advanced Officer Course at Ft.
4 Monmouth, which was a year in duration. Upon completion of
5 that course, I was assigned to my Masters Degree Program at
6 Perdue University --

7 Q And what did you study for your masters at Perdue?

8 A I studied electrical engineering and mathematics
9 in civil engineering.

10 Q When was this, sir?

11 A That was in 1963 to '65 time frame.

12 Q Were you able to get a degree?

13 A Yes, I got a Master of Science Degree in
14 Electrical Engineering with minors in mathematics and civil
15 engineering.

16 Q Was that degree with honors?

17 A Yes, it was.

18 Q After that, what did you do?

19 A After that, I was assigned to Vietnam. I was
20 assigned to the 362nd Tropospheric Scatter Radio Signal
21 Company in Vietnam which had a unique responsibility for
22 providing the entire backbone system for Vietnam and
23 Thailand. Backbone meaning, it's similar to the major
24 network that AT&T operates in this country. We installed
25 and operated the entire telecommunications system, telephone

LEO S. MORRISON, JR. - DIRECT EXAMINATION

125

1 network using tropospheric scatter radio in Vietnam and
2 Thailand.

3 Q You said that fast. Using what?

4 A Tropospheric Scatter Radio.

5 Q I see. Now, after your Vietnam experience, when
6 did you leave Vietnam?

7 A I left Vietnam in July, 1966. I was then assigned
8 to Headquarters U.S. Flight Command at McGill Air Force Base
9 in Florida, which is now called Central Command, and I was
10 assigned to initially to the joint communications which
11 provides kind of the intermediate range communications in
12 the defense establishment between tactical forces, Joint
13 Chiefs of Staff back here and the Office of the Secretary of
14 Defense.

15 Q And then after that, what did you do, sir?

16 A After Strike Command, I was elected to teach
17 electrical engineering at West Point, but I had to go to
18 Korea first. In Korea, I was assigned as an advisor to the
19 First Republic of Korea Army in Seoul and a place called
20 Juanjube. There are two armies in Korea I was advising the
21 Signal Senior Staff --

22 Q What was the nature of the advice that you were
23 rendering?

24 A The advice was in designing, conducting,
25 implementing tactical and strategic telecommunications for

LEO S. MORRISON, JR. - DIRECT EXAMINATION

126

1 the country of Korea.

2 Q And after the Korea advising experience, what did
3 you do then, sir?

4 A I was assigned to headquarters, Defense
5 Communications Agency here at the Pentagon.

6 Q And what were your duties at the Defense
7 Communications Agency?

8 A I was in the Office of what was called NMCSTS,
9 which stands for the National Military Command System
10 Technical Support Directory. That is the directory that
11 provides the telecommunications systems for the President,
12 Secretary of Defense and Joint Chiefs of Staff.

13 Q And after that experience, what did you do?

14 A I should mention during that experience, one of
15 the key duties was designing and supervising contractual
16 work for government contractors the likes of the IBMs, the
17 TRWs, the computer sciences, etc. Nearing the completion of
18 that tour I was selected to run the telecommunications for
19 the Presidential Inaugural Committee. It was the time when
20 President Jimmy Carter was elected.

21 Q Now, did you have any additional education prior
22 to this time other than the degrees that we have talked
23 about?

24 A You mean after this time, or --

25 Q Well, okay, after at any time.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

127

1 A Yes, I had subsequent training in engineering
2 management. I received also an MBA degree from George
3 Washington University and I had additional studies in radio
4 technology, information systems management and political
5 science.

6 Q Now, when did you graduate from, receive your
7 degree from George Washington University?

8 A In 1973.

9 Q And that was a Masters in Business Administration?

10 A That's correct with a specialization in computer
11 systems and information systems management.

12 Q Now sir, let me back up to the -- you told us
13 about the DCAA experience and then I think you told us about
14 the inauguration. After that what experience did you have
15 in your military career?

16 A After the inauguraion, it is customary to put
17 together a rather elaborate after action report which is
18 mothballed for months until the next inauguration. Upon
19 completion of that, I was assigned to headquarters, Military
20 District of Washington in the Office of Deputy of Chief of
21 Staff for Communications and Electronics. In that capacity
22 we designed the systems that were applicable, primarily in
23 the Washington area to be used in a crisis management kind
24 of situation.

25 Q After that, did you have additional military

LEO S. MORRISON, JR. - DIRECT EXAMINATION

128

1 duties?

2 A At the end of that tour, I retired from the Army.

3 Q And what rank had you achieved by the time that
4 you retired from the Army?

5 A I was Lieutenant Colonel.

6 Q Now, upon your retirement, what did you do then,
7 sir?

8 A Immediately upon retirement, I accepted a position
9 with a company called J Corp here in Alexandria, and I
10 served as a telecommunications engineer for them for
11 approximately one year.

12 Q And that would have -- what year was that, please
13 sir?

14 A I started in 1977, August 1st, 1977 and stayed
15 there until roughly June, 1978.

16 Q Tell us about the TechDyn Corporation. How did
17 you go about founding that and when?

18 A I founded, actually TechDyn Systems Corporation
19 was founded and incorporated in the State of Delaware on the
20 30th of December, 1977. I was serving as program manager at
21 J Corp and agreed to stay on until they got a replacement
22 for me. When they did in June, I then opened the doors of
23 TechDyn Systems Corporation.

24 Q What was the, what was your vision for the purpose
25 of the company in founding it?

LEO S. MORRISON, JR. - DIRECT EXAMINATION

129

1 A My vision was to respond to a requirement that I
2 had been exposed to in my experience at U.S. Strike Command
3 Headquarters which was my first time in the military having
4 direct contact with contractors. My job there entailed
5 defining requirements for the Commander in Chief, usually a
6 four-star, most recently General Schwartzkopf held that
7 position. In that capacity, it's kind of a unique position
8 in that the Commander in Chief determine what he needs. I
9 was in the role of designing the communication systems that
10 he would need to carry out his joint mission.

11 Q Now, how did that impact upon your vision for the
12 TechDyn Corporation?

13 A By so doing we came in direct contact, or I came
14 in direct contact with the contractors that we went directly
15 to to acquire the systems having run our requirements
16 through the Office of the Joint Chiefs of Staff upon
17 approval. Then we were at liberty to go to contractors and
18 acquire the systems that we needed to satisfy the same
19 commission.

20 Q Now, but we were talking about the vision of
21 TechDyn. So how did this experience relate to what you were
22 founding TechDyn for?

23 A Well, that wasn't the only experience. Later on
24 at the Defense Communications Agency, I served as a
25 Contracting Officer's Technical Representative and in the

LEO S. MORRISON, JR. - DIRECT EXAMINATION

130

1 Office of NMCSTS, National Military Systems structure
2 designing systems here for the Pentagon, namely the main
3 operations system for the White House Situation Room in the
4 White House, for all of the aircraft that the President
5 uses, etc., and in that capacity, we utilized such
6 contractors as IBM and TRW and others and my role there was
7 to design the work for them to participate in the awards of
8 the contract and to supervise the delivery of the required
9 products n those contracts. Now, what I discovered was that
10 the government has this propensity to prefer larger
11 contractors. However we found, or I found in my experience,
12 that quite often when the guys walked in the room and you
13 sat them around the table to discuss what the requirements
14 were, they took off that hat that said IBM or TRW like they
15 were dealing with ordinary people. The requirement,
16 therefore, is not the company, or a name of a company. The
17 requirement is to assemble the right mix of discipline to
18 personnel that you need to get the job done. I had served
19 previously on a special joint committee selected by the
20 Chairman of the Joint Chiefs of Staff to put together what
21 was called the WMSC Systems Engineering Master Plan. WMSC
22 stands for Worldwide Military Commanding Constrol System
23 Engineering Plan. This weighed heavily in my thoughts about
24 forming TechDyn because what was done there was that the
25 chairman selected from the Army, the Navy, the Air Force,

LEO S. MORRISON, JR. - DIRECT EXAMINATION

131

1 the Marine Corps, both military and civilian personnel
2 recommended to him to man this staff to develop this five-
3 year plan. He got --

4 Q How did that affect your decision?

5 A What I attempted to do, what I recognized was that
6 was how you go about staffing up to do given jobs in this
7 area. I found that the larger contractors had capability
8 gaps and that we could compliment these larger contractors
9 by filling those gaps and at the same by doing business on
10 our own and hopefully grow in that process. So that
11 comprised my vision for TechDyn. That's what we have been
12 attempting to do ever since.

13 Q All right, sir. Now, once you founded TechDyn,
14 tell us about the initial years and the contracts, if any,
15 that you were awarded and so forth.

16 A Merely upon opening the doors of TechDyn we had a
17 contract and --

18 Q What was your first contract?

19 A The first contract was called the Nuclear Test
20 Personnel Review Project which was a job done for the
21 Defense Nuclear Agency. That project had the objective to
22 identify all personnel involved in atmospheric nuclear
23 testing. Ultimately that was to be a correlation between
24 that exposure to ionizing radiation and diseases. TechDyn's
25 role there was to establish a telecommunications center that

LEO S. MORRISON, JR. - DIRECT EXAMINATION

132

1 would collect information there on a 24 hour a day basis
2 from around the world. We did that for the Defense Nuclear
3 Agency as our first contract.

4 Q And, now what was your next job after that?

5 A Concurrent with that we went to some of these
6 larger corporations that I had had experience with and I
7 knew some of the things they were working on and I knew some
8 of the capabilities that they didn't have and I sought out
9 folks that could satisfy those requirements. We went to IBM
10 and we obtained a contract with IBM to provide support to
11 them on what was called, at the time, an Army-wide
12 commanding control master plan. We went also to TRW and
13 acquired a contract with them to provide telecommunications
14 engineering support, systems engineering support in the
15 tactical nuclear forces arena.

16 Q Where was this tactical nuclear forces arena?

17 A That arena was the theatre of Europe. That was
18 our first assignment to go in and assess all of the current
19 telecommunications resources that were being used to provide
20 the president with positive hands-on 24 hour a day control
21 of our nuclear weapons in Europe.

22 Q When was this?

23 A Say it again?

24 Q Was was this?

25 A That was in the 1979 to about '81 time frame. We

LEO S. MORRISON, JR. - DIRECT EXAMINATION

133

1 did that study and analysis for the European Theatre. It
2 was accepted and we were then asked to do the same thing for
3 the Pacific Theatre.

4 Q Now, who was your client at that point?

5 A That was the TRW.

6 Q And you had a contract with them?

7 A That is correct.

8 Q After, in addition to the TRW job, any other
9 contracts that you had say in this 1978 to 1981 time frame?

10 A Yes, we had another job with the Defense Nuclear
11 Agency to assess all of the telecommunications from the
12 White House to Europe and down through the forces both on
13 the U.S. side and on the NATO side to determine what assets
14 they were, to assess their capabilities. Again, the
15 interest being making sure that the President had this
16 positive 24 hour a day control of our nuclear forces. And
17 then, upon the assessment making recommendations,
18 identifying deficiencies and making recommendations for
19 fixes.

20 Q After that job, anything else?

21 A A series of jobs after that. One was called, I
22 won't go through them all, Naked Radars which we did for the
23 Army out at Ft. Monmouth which looked at the business of
24 netting radars that were airborne, on airborne platforms as
25 well as radars on the ground for target acquisition

LEO S. MORRISON, JR. - DIRECT EXAMINATION

134

1 purposes. We very early on became involved and are
2 continuing to be involved in a major project in Europe
3 called the European Telephone System Program.

4 Q What about the -- are you familiar with the High
5 Frequency, Single-Side Bend Project?

6 A Yes.

7 Q Tell the jury about that project.

8 A That was a job that we got the Army, at that time,
9 in the early '80s had a program called a "Pilot Program"
10 where they selected small businesses that had capabilities
11 that were similar to larger businesses and they wanted to
12 give them special contracts and generally larger contracts
13 and typically other companies would get. This was the so-
14 called High-Frequency, Single-Side Bend Radio System that's
15 based in Europe -- Germany, Greece and Turkey. Probably --

16 Q What is that radio system do?

17 A Right -- that radio system controls our nuclear
18 weapons on a 24 hour a day basis. Has and does to this day.
19 Probably the most important high-frequency single-side bend
20 system that the country has the possibility to operate.

21 Q What was TechDyn's role in that system?

22 A Our role in that job was to design an upgrade for
23 the entire network. There were existing radios that were
24 old, antiquated. We had to come up with some new radio
25 equipment. We had to come up with the new antenna system

LEO S. MORRISON, JR. - DIRECT EXAMINATION

135

1 that was used and we used horizontal log periodic antennas
2 salvaged on 70 foot masts, etc.

3 Q You say your company designed the system?

4 A Yes we did. Responsible for the design and
5 specifically, a control console that did not exist that we
6 had to, with the Army Engineers, design from scratch and
7 acquire. We employed, engaged a subcontractor in that role,
8 the Harris Corporation, which had a reputation for being
9 outstanding in manufacturing such equipment.

10 Q Does subcontractors, did the Harris Corporation
11 work for you?

12 A That is correct.

13 Q In addition to this nuclear single-side bend job,
14 what other jobs do you have that are pertinent?

15 A We are providing for the major commands in Europe
16 and have been providing support services in Europe and
17 telecommunications since 1979 continues to this day. We
18 provide support to Headquarters Signal Command which has
19 Army-wide responsibility throughout Europe. We are
20 providing support to --that's out of Frankfurt and Wernst,
21 Germany. We are providing support in Heidelberg, Germany to
22 Headquarters, United States Army Europe. We designed the
23 entire operations center for the USARA Commander. Most
24 recently, one of the systems we designed was the UTCC
25 System -- Universal Tactical Command Control System --

LEO S. MORRISON, JR. - DIRECT EXAMINATION

136

1 Q Who is your client in that case, or did you have a
2 contract with?

3 A That was with the Army and specifically with the
4 USARA Headquarters in Heidelberg. But what I wanted to say
5 was that was one of the systems that was used for force
6 analyzing in Saudi Arabia and SITCOM Headquarters.

7 Q Where was this system designed?

8 A It was designed in Europe. In our offices in
9 Europe.

10 Q Have you ever done any work for the National
11 Aeronautics and Space Administration?

12 A Yes, we have. We did local area networks design
13 work for NASA at Goddard Space Center here out in
14 Beltsville, Maryland. In that role we essentially upgraded
15 their internal computer network structure on a task quarter
16 basis. We had to design the systems. We had to acquire all
17 the equipment. We had to install the equipment. We had to
18 do some training on the equipment. We turned it over to the
19 NASA people for their operation and maintenance.

20 Q Okay. Let's talk a little bit about the number of
21 people that are employed -- how many people does TechDyn
22 employ at this time?

23 A We have approximately 175 people. I hesitated
24 because I was going to mention another contract, but if
25 that's not appropriate, I won't.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

137

1 Q Well, if you're proud of it, why don't you go
2 ahead and mention it?

3 A TechDyn, back in the time frame 1984, '85 time
4 frame, we were called upon to design the test facility for
5 the Patriot Missile System at the Radion Missile Division in
6 Massachusetts. We went in and did the preliminary work,
7 that is the site surveys and whether or not the terminal
8 interphases and the signal requirements, etc. And then
9 design the system, got it approved by the Army and then went
10 back to the Missile Division at Radion and installed this
11 test facility called Tattleby Test Facility for the Patriot
12 Missile System.

13 Q This was the same Patriot Missile that shot down
14 the SCUD?

15 A Yes it was.

16 Q Now, to talk about your organization, you have
17 mentioned projects all over the world. Where are your
18 offices located?

19 A Our offices are located in Springfield, Virginia,
20 where we have our corporate headquarters. We originally
21 started out in Alexandria. We've been in this facility
22 about five years. We have a significant operation ongoing
23 at Redbank, New Jersey --

24 Q Why Redbank, what's there?

25 A Redbank is in close proximity to Ft. Monmouth, New

LEO S. MORRISON, JR. - DIRECT EXAMINATION

138

1 Jersey where the engineering labs, the Signal Corps of the
2 U.S. Army are located. We are providing support to those
3 laboratories and have since 1979.

4 Q How many people do you employ at Redbank?

5 A Approximately 30.

6 Q How many in your corporate headquarters, here at
7 Springfield?

8 A About 40 or so.

9 Q And do you have another location?

10 A Well we also have an operational facility out in
11 Germantown, Maryland where we are providing
12 telecommunications for headquarters, Department of Energy.
13 There we are responsible for designing their
14 telecommunication systems, implementing and operating those
15 systems as required. We also have a significant office in
16 Germany where we have been since 1979 running the European
17 Telephone System project out at that office working closely
18 with the Semens Corporation and we have a prime contract
19 there. We also --

20 Q Prime contract with whom?

21 A We have a prime contract with the U.S. Army for
22 the European Telephone System job.

23 Q Any other offices that you may have?

24 A Well we operate out of about six or seven
25 locations in Germany including providing support to command

LEO S. MORRISON, JR. - DIRECT EXAMINATION

139

1 of U.S. forces in Europe in Stuttgaard, Germany.

2 Q Tell me, tell the jury, I guess about some of the
3 people that are in you corporate office here in Springfield,
4 Virginia. Is that where you are?

5 A Yes, I work primarily out of the office here.

6 Q And who is the vice president of the company?

7 A We have several. William G. Hise is the Vice
8 President, Director of Management, Support Operations. We
9 have Herbert Roundtree who operates out of this office. He
10 is the Vice President and Director of Washington Operations
11 and we have Milton DeRoyn, who is Vice President and
12 Director of European Operations and Jerry Swedeland who is
13 the Vice President and Director of Information Systems.

14 Q Now, the projects that you mentioned, you
15 mentioned several of them -- in those projects have those
16 projects finished in the time frame that was required under
17 the contracts?

18 A Yes, they have.

19 Q Have they finished within the budget of those
20 contracts?

21 A Yes they have.

22 Q Are you familiar with the project called the
23 Iceland Command and Control Enhancement project?

24 A Yes, I am.

25 Q And how are you familiar with this?

LEO S. MORRISON, JR. - DIRECT EXAMINATION

209

1 and discussed it and I'm pretty sure then simultaneously we
2 forwarded it to the Air Force.

3 Q When was it that you put together this technical
4 proposal for presentation to the Air Force on the ICCE final
5 operating capability?

6 A This would have been upon receipt of the costing
7 proposal. Once we settled on the cost, then we sat down and
8 put together the technical proposal and then forwarded all
9 of that to the Air Force.

10 MR. RIDDLES: Okay. I'm going to ask you to look
11 at Exhibit 165.

12 JUDGE BROWN: Can I have those two books for the
13 clerk to check in?

14 MR. RIDDLES: And, if there's no objection, I'll
15 move on 165 into evidence.

16 JUDGE BROWN: Any objection to 165?

17 MR. WORK: May we have one second, please?

18 JUDGE BROWN: Let me see 165. Is it the whole
19 book or a piece of it?

20 MR. RIDDLES: I don't think so. I think this is
21 just a piece.

22 MR. WORK: No objection, Your Honor.

23 JUDGE BROWN: 165 is received.

24 (The document referred to,
25 having been previously marked

LEO S. MORRISON, JR. - DIRECT EXAMINATION

210

1 for identification as
2 Plaintiff's Exhibit 165, was
3 received in evidence.)

4 BY MR. RIDDLES:

5 Q What is 165, please, sir?

6 A 165 is the technical proposal, the proposal for
7 the ICCE systems, volume 1, technical, submitted by TechDyn
8 to the Air Force on the 28th of May, 1985.

9 Q And is this the technical proposal that 4C helped
10 you with?

11 A That's correct. We sat side by side in our
12 facilities and put together this entire package.

13 Q Now, would you look please at page 17 and I direct
14 your attention specifically to 1.6.1, entitled software
15 development.

16 MR. WORK: Page what, please?

17 MR. RIDDLES: Page 17.

18 (Pause.)

19 MR. RIDDLES: The pages are -- various sections
20 are -- that's not it, Mr. Work.

21 THE WITNESS: I have it here.

22 MR. RIDDLES: Let me see if I can direct Mr. Work
23 to where that is.

24 (Pause.)

25 MR. RIDDLES: Did you find it?

LEO S. MORRISON, JR. - DIRECT EXAMINATION

211

1 MR. WORK: Yes. Thank you.

2 BY MR. RIDDLES:

3 Q Now, look at that paragraph 1.6.1 where it says
4 software development. Would you read that paragraph, and
5 I'm going to ask the next page be prepared too for the
6 overhead projector, would you read that paragraph to the
7 jury?

8 A "Paragraph 1.6.1, Software development. All PDFA
9 software will be developed by 4C at their software
10 development center in Torrence, California."

11 Q Let me interrupt you for a minute before I ask you
12 to keep reading. What software development center did 4C
13 have in Torrence, California?

14 A 4C had its own software development center in
15 their facility in Torrence, California.

16 Q Have you ever had occasion to visit that?

17 A Yes, I have.

18 Q And when was that?

19 A Several times. Well, several times -- in '85 and
20 '86, '87 time frame, prior to their moving to Carlsbad.

21 Q All right. And if you will continue reading then
22 from there.

23 A "This center has a Data General MV 10,000 system
24 and data link simulators which together provide a highly
25 effective and efficient system on which to develop and test

LEO S. MORRISON, JR. - DIRECT EXAMINATION

212

1 all the software required for the PDFA."

2 Q Now, when they say "develop and test all the
3 software required for the PDFA" were you aware of this
4 provision when you sent this to the Air Force?

5 A Yes, I was. And in our many trips there, they had
6 taken us into this facility and assured us that this was a
7 system ready to go, available to develop all the software
8 required.

9 Q Now, then, continue reading, please, sir.

10 A "The PDFA software will be developed from proven,
11 off-the-shelf software which uses the RADIL software as a
12 baseline. This software will be modified to meet the
13 requirements of the RFP." The Request for Proposal.

14 Q So was it your understanding, then, that they were
15 going to be modifying and enhancing their existing software?

16 A That was my absolute understanding, that they
17 would be using the software that they had developed years
18 earlier, they would be upgrading that according to the
19 requirements using the system that they showed us at their
20 facility at Torrence.

21 Q Thank you, sir. Let me ask you one more question
22 about this. In the first part of that paragraph -- when it
23 says that all PDFA software will be developed by 4C, what
24 was your understanding of what would be included in that
25 development process?

LEO S. MORRISON, JR. - DIRECT EXAMINATION

213

1 A It was my understanding that that would include
2 all of the specification development, that is, putting
3 together the specifications required for the software, the
4 B-specs, specifications, the C-specifications, et cetera.
5 It meant --

6 Q Let me just interrupt you right there. That's a
7 new one on us, I think. We've not talked about B-specs and
8 C-specs. What do those terms mean to you?

9 A These are the standard specifications that are
10 required by the Department of Defense in developing
11 software.

12 Q What does B-specs refer to?

13 A B-specs refer to the software. The specifications
14 as to what the software will do. You indicate in a
15 descriptive format exactly what the software is supposed to
16 do and how you are going about satisfying the requirements
17 of the software.

18 Q And what are C-specs?

19 A C-specs are at a next level down, in more detail.

20 Q I see. And you understood that 4C was to design
21 both the B-specs and the C-specs?

22 A That's correct.

23 Q Who was to develop these specs?

24 A The 4C software personnel.

25 Q And who -- go ahead.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

214

1 A You had asked earlier about the software
2 development and that's just the first step in the process.
3 After the acceptable specifications are developed and
4 approved, then the programming starts, the coding starts and
5 then you go right straight through to developing the
6 software programs. Then the programs are tested in this
7 facility and then made available and presented as software
8 for the formal testing program.

9 Q When you say "tested at this facility" you're
10 referring to the Torrence facility?

11 A That's correct. That's what we're talking about
12 here on software development.

13 Q Who is to actually deliver this software?

14 A The 4C Corporation.

15 Q Now, they state that they have test facilities.
16 Did they indeed have test facilities?

17 A Yes, they did.

18 MR. WORK: Your Honor, may I have a clarification?

19 The question was "They state that they have test
20 facilities." This was identified as a TechDyn proposal to
21 the Air Force. Am I mistaken?

22 MR. RIDDLES: It has been identified as that. Let
23 me clarify and I'll ask him a clarifying question.

24 BY MR. RIDDLES:

25 Q When I say "they state that" who drafted this

LEO S. MORRISON, JR. - DIRECT EXAMINATION

232

1 Q Now, sir, would you turn, please, to page 49 of
2 the prime contract?

3 A What page?

4 Q I believe it's 49.

5 A Okay.

6 Q These pages are grouped in different places. Do
7 you see where it says "Paragraph 3, Directed Subcontract"?

8 A Yes.

9 Q And would you read that for the jury, please?

10 A Yes. "Directed Subcontract. The contractor is
11 hereby required to obtain all hardware, software and related
12 documentation for the processing and display functional
13 area, PDFA, as defined in the statement of work and
14 specifications from Command, Control and Communications
15 Corporation (4C) of Torrence, California."

16 Q Now, after entering into this prime contract with
17 the Small Business Administration and the Air Force, was
18 TechDyn able to subcontract with 4C Corporation?

19 A Yes, we were.

20 MR. RIDDLES: And I would ask now that the witness
21 be shown Exhibit 22.

22 (Pause.)

23 MR. RIDDLES: And, Your Honor, may we retrieve
24 Exhibit 4 at this time?

25 JUDGE BROWN: Yes.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

235

1 JUDGE BROWN: I don't know whether that means you
2 want the contract allowed in evidence with the understanding
3 that you are not claiming it all was received or --

4 MR. WORK: I have no objection to the contract if
5 it is not accepted as the contract. The entirety of these
6 documents are not documents that we received as contracts.

7 JUDGE BROWN: Where is your version of the
8 contract?

9 MR. WORK: We have an exhibit -- I'll get you the
10 number in a minute.

11 (Pause.)

12 JUDGE BROWN: Well, what I'm wondering is whether
13 you can introduce what you can agree is the contract and
14 then expanded it via testimony if you need portions of this
15 Exhibit 22 that they don't agree to but he could lay the
16 foundation for, or others could. Whether you could admit
17 what you all agreed was the contract, the minimum contract.

18 MR. RIDDLES: Yes, sir. I understand, Your Honor.

19 MR. WORK: I'll certainly try with Mr. Riddles to
20 work that out. Our exhibit which we believe to be the
21 contract is Defendant's Exhibit 52.

22 JUDGE BROWN: Have you reviewed their 52?

23 MR. RIDDLES: Yes, I have. May I have just a
24 minute and talk to Mr. Boehlert, Your Honor?

25 JUDGE BROWN: Yes.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

236

1 (Pause while counsel confer.)

2 JUDGE BROWN: They are going to introduce the
3 portion of the contract that they agree was the contract and
4 then they can add to and subtract from it by other witnesses
5 who will say something was or wasn't part of the contract.

6 MR. RIDDLES: And it will take us just a minute,
7 Your Honor.

8 JUDGE BROWN: Okay.

9 (Pause.)

10 MR. RIDDLES: Your Honor, we have our copy of the
11 Whittaker exhibit. Why don't we just do that?

12 JUDGE BROWN: All right. It will become not 52,
13 not Defendant's 52 but Plaintiff's 22A.

14 MR. RIDDLES: Thank you, Your Honor.

15 JUDGE BROWN: 22A1 and A2, I guess.

16 MR. RIDDLES: All right.

17 JUDGE BROWN: And the general exhibit 22 is not
18 received.

19 (Pause.)

20 MR. RIDDLES: Your Honor, what I would ask to do
21 is submit as part of our package Exhibit 22, folder 1.

22 JUDGE BROWN: Okay. Show it to him and see if
23 they agree that it is -- as I heard you talking up here, the
24 front end contract.

25 MR. RIDDLES: Yes, sir.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

237

1 JUDGE BROWN: Which wasn't part of their 52.

2 MR. RIDDLES: Yes, sir.

3 (Pause.)

4 MR. WORK: We have no objection to volume 1 of
5 their 22, that is the front end subcontract.

6 JUDGE BROWN: All right. That will become 22A1.
7 Let's have it up here and mark it. Give it to the clerk.
8 Let me have it right now. That's admitted in evidence.

9 (The document referred to was
10 marked for identification as
11 Plaintiff's Exhibit 22A1 and
12 was received in evidence.)

13 MR. RIDDLES: Thank you.

14 JUDGE BROWN: Is there another piece of their 52
15 coming in?

16 MR. RIDDLES: Yes, sir, and we proffer 52A and B,
17 which is going to become 22B1 -- I'm sorry -- 22A2 and A3.

18 (Pause.)

19 JUDGE BROWN: Where is the other one?

20 (Pause.)

21 JUDGE BROWN: Okay.

22 (The documents referred to,
23 were marked for identification
24 as Plaintiff's Exhibits 22A2
25 and A3 and were received in

LEO S. MORRISON, JR. - DIRECT EXAMINATION

238

1 evidence.)

2 MR. RIDDLES: Now, Your Honor, if you could hand
3 to the witness 22A1.

4 (Pause.)

5 BY MR. RIDDLES:

6 Q Can you find in 22A1 a cover letter submitting
7 this subcontract to 4C?

8 A Yes. I think I have it here. Dated 3 September
9 1985?

10 MR. RIDDLES: I think so. Just a minute.
11 Actually, look for the July 12, 1985 letter where 4C signs
12 the subcontracts.

13 MR. RIDDLES: May I help the witness just a
14 minute, Your Honor?

15 JUDGE BROWN: Yes.

16 (Pause.)

17 MR. RIDDLES: I'm sorry about the delay, Your
18 Honor. I appreciate the jury's patience.

19 (Pause.)

20 BY MR. RIDDLES:

21 Q Are you able to find that now?

22 A Page 17. Yes.

23 MR. RIDDLES: Okay.

24 (Pause.)

25 MR. WORK: Your Honor, I've lost track of the

LEO S. MORRISON, JR. - DIRECT EXAMINATION

243

1 MR. WORK: Yes he did, Your Honor.

2 JUDGE BROWN: Well I thought the question that you
3 were objecting to was the one that he just asked.

4 MR. WORK: That's right and the witness answered
5 it.

6 JUDGE BROWN: All right, well.

7 MR. WORK: As I was speaking.

8 JUDGE BROWN: I didn't hear it so it's stricken.

9 BY MR. RIDDLES:

10 Q Let me ask you the question this way -- the FOC
11 that you indicated, what was that change?

12 A The FOC was changed or added to our contract under
13 modification 3.

14 Q I see. Now, after -- was this subcontract signed?

15 A Yes, it was.

16 Q And could we show the signature page? Do we have
17 that?

18 A Page 17.

19 Q What was the date of the signing?

20 A 12, July, 1985 by Marie E. Raymond.

21 Q All right, sir.

22 A And 16, July, 1985 by William C. Hise, TechDyn.

23 Q Thank you, sir. After it was signed, what
24 happened with TechDyn then, what did TechDyn do?

25 A After the subcontract was signed, we gathered with

LEO S. MORRISON, JR. - DIRECT EXAMINATION

244

1 4C Corporation and proceeded to continue the work actually
2 that we had already been involved in.

3 Q And would that be for the initial operating
4 capability?

5 A That is correct.

6 Q And were you ever able to arrive at a price for
7 the final operating capability?

8 A Yes we were.

9 Q And how was that arrived at?

10 A Through negotiations.

11 Q Okay. Were those negotiations reduced to writing,
12 do you know?

13 A Yes.

14 Q Now I'm going to ask you to keep that document
15 there, but I want to show you Exhibit 181.

16 A Okay, I have it.

17 Q And do you recognize Exhibit 181?

18 A Yes.

19 Q What is it please, sir?

20 A This is a telex to TechDyn Systems, attention Dave
21 Yennowine from Marie E. Raymond of 4C and it's confirming
22 the price of \$5,271,888.00 for subject twins 1 through 5 and
23 47.

24 Q Have you seen this document before?

25 A Yes I have.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

245

1 Q And when was that, sir?

2 A Shortly after it was received at TechDyn.

3 MR. RIDDLES: Your Honor, I move Exhibit 181 into
4 evidence.

5 MR. WORK: I have no objection to the exhibit
6 which was produced by Whittaker, but I have an objection to
7 the characterization of the exhibit and the prior question
8 which was the negotiation memorandum. This is simply a
9 document confirming the price.

10 JUDGE BROWN: Well, the document speaks for itself
11 and it's received.

12 (The document referred to,
13 having been previously marked
14 for identification as
15 Plaintiff's Exhibit 181, was
16 received in evidence.)

17 JUDGE BROWN: May I have it here so I can see it?

18 (Pause.)

19 JUDGE BROWN: Okay.

20 BY MR. RIDDLES:

21 Q Now, the Telex has as its subject ICCE CLINS, C-L-
22 I-N-S, 001 through 005 and 0047. And CLINS, as I understood
23 your testimony yesterday is a contract line item number.

24 A That is correct.

25 Q And do you know what these contract line item

LEO S. MORRISON, JR. - DIRECT EXAMINATION

246

1 numbers refer to here, 1 through 5 and 47?

2 A Yes. They refer to the tasks issued in the
3 subcontract.

4 Q Had you previously provided a copy of these CLINS
5 to the 4C Corporation?

6 MR. WORK: Object to the question unless this is
7 personal, we are going to have the same problem as we did
8 yesterday. Its a company and so how does he know? If the
9 question is did he, then that's a fine question.

10 BY MR. RIDDLES:

11 Q Had TechDyn previously provided a copy of these
12 subject contract line items to the 4C Corporation?

13 MR. WORK: Objection -- no foundation.

14 JUDGE BROWN: Yes it has. Just a moment while I
15 rule on the objection. Okay. I overrule the objection
16 subject to him answering the next question that you just
17 asked. I have to catch up with you.

18 MR. RIDDLES: Thank you, Your Honor.

19 BY MR. RIDDLES:

20 Q How do you know that, Mr. Morrison?

21 A Well, I know that because we were involved in
22 discussions, interactions with 4C on a nearly continuous
23 basis at that time.

24 MR. WORK: Move to strike the prior answer, Your
25 Honor. The foundation is not adequate.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

247

1 MR. RIDDLES: Move for a stay, Your Honor.

2 JUDGE BROWN: I overrule the objection. He is the
3 president of the company and the chief executive officer of
4 the company. If there are -- you can present your evidence
5 as to whether he is testifying to in regard to actions taken
6 by the company are not true. It is clear, and should be
7 made clear each time, that you are talking about things that
8 he personally did, or things that TechDyn did. I think he
9 should be entitled to testify as to what TechDyn did based
10 on his position with the company.

11 MR. WORK: I understand that, Your Honor.

12 BY MR. RIDDLES:

13 Q Now, sir, what happened with this price of
14 \$5,271,888.00 that 4C submitted to you?

15 A That was the price that was put on the subcontract
16 and paid out over time to the 4C Corporation.

17 Q Now, were you able to -- did there come a time
18 when the contract, Exhibit 22, was modified by adding the
19 full operational capability?

20 A Yes.

21 Q And was that modification added to your contract,
22 the prime contract?

23 A Yes, that is correct.

24 Q And was that in turn added in part to the
25 subcontract?

LEO S. MORRISON, JR. - DIRECT EXAMINATION

248

1 A Yes, that is correct -- immediately.

2 Q Okay, now then I would like for you to look at
3 Exhibit 4.

4 JUDGE BROWN: I think you took Exhibit 4 back.

5 MR. RIDDLES: Yes, I did.

6 BY MR. RIDDLES:

7 Q I show you what has been marked and admitted
8 earlier as Exhibit 4. How much is the amount of your
9 contract with the Small Business Administration and Air
10 Force for Modification # 3?

11 A Okay, the amount of Modification # 3, Item 15 here
12 is \$10,411,875.00.

13 Q Now, I'll retrieve that from you and ask you to
14 look at I believe it's, is it 22A?

15 A These books are 22A2 and A3.

16 Q Okay. Look at 22A2 and 3 and I'm going to invite
17 your attention to Modification 3 and see if we can find
18 which volume that's in.

19 JUDGE BROWN: Do you all happen to know Whittaker
20 folks since you have written letters?

21 MR. WORK: Yes, it's at Tab 3, Your Honor.

22 JUDGE BROWN: All right. I have it right here.

23 MR. WORK: If he is asking for Mod 3 to the
24 subcontract.

25 MR. RIDDLES: That's right -- yes.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

249

1 JUDGE BROWN: I have it right here.

2 BY MR. RIDDLES:

3 Q Okay, now taking a look at that, do you recognize
4 this letter from TechDyn to Ms. Raymond?

5 A Yes, I do.

6 Q Now, this -- what is this letter doing? What is
7 the purpose of this letter if you know?

8 A This letter is to advise 4C of the modification to
9 their subcontract Mod # 3 and it adds certain CLINS that are
10 listed and the cost for those CLINS.

11 Q And then the total price is \$5,271,888.00, is
12 that correct?

13 A That is correct.

14 Q With this modification, did you provide a copy of
15 the CLINS that are indicated here to the subcontractor?

16 JUDGE BROWN: You are slipping back into the
17 "you."

18 MR. RIDDLES: You -- TechDyn. I'm sorry. Thank
19 you for helping me with that.

20 THE WITNESS: TechDyn did provide copies of the
21 CLINS to 4C.

22 BY MR. RIDDLES:

23 Q Now, are they included in this defendant's copy of
24 the exhibit that we have agreed on and have marked as "22B1
25 and 2"?

LEO S. MORRISON, JR. - DIRECT EXAMINATION

250

1 A 22A1 and 2.

2 Q I'm sorry, 22A2 and 3.

3 A Yes.

4 Q Looking at the second page of your letter to
5 TechDyn Corporation, what is the effective date of this
6 modification?

7 A The effective date of the modification is 30,
8 August, 1985.

9 Q And you attached certain documents to this TechDyn
10 indicates in the letter.

11 A Yes.

12 Q Do you see where it says "Attached please find the
13 statement of work, the specifications and the corresponding
14 exhibits and attachments for the work covered by these
15 CLINS"?

16 A Yes.

17 Q Were those attached to this letter, if you know?

18 A Yes, they were attached.

19 MR. WORK: Your Honor, I'm going to object again
20 on foundation because on this one I think it's very
21 important to know what the basis of this gentleman's
22 testimony is as to how he knows what was sent and when it
23 was sent.

24 JUDGE BROWN: You may inquire on cross-
25 examination. My ruling is that the president and chief

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0131

1 executive officer of the company may so testify and that
2 position lays the foundation for his testimony. It does not
3 mean the jury has to accept it and does not mean that you
4 can't cross-examine with regard to any particular place that
5 you believe his knowledge is not such as the jury ought to
6 believe.

7 MR. WORK: Very well, Your Honor.

8 BY MR. RIDDLES:

9 Q But to keep the jury from being in suspense, how
10 do you know whether these documents were forwarded to the 4C
11 Corporation by TechDyn?

12 A Well, the reason I know is because I was
13 personally very, very intimately involved in the pre-
14 contract arrangements, discussions between TechDyn and the
15 4C Corporation and the Air Force. Further, in the course of
16 a business day, every document that is produced in TechDyn,
17 I'm provided a copy of. Every day in a folder, and I review
18 that every day and I'm -- at this point in the game I was
19 intimately involved in nearly everything that happened in
20 this contract on both the administrative side and the
21 technical side.

22 MR. WORK: Move to strike the answer as non-
23 responsive, Your Honor, to the question of how does he know
24 what documents were submitted to Whittaker and when.

25 JUDGE BROWN: I will overrule the objection.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

252

1 Whether that lays the foundation that the jury will consider
2 or not is for the jury to determine after hearing all the
3 evidence.

4 MR. RIDDLES: Thank you.

5 BY MR. RIDDLES:

6 Q Now, Mr. Morrison, look at the bottom. It says
7 here "if the above terms are satisfactory, please sign and
8 return two copies of this modification. Upon receipt, a
9 full executed copy will be returned to you for your
10 records." Do you see that reference?

11 A Yes, I do.

12 Q And then following that it says "If you have any
13 questions concerning this modification, please contact the
14 undersigned." and it has a telephone number of the TechDyn
15 Corporation, am I correct?

16 A That is correct, yes. It's our telephone number.

17 Q Now, then, is this document signed?

18 A Yes, it is.

19 Q And who is it signed by?

20 A It's signed by Marie E. Raymond suggesting
21 approval.

22 Q She is indicated as the Director of Contracts, is
23 she not?

24 A That is correct.

25 Q And the date of her signature?

LEO S. MORRISON, JR. - DIRECT EXAMINATION

253

1 A 14, January, 1986.

2 Q Now, sir, I note that the date of this letter is
3 27, November, 1985?

4 A That is correct.

5 Q Do you know why it took her so long to return the
6 document?

7 A I have no idea.

8 Q I'm going to show you a document. I'm going to
9 show you now what I have marked as 22A4 and ask if you
10 recognize this.

11 (The document referred to was
12 marked for identification as
13 Plaintiff's Exhibit 22A4.)

14 A Yes, I do.

15 Q And what are these documents, please?

16 A These are the supply line item data sheets for the
17 FOC and CENTAF.

18 Q Are these documents included in the 22A2 and 3
19 that we have marked that were the defendant's prior copy of
20 this contract modification?

21 A I haven't looked, but I will try to find them.
22 They should be a part of this document.

23 MR. WORK: I can save time, Your Honor. They are
24 not part of the document.

25 BY MR. RIDDLES:

LEO S. MORRISON, JR. - DIRECT EXAMINATION

254

1 Q They are not, are they, Mr. Morrison?

2 JUDGE BROWN: Well, never mind whether he can find
3 it or not. There is no point in making him look through
4 there. The stipulation is its not in there.

5 BY MR. RIDDLES:

6 Q Okay, now when you said they should be, what did
7 you mean by that?

8 A Well, what I meant was that this supply is not
9 item data sheets or a part of -- okay, this is a part of our
10 contract.

11 Q And did you include this, do you know whether or
12 not TechDyn forwarded this to 4C with the subcontract
13 modification number 3?

14 A It's my understanding yes, that they were
15 forwarded to the 4C Corporation.

16 Q In the folders that we first identified as 22,
17 which is -- are they included in that version?

18 A I don't quite follow.

19 JUDGE BROWN: Well, let's not ask him whether
20 something is included in some version or not. The question
21 isn't whether you think it was and they think it wasn't.

22 BY MR. RIDDLES:

23 Q Okay. These were forwarded then -- let me ask you
24 to turn your attention -- Your Honor, at this point I would
25 ask these be accepted as Plaintiff's Exhibit 22A4.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

255

1 JUDGE BROWN: Is there any objection to 22A4?

2 MR. WORK: Yes, we object, Your Honor. Mr.

3 Morrison just testified this was part of the TechDyn Prime
4 Contract with the Air Force. The suggestion is being made
5 here that this is a document that was part of the
6 subcontract.

7 JUDGE BROWN: Well, he has suggested, or said that
8 it's his understanding that it was forwarded. I can tell by
9 your objection you may think it wasn't and that's an issue
10 that the jury will have to determine, but I rule on the
11 basis of what I have said that the foundation has been laid
12 for its admissibility through him on that and I receive it
13 into evidence.

14 (The document referred to,
15 having been previously marked
16 for identification as
17 Plaintiff's Exhibit 22A4, was
18 received in evidence.)

19 MR. RIDDLES: I would like for you to look at the
20 first page of these supply and line items data.

21 (Pause.)

22 THE WITNESS: Okay.

23 BY MR. RIDDLES:

24 Q Can you explain for the jury the various sections
25 here and what role these things have in the contract?

LEO S. MORRISON, JR. - DIRECT EXAMINATION

256

1 A Okay. If we look at item number 0002AA, the item
2 for that is this represents the Iceland Command and Control
3 Enhancement full operational capability hardware acquisition
4 and the price for that, the unit price, is \$3,596,399.

5 Q Whose price is that?

6 A This is the price that the Air Force has
7 established based on our proposal.

8 Q And what is included in this item 2AA?

9 A 2AA covers the acquisition, the installation and
10 testing of one addition UHF GES for the ICCE FOC system.

11 Q Now, would you look at 2AB?

12 A Okay. 2AB provides for the ICCE full operational
13 capability hardware development. This hardware development
14 is to provide the capability for remote control of up to
15 five ground entry stations from the master direction center,
16 MDC, in Iceland. The dollar amount authorized is \$485,977.

17 Q Now, would you look at 2AC?

18 A 2AC provides for the full operational capability
19 software, software modifications for the ICCE FOC system.
20 An amount of \$1,255,002 is allocated for this purpose.

21 Q All right, sir. And now would you look at 3AD?

22 A 3AD provides for the full operational capability
23 development data. The price is not -- I'm sorry -- down at
24 the bottom. Development data for ICCE FOC put in 0002A in
25 accordance with CDRL items designated exhibit H. The firm

LEO S. MORRISON, JR. - DIRECT EXAMINATION

257

1 fixed price for this item is \$980 -- it looks like -- maybe
2 that should be a comma -- '674.

3 Q Okay. Now, then, if you would look at 4AA.

4 A 4AA provides for the CENTAF, Central Air Force
5 systems.

6 Q Now, remind the jury and me what CENTAF is and
7 what this system is.

8 A CENTAF is for Central Air Force and it's an
9 organizational element of the Tactical Air Command.

10 Q What was called for, as you understand the
11 contract, for the CENTAF system?

12 A The CENTAF system provision was for the
13 acquisition of two transportables, warning and control
14 system digital data link systems, essentially RADILs, with
15 associated communications equipment for the Central Air
16 Force.

17 Q Okay. And if you will look then at the provision
18 47.

19 A 47 provides for the provisioning data for end
20 items and for support equipment in accordance with CDRL
21 designated attachment number 12 and an amount of \$305,936
22 was allocated for this purpose.

23 Q Now, thank you for going through that. I want to
24 refer you back to the letter of 11 November that you sent to
25 the 4C Corporation. A copy of it is up here on the screen.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

258

1 Have you found it?

2 A No, I haven't.

3 Q I know there are so many exhibits --

4 MR. WORK: It's at tab 3.

5 MR. RIDDLES: At tab 3. That's right.

6 (Pause.)

7 MR. RIDDLES: We'll all have very powerful biceps
8 muscles by the time we finish this trial, lifting these
9 books.

10 THE WITNESS: Okay. I have it here. Sorry.

11 BY MR. RIDDLES:

12 Q Okay. Now. You see where it says "CLIN" and then
13 it has -- these numbers are the numbers that you've just
14 identified on Exhibit 22A4, are they not?

15 A That's correct.

16 Q And would it be fair for me to say that this
17 represents the portion that the 4C Corporation was going to
18 do of those subject contract line item numbers?

19 A That's correct.

20 MR. RIDDLES: I see. All right. Thank you, sir.

21 Now, I want to direct your attention to the
22 statement of work portion of subcontract modification number
23 3.

24 (Pause.)

25 MR. RIDDLES: Your Honor, I'm correct that these

LEO S. MORRISON, JR. - DIRECT EXAMINATION

262

1 (Pause.)

2 BY MR. RIDDLES:

3 Q Do you see where it says "3.319 Computer Resources
4 Management?

5 A Yes.

6 Q And what does it state there?

7 A "Computer Resources Management. The overall
8 intent of this task and computer programming requirements of
9 3.38 of the system specification is to mandate minimum
10 computer programming requirements. This shall not preclude
11 exceeding these minimum requirements."

12 Q And below that, there is an approach section,
13 3.319 subsection 1. Do you see that reference?

14 A Yes.

15 Q Now, what does that indicate?

16 A "3.319.1 Approach. The contractor shall design
17 and develop the computer programs to satisfy the performance
18 requirements and the system specification. All software
19 designed and delivered for use on this system shall also be
20 capable of operating on existing RADIL equipment. The
21 contractor's approach to software development under this
22 contract shall be documented in a computer program
23 development plan, CPDP, which shall be updated by the
24 contractor. All computer programs shall be controlled in
25 accordance with the requirements established in the

LEO S. MORRISON, JR. - DIRECT EXAMINATION

263

1 configuration management task of this statement of work,
2 data item E-30145."

3 Q Now, did you have any computer responsibilities as
4 part of the TechDyn -- did TechDyn have any responsibilities
5 for computer work on this project?

6 A No. All computer work on this Iceland enhancement
7 program was in the PDFFA portion of the work, except for that
8 pertaining to the RCE and we subcontracted all of that to
9 the 4C Corporation so that all of the computer programming
10 effort was in the hands of the 4C Corporation.

11 Q All right, sir. Now, was this contract modified
12 again?

13 A Yes, it was.

14 Q How many times? Several times?

15 A Several times. I don't require the number of
16 mods. There were many.

17 MR. WORK: Your Honor, again, we have a confusion.
18 We've just been referring to a document from the prime
19 contract and now we have a question was this contract
20 modified and I have no idea what that question is referring
21 to.

22 JUDGE BROWN: Well, what we have just been
23 referring to is a document which apparently was a part of
24 the prime contract but which is in the document which is the
25 subcontract. And by their testimony, it becomes part of the

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0141

LEO S. MORRISON, JR. - DIRECT EXAMINATION

271

1 LRU's, and provide real time equipment status to the
2 operator."

3 Q Now, under that is 3.1.1.1.4. Would you read that
4 to the jury, please.

5 A This covers support computer programs. "The
6 support computer programs shall consist of the computer
7 programs required to support operational programs, software
8 development, tests and maintenance, off-line hardware
9 maintenance, and pre and post commission support functions.
10 Off-line diagnostics shall provide loopback of all external
11 ports, test all hardware devices in ports and fault isolate
12 to the LRU level."

13 Q Now, based on these provisions, what did you have
14 an understanding that 4C's responsibility would be?

15 A It was my understanding, and the understanding of
16 our staff at TechDyn, that 4C would have responsibility for
17 the design and development of all software for the PDFA.

18 Q All right, would you please turn to 3.2.1.

19 A Okay.

20 Q And does this deal with performance
21 characteristics?

22 A Yes.

23 Q And would you look at -- would you go ahead and
24 read that first paragraph of 3.2.1.

25 A "Performance Characteristics -- The ICCE system

LEO S. MORRISON, JR. - DIRECT EXAMINATION

272

1 consisting of the PDFA and the CFA shall have the following
2 system performance characteristics: (A) the ICCE system
3 shall be capable of operating on and processing the data of
4 a TADIL-A net in accordance with the standards defined in
5 3.2.1.1.2; (b) the ICCE system shall have a capacity of
6 C10.0; (c) the ICCE system shall provide a TADIL-A message
7 error performance between the E-3 and the MBC/Interim Air
8 Defense Control Facility (IADCF) of 10 to the minus 3 or
9 1/1000 through the UHF ground entry stations.

10 Q Now, then below that are some processing and
11 display performance characteristics, is that correct?

12 A Yes.

13 Q And what was your understanding of what you were
14 asking 4C to do with respect to these provisions and I mean
15 "you" - TechDyn and your personal understanding as well.

16 A You mean under the characteristics --

17 Q The performance characteristics?

18 A Well, under the -- this portion of the
19 specification, as all portions are, this portion is
20 extremely important. It says -- it expresses what you
21 expect the system to do in great detail. It is very
22 rigorous. You notice the reference to the 1/1000
23 requirements in terms of air rates. It's very specific. We
24 expected them to adhere to the letter of these
25 specifications.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

273

1 Q Now, underneath that are actual subparagraphs. Do
2 you see there are capacities and accuracies?

3 A Yes.

4 Q Then, if you will look on the next page, I believe
5 there would be message processing performance
6 characteristics?

7 A That is correct.

8 Q And these are broken down into multiple elements
9 is that correct?

10 A Yes.

11 Q Then 3.2.1.1.3 is response time requirement?

12 A That is correct.

13 Q And are there others?

14 A Processing time requirements, start up time
15 requirements, start over/restart requirements, data
16 recordings, playback data system simulation, etc.

17 Q Etc. All right, sir. Now, with this
18 understanding of what the 4C Corporation would do, do you
19 know whether or not there is a schedule for the activities
20 that were to be done under the final operating capability,
21 under the prime contract?

22 A Yes, there was a schedule.

23 Q And where is that set out, is that in the prime
24 contract, sir?

25 A Yes, it is.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

274

1 Q Let me have one of these volumes back from you and
2 if you will look at Exhibit 4, Plaintiff's Exhibit 4. I
3 think we have already introduced it and perhaps I can just
4 save time and let me ask you some questions. Do you
5 remember the date of the award, the award of the prime
6 contract?

7 A Yes, I do. As I recall the date of award was 27
8 September, 1985.

9 Q Okay, that's the date of the award. What was the
10 effective date?

11 A The effective date of the contract was 30, August,
12 1985.

13 Q All right, sir. Does Modification # 3 that you
14 sent to the 4C Whittaker Corporation stipulate the effective
15 date as August 30?

16 A Yes, it does.

17 Q And that was on page 2 of the letter that we
18 looked at earlier?

19 A That is correct.

20 Q Do you know whether Modification 3 states the
21 overall completion date for the final operating capability
22 of the project?

23 A Yes it does.

24 Q Where does that information come from?

25 A It came from Basic Contract.

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0145

LEO S. MORRISON, JR. - DIRECT EXAMINATION

275

1 Q And is that information on the supply schedule
2 data that we looked at earlier?

3 A That is correct. Supply schedule, data listing,
4 yes.

5 Q What are the dates for the -- if you recall -- for
6 the portion of the work that the 4C Corporation had agreed
7 to do?

8 A The PDFA portion for the ICCE FOC was due within
9 16 months after the contract award.

10 Q Was it after contract award or after the --

11 A No, the effect date of the contract.

12 Q The effective date, and the effective date again
13 was 30, August, 1985?

14 A That is correct.

15 Q And that would be 16 months then. What date would
16 that be extend to?

17 A Sixteen months, you get to August, so that would
18 be 12, September, October, November and December, so it
19 would be roughly the end of December, 1986.

20 Q Would it be fair to say December 31, 1986?

21 A I would think that would be accurate, yes.

22 Q Thank you, sir. Now, you heard references in Mr.
23 Work's opening statement to 18 months.

24 A That is correct.

25 Q What does that refer to?

LEO S. MORRISON, JR. - DIRECT EXAMINATION

276

1 A The 18 months referred to the CENTAF portion of
2 the contract which had delivery dates of -- there were two
3 systems involved, mobile RADIL systems. They were due, the
4 first system was due 15 months after the effective date of
5 the contract and the second system was due 18 months after
6 the effective date of the contract.

7 Q All right, sir. Now, do the documents in the
8 statement of work establish a schedule for the software
9 design?

10 A Yes, it does.

11 Q In the statement of work what does it say, if you
12 recall and I can find the documents for you, but I'm just
13 trying to move things along, what -- do you recall when the
14 preliminary design review is scheduled in the statement of
15 work section?

16 A Okay. I'm pretty sure that the Preliminary Design
17 Review for the PDFA was 90 days after the effective date of
18 the contract.

19 Q Let me see if I can find that. My recollection is
20 90 days after the award date.

21 A Okay.

22 Q Well, I want to remove any doubt about it. If we
23 can find the statement of work, paragraph 3.3.1.1.3.

24 JUDGE BROWN: I don't think he has the volume in
25 front of him.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

277

1 THE WITNESS: I'm pretty sure it was December of
2 1985.

3 MR. RIDDLES: All right, sir.

4 THE WITNESS: So that would be, that would
5 correspond with your recollection of the award date as
6 opposed to the effective date.

7 MR. RIDDLES: All right. Thank you for helping me
8 out on that.

9 BY MR. RIDDLES:

10 Q Now, what is the Preliminary Design Review?

11 A The Preliminary Design Review is a formal review
12 session that is called out for the contract in which you
13 look at the design at that point in time or the software of
14 the PDFA, the full operational capability software.

15 Q Now, do you know what the critical design review
16 is of the software specifications?

17 A The Critical Design Review is taking a harder look
18 at the software development effort. At that point it is
19 specially called out in the requirement as a formal review
20 session and the critical design review is scheduled 180
21 degrees after the contract date.

22 Q You said degrees?

23 A One hundred eighty days, I'm sorry.

24 Q Okay. All right, let me summarize then --

25 A Which is three months after the PDR.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

278

1 Q Three months after the PDR. All right, sir. Now,
2 what happens with respect to the "B" specifications. Do you
3 know which of these two dates the PDR or the CDR, those
4 specifications are reviewed at?

5 A Okay, I'm being tactical a little bit, here, but
6 the -- it's my recollection that the "B" specs are reviewed
7 at the time of the PDR, which is the 90 day review session
8 after contract award and the "C" specs are reviewed at the
9 CDR.

10 Q That is correct. Thank you, sir.

11 MR. WORK: Move to object. I want to strike
12 counsel's last statement.

13 JUDGE BROWN: No comment on his testimony.

14 MR. RIDDLES: Yes, sir. Thank you, Your Honor.

15 BY MR. RIDDLES:

16 Q All right.

17 tape 5

18 BY MR. RIDDLES:

19 Q When did you anticipate that the critical design
20 review would take place when you entered into the
21 subcontract with 4C?

22 A The critical design review should have occurred
23 around the 30th of March of 1986.

24 Q And I believe you testified that you -- what was
25 your anticipation, TechDyn's anticipation with respect to

LEO S. MORRISON, JR. - DIRECT EXAMINATION

279

1 the PDR and when that would --

2 A The PDR should have occurred on about the 30th of
3 December 1985.

4 Q Did those events take place at that time?

5 A Neither event took place at the scheduled and
6 anticipated time.

7 Q Who was to provide the B-specs for the PDR?

8 A The 4C Corporation.

9 Q And they were also, I take it, to provide the
10 C-specs for the critical design review?

11 A That's correct.

12 Q Was there any other scheduling requirement or
13 schedules for the subcontract, to your knowledge?

14 A Yes, there were.

15 Q And did the 4C Corporation submit a schedule?

16 A Yes, they did. Actually, they were required to
17 submit a schedule to us monthly.

18 MR. RIDDLES: I see. I'm going to ask that you be
19 handed Exhibit 1601.

20 (Pause.)

21 MR. RIDDLES: Take a look, please, at Plaintiff's
22 Exhibit 1601.

23 (Pause.)

24 THE WITNESS: Okay.

25 BY MR. RIDDLES:

LEO S. MORRISON, JR. - DIRECT EXAMINATION

280

1 Q What is this document, please, sir?

2 A This document, at least the first item in it, is
3 the submission of a monthly program schedule from the 4C
4 Corporation to TechDyn submitted by Marie Raymond.

5 Q And what is the date of it, please, sir?

6 A The date is 31 January 1986.

7 Q Was this received by the TechDyn Corporation?

8 A Yes, it was.

9 MR. RIDDLES: Your Honor, I move Exhibit 1601 into
10 evidence at this time.

11 JUDGE BROWN: Any objection to 1601?

12 MR. WORK: No objection, Your Honor.

13 JUDGE BROWN: Exhibit 1601 is received.

14 (The document referred to,
15 having been previously marked
16 for identification as
17 Plaintiff's Exhibit 1601, was
18 received in evidence.)

19 BY MR. RIDDLES:

20 Q And Mr. Yennowine signed for receipt of this on 3
21 February, did he not?

22 A That's correct. In the lower right-hand corner.

23 Q All right. Now, turn, please, to the enclosure,
24 which is the schedule itself.

25 (Pause.)

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0151

LEO S. MORRISON, JR. - DIRECT EXAMINATION

281

1 A Okay. I'm there.

2 Q Can you explain this schedule to the jury and how
3 TechDyn understood it?

4 A Yes. This is a schedule which lists the
5 activities of the 4C Corporation in their subcontract and
6 it's a milestone schedule chart indicating activities and
7 it's laid out against a timeline at the top, '85, '86, '87,
8 et cetera.

9 Q Do you see the indication under "Reviews"? For
10 example, PDR?

11 A Yes.

12 Q And when is the PDR schedule, according to this
13 schedule?

14 A According to this schedule, it's shown as 8-9
15 January 1986.

16 Q And so this is the preliminary design review, am I
17 correct?

18 A That's correct. PDR.

19 Q And how does that comply with what you anticipated
20 when you entered into the subcontract?

21 A Well, the requirement was that this PDR be
22 conducted on or about the 30th or 31st of December 1985.

23 Q Now, look at the critical design review.

24 A Okay.

25 Q And when is that scheduled to occur, according to

1 this schedule?

2 A The schedule here indicates that it should be
3 conducted on 9 April 1986.

4 Q Now, then, under that is "Systems Engineering" and
5 you have "Prepare B-2 specs".

6 A Yes.

7 Q Those were scheduled to be prepared -- what's the
8 last date that you see?

9 A Well, it appears that the B-2 specs would have
10 been finished in mid-February or so 1986 and the B-5 specs
11 would be finished at the end of the month or the first of
12 March 1986.

13 Q Now, look now at "Software Development".

14 A Okay.

15 Q Can you explain this, where it says "System
16 Control Programming" and so forth and you have these items
17 here and then you have "Contractual Items" out here?

18 A All right. These first four items under software
19 development represent the major computer programs that were
20 required in the PDFA module. The schedule shows here a
21 beginning date of software development about the latter
22 third of the month, around the 20th of January, extending
23 through roughly the middle of June for all of these modules,
24 software modules, 15 June completion date, roughly, '86.

25 Q And this is the 4C schedule?

1 A That's correct.

2 Q Now, then, out here at the extension, you have
3 some activities taking place out in 1986. What is this? Do
4 you see where it says "Test Plan Procedure"?

5 A Yes.

6 Q And they show activities out here into December of
7 1986. Is that correct?

8 A That's correct.

9 Q What are these activities that are shown taking
10 place in December of 1986?

11 A Okay. It looks like the hardware/software
12 integration and the software formal qualification testing.

13 Q Do you know what those activities are?

14 A I'm sorry. On that last answer, for December,
15 it's the hardware/software integration activities. Those
16 activities were the activities in which you combine your
17 developed software with your hardware to make sure that you
18 have an operational combination and that the system in fact
19 works.

20 Q Would it be up and running at that time?

21 A It should be running sufficiently to be able to
22 begin testing.

23 Q What is RSSF integration, which is the last item
24 on this page?

25 A Okay. RSSF is an acronym for RADIL software

LEO S. MORRISON, JR. - DIRECT EXAMINATION

284

1 support facility. It happens to be a facility at Tyndall
2 Air Force Base in Florida.

3 Q And when was that to take place?

4 A That was to take place in -- looks like November.
5 About a five-day period in November.

6 Q Okay. Of 1986?

7 A Of 1986.

8 Q The next page of the schedule -- it says
9 "Logistics Support".

10 A Yes.

11 Q What's the last date on the logistics support
12 activity, which is a top line activity?

13 A It appears to be the end of January 1987,
14 beginning of February 1987.

15 Q What are these other activities here where it
16 indicates final and you have CDRL? Do you see that? And
17 then there's a final date -- it looks like the end of April

18 A Okay. The CDRL is the contract deliverable
19 requirements listing and there are several activities here
20 under logistics that are listed. And these items are
21 paperwork kinds of reports and analyses that have to be
22 compiled and they are done initially in draft, submitted,
23 commented upon and finalized.

24 Q All right, sir. Look to the next page, please.
25 It says "CDR Conduct". Do you see that?

LEO S. MORRISON, JR. - DIRECT EXAMINATION

285

1 A Yes.

2 Q And when is that to be conducted?

3 A According to this schedule, it shows the period
4 March through about the first week of April.

5 Q Now, then, it says here "FCA and PCA Conduct".
6 What is FCA and PCA?

7 A FCA stands for final configuration audit,
8 final/functional configuration audit and PCA stands for
9 physical configuration audit.

10 Q And these were scheduled to occur in September of
11 1986.

12 A That's correct.

13 Q Now, then, the final item -- "ICMG meetings". Is
14 that what that says?

15 A ICWG. ICWG is what we call them but they are
16 combined -- they are Iceland combined working group
17 meetings.

18 MR. RIDDLES: All right, sir. Thank you.

19 (Pause.)

20 BY MR. RIDDLES:

21 Q I'm showing you now what's been marked as -- an
22 enlargement of Plaintiff's Exhibit 993. I believe it's
23 number 3. Do you recognize this chart, sir?

24 A Yes. That's a chart that indicates Whittaker's
25 schedule for preparing C-level specifications.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

286

1 Q Now, who prepared this document?

2 A For the FOC software, PDFA software.

3 Q Do you know who prepared this chart?

4 A Well, this chart was prepared by us, by TechDyn.

5 Q And was it prepared in conjunction with this
6 litigation?

7 A Yes.

8 Q Does this summarize the testimony that you've
9 given concerning critical design review requirements of the
10 prime contract?

11 A Yes. It shows the award date of the contract, it
12 shows also the effective date of the contract and it shows
13 the respective schedule dates for the preliminary design
14 review being 90 days after the award date of the contract
15 and the critical design review being 180 days after the
16 contract award date.

17 MR. RIDDLES: Your Honor, I move this into
18 evidence at this time.

19 MR. WORK: Object, Your Honor. It's just a visual
20 aid like ours. It's demonstrative evidence and it hasn't
21 been supported by the testimony. I don't have any objection
22 to it as a visual aid but I certainly have --

23 JUDGE BROWN: I'll sustain the objection to it as
24 an exhibit. You may use it to illustrate your point to the
25 jury.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

287

1 MR. RIDDLES: Thank you.

2 Can you come down, Mr. Morrison?

3 THE WITNESS: Yes.

4 (Pause.)

5 BY MR. RIDDLES:

6 Q Now, sir. Would you explain the chart to the
7 jury, please?

8 A This chart is the critical schedule for the
9 preparation of the C-level specifications for the PDFA FOC.
10 The years here are self-evident -- '85 through '88. The
11 contract award date or effective date is 8/30/85 shown here.
12 Also, MOD 3 effective date, the award date. The award date
13 is 9/27/85. It's also the award date for MOD 3 to the
14 subcontract.

15 The preliminary design review is required to be
16 conducted 90 days after the award date of the contract,
17 causing it to be scheduled on the 28th of December 1985.
18 The critical design review is scheduled 180 days after the
19 award of the contract, causing it to have a scheduled due
20 date of 3/26/86.

21 Q All right, sir. Now, look at another
22 demonstrative exhibit 992. Can you explain that to the
23 jury, please?

24 A This is a similar chart which represents the
25 Whittaker schedule for the preparation of B-level

LEO S. MORRISON, JR. - DIRECT EXAMINATION

288

1 specifications for the FOC PDFA effort. The schedule
2 shows -- again, it's based on the effective date of the
3 contract and the award date of the contract. The PDR --
4 again, for the C-specs was due 90 days after the contract
5 award date and the CDR was due 180 days after the contract
6 award date.

7 Q So the draft B-specifications were due here on
8 12/18/85?

9 A 12/18/85 for the PDR for the draft B-specs and the
10 final specs would have been due here on 1/27/86. Now,
11 the -- okay. You'll notice here that the draft
12 specifications are due -- it appears -- ten days prior to
13 the effective date of the contract. And the --

14 Q You mean prior to the preliminary design review?

15 A Prior to the PDR. That's correct. And it's
16 due -- the final B-specs are due 30 days after.

17 MR. RIDDLES: Thank you, sir. And if you will
18 return?

19 (Pause.)

20 BY MR. RIDDLES:

21 Q I'm showing you Plaintiff's Exhibit 1006. I would
22 like you to review that and the attachment that is with it.

23 A Okay.

24 (Pause.)

25 Q Do you recognize Plaintiff's Exhibit 1006?

LEO S. MORRISON, JR. - DIRECT EXAMINATION

289

1 A Yes, I do. It's a letter from me to Mr. Marty
2 Hatchett, President of Command and Control Communications
3 Corporations dated 26 February 1986, subject software
4 quality assurance audit.

5 Q All right, sir. And does that letter from you to
6 him have an attachment to it or an enclosure to it?

7 A Yes, it does.

8 Q What is the subject of -- and do you recognize the
9 enclosure?

10 A The enclosure is a letter from the Department of
11 Air Force, Headquarters, ESD Hanscombe, to TechDyn Systems
12 Corporation to my attention, Leo Morrison, subject:
13 software quality assurance.

14 MR. RIDDLES: Your Honor, at this time, I would
15 move Exhibit 1006 and the attachment into evidence.

16 MR. WORK: No objections, Your Honor.

17 JUDGE BROWN: It's received.

18 (The document referred to,
19 having been previously marked
20 for identification as
21 Plaintiff's Exhibit 1006, was
22 received in evidence.)

23 JUDGE BROWN: Does he need to look at it further?

24 MR. RIDDLES: Yes, sir, he will.

25 JUDGE BROWN: Okay. Just keep it and we'll do it

LEO S. MORRISON, JR. - DIRECT EXAMINATION

290

1 in a moment.

2 (Pause.)

3 BY MR. RIDDLES:

4 Q Would you please look at the attachment, Mr.
5 Morrison? In this 20 February '86 letter, this appears to
6 be a letter to you from the Air Force. Am I correct?

7 A Right.

8 Q And do you know what the subject of this letter
9 is?

10 A Software quality assurance.

11 Q Okay. I invite your attention, then, to paragraph
12 1 of the letter. Would you -- it says "The subcontractor's
13 (Command Control and Communications Corporation) present
14 software quality assurance procedures were determined to be
15 unacceptable during a 6 February 1986 Government review of
16 internal software at the subcontractor's facility. In a
17 regular software development program, the Government
18 normally expects to receive a computer program development
19 plan, CPDP, 30 to 45 days after contract award." To your
20 knowledge -- do you recall this letter and the Government
21 review of the software that occurred on 6 February 1986?

22 A Yes, I do.

23 Q Do you recall that the software submitted by 4C
24 Corporation was found to be unacceptable by the Government?

25 A Yes. That's correct.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

291

1 Q What is referred to here as a computer program
2 development plan?

3 A A computer program development plan is required by
4 the contract and it is a way to demonstrate your approach to
5 developing the software and attendant schedule for that
6 development effort.

7 Q And, at this time, do you know whether or not 4C
8 had submitted a computer program development plan?

9 A No. At this time, they had not.

10 Q Are the areas of deficiency identified in this
11 letter?

12 A Yes.

13 Q Would you look at paragraph 2, please, sir, and
14 itemize the deficiencies that are found there for us,
15 please.

16 A "The Government found the subcontract to be
17 deficient in the following areas: (A) a CPDP, computer
18 program development plan, is not available. According to
19 the statement of work, ECI-1229 paragraph 3.3.19.1, the
20 contractor's approach to software development under the
21 subject contract is to be documented in a CPDP. The
22 recommended contents of the Iceland command and control
23 enhancement (ICCE) CPDP is attachment 1 to this letter; (b)
24 there is no means for tracking requirements between the
25 different levels of specifications; (c) a standard list of

1 tools used in the software development environment was
2 presented during the time of the review. The Government
3 would like to know the number of tools in use and which
4 tools are deliverable under subject contract; (d) there was
5 a lack of checklists and detailed schedules to ensure SQA
6 procedures are in effect. According to SOW ECI-1229,
7 paragraph 3.5.2, the contractor is responsible for
8 developing and maintaining detailed schedule information in
9 all contractor activities. The information to be provided
10 shall include schedules for in-plant and subcontractor
11 activities."

12 Q All right, sir. And then (e) on the next page?

13 A (e) did you say?

14 Q Yes.

15 A Did you want me to --

16 Q It says "there is no standardized way of tracking
17 performance of the staff." Am I correct?

18 A I think you lost me. Sorry.

19 Q The second page --

20 A The second page -- did you say (e)?

21 Q Yes. Right at the top of the page.

22 A "(e) there is no standardized way of tracking
23 performance of the staff."

24 Q Look down at paragraph 4 please, sir.

25 A Okay.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

293

1 Q Where it says -- and read that paragraph for us.

2 A Paragraph 4 -- "the 'trust me' approach presented
3 by the subcontractor is not satisfactory. A SQA program" --
4 I think that means Software Qualification and I might come
5 up with the "A" in a moment, I'm not, I get --

6 Q All right.

7 A "program was to be quality" -- Software Quality
8 Assurance Program -- "was to be implemented at contract
9 award and to be continued through the entire software
10 development cycle. Statement of Work ECI 12229, paragraph
11 3.3.17.2. The government is paying for a disciplined
12 approach to software development. Modifications to existing
13 software and complete documentation."

14 Q And then paragraph 5 requests that you inform the
15 government of your plans to amend the deficiencies in the
16 subcontractor's SQA procedures, am I correct?

17 A Yes, that is correct.

18 Q All right, sir. Did you so -- and this is the
19 letter you sent to the subcontractor?

20 A That is correct.

21 Q Okay, did you -- do you know whether or not the
22 subcontractor ever provided a computer program development
23 plan?

24 A Yes, they did.

25 Q Okay. May I ask to be shown Plaintiff's Exhibit

LEO S. MORRISON, JR. - DIRECT EXAMINATION

294

1 30.

2 JUDGE BROWN: Let me have that one there and we'll
3 mark it 1006.

4 (The document referred to was
5 marked for identification as
6 Plaintiff's Exhibit 30.)

7 BY MR. RIDDLES:

8 Q Do you recognize Plaintiff's Exhibit 30?

9 A Yes, this is the computer program development plan
10 for the process of displaying the functional area for the
11 ICCE project prepared by Command and Control Communications
12 Corporation 4C.

13 Q Was this received by the TechDyn Corporation?

14 A Yes, it was.

15 MR. RIDDLES: Your Honor, I move Plaintiff's
16 Exhibit 30 into evidence at this time.

17 JUDGE BROWN: Any objection to Exhibit 30?

18 MR. WORK: I have no objection, Your Honor.

19 JUDGE BROWN: It is received.

20 (The documents referred to,
21 having been previously marked
22 for identification as
23 Plaintiff's Exhibit 30, were
24 received in evidence.)

25 JUDGE BROWN: Does he need to refer to it now?

LEO S. MORRISON, JR. - DIRECT EXAMINATION

295

1 MR. RIDDLES: Yes.

2 JUDGE BROWN: All right.

3 BY MR. RIDDLES:

4 Q At this point, was the Command Control
5 Communications they were, by this point, a subsidiary of
6 Whittaker Corporation, am I correct?

7 A Yes, that is correct.

8 Q Still located at Torence, California?

9 A Yes, still in Torence.

10 Q Okay. Look over, please, at page 1.1, the
11 purpose.

12 A Okay.

13 Q I'm sorry I don't have an overhead of that. What
14 is the -- is the purpose indicated?

15 A Yes it is.

16 Q Why don't you read it to the jury.

17 A The purpose -- "Purpose -- this computer program
18 development plan, CPDP, delineates the software requirements
19 for the operational interface provided for the ICCE/CENTAF
20 program by the processing and display functional area, PDFA.
21 Specifically, this CPDP defines and establishes the
22 requirements, the methodology and procedures to be used in
23 the development and validation of the PDFA software program.

24 Q Now, then under that is SCOPE on 1.2 and that
25 reads, as I read it, the CPDP is prepared to establish

LEO S. MORRISON, JR. - DIRECT EXAMINATION

296

1 initial design concepts and to recognize the operational
2 functions and constraints applicable to software design, is
3 that correct?

4 A That is correct.

5 Q All right, sir. Look over please section 14 where
6 it says "Risk Areas." It's on page 14-1 and 14-2.

7 A I have it here.

8 Q 14-2, if you will turn to that particular risk
9 area --

10 A Okay. I have it.

11 Q Now look at where it says loss of key personnel.

12 A Yes.

13 Q Read that to the jury, please.

14 A "(c) Loss of Key Personnel -- This often delays
15 program completion. 4C will assign personnel to the project
16 who are committed to the project's duration. The program
17 manager will ensure that these people remain available.

18 Q Thank you. Now, then, is there a schedule
19 attached with this program?

20 A Yes.

21 Q And let's look, please, at page 16-2.

22 A Okay.

23 Q I note the date of this schedule is 28 April,
24 1986, am I correct?

25 A That is correct.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

297

1 Q What is the date that they show now for the
2 critical design review?

3 A The critical design review appears now to have
4 slipped to the last week of June, 1986 from the last week of
5 April, 1986.

6 Q Did they indicate when the draft "C" specs will be
7 compiled under Subsection A?

8 A Yes.

9 Q And --

10 A And that appears to be a slippage from the last
11 week of April, 1986 to the first week of September, 1986.

12 Q All right, sir. Would you look, please, at page
13 16-5 of the schedule.

14 A Okay.

15 Q And what does the 4C schedule indicate for the
16 integration and testing now?

17 A Integration and testing slipped to August, I can't
18 tell the year here --

19 Q I believe they didn't put the year on this one, it
20 looks -- could that be '86 or '87?

21 A Okay, it must be '86. Integration is with the
22 dark lines here that's already been done and so we -- if its
23 dated '86, so it couldn't be '87.

24 Q All right, sir. Now do you know whether or not
25 these activities are indicated on 4C's schedule -- took

LEO S. MORRISON, JR. - DIRECT EXAMINATION

298

1 place when they said they would take place?

2 A I can't say with certainty. I can only say that
3 most of the activities did not take place when they were
4 scheduled.

5 MR. RIDDLES: Now, I'm moving to a new area, Your
6 Honor. Can I have just a minute and --

7 BY MR. RIDDLES:

8 Q Okay, I am going to ask that you be shown Exhibits
9 1251, and I think they are in one volume, and we'll
10 hopefully move right quickly with them. Through 1266.

11 JUDGE BROWN: Let me have Exhibit 30 here and
12 we'll put it into evidence. It was received but hasn't been
13 marked by the court.

14 BY MR. RIDDLES:

15 Q Would you look first, please, at Exhibit 1251.

16 A Yes, I have it here.

17 Q Do you recognize it please, sir?

18 A Yes, it's a news release from the Whittaker
19 Corporation dated, the release is dated 3 October, 1985.

20 Q And, Your Honor, at this time I would move Exhibit
21 1251 into evidence.

22 JUDGE BROWN: Do you have any objection to Exhibit
23 1251?

24 MR. WORK: No objection, Your Honor.

25 JUDGE BROWN: It is received.

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0169

LEO S. MORRISON, JR. - DIRECT EXAMINATION

299

1 (The document referred to,
2 having been previously marked
3 for identification as
4 Plaintiff's Exhibit 1251, was
5 received in evidence.)

6 BY MR. RIDDLES:

7 Q Okay. What is the date of this news release,
8 please sir?

9 A The date is October 3, 1985.

10 Q And it announces a merger with Whittaker. What is
11 the "Los Angeles" referred to there? Would that be the
12 location of Whittaker's company or the 4C Company?

13 A That is the location of the Whittaker's Corporate
14 Headquarters, Los Angeles, Wilshire Boulevard.

15 Q Was this document received by the TechDyn
16 Corporation?

17 A Yes.

18 Q And do you know when it was received?

19 A I don't know when it was received, no.

20 Q I see an indication "Hise" up in the top right
21 hand corner.

22 A Right. Hise signed it as, it appears to be
23 October 8, 1985.

24 Q All right, sir. How far -- this was right after
25 the contract award of the prime contract, am I correct?

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0170

LEO S. MORRISON, JR. - DIRECT EXAMINATION

300

1 A A few months after, yes.

2 Q The prime contract award date was September 27,
3 1985.

4 A That is correct.

5 Q And right after that award of the prime contract,
6 this merger occurred?

7 A That is correct.

8 Q Now it indicates here, does it not, that 4C is a,
9 or was, I suppose, a closely held corporation employing 200
10 people and does it indicate what the net sales are of the
11 Whittaker Corporation?

12 If you look down at the bottom.

13 A Yes. It says "Whittaker reported sales of \$1.4
14 billion dollars for the fiscal year ended October 31, 1984.

15 Q All right, sir. I want to invite your attention
16 please to Exhibit 1252.

17 A Okay.

18 Q Just a moment.

19 (Pause while counsel confer.)

20 MR. RIDDLES: Your Honor by stipulation, we will
21 move into evidence and ask the court to receive 1251, 1252,
22 1253, 1254, 1256, 1257, 1258, 1259, 1260, 1261, 1263 through
23 1266.

24 JUDGE BROWN: Those are received into evidence.

25 (The documents referred to,

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0171

LEO S. MORRISON, JR. - DIRECT EXAMINATION

301

1 having been previously marked
2 for identification as
3 Plaintiff's Exhibit 1252,
4 1253, 1254, 1256, 1257, 1258,
5 1259, 1260, 1261, 1263, 1264,
6 1265 and 1266, were received
7 in evidence.)

8 MR. RIDDLES: Thank you, Your Honor, and I will
9 ask the witness to refer to them now.

10 BY MR. RIDDLES:

11 Q Would you look, please at 1252.

12 A Okay.

13 Q Is this a letter to TechDyn Systems from Marie
14 Raymond?

15 A That is correct, dated 24 October, 1985.

16 Q And she indicates here that effective 15 October,
17 1985, that the 4C Corporation became a wholly owned
18 subsidiary of the Whittaker Corporation, am I correct?

19 A That is correct.

20 Q She states that 4C will retain its name to be
21 followed by words identifying it as a subsidiary to
22 Whittaker Corporation?

23 A Yes.

24 Q Do you know who Mr. John Frietog is, am I
25 pronouncing the name correctly, in the next paragraph who

LEO S. MORRISON, JR. - DIRECT EXAMINATION

302

1 resigned the presidency of 4C?

2 A Yes, Mr. John Frietog was at Whittaker, correction
3 4C Corporation for a short period of time prior to our
4 signing the subcontract with the 4C Corporation and he
5 served in the position of Vice President, correction, of
6 President.

7 Q Who is Monte Hatchet?

8 A Monte Hatchet replaced Mr. John Frietog as
9 president of Whittaker, having been previously, it is my
10 understanding, a vice president at the Huntsville operation
11 of the 4C Corporation.

12 Q Had he had any prior project involvement or
13 knowledge?

14 A To my understanding, he did not in this project.

15 Q All right, sir. Look at 1253, please? And I note
16 that the date of this letter is 9 February, 1987, is that
17 correct, sir?

18 A That is correct.

19 Q And is this a letter to you from Marie Raymond?

20 A Yes it is.

21 Q To the TechDyn Systems Corporation?

22 A Yes.

23 Q Now, would you read this letter to the jury,
24 please.

25 A This is a letter from 4C Corporation dated 9

LEO S. MORRISON, JR. - DIRECT EXAMINATION

303

1 February, 1987 to TechDyn Systems Corporation, Attention Mr.
2 David Yennowine, subject Subcontract 125001, Extension of 4C
3 proposal for CLINS 00570058 for the HF and UHF upgrade. It
4 cites references. "Gentlemen, because of the recent
5 reorganization of the ICCE program management structure,
6 submission of subject proposal is delayed until 16 February,
7 1987. If you have any questions regarding this delay,
8 please contact Mr. Mickey Seagraves at 213-373-9651.
9 Sincerely, Marie E. Raymond, Director of Contracts."

10 Q Who is Mickey Seagraves?

11 A Mickey Seagraves was one of a series of program
12 managers on the ICCE project for 4C Whittaker.

13 Q Now, at this time in February of 1987, what was
14 your original contract anticipation of when this contract
15 would be over?

16 A The original anticipation according to the
17 schedule was 16 months after award of the contract which
18 would have been around December of 1986.

19 Q Look please at Exhibit 1254. Do you recall this
20 letter from Marie Raymond?

21 A Yes, I do.

22 Q And were you looking, at this point, for some
23 responses due on the subcontract to some letters that you
24 had written?

25 A Yes, that is correct.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

304

1 Q And what does Ms. Raymond indicate here to you?

2 A The letter says that, again, from 4C Corporation
3 to TechDyn, Dave Yennowine, subject Subcontract Status of
4 Responses. It lists references. "Gentlemen: Responses to
5 reference correspondence due 18 and 19 February, 1987, are
6 being prepared and will be forwarded upon completion.
7 Changes within the 4C organization have caused a delay in
8 response time. 4C apologizes for any resulting
9 inconvenience caused to TechDyn. Sincerely, Marie E.
10 Raymond."

11 Q Do you know what changes in 4C had occurred at
12 that time?

13 A At this particular time, I believe the 4C
14 Corporation had merged again, was in the process of merging
15 again.

16 Q All right, she doesn't identify --

17 MR. WORK: I object and ask that that be stricken.
18 He is obviously speculating. He says "I believe" and --

19 JUDGE BROWN: I sustain the objection. I don't
20 think that he has laid a foundation for any knowledge of and
21 his belief isn't what we need to hear.

22 BY MR. RIDDLES:

23 Q If you know, do you know, Mr. --

24 A Give me a second to focus on it. I --

25 Q Well let's just move on to the next one. She

LEO S. MORRISON, JR. - DIRECT EXAMINATION

305

1 doesn't indicate that in her letter does she?

2 A No.

3 Q She just indicates there has been some change
4 causing a delay. Look at 1256.

5 A Okay.

6 Q 26 February letter, again, to Mr. Yennowine. Did
7 you receive this at the TechDyn Corporation?

8 A Yes, we did.

9 Q Okay. Again, please excuse the delay in
10 responding to the referenced communication. And she says
11 "As you are aware, significant management and organizational
12 changes have been implemented within the 4C Corporation."
13 She says you are aware of that. Do you know whether TechDyn
14 was aware of these changes at that time?

15 A Well, it's my recollection, again, was that there
16 was a continuing series of mergers and acquisitions and
17 changes of personnel in and out program managers, here today
18 and gone tomorrow, mass changes in the top structure from
19 the president, his vice president right down through the
20 program organization.

21 MR. WORK: Move to strike. It's nonresponsive.
22 There is no foundation, as well.

23 JUDGE BROWN: I overrule the objection. The
24 question was what TechDyn knew and that's what he has said
25 he thinks they knew.

1 BY MR. RIDDLES:

2 Q Look again at where it says here "4C is disturbed
3 by the incomplete CDR" and the fact is that 4C was not
4 permitted to continue its CDR presentations. Do you know
5 who prevented 4C from completing its CDR presentations?

6 A No, I don't.

7 Q Did the TechDyn Corporation prevent the 4C from
8 presenting their CDR presentations?

9 A No.

10 Q Further, she says "no constructive comments other
11 than unsatisfactory were provided." Who provided those
12 comments, do you have any idea?

13 A Those were government-provided comments.

14 Q Would that have been the Air Force?

15 A That would have been the Air Force with its backup
16 contractors in the software area such as Mitre, H&H
17 Aerospace and ASEC Corporation.

18 MR. WORK: Move to strike. It's non responsive
19 unless, excuse me, it's no foundation unless there is a
20 foundation.

21 JUDGE BROWN: I overrule the objection.

22 MR. WORK: There is no indication he was at CDR.

23 BY MR. RIDDLES:

24 Q How do you know that, Mr. Morrison?

25 A I know that because the CDRs were attended by the

LEO S. MORRISON, JR. - DIRECT EXAMINATION

307

1 ESD staff personnel, TechDyn staff people, Mitre Corporation
2 people, and the other program support contractors that were
3 involved in supporting this contract.

4 Q What was the role of the Mitre Corporation?

5 MR. WORK: Again, Your Honor, there is no
6 foundation for his testimony as to what occurred at CDR.

7 JUDGE BROWN: I overrule the objection.

8 BY MR. RIDDLES:

9 Q What was the role of the Mitre Corporation?

10 A The Mitre Corporation was, played a very
11 significant role in the software development area on this
12 contract. The way the -- if I may, the way the contract was
13 laid out on the software side of the house, the PDFA side of
14 the house, the arrangement was that TechDyn would not get
15 involved in direct supervision management, i.e., the review
16 analysis of the software development effort on the part of
17 the 4C Corporation. That function was to be performed by
18 the ESD staff people, specialists --

19 Q ESD, now that's --

20 A Electronic Systems Division of the Air Force with
21 whom we were dealing directly and they were our customers at
22 Hanscom Air Force Base. In addition, the support was
23 provided, and this is spelled out in the contract, was to be
24 provided in this software area by so-called program support
25 contractors. These contractors comprised the Mitre

LEO S. MORRISON, JR. - DIRECT EXAMINATION

308

1 Corporation, of Bedford, Massachusetts very heavily; the, a
2 company with the letters ASEC Corporation; and a company
3 called H&H Aerospace. It was that team that supervised,
4 oversaw, reviewed, analyzed, commented on, critiqued, the
5 PDFA effort of the 4C Corporation, the directed subcontract.

6 Q Now did these people, were they hired -- the
7 civilians that you mentioned, Mitre Corporation and the
8 other corporations, were they hired by the Air Force or by
9 the TechDyn Corporation to do this function?

10 A They were hired by the Air Force.

11 Q Okay, sir.

12 JUDGE BROWN: Now before we move to that, it's
13 time to break now. Remember the instruction that I gave you
14 not to discuss the case with anyone, not to remain within
15 the hearing of anyone who is discussing it. We will break
16 until 1:00. Everyone try to be here at 1. There may be
17 problems in moving around the halls and that kind of thing
18 that will delay us, but we'll try to start at 1:00. One
19 O'clock is our target now. So the bailiff will tell the
20 jurors exactly where and when you need to be so we should be
21 ready to go at 1:00. Break now until 1:00

22 (Whereupon, at approximately 11:45 a.m., the
23 hearing was recessed, to reconvene on July 2, 1981 at 1:00
24 p.m.)

LEO S. MORRISON, JR. - DIRECT EXAMINATION

316

A F T E R N O O N S E S S I O N

1:00 p.m.

BAILIFF: All rise and come to order. This Honorable Court is again in session.

JUDGE BROWN: You can bring the jury in.

(Pause while the jury is seated.)

JUDGE BROWN: You're ready to go?

MR. RIDDLES: Yes, sir.

Whereupon,

LEO MORRISON

having been previously duly sworn, was recalled as a witness herein and was examined and testified further as follows:

DIRECT EXAMINATION (continued)

BY MR. RIDDLES:

Q Looking back, Mr. Morrison, at Exhibit 1256, it states here that completion of the CDR can commence on 16 April 1987. Do you see that reference? Looking at 1256 at the bottom.

A Yes, I see it. Yes.

Q Were you personally, Leo Morrison, present at the CDR?

(Pause.)

A Yes, I was present at the CDR.

Q And where did it occur?

A I think it occurred at the 4C facility.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

317

1 Q So it is at point commencing -- it says
2 "Completion of the CDR commencing 16 April 1987." That's
3 one year later than in the schedule that we earlier looked
4 at. Am I correct?

5 A That's correct.

6 Q Now, I want to ask you to look at Plaintiff's
7 Exhibit 1257.

8 (Pause.)

9 A Okay.

10 Q Is this another letter in this same timeframe from
11 Marie Raymond concerning corporate reorganization in the 4C
12 Corporation?

13 A Yes, it is. It's subject subcontract and open
14 action items and it indicates that responses to references
15 have been delayed due to program management changes.

16 Q All right, sir. Would you look please at 1258?

17 A Okay.

18 Q And she had indicated in her prior letter that
19 responses would be coming forth and is this another letter
20 indicating additional delay?

21 A This is yet another letter from 4C signed by Marie
22 Raymond indicating "References (a), (c) and (f) as
23 previously indicated have been delayed to organizational
24 restructuring. Data for responses is expected by 16 March
25 '87" and the letter is dated 6 March '87.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

318

1 Q And she indicates that additional information will
2 be provided to you on -- some information was mailed on
3 February 27, 1987. Do you know what information -- can you
4 tell from this letter what that was?

5 A I cannot. No.

6 Q Okay. And then she apologizes for the delay.

7 A Yes.

8 Q And thanks you for your patience. Look at 1259.
9 Do you recognize Exhibit 1259?

10 A Yes, I do. A letter from 4C Corporation signed by
11 Marie Raymond dated 20 March 1987. "In response to your
12 request for status, please be advised that the reference (d)
13 of your referenced letter was answered under another letter
14 dated 20 March '87 and that reference (d) response was sent
15 directly to the Government, as your letter requested. Other
16 letter references have been delayed as a result of
17 organizational change and will be discussed by Mr. Mickey
18 Seagraves during upcoming program management review at
19 TechDyn facilities. Thank you for your patience."

20 Q Do you recall whether or not the organizational
21 changes were discussed at the program management review at
22 TechDyn facility?

23 A Yes, I do recall their being discussed.

24 Q And let's look at 1260.

25 A Okay.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

319

1 Q Can you describe what this is, please?

2 A This is another letter from the 4C Corporation
3 dated 6 May 1987 signed by Marie Raymond, subject Command
4 Control and Communications Corporation change of name.

5 Q Now, let's see -- what was the name changing to?

6 A The name was formally changed to Whittaker Command
7 and Control Systems, Inc.

8 Q Do you know whether or not this involved a change
9 of location? This first change?

10 A Okay. At this particular time, I don't think
11 there was a change in location. It says here in this letter
12 "Whittaker Command and Control Systems, Inc. will remain in
13 its present facility locations retaining for a time
14 telephone listings under both the old and the new names."

15 Q All right, sir. And was this your first notice of
16 that change?

17 A To my knowledge.

18 Q What does that next paragraph indicate?

19 A "This letter serves as official notice of that
20 change and is also a request that you disseminate this
21 information throughout your organization in order to avoid
22 the confusion that may ensue for a time."

23 Q All right, sir. Look please at -- there are some
24 attachments to this document.

25 A Yes.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

320

1 Q Well, I'll tell you what -- let's don't look at
2 those attachments. To save time, we'll just move to 1261.

3 A Okay. This is another letter from Whittaker
4 Command and Control Systems, Inc. dated 26 August 1987
5 signed by Marie Raymond, subject change in program
6 management.

7 Q And would you read after the "Dear Sir" -- would
8 you read that part?

9 A "This serves to advise you that due to a company
10 reorganization engendered by the forthcoming merger of two
11 Whittaker subsidiaries, Whittaker Command and Control
12 Systems, Inc. and Lee Telecommunications, a change in the
13 program management responsibility for subject subcontract
14 has occurred. Effective 28 August 1987, Mr. Don Salyers
15 will assume responsibility as Director of Programs for WCCS
16 and Mr. David Bumstead will assume responsibility for the
17 ICCE program. If you have any questions regarding this
18 change, please contact Mr. Salyers or the undersigned."
19 Signed Marie Raymond.

20 Q Prior to this date and 26 August 1987, had you had
21 any dealings with Mr. Salyers or Mr. David Bumstead?

22 A I hadn't dealt directly with David Bumstead but I
23 had dealt with and had been in meetings with Mr. Salyers.

24 Q What was Mr. Bumstead's involvement, if any, do
25 you know? With TechDyn Corporation prior to this time.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

321

1 A I don't know what his involvement was. I don't
2 think there was any involvement.

3 Q I see. Let's look at 1263, please, sir.

4 A 1263?

5 Q Yes, sir. I guess we've jumped ahead in time here
6 to 21 January 1988.

7 A Right.

8 Q What is the gist of this letter?

9 A This is a letter from Whittaker, 21 January 1988,
10 signed by Marie Raymond, subject subcontract and contractor
11 technical support and WCCS proposal. "Dear Sir: The
12 individuals selected to perform the proposed support from
13 has been changed from Mr. Ernesto M. Sibel to Mr. Joe
14 Amerault. Accordingly, the following data must be forwarded
15 to ESD to allow in-country clearance."

16 Q With respect to this change, were there any other
17 changes in the corporate structure of -- is it WCCS II?

18 When the merger occurred that we referenced in
19 Exhibit 1261?

20 A Yes, there were changes. I guess the next exhibit
21 picks up on it but on 30 November, there were changes.

22 Q Okay. Well, let's move to the next exhibit, 1264.

23 A Okay.

24 Q This is yet another merger, am I correct?

25 A Yes, it is.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

322

1 Q And what's the effective date of this merger?

2 A The effective date of this merger is 1 July 1988.

3 And Whittaker Corporation merger Whittaker Command and
4 Control Systems with Whittaker Electronics Systems, WES.

5 Q Now, did you receive some documents? Well, let me
6 go to -- I'll have to come back. My numbers are a little
7 bit -- the dates are a little bit out of sequence. Let's
8 look at 1265.

9 A Okay.

10 Q I take it with this merger that we just talked
11 about there was another relocation of Whittaker personnel?

12 A That's correct. With the merger, the WCCS II
13 organization was folded into the WES division and the entire
14 organization then moved to Simi Valley, California, which is
15 north of Los Angeles.

16 Q Now, where did it move from?

17 MR. WORK: Move to strike the reference to WCCS
18 II. There has been no foundation that there was ever a WCCS
19 II organization and yet counsel and the witness -- I think
20 encouraged by counsel -- was using that term, Your Honor.

21 JUDGE BROWN: You have to explain it.

22 MR. RIDDLES: I think there was some prior
23 testimony, but it might have been mine, so I will ask him.

24 JUDGE BROWN: I think it was yours.

25 MR. RIDDLES: Thank you.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

323

1 BY MR. RIDDLES:

2 Q When I am saying WCCS I and WCCS II, what do we
3 mean by that?

4 A Well, as we have seen here, there were numerous
5 changes in organizations and when you try to track what the
6 name of the organization was at any given point in time, we,
7 for convenience purposes, assigned the numbers I and II.
8 The organization started out, you will recall as the 4C
9 Corporation.

10 Upon acquisition of the 4C Corporation in October,
11 I believe, of '85, the name did not change immediately. It
12 remained as the 4C Corporation for some time.

13 After several months of operations under
14 Whittaker, the name was changed to Whittaker Command and
15 Control Systems, Inc. We called that WCCS at the time.

16 Later, we were advised that there would be another
17 change, and each of these changes had a management structure
18 change. The presidents changed, the vice presidents in many
19 cases changed.

20 Then there was a change combining WCCS with the
21 LTC, the Lee Telecommunications Corporation. At that time,
22 the name stayed WCCS, so we called that -- to distinguish
23 WCCS plus LTC equalled WCCS II. So that was the WCCS II
24 organization. And with that change, the organization moved
25 from Torrence to Carlsbad and subsequently part of it was

LEO S. MORRISON, JR. - DIRECT EXAMINATION

324

1 moved further into Arkansas.

2 Q What part was moved into Arkansas?

3 A The manufacturing part, primarily, that had a key
4 role in the RADIL upgrade portions of this contract.

5 Q And when that part of it moved to Arkansas, and if
6 I may, under WCCS II --

7 A That was WCCS II, yes.

8 Q What part remained at the Carlsbad facility in
9 California?

10 A The software part, at least parts of it remained
11 there in Carlsbad. It was pretty hard for us to know --
12 actually, during the entire course of this contract, one of
13 the problems that we constantly had from day one
14 literally -- when we went to the Torrence facility on many,
15 many occasions for meetings, it was very hard to pin down a
16 specific location where people were working and who was
17 doing what.

18 Q Torrence is where they testing equipment was that
19 we looked at under the 4C Corporation. Is that right?

20 A Originally, everything was in Torrence -- the
21 software, the hardware, the test bed facility -- everything
22 was right there. And upon these mergers and changes and
23 acquisitions, they began to distribute parts of it into
24 various different locations. Then they decided to combine
25 or fold what we called WCCS II -- the WCCS I plus the Lee

LEO S. MORRISON, JR. - DIRECT EXAMINATION

325

1 Telecommunications -- they were all folded into something
2 called -- an existing organization in Whittaker called the
3 Whittaker Electronic Systems Division of Whittaker, and the
4 name WES came into play. Prior to that time, we had no
5 dealings with the WES Corporation or the WES division.

6 Q When the WES Corporation came in, was there
7 another move?

8 A There was a move as well as a presidential and
9 vice presidential change out. The move then was from
10 Arkansas, the Farmington, Arkansas facility shut down and
11 what was left in Carlsbad shut down, and all of that then
12 was moved up to Simi Valley, California, which is a good
13 jump yet north of Los Angeles.

14 Q All right, sir. Thank you very much. Now, would
15 you look, please, at Plaintiff's Exhibit 1266?

16 A Okay.

17 Q Is this another letter concerning a merger?

18 A Yes, it is.

19 Q And which one is this, please?

20 A This is a letter from Whittaker Electronic Systems
21 dated 26 August 1988, subject contract novation/action.
22 "Dear Sir: Effective 30 October 1987, Whittaker Corporation
23 merged two subsidiary corporations, Whittaker Command and
24 Control Systems, Inc. (WCCS) and Lee Telecommunications
25 Corporation. As a result of this merger, WCCS ceased as a

LEO S. MORRISON, JR. - DIRECT EXAMINATION

326

1 corporate entity and LTC became the surviving corporation,
2 changing its name from Lee Telecommunications Corporation to
3 Whittaker Command and Control Systems, Inc."

4 Q Now, do you see in the next paragraph where it
5 says the contract's held by the "disappearing WCCS
6 Corporation"?

7 A Yes.

8 Q You see that reference?

9 A Yes.

10 Q "Require novation agreements."

11 A Right.

12 Q And what does that mean to you?

13 A Well, it was my understanding that novation is a
14 process you go through when one organization is under
15 contract and relinquishes control of those contracts and
16 assigns them essentially to another organization to pursue
17 those contracts on the basis as if the other organization or
18 entity was doing the work.

19 Q I see. Now, in the third paragraph, they
20 reference the further merger that we have talked about of
21 what we've been calling WCCS II into the WES division.

22 A Right.

23 Q Could you read the first sentences there?

24 A "Further, effective 1 July 1988, Whittaker
25 Corporation merged WCCS into the Whittaker Corporation,

LEO S. MORRISON, JR. - DIRECT EXAMINATION

327

1 making WCCS a part of a Whittaker Corporation division known
2 as Whittaker Electronic Systems. By operation of this
3 merger, WCCS will be known as WES and will have corporate
4 status as a division of the parent Whittaker Corporation..

5 Q All right, sir. Thank you. Now, there are some
6 attachments to this document.

7 A Yes.

8 Q Would you please look about three pages over where
9 it says "Agreement of Merger"?

10 A Yes.

11 Q Do you recognize this document?

12 A Yes, I do.

13 Q And what is the document?

14 A This document is Agreement of Merger of Whittaker
15 Command and Control Systems, Inc. and Lee Telecommunications
16 Corporation.

17 Q Would you please look at the first paragraph?

18 A All right.

19 Q You see again the reference to "Whittaker Command
20 and Control Systems, Inc, which is sometimes hereinafter
21 referred to as 'the disappearing corporation' "?

22 A Yes.

23 Q "Shall be merged into the Lee Telecommunications
24 Corporation.

25 A Yes.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

328

1 Q That is the surviving corporation as represented
2 here.

3 A That's correct.

4 Q And yet even though WCCS was the disappearing
5 corporation and Lee Telecommunications is the surviving
6 corporation, it retained the name WCCS.

7 A WCCS.

8 Q Is that correct?

9 A That's correct. The president of WCCS became, I
10 believe Telecommunications became the president of the new
11 company, WCCS.

12 Q Who was that president of Lee that became the new
13 president of WCCS?

14 A The new president was Scott Lamberth, vice
15 president changed as well.

16 Q Who was that?

17 A The lead Telecommunications entourage, if you
18 will, the president and at least two of their vice
19 presidents came with the organization and they were Len
20 Ingram and John Van Tassel.

21 Q Now, when that changed again and became known as
22 WES, Whittaker Electronic Systems, --

23 A Yes.

24 Q Who -- what happened to Mr. Lamberth and those
25 fellows?

LEO S. MORRISON, JR. - DIRECT EXAMINATION

329

1 A Well, at some point in the spring of '88, Mr.
2 Lamberth essentially disappeared. We really don't know what
3 happened to him. We weren't officially notified as to what
4 happened. His two key vice presidents, Len Ingram and John
5 Van Tassel, also, we don't know what happened to them. They
6 went away. It was then in about July, I guess, June, July,
7 '88 time frame, was this merger. Mr. Brancati, Tom Brancati
8 and his management team, who had not been involved in the
9 project at all up to this point, came on the scene.

10 Q All right, sir. Can you tell the jury, then what
11 impact these corporate changes had on this contract, this
12 subcontract.

13 A All of them, or the last ones?

14 Q Well, let me talk just about the changes in
15 personnel.

16 A Okay. In the case of each of the corporate
17 changes, brand new top management people came on board and
18 this was further complicated by other changes in the
19 organizational structure of the company with which we had
20 been dealing on this contract. In ever case, the president
21 left, and certain of his vice presidents left as well.

22 Now, the changes in corporate identity was troublesome
23 to us from the standpoint of dealing with management --
24 every time they brought in new management they had no
25 experience, they had done nothing on this job before. We

LEO S. MORRISON, JR. - DIRECT EXAMINATION

330

1 found that the business of trying to determine status became
2 increasingly difficult with these changes.

3 In addition to that, the fact that these corporate
4 changes were accompanied usually by a geographical
5 displacement. That is --

6 Q What affect does a geographical displacement have
7 on the subcontract?

8 A It had a devastating effect on the performance of
9 the subcontract in my judgment, for these reasons. If we
10 had a map we could better understand this maybe, but I'll
11 try to describe it as best I can. Torrence, California is
12 located south of Los Angeles and I would say on the order of
13 20 to 30 miles. We were dealing with the 4C Corporation
14 initially in that location where everything was centrally
15 located. That was a small company that we entered into the
16 subcontract with. That was a small company that we dealt
17 with on a pre-contractual basis to pursue this work with the
18 Air Force. We were convinced of their integrity as an
19 operation entity, the fact that they were entrepreneurial
20 based, there were folks there like Mr. Cat Byer, a Naval
21 Academy graduate, who had essentially drew this company out
22 of his garage, very dedicated kinds of folks, in our
23 opinion.

24 When that company was acquired by Whittaker, and later
25 moved to Carlsbad, California, which is closer to San Diego,

LEO S. MORRISON, JR. - DIRECT EXAMINATION

331

1 south of Los Angeles, south of Torrence, and I think
2 probably within 30 miles of San Diego, a considerable
3 distance. While we were not advised of this, the effects on
4 the operation were that personnel changes were occurring
5 throughout the ranks. The folks developing the software
6 either moved to the south or left the corporation. Because
7 they couldn't work on the software any more in Torrence.

8 In the instance of software development, as was
9 indicated in the 4C computer development plan, computer
10 program development plan, the continuity of personnel
11 assigned to developing software is extremely, extremely
12 important. It can't be overemphasized. It's very difficult
13 for Operator A, or Programmer A to pick up the work of
14 Programmer B after Programmer B has done it his way. It's
15 very much an individualized kind of operation, kind of
16 tasking. Now, this was, this discontinuity of personnel is
17 what we refer to it as, continued with each of these
18 corporate changes as we indicated earlier. Then later, the
19 organization was moved, split from Carlsbad, part of it
20 moved out to Arkansas, to Farmington. Certainly with the
21 move from California to Arkansas, that's not an easy commute
22 and we knew that there were people that were dropped off.

23 We attempted, on many occasions, to obtain information
24 on personnel who were assigned to this subcontract and we
25 were frustrated and refused on many occasions. For example,

LEO S. MORRISON, JR. - DIRECT EXAMINATION

332

1 and I am jumping a little bit ahead, but in the case of the
2 West Merger, after the West Merger, which was the final
3 merger in 1988, we wanted to know who we were dealing with.
4 We requested information on the personnel starting with the
5 president. All we wanted were resumes of this. To this
6 day, they have refused to give us those resumes. This is
7 the kind of operation we were involved in.

8 Now when they moved from Arkansas and from Carlsbad,
9 the operation then, lock, stock and barrel, moved north all
10 the way north, now, from near San Diego north of, not to Los
11 Angeles, but north of Los Angeles and pulled people out of
12 Arkansas, or shut that facility down, causing more
13 turbulence.

14 Now, also very important here, in this kind of job, and
15 it's laid out in this contract specifically, when you are
16 doing this kind of work, you have to establish protocol test
17 bed facilities. This test bed means that you set up mock
18 representations of the system. You have the actual
19 components in the system, there. It is very important that
20 these things be in place and that they stay in place.

21 Q And how did they move --

22 A On several occasions they were thought to be moved
23 during this period of transit, you can't use the test bed.
24 The program was delayed considerably by these kinds of
25 renovations as well.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

333

1 Q We also looked earlier at a test facility in
2 Torence.

3 A That is correct.

4 Q And they referenced some specific --

5 A Software test facility right there in Torence.

6 Q Software and I believe some computer hardware,
7 main frame computer.

8 A That is correct. As a matter of fact, at the
9 Torence facility, we had two types of test facilities. One
10 was the, let's call it "the resident," the permanent
11 software development center that they always had there and
12 it's represented in our proposal that the software would be
13 developed in that facility. Now, in addition to that there
14 was a requirement to establish a test bed that was separate
15 from this resident software operations center. Both of
16 those were, of course, stripped out and moved with
17 everything else.

18 Q What affect did this have, if any, on the B level
19 specifications that we testified to earlier were to be
20 presented?

21 A In my judgment it had considerable impact,
22 negative impact, in the development of the B specifications.

23 MR. RIDDLES: We are going to mark this as
24 Plaintiff's Exhibit, Group Exhibit 2000, and we are grouping
25 some other exhibits, and there are not 2000 exhibits. I

LEO S. MORRISON, JR. - DIRECT EXAMINATION

334

1 don't know where he drew that, it's just what we are marking
2 for number. The jury may be worried enough. Let me show
3 this to Mr. Work.

4 (Exhibit shown to Mr. Work)

5 (The document referred to was
6 marked for identification as
7 Plaintiff's Exhibit 2000.)

8 BY MR. RIDDLES:

9 Q I'm going to show you now, what has been
10 previously marked as Plaintiff's Exhibit 2000, and it's a
11 Group Exhibit, is it not?

12 A Yes it is.

13 MR. WORK: Did you get a copy?

14 BY MR. RIDDLES:

15 Q Would you identify this exhibit, please, sir, and
16 there are some component parts.

17 A Okay, this is a compilation of correspondence
18 related to the development of the B specifications and I
19 believe the C specifications and specifically what we've
20 done here, at my direction, I've had our counsel summarize
21 these and into a chart. Basically what the documents do is
22 they represent the instance of the submittal of the B5 and
23 C5 specifications by Whittaker to TechDyn for approval and
24 what we did in this case, as I indicated earlier, in the
25 case of B5, C5 specifications, software development in

LEO S. MORRISON, JR. - DIRECT EXAMINATION

335

1 general, we passed it through to the Air Force to the team
2 of folks who were reviewing it and then we have arranged
3 here, each instance of rejection.

4 Q You still have the submissions, do you not?

5 A Say it again?

6 Q You also have the date of submission by it.

7 A Yes, we have the date of submission and the date
8 of rejection by the Air Force.

9 Q And those are summarized there?

10 A Yes, those are summarized here.

11 Q To your knowledge, has an exhibit or a chart been
12 prepared that also summarizes the matter that are set forth
13 in this group exhibit?

14 A Yes, this data has been translated into a visual
15 chart.

16 Q Okay, I am going to ask you to come down now, and
17 refer to the chart.

18 MR. WORK: Your Honor, I am going to object to the
19 chart for a couple of reasons. Number one, we haven't seen
20 it before this moment.

21 MR. RIDDLES: I'm sorry, I think he is under a
22 misapprehension. I'm not going to show him this chart. I
23 am going to show him the one that has been prepared.

24 JUDGE BROWN: Well, show him the chart that you
25 are going to show and then we'll see.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

336

1 MR. WORK: Well, I'm referring to the chart that
2 counsel was just referring to and the testimony on the chart
3 --

4 JUDGE BROWN: Well you don't need to refer to that
5 chart because that's not what he is --

6 MR. WORK: Well we've just too much of testimony
7 on it, Your Honor.

8 JUDGE BROWN: Well, I am going to --

9 MR. WORK: I object to it if I may.

10 JUDGE BROWN: Well, you can't because it hasn't
11 been offered and so there is no point in objecting until
12 something is offered, you can't object. I mean I wouldn't
13 know how to rule. Nothing is offered yet. You said he had
14 a chart and he is going to show it to you.

15 BY MR. RIDDLES:

16 Q I'm going to show you now --

17 JUDGE BROWN: I want you to show it to Mr. Work.

18 MR. RIDDLES: Oh, I'll be glad to.

19 MR. WORK: I've seen this, Your Honor.

20 JUDGE BROWN: Do you have an objection to him
21 showing that to the jury?

22 MR. WORK: Not as a visual aid I don't, but it's a
23 visual aid and it's not evidence.

24 JUDGE BROWN: That's what he wants to do as I
25 understand it.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

337

1 MR. RIDDLES: That's exactly right.

2 BY MR. RIDDLES:

3 Q Look at this chart. Can you explain this chart,
4 this visual aid, of your understanding of Whittaker's
5 preparation of the B level specifications?

6 A Okay, we had -- this chart incorporates in part
7 another chart that we had seen earlier where we had schedule
8 data so I won't review this again. I think we went over
9 that.

10 Q All right, well --

11 A Now, this is the actual schedule and it shows the
12 submission of PDFA software specifications and we have the
13 selected specification numbers here starting with 1496,
14 1497, 1498, 1495, and 1499.

15 Q What are those numbers, specification numbers
16 refer to?

17 A Those numbers refer to the identification of the
18 specific B specifications.

19 Q And so could you begin with 1496 and explain this
20 history?

21 A Okay, on 1496, B level specification, Whittaker
22 made a submission on the 3rd of December, 1985 and it was
23 rejected by the Air Force. Whittaker resubmitted it twice
24 here, I don't have the -- does this track here?

25 JUDGE BROWN: Yes it does.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

338

1 THE WITNESS: This is roughly March of 1986 it was
2 resubmitted. It was later resubmitted in April, 1986 and it
3 was rejected by the Air Force in May, late May, early June,
4 1986, resubmitted by Whittaker in June of '86, rejected by
5 the Air Force in late July, '86, resubmitted by Whittaker in
6 what appears to be the end of September, October, early
7 October, by Whittaker, '86, Air Force rejected it in
8 November of '86. Whittaker resubmitted it in December of
9 '86. Air Force comments here in December, end of December
10 '86. Whittaker resubmitted it in January, '87. Air Force
11 comments in February of '87. Whittaker resubmitted it March
12 of '87. Finally, here in June of '87 it was finally
13 approved.

14 Q That's the B level specs?

15 A That's the B level specification, 1496.

16 Q Looking at 1497, let's just jump to the submit and
17 beginning and end dates.

18 A Okay, the initial submission of specification, B
19 level specification 1497, was 12/3/85 after several Air
20 Force rejections and resubmittals by Whittaker, it was
21 approved in January of '87. Initial submission in December
22 of '85.

23 Specification 1498, a similar situation. Initial
24 submission by Whittaker, 12/3/85. After numerous rejections
25 by the Air Force and resubmittals by Whittaker, it was

1 approved in January '87.

2 Specification 1495, initial submission by Whittaker on
3 3 December, 1985, after several Air Force rejections and
4 resubmittals, approved by the Air Force in October, '86.

5 Q And to your knowledge, is this chart a true and
6 accurate summary?

7 A To my knowledge, this is an accurate reflection of
8 what actually happened.

9 Q I'm going to show you now this chart which Mr.
10 Work has also seen. The PDFA C level specifications.

11 MR. WORK: What number?

12 MR. RIDDLES: This number is Chart # 993 and it's
13 3 of 3.

14 BY MR. RIDDLES:

15 Q Can you explain this one?

16 A Yes, this is a representation of the Whittaker
17 preparation requirements of C level specifications for the
18 final operational capability and we have some actual
19 schedule data shown here. Again, we treated this earlier on
20 this contract schedule with respect to the due dates of the
21 C level specifications of vis-a-vis preliminary design
22 review dates and critical design review dates.

23 Skipping to the specifications, the C level
24 specifications, number 1496, C level specification,
25 Whittaker made its initial on the 13th of December, 1986.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

340

1 The Air Force rejected in February, 1986. Whittaker
2 resubmitted it in March of '86. Air Force comments in April
3 of '86. Air Force comments in June of '87.

4 Q Now, look at 1497.

5 A 1497 again, I'll start, I'll just highlight the
6 beginning and end points. Specification 1497 C level
7 Whittaker submitted on the 13th of December, '86. Air Force
8 rejected it. They resubmitted it. Air Force comments.
9 There is no indication of anything further. And the last
10 Air Force comments were January, 1988.

11 Specification 1498, Whittaker submitted on the C level
12 specifications on the 13th of December, 1986, Air Force
13 rejected it then, there were Air Force comments, two sets of
14 Air Force comments. The last set of Air Force comments
15 occurring in June of 1987.

16 Specification 1495, Whittaker submitted in October 27,
17 1986. Air Force comments were received in February of '87.
18 It was submitted in October '86. February of '87, the Air
19 Force commented.

20 Q Now, this doesn't show the actual approval date of
21 this?

22 A No, it doesn't.

23 Q And to your knowledge, with respect to what it
24 does show, is this a true and accurate summary?

25 A Yes it is.

1 the future and you don't think the person is qualified,
2 let's take it up in advance of showing it to the jury so we
3 don't waste a lot of time.

4 MR. RIDDLES: It would be my opinion, Your Honor,
5 that the objection had been waived as well.

6 JUDGE BROWN: I don't find the objection was
7 waived but it's overruled.

8 MR. RIDDLES: Thank you, sir.

9 BY MR. RIDDLES:

10 Q What happened -- do you know, Mr. Morrison, what
11 happened with the RCE element?

12 A Yes.

13 Q Tell the jury what were the events and the
14 progress with the RCE element.

15 A Okay. I'll try to be as brief as possible.
16 Initially, the RCE -- the RCE is that portion of the project
17 which was required by our contract with the Air Force and we
18 further subcontracted the RCE portion of this work to the 4C
19 Corporation.

20 The RCE portion of the contract is that element,
21 remote control element -- as we discussed earlier, you have
22 this main direction center with the PDFA equipment installed
23 it giving us a visual portrayal of the radar data screens.
24 We have -- in order to talk with the AWACS that's aloft,
25 there were in the FOC capability five ground entry radio

LEO S. MORRISON, JR. - DIRECT EXAMINATION

346

1 stations that all were located on isolated hills,
2 mountainous kinds of arrangements, in Iceland. All of these
3 sites were to be operated on an unattended basis. That is,
4 there were no operators assigned to these locations, plus
5 the requirement for highly reliable equipment, et cetera.

6 But in order to operate this equipment and to be
7 flexible with respect to the operations, you had to be able
8 to control the equipment from the main direction center,
9 that radio equipment that was out there. And by control,
10 we're talking about activating a radio.

11 Visualize your own television set or your own
12 radio set at home. You can walk over to it, you can turn it
13 on by giving it power. You can adjust the volume. You can
14 tune it to the station that you want. Those kinds of
15 things, in addition to some line conditioning and some other
16 things we'd have to do that you don't have to do with your
17 set.

18 It was required that we be able to effect these
19 kinds of controls from the main direction center, thus, the
20 requirement for the RCE element.

21 Now, what happened was when we subcontracted that
22 element to the 4C Corporation, we asked that they do the RCE
23 engineering, RCE element engineering. That meant both
24 hardware and software.

25 Q So when you say software, I take it this then was

1 requirement -- in order to facilitate things, we would have
2 what were called redlining sessions.

3 Q What's a redlining session?

4 A A redlining session is a session you call when you
5 say in view of the schedule and when there are delinquencies
6 or when there are slippages, you say in order to compress
7 the time required to get usable, acceptable approved
8 specifications in hand, let's sit down together, call a
9 group together, and we'll go through this thing line by line
10 and we won't depend on independent review and mailing and
11 back and forth. We'll sit down together, we'll redline this
12 thing, correcting, as it were, on the spot. Hand that to
13 the contract developing the specifications and say now go
14 out and make these changes and if you do that, you should be
15 able to produce acceptable specifications.

16 One of the most frustrating things about this job
17 was the fact that upon doing this in redlining session after
18 redlining session after redlining session, 4C would come
19 back with specifications that had just partially
20 incorporated the redline markups, the redline corrections.

21 Well, to move ahead, after review sessions,
22 program management review sessions, technical interchange
23 meetings on the RCE, it became evident that we weren't going
24 to have an RCE that was computer based that 4C was
25 attempting to produce that would be delivered in any

LEO S. MORRISON, JR. - DIRECT EXAMINATION

349

1 reasonable period of time.

2 There came a time, then, when this became patently
3 clear to us and, in consultation with the Air Force and
4 Mitre and all these other guys, we decided that we had to
5 acquire this capability through some other means.

6 It was then that we finally terminated for
7 default, for cause, the Whittaker Corporation on the RCE
8 effort.

9 Q Let me --

10 A Now, this occurred after -- well, go ahead. I'm
11 sorry.

12 Q I was going to ask you a question about after the
13 WES merger where WCCS -- what I've been calling WCCS II
14 merged into WES -- what effect, if any, did that have on the
15 RCE element?

16 A Well, in my opinion, when the WCCS II organization
17 merged with WES, I was absolutely surprised at what happened
18 to the program at that point.

19 Q That merger occurred in July of 1988.

20 A July 1988. And to give you an instance of what
21 I'm talking about, we had a scheduled program management
22 review to be held at the Whittaker facility in Carlsbad,
23 California in that timeframe, I guess it was around the 21st
24 of June, as I recall, of 1988. I attended that meeting with
25 some of my staff members.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

350

1 The format of the meeting was to be in the morning
2 session, TechDyn and 4C were to get together and discuss
3 some matters.

4 Q Now, you're saying in June of --

5 A '88.

6 Q And is this before the merger?

7 A Maybe it's July of '88. It's June or July -- I
8 think it was July '88, around the 21st of the month.

9 Q So in July '88.

10 A Yes. This would have been after the merger.

11 Q I see.

12 A And we had that session with 4C and we discussed
13 the problems on the project. The afternoon session was set
14 up to have a joint meeting, a program management review
15 meeting, with the Air Force, Mitre, the other program
16 support contractors I mentioned, TechDyn and the 4C
17 Corporation.

18 Q Who was the senior manager for the WES Corporation
19 at that time, in July?

20 A Well, at that time, Tom Brancati was the president
21 of the WES Corporation, the merged organization WES, that
22 had subsumed the WCCS Corporation. So we had the meeting in
23 the morning. We had a working lunch. We didn't leave the
24 room, the conference room.

25 Q When you say "we had a meeting", was --

LEO S. MORRISON, JR. - DIRECT EXAMINATION

351

1 A We had the meeting between TechDyn and 4C
2 Corporation.

3 Q Who was there from the 4C Corporation?

4 A Their top management --

5 Q I'm saying 4C. Let me strike that question. Who
6 was there from WES, Whittaker Electronic Systems?

7 A Okay. Tom Brancati and some of his vice
8 presidents and some of the program people. We sat there
9 during the lunch hour and we didn't leave. The next meeting
10 was to start at one o'clock. They left -- the WES people
11 left the room.

12 At one o'clock, the Air Force people had assembled
13 and they came in. They sat with us. We awaited the WES
14 people to come back to the meeting that had been planned --
15 now, please understand -- the program management review is
16 the major review session that you have in this project. It
17 was scheduled periodically to cover everything in the
18 project. It's the excellent opportunity to come onboard, as
19 it were, to become knowledgeable of what's happening in this
20 project.

21 I remind you that this was the first one that WES
22 had been involved. Their management team had no knowledge,
23 had not worked in this project. It was now their
24 responsibility, through this merger action, but they refused
25 to attend that meeting. We finally said well, let's go with

LEO S. MORRISON, JR. - DIRECT EXAMINATION

352

1 the meeting. We sent for them. We were at their facility.
2 We travelled to California to meet with them.

3 Q Was this in Simi Valley?

4 A This was in Carlsbad, California. The Air Force
5 representatives have come from Massachusetts and from
6 Langley Field here, TAC Headquarters. We were there
7 waiting. I said let's go ahead with the meeting. We had
8 the meeting. They never came in that afternoon. The top
9 management didn't. They had a couple of other guys who were
10 there, but Mr. Brancati, the president, never came in.

11 About five o'clock in the afternoon, a gentleman
12 came down to the meeting room, to the conference room, and
13 handed me a letter and that letter was from Mr. Brancati and
14 he was advising me that the WES Corporation was stopping
15 work on the project.

16 Q Is that on the RCE portion of the project or on
17 all of the project?

18 A That was on the RCE, as I recall.

19 Q And did they stop work?

20 A Yes, they did.

21 Q Do you know when they started work up again?

22 A I think it was roughly something that was close to
23 three months later. And we tried everything we could to
24 cause them not to stop work. We expressed that the project
25 was already late. Our customer had an operational

1 requirement that needed to be supported and it was
2 absolutely imperative that they get on with it. We would
3 help them any way we could. It got to the point where we
4 had to -- since they weren't performing, we were not -- we
5 could not pay them and we had some invoices in the pipeline,
6 something that had accumulated -- it got to the point that
7 these invoices amounted to about \$1 million.

8 Q The invoices from the --

9 A From us to them for work they had performed. And
10 we said we could not pay them in a stop work kind of mode.
11 We told them that hey, go back to work, we've got this \$1
12 million here for you here. We're going to pay you right
13 away. Please go to work. It wasn't until about three
14 months later that they decided to go back to work.

15 Q After you fired them, terminated them for default,
16 what did you do with respect -- "you" being TechDyn -- what
17 did TechDyn do with respect to the RCE program?

18 A Okay. With respect to the RCE, we set about
19 devising another approach to delivering to the Air Force a
20 workable RCE element. The RCE that we had subcontracted to
21 the 4C Corporation was software based, software driven as
22 we've discussed. We sought them to pursue what we call an
23 electromechanical approach to satisfying this requirement
24 which did not involve software development. And we obtained
25 some equipment, put it together. We worked with the Air

1 Force to come up with the design and within a period of
2 approximately five months, we had an acceptable design for
3 the RCE.

4 Q Now, when you say "acceptable" who accepted it?

5 A It was acceptable to the Air Force.

6 Q I think I said in my opening statement that it was
7 up and running.

8 A Yes.

9 Q Was I wrong about that? It was not running?

10 A Well, let's say it was -- at that point in time,
11 the RCE had been approved by the Air Force. It was not "up
12 and running". Up and running implies that it's in place and
13 it's doing the job.

14 Now, we'll recall that the RCE was a part of the
15 FOC of this job. Now, we are not -- at this point in time,
16 this is late '88, early '89 -- because of all the delays,
17 FOC is not there. FOC means that you have the equipment
18 installed in Iceland and everything is ready to go. The RCE
19 was not really required until that time to be up and
20 running, all right?

21 The project envisioned that it would have been
22 developed, produced, ready to go before then. At that
23 point, we had an approved RCE.

24 Q And it was just a matter of completion of the FOC
25 by --

LEO S. MORRISON, JR. - DIRECT EXAMINATION

355

1 A Completion of the FOC. That's correct.

2 Q Okay.

3 A If I may, counsellor, just for classification, if
4 I may --

5 Q Sure.

6 A We talked about termination of the West
7 Corporation for default on the RCE. We want to make a
8 distinction here and make it clear that we terminated them
9 on the RCE portion only of their subcontract.

10 Q Why did you not terminate them for the delayed
11 productivity with the final operating capability?

12 A Well, we had wanted to terminate the 4C
13 Corporation very early on in this project as we were
14 frustrated with them. We went to the Air Force on several
15 occasions. We wanted to get out of the contract, we wanted
16 to be terminated, wanted the whole thing terminated for
17 convenience because they weren't producing. We were not
18 allowed to fire, as it were, or terminate the 4C Corporation
19 or WCCS I or WCCS II nor West from the other work because it
20 was a directed statement in our subcontract. To have
21 terminated them, or to have quite the job ourselves, we
22 would have found ourselves in default to the Air Force.

23 Q I see.

24 A We pleaded with the Air Force and the Small
25 Business Administration and had formal meetings to this

LEO S. MORRISON, JR. - DIRECT EXAMINATION

356

1 effect, that they weren't producing and we wanted out of it.
2 They would not release us from the obligation. Now you will
3 notice they didn't terminate us.

4 Q The Air Force did not.

5 A They had full right to terminate us if we weren't
6 as the "prime" and I'd like to asterisk that, contractor.

7 MR. WORK: Your Honor, I think we have had enough
8 monologue here and if we can --

9 JUDGE BROWN: I'm not sure. What the question
10 was. You need to just answer the question.

11 THE WITNESS: Yes, sir.

12 MR. RIDDLES: All right, sir. Your Honor can we
13 take a break for a short time to go to a new area?

14 JUDGE BROWN: We'll take our 15 minute afternoon
15 recess now.

16 (Pause for a brief recess)

17 JUDGE BROWN: Are you ready?

18 BY MR. RIDDLES:

19 Q Mr. Morrison, did there come a time after these
20 problems that you have talked about that you had occasion to
21 file a claim with the Air Force on the prime contract
22 between you and the SBA and the Air Force?

23 A Yes, they did.

24 Q And what was the purpose of your filing a claim
25 with the Air Force?

LEO S. MORRISON, JR. - DIRECT EXAMINATION

357

1 A The purpose of our filing a claim was to attempt
2 to cause the Air Force to allocate more dollars to the
3 contract inasmuch as the schedule had slipped considerably.

4 Q Now, do you recall the specific areas that you
5 made claim for to the Air Force? You being, and I mean in
6 this case, the TechDyn Corporation?

7 A Yes, without referring to the document, I can
8 recall some of the, I think we called them reasons for the
9 request for equitable adjustment. They had to do with the
10 one was the directed subcontractor.

11 Q And that would be Whittaker?

12 A That would be the 4C Whittaker organization.
13 Another reason was we attempted to identify those things
14 which the Air Force was directly responsible and resulted in
15 delays. We, I think, maybe I shouldn't go any further --

16 Q Maybe you shouldn't. All right. I'm going to
17 bring you some of these clear sheets and ask you if you
18 recognize them.

19 MR. WORK: Your Honor, is this recollection
20 refreshed or what is the purpose of this -- he said he
21 couldn't recall any more. That's what I understood.

22 JUDGE BROWN: He said he couldn't recall without
23 looking at a document.

24 MR. WORK: All right so this is recollection
25 refreshing?

1 MR. RIDDLES: Yes, I haven't offered it into
2 evidence. I am asking if he can look at them and take a
3 look for a moment and refresh his recollection. But I will
4 say this, Your Honor, I do plan to put these on the overhead
5 pursuant to what we just agreed with Mr. Work. I am not
6 offering the total document into evidence at this time, but
7 I believe Mr. Work has agreed that I can show this on the
8 overhead if it's all right with the court.

9 JUDGE BROWN: I'm not sure what you want me to do
10 at this point. Just go until you hear glass.

11 BY MR. RIDDLES:

12 Q Again, can you --

13 A Yes, yeah, this is what I was looking for -- the
14 claim itself was a rather voluminous document and we
15 outlined major causes of the requirement for equitable
16 adjustment. As I indicated, one was the directed
17 subcontractor, the second was misrepresentation of the 4C
18 capability, then fact finding negotiation impact,
19 subcontractor performance, government contribution to cost
20 escalation, scheduled delays and divergence of TechDyn
21 resources from intended functions and ECP 309-2.

22 Q All right, may I have that. I'll just put that up
23 on the overhead at this point. Let's take these one at a
24 time. You mentioned a directed subcontractor. Do you
25 remember what the cause of your -- well first let me back

1 up. You say here equitable adjustment. What was your
2 understanding and I mean, TechDyn and your personal
3 understanding of what the term "equitable adjustment" was
4 intended to be.

5 A Okay. Normally in contracting when you negotiate
6 a contract with an agency, you sit down and you try to have
7 a meeting of the minds with respect to what is fair and a
8 fair price for the services of products to be delivered.
9 If, in the course of pursuing that contract, executing that
10 contract, you discover that for whatever reason the cost of
11 the contract has or is escalating, then you attempt to sit
12 again and have a meeting of the minds for some fair
13 adjustment to that. Now, in this case, in this instance, we
14 were directed by the Air Force to subcontract a considerable
15 portion, namely the PDFA portion of this contract, our
16 contract, to the 4C Corporation.

17 Q Is that what you mean by "directed" subcontractor
18 under A?

19 A Yes, it is.

20 Q Now, then you have misrepresentation of 4C
21 capability?

22 A Yes.

23 Q Looking at a portion of what -- by the way who
24 certified this claim to the Air Force?

25 A TechDyn.

LEO S. MORRISON, JR. - DIRECT EXAMINATION

360

1 Q And did you personally sign it and review it?

2 A Yes, I did.

3 Q Can you see this portion here? I'll read it for
4 you it says "during fact-finding negotiations, the ICCE
5 project was characterized by ESD representatives as a non-
6 development item/off the shelf buy or NDI/COTS buy. The
7 suggestion being made that since the principal items
8 existed, namely the RADIL and the communication equipments,
9 no development with all of its tedious first-time
10 capabilities having to be demonstrated was required." You
11 then go on to say it was "extremely important to TechDyn's
12 requirements analysis for contract staffing and subsequent
13 decision making that essentially acceptable software
14 associated with the RADIL existed and with relatively minor
15 modifications would satisfy the ICCE project requirements."
16 Do you remember that portion of your claim?

17 A Yes, I do.

18 Q Now, what were the representations and when were
19 they made concerning this non-development item/off the shelf
20 that is referred to here?

21 A Well, from the beginning of our discussions in the
22 pre-contract time frame between the Air Force and TechDyn
23 and with Whittaker, and with 4C Corporation, it was
24 repeatedly represented to TechDyn that the RADIL, again, had
25 existed, it was in the Air Force inventory, that it had a

LEO S. MORRISON, JR. - DIRECT EXAMINATION

361

1 capability that was well on the way towards delivering what
2 the new requirement envisioned, i.e., that increment of
3 difference to add to the existing capability. The Air Force
4 continuously indicated that 4C had the capability to get
5 there thus the 16 month time frame that was specified.

6 Q Was the 4C Corporation present when these
7 representations were made?

8 A Yes, they were. We had many, many joint meetings.
9 As a matter of fact nearly all of our meetings were joint
10 and the 4C Corporation continuously also assured both the
11 Air Force and TechDyn that they had the RADIL and what was
12 being required in the new specification and statement of
13 work were easy to achieve. The incremental capability that
14 we wanted.

15 Q Now, when these representations were made, what
16 affect did that have on your staffing?

17 A Well, to us, as we've always maintained in this
18 project, we always looked at this as a very straight-forward
19 kind of contract. We don't think there was anything here
20 that was esoteric or difficult technically, technologically,
21 if the subcontractor had performed.

22 Q And now, when you asked the -- were there any
23 items other than the directed subcontractor and the Air
24 Force representations that formed the basis of your claim
25 that did not involve 4C, Whittaker?

LEO S. MORRISON, JR. - DIRECT EXAMINATION

362

1 A Yes.

2 Q What were those items?

3 A The items we specified specific things that we
4 thought the Air Force was responsible for, and again I don't
5 have them in front of me and I can't really be more explicit
6 about it.

7 Q Did you, did the, did there ever come a time when
8 you were paid something on this claim that you made to the
9 Air Force?

10 A Yes, there did.

11 Q And how much were you paid, do you recall?

12 A Yes, roughly the claim settlement was made at \$1.7
13 million, a little over that.

14 Q And when was that paid to you?

15 A In 1989, I don't recall the exact month.

16 Q Did the Air Force indicate a date for which they
17 were, for what they were paying you the claim?

18 A Yes.

19 Q Just a moment. All Right, would you look at
20 Exhibit 4 please again, I'll see if I can find, and we
21 looked at Modification # 36. I'm showing him Modification
22 36 of Exhibit 4. Is this the modification you are talking
23 about?

24 A Yes, it is.

25 Q And how much is the amount of the modification?

LEO S. MORRISON, JR. - DIRECT EXAMINATION

363

1 A The amount shown in Mod 15 is \$1,719,441.00.

2 Q Did the Air Force say in this modification that is
3 before you for what portion of that payment represented
4 Whittaker's problems or delays?

5 A They did not.

6 Q Do you have any idea how this \$1.7 million was
7 broken down from the various element of your claim?

8 A No, it's represented to us as a, well the break
9 out is in a way that we can't identify it as Whittaker.

10 Q How is it broken out?

11 A For example on page 3, it has "the following are
12 affected ACRNs are affected" "AC is increased by \$36,193"
13 "AF is increased by \$1,083,248." XA is apparently the
14 entire amount, the contract amount is increased by the
15 \$1,719,441. But there is no way we could get from there,
16 from that into Whittaker.

17 Q Now, independent of this modification that we've
18 looked at and talked about here, do you have any idea what
19 the Air Force was paying you for Whittaker-caused problems?

20 A Yes. During numerous negotiation sessions with
21 the Air Force on this request for equitable adjustment, we
22 submitted our claim on the --

23 JUDGE BROWN: Did you want to say something?

24 MR. WORK: Yes, I think we are going to hear some
25 hearsay and I'd like to object before we hear it, Your

LEO S. MORRISON, JR. - DIRECT EXAMINATION

364

1 Honor.

2 JUDGE BROWN: Okay, that's the right time.

3 MR. RIDDLES: Are you -- I haven't heard any
4 hearsay yet, he just said during --

5 JUDGE BROWN: Well, he said, first off when you
6 say does he have any idea what somebody did, we really
7 aren't interested in his idea. So, what we have to be
8 interested in is what the Air Force told him.

9 MR. RIDDLES: Okay, I understand, Your Honor.

10 JUDGE BROWN: And if he is going to say what the
11 Air Force told him that seems to me to be subject to the
12 hearsay objection unless you have a response to that.

13 MR. RIDDLES: Your Honor, I think what he is going
14 to is testify to what the Air Force told him and then aside
15 from that we don't know what's in the mind of the Air Force.
16 All we know is what they told him and then we can, as part
17 of the res gestae of what we are going to take out of the
18 time frame. He has already testified that there is no
19 written document that indicates that.

20 MR. WORK: I'll withdraw my objection, Your Honor,
21 believe it or not.

22 BY MR. RIDDLES:

23 Q Go ahead, Mr. Morrison, what did they tell you?

24 A I was about to say that while we had nothing in
25 writing, that the Air Force in several sessions that we had

LEO S. MORRISON, JR. - DIRECT EXAMINATION

365

1 with them and again we submitted our proposal or our request
2 for equitable adjustment in February of 1987. You will
3 notice that this settlement is March 10, 1989, so we had
4 many, many occasions to sit with the Air Force and attempt
5 to resolve this matter and through the course of those
6 discussions, the closest they came to (1) acknowledging any
7 responsibility for the performance of the directed
8 subcontractor was to indicate that at a certain point in
9 time the project was 13 months behind schedule. Now I
10 remember very, very explicitly, I can see the practicum on
11 the board and they indicated that they would accept, and the
12 amount of slippage was 13 months. They would accept, the
13 Air Force would accept 13, 10/13ths of that, you know,
14 roughly ten months out of that period of slippage, so that
15 was the closest we have ever come to trying to allocate
16 slippage due to the subcontractor with the Air Force at that
17 time.

18 Q During this, and in this action, are you asking
19 the jury to award you any money for that ten months, that
20 ten month period as a result of the Whittaker actions?

21 A We are not, no.

22 Q What is, do you know the value of that?

23 A We reduced that to I think roughly \$750,000.

24 Q And you are not asking the jury to award you any
25 of that ten months?

1 A That is correct. We are not.

2 Q And not any of that \$750,000.

3 A That is correct. We are not, we took those
4 numbers out of our figures.

5 Q And why did you take them out?

6 A Because we didn't want to attempt to recover for
7 anything that the Air Force had already awarded us based on
8 Whittaker's performance.

9 Q You heard Mr. Work in his opening statement
10 mention "double dipping." Is it your intention to "double
11 dip?"

12 A Whatever that means, absolutely not.

13 Q What is the cutoff date for the -- I mean, is
14 there any indication for the time period that's covered by
15 your claim recovery?

16 A Yes. We have a release of claims date of 10
17 August 1987, which means that for any time occurring
18 precedent to that, we're not entitled to go back to the Air
19 Force to ask for any kind of claim. We have released them
20 or essentially indemnified from any kind of liability beyond
21 that date -- precedent to that date.

22 Q All right, sir. Do you know whether the Air Force
23 has ever paid you any recovery for time periods after that
24 date for any reason?

25 A They have not.

1 Q What effect did these damages -- this delay --
2 have on the TechDyn? One, in terms of its dealings with the
3 Government contracting community?

4 MR. WORK: Object to the form. I don't know what
5 delay he's talking about.

6 MR. RIDDLES: The delay of the project.

7 THE WITNESS: The delay in this project,
8 considering that when we entered into this contract with the
9 Air Force, we assumed that this contract would operate as we
10 were accustomed to having our contracts operate; i.e., to be
11 performed by us and by any other party we were associated
12 with in a professional, timely manner, responsive manner.

13 We found out very early on that that was not to be
14 under this contract. We have suffered immeasurably in terms
15 of having our attention -- we're a small corporation. We
16 don't have the kinds of resources that you can split up very
17 easily. We found that we were preoccupied with this
18 contract. And, as a result of that, we were not able to
19 focus on other things that were important to the operation
20 and growth of the company.

21 The marketing effort was very, very directly
22 impacted; therefore, the growth has been impacted in terms
23 of acquiring additional business.

24 You'll find that this is the most intensive, paper
25 intensive contract, we've ever been involved in. As a

1 matter of fact, the amount of paper, the records we have on
2 this job -- and most of them are of the nature we've been
3 discussing here; i.e., attempting to respond to the Air
4 Force for things that the directed subcontractor didn't do.
5 The back and forth. The back and forth, serving as a
6 conduit in that respect for things related to the PDFA
7 portion of this contract.

8 The paper that we have in our archives, our record
9 archives, on this job is about three times all of the paper
10 we've ever had to do on all of our contracts in the last
11 thirteen and a half years. It has imposed a tremendous
12 burden on us.

13 Our project personnel have had to move away from
14 performing the CFA portions of the job that they were hired
15 to do in order to attend meetings at 4C, WCCS, WES, those
16 organizations on the West Coast. We've had to attend
17 meetings at Hanscombe Field at their call. We've had to
18 attend meetings at --

19 Q At whose call, now?

20 A At the Air Force's call. We've had to attend
21 meetings at Tactical Air Command Headquarters at Langley,
22 understanding that TAC is the customer of the Electronics
23 System Division.

24 Q Let me ask you this --

25 A They had meetings there, they had meetings at Shaw

LEO S. MORRISON, JR. - DIRECT EXAMINATION

369

1 Air Force Base. They had meetings at Sacramento. We've
2 been jerked all over the place over all these years, trying
3 to be responsive to the Air Force. Now, if we weren't
4 responsive, the risk we ran was to be terminated on this job
5 by the Air Force summarily and therefore really just
6 absolutely ruining the operation of the company.

7 Q Who is currently assigned to this project for
8 TechDyn?

9 A At the present time, the project manager is Mr.
10 Donald Ellis. The chief engineer is Rufus Thornton. The
11 configuration manager is Mr. Edward Bell. The logistian is
12 Mr. Everett Jones. We have a draftsman and we have a
13 secretary. Those are the full-time people. Of course, we
14 have administrative support involved as required.

15 Q Are you familiar with Mr. Al Johnson?

16 A Yes, I am.

17 Q How are you familiar with him?

18 A Mr. Al Johnson is a former vice president of
19 TechDyn. I hired Al Johnson back in 1979.

20 Q And what were his duties when you hired him?

21 A I hired Al Johnson to -- he was assigned to the
22 Redbank office where we were supporting efforts at Fort
23 Monmouth at the time.

24 Q Did he ever do any work on this project?

25 A Yes, he did.

1 A No.

2 Q Who was he with?

3 A When I saw him, he was in a vehicle with Mr. Work
4 and one of his colleagues.

5 (Pause.)

6 MR. RIDDLES: I'm going to ask now that you be
7 shown Exhibit 105.

8 (Pause.)

9 BY MR. RIDDLES:

10 Q And while Mr. Boehlert is bringing that to you,
11 let me ask you this: You remember earlier, your testimony
12 concerning the options for the Alaska region and the Pacific
13 Air Force region?

14 A Yes.

15 Q Was there a date for those options?

16 A Yes. There was a specified period for the
17 options.

18 Q And was there a date when the option would expire,
19 as set forth in Exhibit 4, when you recall that?

20 A Yes.

21 Q Was that date ever extended, do you know?

22 A Yes, it was.

23 Q I now ask you to look at Exhibit 105. Can you
24 identify it, please, sir?

25 A This is a letter from Headquarters Air Force

LEO S. MORRISON, JR. - DIRECT EXAMINATION

405

1 MR. RIDDLES: Maybe we could show them to the
2 jury.

3 BY MR. RIDDLES:

4 Q What are you looking at -- 114? Task 9?

5 A Task 9 and the last cost sheet shows total tasks
6 shown at -- there are two numbers here, one is typed in and
7 one is written in. The typed one is \$159,883. The
8 handwritten number is \$139,488.

9 Q And what was the same amount for -- this is the
10 amount to the Air Force.

11 A This is the amount to the Air Force. And to
12 TechDyn, the amount was \$247,243.

13 MR. RIDDLES: Just a minute.

14 (Pause.)

15 BY MR. RIDDLES:

16 Q I think that this is fiscal year '90, is it not?
17 The one you're looking at? The \$139,488?

18 A I think you're right. Right. That's correct.
19 Under the '89. Okay.

20 Q The TechDyn proposal was for 1989.

21 A Okay. And there is only one sheet here for
22 TechDyn.

23 Q Excuse me -- what is the fiscal year?

24 A '89. For TechDyn.

25 Q Okay. Well, let's compare apples to apples. What

1 is the '89 --

2 A I hadn't noticed the distinction -- there are
3 several years here. For FY '89, the total to the Air Force
4 is \$87,594.

5 Q And what is it to the TechDyn people?

6 A The number to TechDyn for FY '89 total task is
7 \$247,243.

8 Q Are we comparing apples to apples at that point,
9 as far as you know?

10 A As far as I can tell.

11 JUDGE BROWN: I need a little break. Let's take
12 until four o'clock -- about an eight-minute break.

13 (Brief recess.)

14 BAILIFF: Remain seated and come to order.

15 JUDGE BROWN: Okay. Are we ready?

16 MR. RIDDLES: Yes, Your Honor.

17 JUDGE BROWN: Bring them in.

18 (Pause while jury is seated.)

19 JUDGE BROWN: Okay.

20 BY MR. RIDDLES:

21 Q What was the total price of Whittaker's proposal
22 to TechDyn? That's Exhibit 114.

23 A Wait a second here.

24 (Pause.)

25 Q Well, let me -- was it \$2,702,651? I think you

1 previously testified to that.

2 A Yes, I did. I just don't have that sheet in front
3 of me.

4 Q You don't have the sheet in front of you.

5 A No.

6 Q Well, let me -- do you know what it was for -- did
7 you find it?

8 A Yes. I think I have it here -- \$2,702,651.

9 Q Now, for the proposal to the Air Force,
10 Whittaker's proposal to the Air Force, what was the total
11 price there?

12 (Pause.)

13 THE WITNESS: Bear with me a second here.

14 MR. RIDDLES: Sure.

15 (Pause.)

16 MR. RIDDLES: Let's see if you can find it here.

17 (Pause.)

18 MR. RIDDLES: Hang on just one second.

19 (Pause.)

20 MR. RIDDLES: I think you add those two things.

21 JUDGE BROWN: I've been pretty liberal in letting
22 the witness testify. I think I do have to draw the line at
23 the lawyer testifying.

24 MR. RIDDLES: Thank you.

25 MR. WORK: I'll stipulate to the fact that you add

1 them both together and I'll stipulate that the number is
2 higher.

3 MR. RIDDLES: Your Honor, I'm trying to help
4 you -- you don't want my help.

5 (Laughter.)

6 MR. RIDDLES: Well, if you stipulate to it, tell
7 us what the number is and let's go on to something else.

8 MR. WORK: We believe the number is \$2.9 to the
9 Air Force and \$2.7 to TechDyn.

10 MR. RIDDLES: Okay. I accept that stipulation --
11 \$2.9 to the Air Force and \$2.7 to TechDyn.

12 BY MR. RIDDLES:

13 Q Now, we just went through all these items where
14 the price was lower to the Air Force than TechDyn. Can you
15 account for the fact that the total amount of the proposal
16 was lower to the Air Force from Whittaker?

17 A It was lower to TechDyn.

18 Q Excuse me -- lower to TechDyn.

19 A Yes. It's based on these schedules that we just
20 went through. In some cases, Whittaker was proposing
21 multiple years to the Air Force and in the same instance
22 only one year to TechDyn. So that accounted for the
23 difference in there.

24 Q In the comparisons that we were doing, were the
25 comparisons fiscal year to fiscal year?

1 A On a one-to-one fiscal year basis comparison, in
2 nearly every case, the price to the Air Force was lower than
3 the price to TechDyn.

4 Q Do you have any explanation for that?

5 A I have none.

6 Q Did Whittaker tell you when they were submitting
7 this proposal to the Air Force -- did they tell you about
8 that?

9 A I had no knowledge that they were submitting
10 proposals directly to the Air Force on our option.

11 Q I will say this: I am through with the contract
12 for today and I'm just going to ask you a question. We've
13 talked about these things -- what is that you'd like for the
14 jury to do with respect to the Alaska PACAF option?

15 MR. WORK: Objection, Your Honor. That's not a
16 proper question.

17 JUDGE BROWN: I sustain the objection, too. The
18 nature of the question.

19 BY MR. RIDDLES:

20 Q Are you seeking punitive damages as well as actual
21 damages for the --

22 MR. WORK: Object, Your Honor.

23 JUDGE BROWN: Sustained. You can't ask him what
24 he's seeking. You can ask him what damages -- or you can
25 ask him questions to elicit places where he has specific

1 losses or that kind of thing.

2 MR. RIDDLES: Thank you, Your Honor.

3 BY MR. RIDDLES:

4 Q Did you suffer losses as a result of this
5 submission of this claim from Whittaker to the Air Force?

6 JUDGE BROWN: I didn't mean that as a question
7 that you could ask him. I meant you can bring out from
8 witnesses what the figures are but you can't ask the witness
9 what they want the jury to do.

10 MR. RIDDLES: I understand that, Your Honor. But
11 may I still ask him that question?

12 JUDGE BROWN: I don't know.

13 BY MR. RIDDLES:

14 Q Did you suffer losses as a result of this?

15 A Yes, we did. As a minimum or for starters, we
16 lost the option work for which we had planned and considered
17 that we would be getting as in the instance of other options
18 that were under this contract and that were awarded to
19 TechDyn under the contract.

20 Q Now, do you know the exact amount or the number
21 that you're asking for or the losses that you've suffered or
22 is someone within TechDyn doing that?

23 A I don't have the exact number with me in my head
24 right now. There's somebody else in the company that can
25 testify to that number. But a component of that number

LEO S. MORRISON, JR. - DIRECT EXAMINATION

411

1 results from the fact that the Air Force on several -- at
2 least two occasions -- requested that TechDyn prepare a
3 Request for Proposal and directed us to utilize the directed
4 subcontractor to do this Alaska PACAF work.

5 In addition to that, TechDyn out of its own pocket
6 participated in a site survey in Alaska and in the Pacific,
7 in Hawaii, in anticipation of receiving this work. It was
8 out of our pocket. The Air Force told us up front they
9 wouldn't pay us for it.

10 MR. WORK: Object to the first part of the --

11 THE WITNESS: So that would be --

12 MR. WORK: Excuse me --

13 THE WITNESS: I'm sorry.

14 JUDGE BROWN: Object to what?

15 MR. WORK: Object to the first part of the answer.
16 the Air Force directed TechDyn to do something. If there is
17 a document indicating it, fine. Otherwise, it's hearsay.

18 MR. RIDDLES: Your Honor, I think we've seen
19 several times that there is a document in evidence where
20 they directed the subcontractor, including the prime
21 contract.

22 JUDGE BROWN: I don't think I understand the
23 objection. I don't understand the distinction between
24 written hearsay and oral hearsay. You say if there's a
25 document, it's not hearsay?

LEO S. MORRISON, JR. - DIRECT EXAMINATION

412

1 MR. WORK: If there's a document that is an
2 official record and that would be subject to an exception to
3 the hearsay rule. If it's just oral, then it's hearsay,
4 Your Honor. I've never seen such a document and, thus, I
5 assume --

6 JUDGE BROWN: On the option?

7 MR. WORK: On the expired option, I should hasten
8 to say.

9 JUDGE BROWN: Well, I understand your position on
10 that. But does the option, written option -- can you show
11 us where that directs the subcontractor and then apparently
12 his objection is withdrawn?

13 MR. RIDDLES: Yes, sir, I can.

14 JUDGE BROWN: Okay.

15 MR. RIDDLES: Can I have a minute?

16 MR. WORK: I'll just withdraw my objection.

17 JUDGE BROWN: He withdraws the objection.

18 MR. RIDDLES: Thank you. I appreciate it.

19 BY MR. RIDDLES:

20 Q Go ahead.

21 A Well, my comment was just to the fact that there
22 were substantial losses -- time and effort as well as
23 dollars in our thinking that we would get this work and we
24 approached it in that manner and we were -- I was absolutely
25 surprised to learn that Whittaker, 4C had submitted these

LEO S. MORRISON, JR. - DIRECT EXAMINATION

413

1 proposals to the Air Force. I wish somebody had told us --
2 we wouldn't have wasted our time.

3 MR. RIDDLES: Thank you, sir.

4 Pass the witness.

5 (Pause.)

6 MR. WORK: Good afternoon, Mr. Morrison.

7 THE WITNESS: Good afternoon.

8 CROSS-EXAMINATION

9 BY MR. WORK:

10 Q Is it your testimony that you lost work in Alaska
11 and Hawaii because Whittaker submitted a higher bid to the
12 Air Force than it submitted to TechDyn?

13 A That's not my testimony.

14 Q Now, sir, you're aware that with regard to the
15 PACAF work that there were two separate RFPs that stated
16 different requirements and different tasks: one that
17 TechDyn issued to Whittaker and one that the Air Force
18 issued to Whittaker, aren't you?

19 A I'm not aware of the RFP that was submitted to
20 Whittaker by the Air Force.

21 Q So all of the testimony we've just heard is based
22 simply on reading two proposals but you haven't read those
23 documents to which the proposals are responsive, have you?

24 A I read the proposal that came to TechDyn. The
25 Request for Proposal that came to TechDyn.

LEO S. MORRISON, JR. - CROSS EXAMINATION

417

1 THE WITNESS: Could I just finish reading from
2 here? "We request you resubmit the specifications on an
3 incremental basis as completed but not later than 12 March
4 1987, as stated in your January program schedule.

5 BY MR. WORK:

6 Q Isn't it a fact, Mr. Morrison, that under your
7 prime contract with the Air Force, C-specifications were not
8 due before -- final C-specifications were not due before
9 CDR, as you said, but due at PCA? Right? Isn't that what
10 your contract with the Air Force says?

11 A I don't have it in front of me here.

12 Q And so you don't know.

13 A Wait a minute. The referenced date with respect
14 to the PDR and the submission of C-level specs is as I
15 stated it and as we reflected it on the chart.

16 Q I'm not sure I know what that means, but let's go
17 on. What is PCA, incidentally?

18 A Physical configuration audit.

19 Q And PCA was just held, wasn't it? A couple of
20 months ago.

21 A Which one?

22 Q The PCA on the FOC 2 system.

23 A Of PDFA, CFA -- which one are we talking about?

24 Q The PDFA -- the PCA on the FOC 2 system. Were
25 they separate?

LEO S. MORRISON, JR. - CROSS EXAMINATION

423

1 JUDGE BROWN: Okay.

2 MR. RIDDLES: This is what he's proffered to the
3 jury.

4 JUDGE BROWN: All right. Just wait a minute until
5 we get -- Mr. Work, were you going to -- or was somebody
6 going to show me -- you were going to show me yours. This
7 is what you object to, 32?

8 MR. RIDDLES: Yes, sir. Exhibit 32.

9 (Pause.)

10 MR. RIDDLES: I would not object to him having the
11 entire quote for context and so forth, but when he has a
12 representation that's really an argument --

13 JUDGE BROWN: Do you want to respond, Mr. Work?

14 MR. WORK: Well, let me respond by asking a few
15 questions to clarify the statement.

16 JUDGE BROWN: Well, meanwhile, get 32 back from
17 the jury.

18 (Pause.)

19 BY MR. RIDDLES:

20 Q The Air Force, Mr. Morrison, in pre-contract
21 negotiations, represented the ICCE program as a
22 non-developmental item, commercial off-the-shelf project to
23 TechDyn. Is that right?

24 A If I understand the question, my response is the
25 Air Force and 4C Corporation in pre-contract discussions and

LEO S. MORRISON, JR. - CROSS EXAMINATION

424

1 meetings and throughout the pre-contract phase of this
2 project constantly told TechDyn that this was a commercial
3 off-the-shelf essentially non-developmental item
4 procurement. That's what they both represented. That's
5 correct.

6 Q Thank you. And it turned out to be something
7 different than a commercial off-the-shelf project, didn't
8 it?

9 A Well, it turned out to be an effort that wasn't
10 performed. The developmental effort largely pertained to
11 the RCE. That was laid out very explicitly in our proposal
12 to the Air Force that was jointly put together by TechDyn
13 and the 4C Corporation.

14 Q And commercial off-the-shelf talks about something
15 that is existing, proven and in use. Isn't that correct?
16 With very minimal improvement required?

17 A Commercial off-the-shelf means that it's generally
18 available. You can go out and buy it. You can buy
19 something that's tangible. It doesn't mean that it
20 satisfies the requirement that you want to use it in
21 application for.

22 MR. WORK: With that said, Your Honor, may I give
23 this chart back to the jury to help its understanding of the
24 testimony?

25 JUDGE BROWN: No, I think chart puts your

LEO S. MORRISON, JR. - CROSS EXAMINATION

425

1 particular spin on the items and goes further than stating
2 what the documents say as an aid. You used the word
3 misrepresentation.

4 MR. WORK: Well, we'll get to that, Your Honor.

5 JUDGE BROWN: And that's --

6 MR. WORK: I think that's what Mr. Morrison said.

7 JUDGE BROWN: Well, then Mr. Morrison can testify
8 to it and you can put your argument on. But I think to give
9 the jury a document that has that kind of spin on it --

10 MR. WORK: All right. We can proceed with out it.

11 JUDGE BROWN: -- is not the same thing as what's
12 been done so far.

13 MR. WORK: Mr. Morrison, would you turn to page
14 22?

15 MR. RIDDLES: Excuse me.

16 (Pause.)

17 BY MR. WORK:

18 Q Do you see it? This is your February 10, 1987
19 claim.

20 A I have it right here.

21 Q There in the middle of the page, do you see the
22 sentence starting with "Another aspect"?

23 A Yes.

24 Q And I'll read it and you follow along with me.
25 "Another aspect of factfinding negotiations which was

1 extremely misleading to TechDyn on the part on the part of
2 the Air Force was the failure to fully disclose to TechDyn
3 the priority nature of the PDFA RADIL software development
4 aspect of the ICCE project, that the emphasis which the Air
5 Force would place on the software development function of
6 the project --" do you see that language?

7 A That's correct.

8 Q Did you certify to that language, sir?

9 A Yes, I did. I certified to everything in my
10 claim.

11 Q Okay. Then will you turn, please, to page 18?

12 THE WITNESS: Could I explain that?

13 MR. WORK: There's not a pending question.

14 THE WITNESS: All right. Fine. Eighteen?

15 MR. WORK: Page 18.

16 BY MR. WORK:

17 Q About one-third down the middle of the page, do
18 you see the words, the sentence starting with "It was
19 extremely"? Do you see that? Do you see the sentence?

20 A Starting -- oh, yes. I see the sentence.

21 Q I'll read it to you.

22 A Yes. I see it.

23 Q "It was extremely important to TechDyn's
24 requirements analysis for contract staffing and subsequent
25 decisionmaking that essentially acceptable software

LEO S. MORRISON, JR. - CROSS EXAMINATION

427

1 associated with the RADIL existed and with relatively minor
2 modification would satisfy the ICCE project requirements."

3 Do you see that, sir?

4 A Yes, I do.

5 Q And did you certify to that?

6 A Sure, I did.

7 Q And the ICCE project requirements you refer to in
8 that sentence are the requirements of the Air Force. Is
9 that right?

10 A Yes.

11 Q Now, please, turn to page --

12 THE WITNESS: As promulgated by the Air Force.
13 That's correct.

14 BY MR. WORK:

15 Q Would you turn, please, to page 16. Excuse -- 14,
16 right at the bottom, the sentence starting with "TechDyn
17 asserts"?

18 A Yes.

19 Q "TechDyn asserts that during factfinding and
20 negotiating sessions with the Air Force after certain
21 specific descoping actions had been effected and in order to
22 reduce further the costs to a level within budgetary assets,
23 the Air Force did in fact cause the contractor, TechDyn
24 Systems, to make arbitrary and unreasonable cuts in its cost
25 proposal. TechDyn asserts that on 28 May 1985 it submitted

LEO S. MORRISON, JR. - CROSS EXAMINATION

428

1 its initial response to the RFP in the amount of
2 \$33,178,659. From 28 May 1985 to 30 August 1985, the
3 proposal was incrementally and substantially reduced by
4 factfinding sessions to the final negotiated contract of
5 \$10,411,875." Do you see that?

6 A Yes.

7 Q Did you certify to that?

8 A Yes.

9 MR. RIDDLES: Your Honor, he's already testified
10 he certified to everything in it.

11 JUDGE BROWN: He certified to everything so you
12 don't have to ask him each time whether he certified it.

13 BY MR. WORK:

14 Q And then turn, please, to the bottom of page 16.
15 Do you see the sentence that starts with "In addition"?

16 A Yes.

17 Q "In addition, the overall management capability of
18 TechDyn was by such action seriously impaired, if not
19 essentially eliminated." Did I read that correctly?

20 A Yes.

21 Q And then over on the top of the next page, the
22 first words on the page, "After the contract award"? Do you
23 see that?

24 A Yes.

25 Q "After the contract award, the Air Force, however,

LEO S. MORRISON, JR. - CROSS EXAMINATION

429

1 has demanded of TechDyn a management oversight
2 responsibility that was not envisioned by either party
3 during the descoping and factfinding reduction phase that
4 led to contract definitization." Did I read that correctly?

5 A Yes.

6 Q Page 19, please. Right at the top of the page.
7 "At the provisioning guidance conference conducted by the
8 Air Force on 19-20 November 1985, the Government took a
9 position with regard to the level of provisioning which has
10 not been accepted by either TechDyn or its subcontractor as
11 being in accordance with contract negotiations." Did I read
12 that right?

13 A Yes.

14 Q And provisioning is basically laying a foundation
15 for maintaining the system once it's fielded, isn't it?

16 A Do you want me to define it -- provisioning?

17 Q Did I correctly define?

18 A It's not what you said. No, it's not what you
19 said. That's not the definition of provisioning.

20 Q All right. What is provisioning, sir?

21 A Provisioning is the process whereby you examine or
22 analyze the system in question and make an assessment as to
23 what kind of logistical supply system has to be set up in
24 terms of spare parts and other allowances that are needed
25 for the operation and support of the system.

LEO S. MORRISON, JR. - CROSS EXAMINATION

430

1 Q For the maintenance of the system in the field,
2 once the system has been installed. Is that correct?

3 A It is a support mechanism -- yes. Behind the
4 system, once it's fielded.

5 Q Okay. Now, sir, would you please turn to page 26
6 of your claim of February 10, 1987.

7 (Pause.)

8 MR. WORK: Your Honor, I'm going to use, if I may,
9 the chart that I used in my opening statement to help orient
10 the jury as to when some of these things are taking place.

11 JUDGE BROWN: All right.

12 BY MR. WORK:

13 Q And do you see about two-thirds of the way down,
14 page 26, sir, the sentence that starts with "The delay in
15 fielding"? Do you see that?

16 A Yes.

17 Q "The delay in fielding the modified DTS will
18 directly impact the finalization of the hardware allocated
19 baseline and the conduct of requisite in-plant testing,
20 training and provisioning activities necessary to achieve a
21 final operating capability (FOC) system."

22 A That's correct.

23 Q Did I read that correctly?

24 A Yes.

25 Q And the DTS stands for data terminal set.

LEO S. MORRISON, JR. - CROSS EXAMINATION

431

1 A That's correct.

2 Q And the DTS was to be Government-furnished
3 equipment in this project.

4 A That's correct.

5 Q That's purchased by -- GFE equipment. Is that
6 correct?

7 A Yes, but with qualifications. It was GFE to be
8 purchased by the 4C Corporation.

9 Q It was to be supplied by the Government, is that
-10 correct?

11 A It was to be purchased by the 4C Corporation.

12 Q And that delay in providing the data terminal set
13 extended from the effective date of your contract, which was
14 August 30, 1985, all the way out into mid-1987, didn't it,
15 sir?

16 A That was the final modified DTS. I can't testify
17 as to the exact date from the date I have available to me
18 but that was -- we had other DTSs that were in use.

19 Q And that delivery date of the DTS was well beyond
20 the original contract date in your prime contract with the
21 Government, wasn't it?

22 A I don't know. I don't have any data available to
23 me.

24 Q I heard you testify earlier today, sir, that the
25 original contract completion date under your contract was

LEO S. MORRISON, JR. - CROSS EXAMINATION

432

1 when? What did you say to the jury?

2 A The end of December 1966.

3 Q 1986.

4 A I'm sorry -- 1986.

5 Q And you didn't even get the DTS from the
6 Government until mid-1987. Isn't that right?

7 A I can't testify to that.

8 MR. RIDDLES: I object to that. He's answered
9 three times that he doesn't know because he doesn't have the
10 data in front of him. All he has is the chart.

11 JUDGE BROWN: His answer was he couldn't say, so
12 the objection is the same as his answer.

13 BY MR. WORK:

14 Q So when you certified this statement concerning
15 the DTS in your claim, you didn't know when the DTS was
16 available?

17 A At the time, I did. When I certified this
18 document.

19 Q Well, it hadn't been made available at the time
20 you certified this document, had it?

21 A What had not been made available?

22 Q The DTS -- the modified DTS which was Government
23 furnished equipment.

24 A The DTS -- that's correct. It had not been at the
25 time.

LEO S. MORRISON, JR. - CROSS EXAMINATION

433

1 Q Thank you. Turn to page 17 of your claim of
2 February 19, '87. In here you are describing in the middle
3 of the page the sentence that states "it must be" -- do you
4 see that?

5 A Yes.

6 Q "It must be noted that although a reduction of
7 \$10,209,920. was affected during the fact finding
8 negotiation process, at the time the contract was signed on
9 30, August, 1985, no revisions to the statement of work or
10 technical specifications had been made except as related to
11 the option CLINS to effect or recognize that descoping
12 actions. The contractor submitted to the contracting
13 officer on 14 February, 1986 an ECP309-2 Systems
14 Specification Update to reflect negotiations which TechDyn
15 requested be processed on an urgent basis in order to bring
16 the technical requirements of the contract in line with
17 contract negotiations." Did I read that accurately, sir?

18 A Yes.

19 Q And so, the thrust of this testimony is that when
20 you descoped this project in the period after May 30, 1985
21 and up until the contract effective date of 30, August,
22 1985, you went down from \$33.8 million to \$10.4 million on
23 the assumption that there would be a change in the contract
24 and that you tried to effect that assumption by submitting
25 ECP309-2, is that correct?

LEO S. MORRISON, JR. - CROSS EXAMINATION

434

1 A No, that is not the only assumption it's based on.

2 Q Well, is what I stated correct, sir and you can
3 add to it?

4 A Would you restate what you said, I couldn't follow
5 it.

6 Q You expected, when you signed the basic Mod 3 or
7 FOC contract for the FOC system, that the negotiations which
8 led to a reduction of \$23 million dollars from \$33 to \$10,
9 would ultimately be reflected in a changed contract between
10 TechDyn and the Air Force, isn't that correct?

11 A Yes, in some fashion.

12 Q Thank you. But that never happened?

13 A I can't say it never happened. It hadn't happened
14 at this particular point in time.

15 Q Do you know whether it ever happened?

16 A Yeah, there were changes, there were adjustments.
17 There were reactions from the Air Force, yes to reflect
18 this.

19 Q And did the descoping of \$23 million dollars out
20 of this contract between May and August of 1985 ever get
21 fully reflected in your contract with the Air Force?

22 A I can't answer that question. I can talk to you
23 about descoping and what was involved in it if you want
24 that.

25 Q Why can't you answer my question, sir, because you

LEO S. MORRISON, JR. - CROSS EXAMINATION

437

1 A I didn't say we claimed \$1.7 in the first claim.
2 That's not what we claimed.

3 Q What is your recollection? How much did you claim
4 in your first claim, sir?

5 A There were various figures. The amount that we
6 recovered was \$1.7.

7 Q Sir, I am asking you in the 01 basic claim that we
8 just --

9 A I'd have to find it here to find out what we did
10 ask for. I don't remember the numbers.

11 Q You don't -- do you have a ball park?

12 A No, I don't. I'd have to find it.

13 Q Was it above \$5 million?

14 MR. RIDDLES: Objection, Your Honor. He has
15 testified that he doesn't know --

16 JUDGE BROWN: I sustain the objection. There is
17 no point in asking him if he doesn't know.

18 BY MR. WORK:

19 Q Well look at page 2 of your basic 01 claim, sir,
20 and see if you can find a figure.

21 A The total amount of the initial claim was
22 \$1,654,044 million, \$1.65 million.

23 Q What was the amount of REV1 to that 01 claim, sir,
24 that you certified on May 18, 1987 to the Air Force?

25 A What tab is that behind? I went back to the front

LEO S. MORRISON, JR. - CROSS EXAMINATION

438

1 and I'll have to find it again.

2 Q You have before you the REV1 version of your 01
3 claim against the Air Force, sir?

4 A Yes.

5 Q And how much did you claim in that REV 1 version
6 against the Air Force?

7 A The total amount -- to the amount of \$6.670,468
8 million.

9 Q And you certified to that --

10 A Provisioning price is based on 10,000 piece parts.

11 Q And you certified to that amount, is that correct?

12 A Yes.

13 Q And the parenthetical relating to provisioning
14 reflects the fact that you are now putting in additional
15 money for provisioning is that correct, that you hadn't
16 included in the first?

17 A That is correct due to the fact that we had been
18 told initially not to include provisioning in the first
19 submission.

20 Q So the difference between \$1.6 and \$6.6 or \$1.7
21 and \$6.6 related to provisioning, is that correct, sir?

22 A I'm not certain that that was the only component
23 of that increase.

24 Q What other components were there?

25 A I don't know. I'd have to study the document to

LEO S. MORRISON, JR. - CROSS EXAMINATION

446

1 Q I thought we could start out by following up a
2 little bit on some of your testimony of yesterday. I have
3 the transcript and I'd be happy to have you follow along
4 with me as I read it, starting at page 368, line 14. Do you
5 see that?

6 MR. RIDDLES: Your Honor, this is irregular. I
7 don't have a copy of this transcript.

8 JUDGE BROWN: What are you doing?

9 MR. WORK: I'm just going to focus on some
10 testimony that he gave yesterday.

11 JUDGE BROWN: Well, I ask you not to repeat the
12 testimony he gave yesterday. Let's move the case on to
13 another point. Don't repeat what was done yesterday.

14 MR. WORK: All right.

15 (Pause.)

16 BY MR. WORK:

17 Q Just to orient you, Mr. Morrison, you testified
18 that throughout the program -- and just to orient you, I'll
19 quote from some of your testimony just a brief bit. "They
20 had meetings there, they had meetings at Shaw Air Force
21 Base. They had meetings at Sacramento. We've been jerked
22 all over the place over all these years, trying to be
23 responsive to the Air Force."

24 Now, my question, sir, how long did that being
25 jerked around by the Air Force in this program continue?

LEO S. MORRISON, JR. - CROSS EXAMINATION

447

1 Was it throughout the program or for just some period of it?

2 A Well, the characterization "jerked around" was
3 perhaps ill-advised. I'd like to say that we were required
4 to -- an in effort to try to be responsive, we had to react
5 to what was developing on the project. And that development
6 was basically a non-performance. And when you don't
7 perform, the Air Force looked at us as the guys who were
8 supposed to get the thing going, keep it going and we did
9 everything we could do that. We attended meetings all over
10 the country in an effort to try to do that.

11 Q And that continued throughout the program?

12 A Shortly after the program started, yes.

13 Q And it continued to?

14 A It continued to this day.

15 Q Okay. And the kinds of costs that were involved
16 in that to TechDyn were manpower costs, costs of time?

17 A People hour costs, travel time.

18 Q Consultant costs?

19 A Costs with respect to not being able to do our
20 primary duties.

21 Q Consultant costs?

22 A Perhaps in some cases.

23 Q Other direct costs?

24 A Other direct costs, yes.

25 Q Okay. Now, sir, as I recall your testimony

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0255

LEO S. MORRISON, JR. - CROSS EXAMINATION

450

1 essentially eliminated." Do you see that?

2 A Yes.

3 Q And that was part of what you took out of the
4 original \$33.8 million to get down to the \$10.4 million. IS
5 that correct?

6 A That's correct.

7 Q On the expectation that the Air Force would not
8 insist on the active management role that you encountered as
9 the program proceeded. Is that correct?

10 A Not exactly. The active management role obviously
11 was to go forward but the question was what would be managed
12 and how would it be managed and by whom.

13 Q Okay. But part of what you took out of the \$33
14 was management time. Is that correct?

15 A Part of it was management time. We never expected
16 management to go away completely.

17 Q And then after you signed the contract, you
18 submitted an ECP to try to adjust the contract, the prime
19 contract statement of work and the specification to reflect
20 the downsizing of the contract. Is that right?

21 A That's correct.

22 Q And that was ECP 309-2. Is that correct?

23 A That's correct.

24 Q Thank you. Now, let's go back to the claim, what
25 we referring to yesterday as the 01 claim with its original

LEO S. MORRISON, JR. - CROSS EXAMINATION

451

1 basic 01 claim of February '87, revision 1 of May '87 and
2 revision 2 of July '87. Is that right?

3 A That's correct.

4 Q And you remember discussing that yesterday?

5 A Yes.

6 Q And that claim, I gather, sir, was based on a
7 theory that TechDyn had a right to be compensated for
8 constructive changes -- that is, an expansion of the work
9 from what you had expected to perform at the time you signed
10 the contract. Is that correct?

11 A No, we didn't talk very much about an expansion of
12 services to be performed. We talked largely about the lack
13 of performance of the directed subcontract and the spinoff
14 effects of that that resulted in the schedule stretch out
15 and the attendant cost escalations.

16 Q Well, I won't go back over what you said in your
17 claim. I think we dealt with that in some detail yesterday.
18 My question, sir, was not the specifics but the concept, the
19 theory of the claim was that the Air Force was asking
20 TechDyn to do more work than it anticipated and asking to be
21 compensated for that. Is that correct?

22 A That is not correct. That was not the theory.
23 The theory was based primarily on the lack of performance of
24 the directed subcontractor that had been sold to us and
25 directed to us and that had indicated to us they could

LEO S. MORRISON, JR. - CROSS EXAMINATION

452

1 perform. As a result of the lack of performance, there were
2 spinoff effects that resulted in additional costs and we
3 thought there should be an adjustment.

4 Q More management time and that sort of thing.
5 Right?

6 A More time in trying to remedy the problems that
7 were resulting, to review the things that were submitted
8 time and time again that were not anticipated, attending
9 redline sessions, tests that didn't pass that had to be
10 redone, deadlines that weren't met. Those kinds of things
11 resulted in additional costs.

12 Q Okay. And you had performed this additional work
13 and incurred this additional cost prior to the Air Force's
14 issuance of any formal contract modification. Is that
15 right?

16 A The incurrence actually was on an incremental
17 continuing kind of basis, so it began before and continued
18 through and after the modification. It continued throughout
19 the duration of this contract.

20 Q Okay. And ultimately after some of this
21 additional work had been performed and additional costs had
22 been incurred, you submitted a claim to the Air Force which
23 you certified, asking to be compensated for the additional
24 time and additional money that you had spent. Is that
25 right?

LEO S. MORRISON, JR. - CROSS EXAMINATION

453

1 A That's correct.

2 Q And that is what's known as a constructive change,
3 isn't it?

4 MR. RIDDLES: Objection. Calls for a legal
5 conclusion. The witness has not testified to that. In
6 fact, he's already asked and answered that question. The
7 witness answered it in the negative.

8 JUDGE BROWN: I'll overrule the objection.

9 BY MR. WORK:

10 Q You remember the deposition --

11 JUDGE BROWN: Let him answer. He hasn't answered
12 the question yet.

13 MR. WORK: Excuse me. Thank you.

14 THE WITNESS: Would you restate the question,
15 please?

16 MR. WORK: Certainly.

17 BY MR. WORK:

18 Q You know what the term "constructive change"
19 means, don't you?

20 A I'm not certain what "constructive change". There
21 are various representations of that. I don't know what
22 interpretation you have in mind.

23 Q Who is Chris Ripper?

24 A Chris Ripper is an employee of the Barrington
25 Group. It's a consulting group that does expert work in

LEO S. MORRISON, JR. - CROSS EXAMINATION

458

1 to --

2 A No, I can't.

3 Q You have no idea.

4 A No. I have no idea. There were several, too many
5 changes. I don't know.

6 Q Okay. Now, sir, what was P00036? That's P00036.

7 A I don't know just sitting here what P00036 was but
8 I can tell you what P000s are in general.

9 Q Okay.

10 A P000 was the symbology -- or triple 0s, P and
11 three 0s, followed by three 0s and then some number: 1, 2,
12 3 sequentially number. But in the process of changing a
13 contract, it takes place formally. It can start with an
14 engineering change proposal and there's a specific procedure
15 for doing that covered by MIL standard 483 or it can be done
16 by a technical change proposal, TCP, which is also provided
17 for by the MIL standard. Once you have agreement by all the
18 parties concerned to these engineering change proposals or
19 the technical change proposals, all parties sign off on the
20 change proposal formally. Then the customer, in this case,
21 the Air Force, issues a supplemental agreement to the
22 contract and this supplemental agreement is normally
23 designated as a P000. So it would be P0001, P0002 and so
24 forth.

25 Q So it's a formal modification to the agreement.

LEO S. MORRISON, JR. - CROSS EXAMINATION

461

1 A Yes, it's designated as P00036. I was just trying
2 to see if it was complete. Yes, this appears to be the
3 modification, the P00, yes.

4 Q Now, would you turn over to page 3 of that
5 document, sir?

6 A Okay.

7 Q And do you see there a section entitled "Release
8 of Claim"?

9 A Very familiar with it, yes.

10 Q And that states that the settlement that you were
11 entering into with the Air Force was based on events and
12 causes that occurred prior to August 10, 1987. Is that
13 right?

14 A That's correct.

15 Q And it didn't cover any clauses after August 10,
16 1987, is that right?

17 A That's correct.

18 Q Let me move this back so you can see.

19 MR. WORK: Your Honor, may I publish copies of
20 this to the jury? This is one of the documents we referred
21 to in the --

22 JUDGE BROWN: If you can show it, you can publish
23 it, yes.

24 MR. WORK: All right, thank you.

25 Could you do that, please?

LEO S. MORRISON, JR. - CROSS EXAMINATION

462

1 MR. RIDDLES: Your Honor, I renew my objection to
2 this. I know the cat's out of the bag. The jury saw it in
3 open sight and otherwise, but my objection to it as a
4 demonstrative aid, again, for the same reason that the other
5 document. It has the Whittaker spin on interpretation and
6 is not calculated to lead to this witness's testimony.

7 JUDGE BROWN: I don't think it has the same kind
8 of spin as the other one did, and it has been shown in the
9 opening statement. It was shown one time yesterday. I have
10 told the jury, to tell them again, if the evidence doesn't
11 support this, it doesn't mean a thing. It's an aid to you
12 in understanding testimony and it's not evidence in the
13 cases.

14 THE WITNESS: Excuse me. With respect to the
15 last question you asked me, the answer was really incomplete
16 as I refreshed myself in reading. You asked me were any
17 amounts to be allowed post 10 August 1987.

18 MR. WORK: No, I understand. Let me rephrase the
19 question just so we have a clear record on this.

20 THE WITNESS: Okay, rephrase it and straighten it
21 out.

22 BY MR. WORK:

23 Q My question, sir, was that the settlement of our
24 01 claim and revisions --

25 A Yes.

LEO S. MORRISON, JR. - CROSS EXAMINATION

463

1 Q -- was based on causes and events that took place
2 exclusively prior to 10 August 1987. Is that correct?

3 A Prior to?

4 Q Prior to 10 August of 1987.

5 A The sum that was based on that, yes, those events
6 prior to 10 August.

7 Q Okay.

8 A But you asked also, you know, were any provisions
9 for after, could anything be claimed after that date.

10 Q I will ask you that, but I didn't.

11 A Okay.

12 Q So that would take us out to August of 1987 and
13 claim 01 simply dealt with causes from the inception of your
14 prime contract in August of 1985, out to August of 1987. Is
15 that correct?

16 A State that again because I think there is a
17 difference here.

18 Q The settlement of the TechDyn's 01 claim against
19 the Air Force --

20 A Yes.

21 Q -- encompassed events that occurred exclusively
22 between August of 1985 and August of 1987. Is that right?

23 A Not -- not technically correct. The difference is
24 this.

25 The claim was prepared in the fall of 1986. It

LEO S. MORRISON, JR. - CROSS EXAMINATION

464

1 was completed actually, in terms of cutoff point in time, in
2 terms of activities occurring, some time around 31 October.
3 When we finally got the claim into final format and
4 submitted it, it had a date of 10 February 1987.

5 Now, when we -- so, therefore, there was a period
6 of time between October and February that weren't included,
7 all right. When we settled the claim with the Air Force and
8 it took considerable negotiation, the Air Force settled on a
9 date -- the Air Force and TechDyn -- of 10 August 1987. A
10 major problem we had in coming to terms was agreeing on that
11 date.

12 What the Air Force had originally wanted us to do
13 was to allow them as much time as they wanted to settle the
14 claim and then say the date of the settlement of the claim
15 would be the date of the release of claims, which we thought
16 was unfair, and the Air Force finally agreed.

17 Q May I just read the language of the release clause
18 in --

19 A Yes.

20 Q -- the formal modification of the contract, sir?
21 And follow along with me, if you will.

22 "In consideration hereof the contract releases and
23 forever discharges the Government from any and all claims,
24 disputes, breaches of contract or other liability arising
25 under or relating to this contract based upon any legal or

LEO S. MORRISON, JR. - CROSS EXAMINATION

465

1 equitable theory known or unknown which existed in fact
2 prior to 10 August of 1987, or based upon any cause which
3 the contractor approved or may have approved prior to 10
4 August of 1987."

5 A That's correct.

6 Q Did I read that correctly, sir?

7 A That's the right reading of it, yes.

8 Q Now, there were certain exceptions stated in the
9 release clause to the statement that the claim included all
10 causes that occurred prior to 1987, weren't there?

11 A That's correct.

12 Q And one of those exceptions was the issue of
13 provisioning which we talked about yesterday, wasn't it?

14 A That's correct.

15 Q And you had mentioned, I believe yesterday in your
16 testimony, sir, that when you made your first revision to
17 the 01 claim and increased the claim price or the claimed
18 amount from 1.6 plus million to 6.6 million, that a large
19 component of that increase represented increased costs and
20 added work in the provisioning area. Is that right?

21 A I think I represented it as a significant
22 component. I didn't know what the numbers were without
23 looking at the spreadsheet calculations.

24 Q And that was accepted from the release because at
25 the time you entered into this agreement with the Air Force

LEO S. MORRISON, JR. - CROSS EXAMINATION

466

1 you didn't really know what your ongoing added provisioning
2 costs would be, and you wanted to wait to find out before
3 you included that in the settlement, didn't you?

4 A That was true, because the provisioning process
5 had not run its course.

6 Q So you haven't been paid yet by the Air Force for
7 the amounts of added work and added cost that you claimed in
8 your 01 claim. Is that right?

9 A We weren't paid in the settlement.

10 Q And you haven't been paid yet, have you?

11 A I'm not certain of that.

12 Q And how much cost have you incurred over the years
13 in the provisioning area that wasn't contemplated at the
14 start of the contract that represented an expansion of the
15 contract?

16 A I don't know the answer to that.

17 Q Can you give me a ball park?

18 A No, I can't.

19 Q Is it several millions?

20 A I don't know.

21 Q Well, the difference between 1.6 and 6.6 is 5.
22 You said it was a substantia portion of that.

23 A I stated you have to look at the spreadsheet to
24 determine what the components of that delta were, what the
25 components were. I don't know what they were sitting here,

LEO S. MORRISON, JR. - CROSS EXAMINATION

467

1 and I don't know what percentage of it was provisioning. I
2 don't know what percentage of it was due to other reasons.

3 But you understand that revisions are done to
4 reflect changes, and I don't know how to characterize those
5 changes sitting here.

6 Q Okay, fair enough.

7 Now, sir, there were other exceptions to what was
8 covered by the release weren't there, other than
9 provisioning?

10 A Yes.

11 Q One of the additional exceptions was that the
12 amount paid to you didn't include the cost of preparing and
13 negotiating the claim. Is that right?

14 A Doesn't sound right. Just one minute. I can
15 respond to that.

16 Q Are you reading from the release form, sir?

17 A Yes.

18 (Pause.)

19 Yes, that's correct. It appears to be, yes.

20 Q Okay, and normally when you file a claim like this
21 and the Government agrees that it's expanded your work, you
22 are entitled to collect the costs of preparing the claim and
23 negotiating the claim, aren't you?

24 A Well, I don't agree with the characterization of
25 expanded the work, because that was not the basis of the

LEO S. MORRISON, JR. - CROSS EXAMINATION

468

1 claim.

2 Q Let me strike that question then and ask another
3 one.

4 Normally, when you prepare any kind of a plan
5 based on increased cost --

6 A Yes.

7 Q -- in the government procurement arena, and you've
8 filed such claims before, haven't you, you're entitled
9 to --

10 A No, this is our first -- well, we've filed claims.

11 Q Sure.

12 A I don't know whether this is the first or second
13 or third or where it was in it, but not many.

14 Q Normally you're entitled to collect the cost of
15 preparing and negotiating the claim, aren't you?

16 A Yes.

17 Q Yes.

18 A Yes.

19 Q And the reason that you accepted that item from
20 the settlement of 1.7 is that you really hadn't been able to
21 tell yet what all the costs of negotiation and claim
22 preparation were as of the time of the settlement. Is that
23 right?

24 A No, I don't agree with that.

25 Q Well, why was it accepted then, sir?

LEO S. MORRISON, JR. - CROSS EXAMINATION

469

1 A Well, this is the Air Force's expression here.
2 The Air Force drafted this. We agreed to it.

3 Now, please understand that this settlement was
4 arrived at in 1989. This project started in 1985. We had
5 received no adjustment. We were -- we had overrun the
6 budget as it were because of the stretch out in schedule.
7 This job was to have been over many, many months earlier.

8 So at this time it took this long to come to some
9 agreement. We finally settled.

10 Q And you settled when, sir?

11 A The settlement, I believe without having it in
12 front of me, I think it was March '89.

13 Q And you don't recall coming to an agreement with
14 the Air Force on the amount that it would pay you until
15 March of '89, sir?

16 A I don't -- we did not have a settlement with the
17 Air Force until March of '89.

18 Q You don't recall anything prior to that time?

19 A A settlement?

20 Q Right.

21 A Well, a settlement includes the whole provision.
22 It's more than cost. A settlement, a very important
23 provision there or aspect is the release of claims date
24 which is extremely significant.

25 Q You settled ---

LEO S. MORRISON, JR. - CROSS EXAMINATION

470

1 A As I indicated earlier, it took us some time to
2 arrive at that date.

3 Q When did you settle on the amount, sir?

4 A I don't know when we settled on an amount. We had
5 numerous -- we had as many as 15 to 20 meetings on the claim
6 and various offers were made and discussions were had.

7 No, I don't consider an agreement until we have a
8 final signed settlement.

9 Q Okay.

10 A And that was in March of '89. Anything prior to
11 that to me is negotiation.

12 Q Can you tell me in what year you reached agreement
13 with the Air Force as to the amount of this claim? Just the
14 year, not a specific date, just the year.

15 A The amount of the claim?

16 Q Right.

17 A The amount --

18 Q The amount the Air Force would pay you.

19 MR. RIDDLES: I object to the question because
20 it's asked and answered. He's testified two or three times
21 that he did not know.

22 MR. WORK: I'm just asking him for a year. If he
23 remembers even the year.

24 JUDGE BROWN: If you know the year, tell us. If
25 you don't, I'm going to let him ask you again.

LEO S. MORRISON, JR. - CROSS EXAMINATION

471

1 THE WITNESS: What's the question then?

2 BY MR. WORK:

3 Q Do you remember when you reached an oral agreement
4 with the Air Force, what year in which you reached an oral
5 agreement with the Air Force as to the amount the Air Force
6 would pay you in added compensation for your 01 claim?

7 A I don't know.

8 Q You don't have any idea?

9 A No.

10 Q Okay. Now, there was another exception to the
11 amount covered by the 01 claim settlement, wasn't there?

12 A Yes.

13 Q And I will just read that so we get the language
14 correct.

15 "Provided further, however, that any claims based
16 upon legal or equitable theory and any amounts related
17 thereto set forth in a Whittaker Electronic System claim are
18 specifically accepted from this release and only to the
19 extent that WES is the real party in interest regarding such
20 matters both as to entitlement and amount."

21 That was an exception, too, wasn't it?

22 A That's correct.

23 Q So the amount didn't include any monies for you to
24 flow down to Whittaker. Is that right?

25 A Not necessarily. The claim -- TechDyn, in its

LEO S. MORRISON, JR. - CROSS EXAMINATION

472

1 discretion, could do what it wanted with that settlement
2 money, all right. If we desired to deal with Whittaker on
3 the matter, we could have. The claim had no provision for
4 that. The claim was saying -- that exception was to say and
5 it was known at the time that Whittaker was in the process
6 of filing its own claim.

7 Q The release says what it says. Didn't I read it
8 correctly?

9 A Well, yes, but you characterized it differently
10 later. And I'm saying that what it said was that the claim
11 that WES was preparing, which would normally be flowed up
12 through TechDyn, was accepted, in other words. And if that
13 claim covered a period prior to 10 August 1987, that was the
14 exception.

15 A Okay.

16 Q Now, sir, you say that you reached a formal
17 agreement on a formal contract modification with regard to
18 your 01 claim in March of '89 and covering only costs, added
19 costs up until August of '87. Is that right?

20 A That's right, except that the claim was submitted
21 as claimed with revision one and revision two.

22 Q Right.

23 A All right, so all of that package represents the
24 claim.

25 Q Right.

LEO S. MORRISON, JR. - CROSS EXAMINATION

473

1 A It's not just revision one.

2 Q Now, four months --

3 A Or 01.

4 Q Four months after you signed that formal contract
5 modification, do you recall initiating an effort to prepare
6 a second claim against the Air Force based on added cost you
7 incurred in the course of this program?

8 A I don't recall that.

9 Q No recollection at all?

10 A Well, we discussed -- you know, when you have
11 recent claims date and you are still in a situation where
12 there have been no changes essentially, that the
13 subcontractor was still not performing, then therefore we
14 had to consider, and we discussed this off' and on, the
15 possibility of filing another claim. Thus the requirement
16 for establishing a point in time for which -- since the
17 contract wasn't ended had there been a co-terminus of the
18 contract performance with that settlement, there wouldn't
19 have been a requirement for further consideration.

20 Q Okay, and that --

21 A And please understand. Please understand that
22 this was 1989, March, and the cutoff time was 10 August '87.
23 So, yes, it's natural to consider what happens after that.
24 You know, we had a year plus of additional expenses of the
25 same general nature that had accumulated.

LEO S. MORRISON, JR. - CROSS EXAMINATION

474

1 Q So do you have a recollection, sir, at the end of
2 '87 or beginning of '88, setting up a charge number, an
3 accounting charge number to collect additional costs for
4 added work to be claimed against the Air Force?

5 A I didn't set that up.

6 Q Do you have a recollection of it?

7 A But there may have been -- it may have been set up
8 and it would have been quite logical to do so inasmuch as we
9 were in this ongoing operation and that we had to be
10 prepared.

11 Q Okay. All I'm asking you, sir, is do you know
12 whether or not it was set up.

13 (Pause off the record for fire alarm.)

14 MR. WORK: Mr. Morrison, I'm going to hand you a
15 copy of a document that we had marked as Defendant's Exhibit
16 46A. It's a memorandum from Mr. William C. Hise to Don
17 Ellis and Max Rosen dated 24 July 1989.

18 BY MR. WORK:

19 Q Mr. Hise is your Vice President for Finance and
20 Administration. Is that correct?

21 A His specific title is Director of Management
22 Support Operations, but it includes those functions.

23 Q And he is a vice president of the company?

24 A Yes, he is.

25 Q He's number two in the company under you?

LEO S. MORRISON, JR. - CROSS EXAMINATION

475

1 A He's a vice president. Yes. He's my main
2 management support operations guy. Yes.

3 Q And Max Rosen at the time of this memorandum, July
4 24, 1989 was the contract administrator assigned to the ICCE
5 program?

6 A In 1989 -- I think -- yes. It was Max Rosen at
7 that time.

8 Q And Don Ellis, the second recipient of the memo,
9 was the ICCE program manager at the time of this memo. Is
10 that correct?

11 A That's correct.

12 Q And the subject of this memo is, and it's stated
13 as follows: "Second ICCE claim preparation schedule". Do
14 you see that?

15 A That's correct.

16 Q Let me just read and you follow along, please.

17 A Okay.

18 Q In the first paragraph?

19 A Right.

20 Q "Modification 36 --" modification P00036.

21 A Yes.

22 MR. RIDDLES: Objection, Your Honor. He's reading
23 a document that's not in evidence.

24 JUDGE BROWN: I sustain the objection. If you
25 want to admit it, you can read from it.

LEO S. MORRISON, JR. - CROSS EXAMINATION

476

1 MR. WORK: All right.

2 BY MR. WORK:

3 Q Now, does this document, sir, refresh your
4 recollection that four months after you signed the formal
5 modification to the contract covering costs up until August
6 of 1987, you began preparation of a second claim, an 03
7 claim, against the Air Force. Is that right?

8 A Yes. We positioned ourselves to collect data for
9 a second claim if we chose to submit or file such a claim.
10 Yes.

11 Q Well, in fact, sir, didn't you position yourself
12 to collect data for a second claim against the Air Force
13 back in January of 1988 and this was simply the initiation
14 of a formal claim preparation effort in July of '88? Isn't
15 that right?

16 A I don't understand the reference to January of
17 '89.

18 Q Would you read the second paragraph of this
19 memorandum, sir, to yourself and see if it refreshes your
20 recollection as to whether TechDyn began collecting costs
21 for a second claim against the Air Force in January of 1988?

22 A Yes. That's correct. Yes.

23 Q It does refresh your recollection.

24 A Establish the costs. Yes.

25 Q Okay. There's a second document attached to this

LEO S. MORRISON, JR. - CROSS EXAMINATION

477

1 exhibit, sir. Would you turn to that, please? It's a
2 memorandum from the same William C. Hise to Donald Ellis
3 dated November 7, 1989.

4 A Yes.

5 Q Do you see that?

6 A Yes.

7 Q And because not much had happened on this claim
8 between July when the first memo came out and this
9 memorandum, you had directed Mr. Hise that you were
10 extremely concerned that we have not made progress in the
11 submission of this second claim against the Air Force. Is
12 that correct, sir?

13 MR. RIDDLES: Object, again, Your Honor. He's
14 reading from a document that's not in evidence.

15 MR. WORK: I'm not reading.

16 JUDGE BROWN: I sustain the objection to reading
17 from a document that's not in evidence.

18 BY MR. WORK:

19 Q Does this document refresh your recollection, sir,
20 as to whether in the November 1989 timeframe you told Mr.
21 Hise that you were extremely concerned that progress had not
22 been made on preparing TechDyn's second claim against the
23 Air Force. We're talking November 1989.

24 A Yes.

25 Q And that was 7 November 1989, is that correct?

LEO S. MORRISON, JR. - CROSS EXAMINATION

478

1 A That's correct.

2 Q Now, sir, ten days later, on November 17, 1989,
3 you did file a claim, sir, didn't you?

4 A To whom?

5 Q Do you recall filing a claim against anyone on
6 November 17, 1989?

7 A A claim -- is that the date of the lawsuit?

8 Q Well, I'm asking you.

9 A I don't know. I don't recall the exact date of
10 the filing of the lawsuit. If you're referring to that, it
11 was some time in the late '89 -- in that timeframe. I don't
12 recall the exact date.

13 Q All right. Would it refresh your recollection if
14 I told you that you filed this lawsuit against Whittaker on
15 November 17, 1989, ten days after you had told Mr. Hise that
16 it was extremely urgent that progress be made on a second
17 claim against the Air Force?

18 A Again, I don't know what the date was but we did
19 file in that period of time -- in that period we filed a
20 lawsuit in the Circuit Court here in Fairfax against
21 Whittaker Corporation.

22 Q Thank you. And how much did you claim in that
23 lawsuit against Whittaker that you filed ten days after you
24 said to Mr. Hise that it was extremely important that you
25 begin to make progress on a second claim against the Air

LEO S. MORRISON, JR. - CROSS EXAMINATION

479

1 Force?

2 A I don't have it in front of me so I can't give you
3 an exact dollar amount.

4 Q Can you give me a ballpark?

5 MR. RIDDLES: Object to the relevance of it, Your
6 Honor. We have this lawsuit at this time and he can testify
7 to that on amendments to the claim that have been made.

8 JUDGE BROWN: I'm not sure I understand either the
9 relevance of what he said or the relevance of what you said.
10 He's not talking about this lawsuit, is that what you're
11 saying?

12 MR. RIDDLES: I'm not sure what he's talking
13 about. He's talking about something on November 17, 1989
14 and there's no -- I don't see the relevance and I don't see
15 where he's going with what amount was filed in the original
16 complaint that may have been amended.

17 JUDGE BROWN: Well, what is the relevance?

18 MR. WORK: The relevance is, and I think Your
19 Honor heard my opening statement, we feel that the claims
20 against Whittaker have been filed in bad faith and that we
21 feel that that is part of the cause of action that we are
22 asserting against TechDyn.

23 JUDGE BROWN: I don't see how the amount that they
24 filed in November of '89 relates to that. I may just be
25 missing the point, but how does that -- is it the same as

LEO S. MORRISON, JR. - CROSS EXAMINATION

480

1 some other amount you're going to show or something?

2 MR. WORK: No, but it is an amount far beyond the
3 amount of costs that have been incurred in this program.

4 JUDGE BROWN: Well, I'll tell you what. I'll let
5 you do that if you show a foundation that he picked the
6 amount, because generally lawyers pick the amount out of the
7 air. Maybe they did and maybe they didn't here, but we're
8 not going to hang him with his lawyer.

9 MR. WORK: Fine. That's fair enough, Your Honor.

10 JUDGE BROWN: All right.

11 MR. RIDDLES: Thank you, Your Honor.

12 JUDGE BROWN: Well, you probably weren't even the
13 lawyer.

14 (Laughter.)

15 BY MR. WORK:

16 Q Did you participate in selecting the amount that
17 TechDyn would claim against Whittaker on November 17, 1989?

18 A I was advised of the amount in discussions that we
19 had with our counselors.

20 Q Well, I'm trying to set the foundation or simply
21 trying to inquire pursuant to Judge Brown's question and his
22 stipulation was that if you had participated in designating
23 the amount, then I could ask you what the amount was and
24 that's thus my question. Did you participate in determining
25 what amount to claim against Whittaker?

LEO S. MORRISON, JR. - CROSS EXAMINATION

481

1 A I'll say again I was advised of the amount that
2 was derived by my counsellors.

3 Q So the answer to my question is no. You did not
4 participate in it.

5 A I don't know what you mean by "participated" but
6 I've indicated what I did.

7 Q All right. Well, we'll simply go on. In one of
8 the elements of your claim, of your lawsuit, against
9 Whittaker in November 1989 was this so-called AAC/PACAF
10 work. Is that correct?

11 A That's correct.

12 Q And theory of that claim -- well, let me just lay
13 a foundation. Did you review that lawsuit before it was
14 filed against Whittaker, sir?

15 A Yes, I did.

16 Q And did you review the element of that claim
17 pertaining to the Alaska and Hawaii work?

18 A Yes, I did.

19 Q And the theory of that claim was that Whittaker
20 had submitted a price to TechDyn in response to TechDyn's
21 request for proposal that was higher than the price that
22 Whittaker had submitted to the Air Force. Is that correct?

23 A That was part of the basis for it.

24 Q And you know now, sir, that the price, the bottom
25 line price, that Whittaker submitted to the Air Force was

LEO S. MORRISON, JR. - CROSS EXAMINATION

482

1 actually higher rather than lower than the bottom line price
2 that Whittaker submitted to TechDyn. Is that right?

3 A That's not correct. Not for the same work. We
4 have to compare apples with apples and for the same work,
5 the price was lower.

6 (Pause.)

7 Q As I recall, you said yesterday, sir, that you
8 hadn't read the Air Force request for proposals to Whittaker
9 that resulted in Whittaker's proposal to the Air Force, is
10 that right?

11 A That's correct.

12 Q But you were here, sir, when your counsel made a
13 stipulation concerning what the bottom line prices were,
14 weren't you?

15 A The total prices of what was submitted. Yes.

16 Q And you know now that the bottom line price in the
17 Whittaker proposal was actually lower rather than higher to
18 TechDyn than it was to the Air Force. Isn't that right?

19 A To do what, though?

20 Q Okay. You don't know.

21 A I don't know what?

22 Q Now, sir. Prior to filing your lawsuit against
23 Whittaker in November of 1989, did you take the claims that
24 were embodied in that lawsuit to anyone in the Air Force to
25 see if the Air Force would be willing to arbitrate or

LEO S. MORRISON, JR. - CROSS EXAMINATION

491

1 travel cost to the West Coast where he seemed to spend most
2 of his time.

3 Q And you didn't issue a similar memorandum to other
4 individuals in your company such as Mr. Hise, who controlled
5 portions of the cost on the ICCE program in the contract
6 administration area, did you?

7 A I sent that memorandum to Al Johnson who was the
8 program manager. Others in the company were aware of our
9 cost control efforts, yes.

10 Q My question sir, my specific question is did you
11 send a similar memorandum to Mr. Hise whose area was --

12 A No, I did not send him a similar memorandum. He
13 was in discussions with us on the matter. He was aware.

14 Q Okay. And do you remember a meeting with Mr.
15 Johnson concerning the subject of cost cutting on the ICCE
16 program shortly after you issued that memorandum?

17 A I don't recall the meeting. I probably did have a
18 meeting.

19 Q But sitting here today you have recollection at
20 all, is that right?

21 A I had many, many meetings with Al Johnson and
22 others. I don't recall that particular meeting for that
23 purpose.

24 Q Okay, I'll accept that answer.

25 A Okay.

LEO S. MORRISON, JR. - CROSS EXAMINATION

494

1 an average of about six people working on the program.

2 Isn't that correct?

3 A No, I don't agree with that. I don't know where
4 you get those numbers from.

5 Twenty-five people?

6 Q What would the average number of people that
7 worked on this program at TechDyn from August of 1985 until
8 the end of 1987? You tell me.

9 A I don't know.

10 Q Give me a ball park.

11 A I don't have a ball park.

12 MR. RIDDLES: I object, Your Honor. He's asking
13 him for average figures and he's saying -- and then there's
14 always this question of "give me a ball park."

15 JUDGE BROWN: He can't answer the question.

16 MR. WORK: All right, let me break up the
17 question.

18 BY MR. WORK:

19 Q Can you tell me how many people worked on the
20 program at TechDyn in 1985?

21 A I don't know. I'd have to --

22 Q Can you tell me how many people worked on the
23 program at TechDyn in 1986?

24 A I don't know. I would have to look at the
25 records.

LEO S. MORRISON, JR. - CROSS EXAMINATION

495

1 Q Can you tell me how many people --

2 A I don't know.

3 JUDGE BROWN: Don't ask him repeatedly, Mr. Work.
4 When you get an answer, let's move on. We don't have time
5 to do that.

6 MR. WORK: Certainly, Your Honor.

7 BY MR. WORK:

8 Q Let me just ask one question because I don't
9 recall whether you answered this or not and then I'll move
10 on.

11 A Okay.

12 Q Do you recall the average number of people that
13 worked on the program at TechDyn from early 1988 through
14 1990?

15 A No, I don't know the answers, no. I'd have to
16 look at the records for that.

17 Q Okay. Do you recall Mr. Thornton saying to anyone
18 and the information ultimately getting to you that he
19 desperately needed people on the program who had something
20 more than two feet and a pumpkin on their shoulders?

21 A I don't recall that, no. I didn't get that
22 information.

23 Q And sitting here today you recall no requests,
24 either directly or indirectly, from Mr. Thornton for
25 additional help on the program from TechDyn people?

LEO S. MORRISON, JR. - CROSS EXAMINATION

496

1 A What do you mean by "indirectly"?

2 Q Through someone other than Mr. Thornton.

3 A No, I don't.

4 Q Now let's talk further about your cost cutting
5 efforts that you talked about starting in January of 1988.

6 One of the ways that you sought to cut costs on
7 this program was simply not to pay Whittaker, wasn't it?

8 A No.

9 Q You talked yesterday about how in June or July of
10 1986, you said that you had about a million dollars in
11 Whittaker's money that you were willing to pay.

12 For what period of time had that money accrued?

13 A I'm not sure, but the reason we had that money was
14 because Whittaker had served notice that they were going to
15 stop work and they had stopped work. We don't pay
16 contractors who are not performing.

17 Q And the only reason --

18 A We retain -- we retain this money. It
19 accumulated. We advised the Defense Contractor Audit Agency
20 that we were doing this, and we even asked them for advice
21 as to what we should do with this money that was accruing.

22 This was not a cost-cutting effort. The money was
23 never intended for TechDyn. The money was there for
24 Whittaker, and we attempted to get them to work and told
25 them we had the money for them, and all they had to do was

LEO S. MORRISON, JR. - CROSS EXAMINATION

497

1 to go to work and we'd pay them. That was not a cost-
2 cutting exercise.

3 Q So you're saying, sir, that you stopped paying
4 Whittaker only because Whittaker said that under the
5 circumstances that prevailed it would not continue work on
6 the RCE in June of 1988. Is that your testimony, sir?

7 A What I'm saying is that in the course of business
8 there is such a thing as a cure notice. That if a
9 contractor is not performing, he can be served -- advised of
10 that lack of performance and served a so-called cure notice.
11 A part of the process could be if the contractor does not
12 perform satisfactorily, you may withhold payment.

13 I don't recall whether we did or not at this time.
14 What I do know that when they -- that is, prior to their
15 stopping work. But I do know that there came a time after
16 they stopped work in which I indicated that the payments
17 would stop to Whittaker until such time as they resumed
18 work.

19 Q Let's see if I can refresh your recollection. In
20 point of fact you stopped paying Whittaker in November of
21 1986. Isn't that correct, sir?

22 A I don't recall that. But if we did, there were
23 reasons for it.

24 Q And do you recall whether you paid Whittaker
25 anything in the period November 1986 to June 1988?

LEO S. MORRISON, JR. - CROSS EXAMINATION

498

1 A I don't know without referring to the records.

2 Q Sitting here today you don't?

3 A I don't know, no.

4 Q Okay. I think you mentioned a gentleman
5 yesterday by the name of Monty Hatchett?

6 A The late Monty Hatchett, yes.

7 Q And Monty Hatchett was at one time president of
8 Whittaker Command Control and Communications Corporation.
9 Is that right?

10 A That's correct.

11 Q And he occupied that position in December of 1986,
12 didn't he?

13 A I don't know when he occupied it, but he was the
14 third, I think, president that I dealt with, second or third
15 president that I dealt with.

16 Q Do you recall in December of 1986 calling Monty
17 Hatchett following a letter from Mr. Hise to Whittaker
18 stopping payments and telling Mr. Hatchett that he should
19 not take this action of Mr. Hise seriously because you had
20 an overall plan to obtain additional funds from the Air
21 Force to cover not only your added costs but also
22 Whittaker's added costs?

23 A Is that a question?

24 Q Yes.

25 A A phone call to Monty Hatchett to that effect?

LEO S. MORRISON, JR. - CROSS EXAMINATION

499

1 Q Correct.

2 A I don't recall that. Might have made one. I
3 don't know.

4 Q Hand you a document that we have marked as
5 Defendant's Exhibit 43E.

6 A Okay.

7 Q And it consists of two documents and I would ask
8 you to read both of them and I'll be happy to provide Mr.
9 Riddles with a copy.

10 And my question, sir, once you have finished
11 reading not only the memorandum on top but also the letter
12 that follows it, as to whether that refreshes your
13 recollection as to what I just asked you.

14 (Witness reviews documents.)

15 A This is a 4C document and I don't have any
16 recollection of any such phone call to Marty Hatchett.

17 Q Would you look at the TechDyn document that
18 immediately follows that in the exhibit that I've handed
19 you, sir? That's a TechDyn document, isn't it?

20 A Yes, it is.

21 Q Does that refresh your recollection?

22 A Do you want me to read it?

23 Q Just read it to yourself.

24 (Pause.)

25 A Okay.

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0289

LEO S. MORRISON, JR. - CROSS EXAMINATION

502

1 initial operational capability and that system was
2 operational until such time as we delivered the full
3 operational capability and right up until the time that the
4 Air Force would take it over that we provided a maintenance
5 person in Iceland. Yes, sir. Is that what you're talking
6 about?

7 Q That was an obligation that TechDyn had undertaken
8 under its MOD 3 ICCE contract that became effective on
9 August 30, 1985. Is that correct, sir?

10 A You say "obligation". Can you describe that
11 obligation or do you want me to describe my understanding of
12 it?

13 Q I'm just asking you whether in fact under your MOD
14 3 contract or what we're calling the contract for the FOC
15 program you undertook an obligation to the Air Force to
16 provide the Air Force with that field service?

17 A What we were required to do and what we responded
18 to was a requirement to provide support in Iceland in the
19 States, if required, or wherever, to support the initial
20 operational capability that was operational in Iceland.
21 That is, the one RADIL that was there and the one ground
22 entry station that was there, until such time as the full
23 operational capability was delivered. That was our
24 responsibility. Yes.

25 Q Okay. And from time to time in the period after

LEO S. MORRISON, JR. - CROSS EXAMINATION

503

1 the IOC system was installed in October of 1985 until
2 February of 1988, you issued purchase orders to Whittaker to
3 help you perform TechDyn's obligation to the Air Force.
4 Isn't that correct? In this field service area?

5 A We did on at least one occasion and we did that
6 because Whittaker would not respond to the outage of the
7 PDFA that was installed in the IOC in Iceland when it went
8 down. We asked them to go, we reported it to them. We had
9 a man on the scene who was not a PDFA man. He had had an
10 orientation, an introduction to the PDFA by Whittaker. He
11 was on island, in Iceland, 24 hours a day. And his job was
12 to identify problems with the system, sound the alarm and we
13 would get the necessary support to him to get the system
14 back up.

15 Q And prior to --

16 A And Whittaker wouldn't go, so we said okay -- they
17 were demanding that you pay us to go so we said you are
18 required to go there to provide this support. They insisted
19 no, we aren't going. In the interests of supporting the Air
20 Force, I said okay, pay them the PO, let's get them up
21 there. We'll settle it later as to who should pay and who
22 shouldn't. So we did issue a PO to get them up there, a
23 PDFA qualified man to repair the PDFA in Iceland.

24 Q Starting in February of 1988 following your cost
25 control memorandum to Mr. Johnson, you took the position

LEO S. MORRISON, JR. - CROSS EXAMINATION

504

1 that you would not pay Whittaker for that, that it was
2 Whittaker's obligation and you so told the Air Force, didn't
3 you?

4 A As I just explained, I took that position early
5 on. As a matter of fact, I think you'll find if you check
6 the record that in the instance of the first outage of the
7 system that Whittaker responded by sending somebody to
8 Iceland. There was no PO. On the second instance when it
9 went down, they insisted on a purchase order. I think this
10 is after they had undergone another organizational change
11 and they were changing their ways of doing business. And
12 after days of delay, and I'm in contact with the Air Force
13 and they're beating up on TechDyn saying get up there and
14 get it fixed, we said okay -- if we must, issue a purchase
15 order at this time, we'll settle the money later but let's
16 get somebody up there who is PDFA qualified to repair the
17 system. And they sent somebody.

18 Q I'd like to come back to the question I asked.

19 A I answered your question.

20 Q And that question was after February of 1988, you
21 took the position that you would not pay Whittaker yet you
22 demanded that Whittaker perform those field services for
23 which you had previously paid Whittaker additional funds.
24 Is that correct?

25 A Again, I say I took the position from the

1 beginning, not after January of '88. I took the position
2 back in the '85, '86 timeframe. I knew what the
3 arrangements were.

4 Q You knew what the arrangements were? What do you
5 mean by that, sir?

6 A I knew how the system was to be supported.
7 TechDyn had -- and does not have today any qualified PDFA
8 maintenance people. Whittaker -- this is Whittaker's
9 equipment. Whittaker built it. Whittaker designed it.

10 Q Are you saying, sir, that there was a provision in
11 a subcontract statement of work between TechDyn and
12 Whittaker that gave Whittaker that obligation?

13 A You never heard me say anything like that. I said
14 I knew what the arrangement was. I don't know how it's
15 presented but I know that Whittaker was to provide the
16 support to the PDFA in Iceland. That's totally logical. We
17 did not have, at TechDyn, have never had, nobody expected us
18 to have and the Air Force would not expect me to send a
19 non-qualified PDFA man to Iceland to fix the PDFA.

20 Q Mr. Morrison --

21 A Now, we had people qualified in the CFA and we had
22 a man on-site to do that.

23 MR. WORK: Your Honor, may I have --

24 THE WITNESS: I'm sorry.

25 MR. WORK: May I have an admonition to the witness

LEO S. MORRISON, JR. - CROSS EXAMINATION

506

1 to stick to my questions, please?

2 JUDGE BROWN: Just answer the one question.

3 THE WITNESS: Yes, sir.

4 BY MR. WORK:

5 Q Now, just listen to my question, please. My
6 question is is your position here today that there was in
7 some statement of work in the ICCE subcontract an obligation
8 for Whittaker to perform any field services? Yes or no and
9 then, if you want to explain, please do.

10 A I don't know. I don't have the statement of work
11 in front of me and I don't know.

12 Q Would it help you if I put the statement of work
13 in front of you?

14 A Yes, I'll review it. Yes.

15 Q Was there a separate subcontract statement of work
16 for the ICCE subcontract as distinguished from the ICCE
17 prime contract?

18 A Yes. There was a subcontract issued, a statement
19 of work issued with the subcontract and there was also a
20 specification issued for the subcontract. I remind you that
21 we were directed to obtain all PDFA services, products and
22 services, from the 4C Corporation. Now, maintenance of the
23 PDFA is a service of the PDFA. We were directed in the
24 contract and we passed all of that to Whittaker. So in that
25 sense, it's absolutely there.

LEO S. MORRISON, JR. - CROSS EXAMINATION

507

1 Q Let me just get, if I can, try to get a clear
2 answer to my question.

3 MR. RIDDLES: Objection. He got a clear answer
4 about three times and he's asked the question about three
5 times.

6 JUDGE BROWN: I sustain the objection to that
7 comment.

8 BY MR. WORK:

9 Q Mr. Morrison, did TechDyn issue to Whittaker a
10 specific subcontract statement of work distinct from the
11 prime contract statement of work for the ICCE FOC or MOD 3
12 work? Yes or no and then please explain.

13 A We submitted a statement of work to the 4C
14 Corporation with the subcontract, with the MOD and
15 periodically throughout this contract, we reissued the
16 statement of work as the contract was modified to make sure
17 that everybody understood what was required. We issued a
18 statement of work. Now, I can't say -- I cannot sit here
19 and say whether it was identical because to change one
20 letter would it cause it not to be identical. So I don't
21 know whether it was identical or not but I do know that we
22 submitted to them a statement of work and a specification
23 and we also forwarded to them every time the direction that
24 we had as part of the contract that the directed
25 subcontractor -- we had to provide -- get all of the

LEO S. MORRISON, JR. - CROSS EXAMINATION

513

1 A Yes, that's what it appears to be.

2 Q And do you recognize that as the same statement of
3 work that was forwarded to Whittaker on November 27, 1985?

4 A I have no way of knowing if it was the same. I
5 would assume that whatever we had we sent them, you know, an
6 exact copy of it.

7 Q And on November 27, in the package that you said
8 you were familiar with yesterday, there was no other
9 statement of work other than this TechDyn prime contract
10 statement of work. Is that correct?

11 A Well, we're talking about the statement of work
12 that was submitted with mod 3 or the statement of work that
13 was submitted with the basic subcontract, the basic issuance
14 of a subcontract to Whittaker to 4C Corporation?

15 Q I'm talking about the document that you testified
16 yesterday that was enclosed in a package which Mr. Yennowine
17 sent to Ms. Raymond on November 27, 1985; subject:
18 subcontract 125001, modification 003.

19 A Okay, mod 3.

20 Q Pardon?

21 A Okay.

22 Q My question to you is whether the TechDyn prime
23 contract statement of work that you have in front of you was
24 the statement of work that was forwarded to Whittaker with
25 Mr. Yennowine's letter to Ms. Raymond of 27 November 1985.

LEO S. MORRISON, JR. - CROSS EXAMINATION

514

1 A Okay. I don't know, you know, what statement of
2 work was sent. As I said, it's my understanding that a copy
3 of the statement of work that we had received with mod 3 was
4 passed to the Whittaker Corporation.

5 Q Okay.

6 A As the statement of work to be followed.

7 Q Now, just before the break, Mr. Morrison, we were
8 talking about pre-operational field services following the
9 installation of the IOC system in October of 1985. And I
10 believe your testimony was that under the mod 3 contract
11 Whittaker had an obligation to provide pre-operational field
12 services without additional compensation. Is that correct?

13 A No, I didn't characterize it that way. We didn't
14 talk about --

15 Q What was Whittaker's obligation with regard to
16 field services under the mod 3 statement of work?

17 A With regard to field services, field support, it
18 was my understanding that Whittaker's obligations were to
19 support the PDFA that had been installed in Iceland as a
20 part of the initial operational capability system for which
21 they had been paid.

22 Q And if such an obligation that existed, it would
23 be reflected in a statement of work. Is that correct?

24 A It was reflected in the contract.

25 Q Okay, and the part of the contract in which it

LEO S. MORRISON, JR. - CROSS EXAMINATION

523

1 Q Okay. But at some point, when the RCE hardware
2 passed the Critical Design Review for the initial version of
3 the RCE, the Government as given a B specification on the
4 hardware, wasn't it?

5 A At some time the Government was presented with B
6 specifications for the hardware of the --

7 Q Okay. Now, sir, let me ask you this. That B
8 specification would have described what components comprised
9 the hardware for the RCE, wouldn't they?

10 A Among other things.

11 Q Now, what components did those B specifications
12 describe as constituting the RCE that were submitted in
13 connection with the initial hardware RCE Critical Design
14 Review?

15 A I would have to refer to a copy of the
16 specification that was submitted; the one we're talking
17 about.

18 Q Sitting here today can you tell us --

19 A No, I can't. There are several components of the
20 RCE and I would have to -- that's the purpose of the
21 specification is to --

22 Q Well, let me see if I can refresh your
23 recollection. Did the RCE hardware that was approved at the
24 initial CER, did they include computers?

25 A Again, I would have to see the specification.

1 contract line item for the RCE, was there not?

2 A I can't say sitting here. I'd have to -- see,
3 there were various categorizations. You had contract line
4 item numbers, you had CDRL designations, you had a work
5 breakdown structure with designations. I can't tell you
6 just how we characterized or tracked the RCE per se, the
7 aspects of it.

8 Q My question wasn't how you tracked them. My
9 question was how the Government paid you. Was it in lump
10 sum or by contract line item?

11 A Well, how they paid us was how we tracked it. And
12 I don't -- I can't tell you sitting here.

13 Q Would it refresh your recollection if I told you
14 the Government, the Air Force paid you according to contract
15 line items, line items which you identified yesterday for
16 the FOC hardware, line items for the FOC software, line
17 items for the FOC RCE, line items for the CENTAF and so
18 forth. Does that refresh your recollection as to how the
19 Air Force paid you in this program, sir?

20 A No, it doesn't. But I can say -- I can say that
21 we were paid for the work that we did. Now, whether it was
22 by contract line item number or by CDRL or by work breakdown
23 structure, I can't sit here and say. I can say that we were
24 paid for the work that we did.

25 MR. WORK: Let me ask your counsel if he's yet

LEO S. MORRISON, JR. - CROSS EXAMINATION

530

1 found the volume that the judge marked yesterday of what the
2 ICCE subcontract consisted of.

3 MR. RIDDLES: I have 22A1, 22A2 and 22A3.

4 (Pause.)

5 BY MR. WORK:

6 Q Sir, I will try this one more time. I hand you a
7 document that Judge Brown has marked as the ICCE subcontract
8 and I turn to --

9 JUDGE BROWN: What's the exhibit number?

10 MR. WORK: 22A1.

11 THE WITNESS: A3.

12 THE WITNESS: A3.

13 THE WITNESS: 22A3.

14 BY MR. WORK:

15 Q And I hand you the portion of it that is entitled
16 "Statement of Work for the Iceland Command and Control
17 Enhancement System" dated 20 August 1985, the document we
18 looked at just a moment ago. Is that the statement of work,
19 again, that the Air Force issued to you in connection with
20 your MOD 3 prime contract?

21 (Pause.)

22 A No, I can't say. I assume it is. I don't see the
23 judge's initials, if that's necessary, but maybe they're
24 here somewhere.

25 Q All right. Now, my question to you is, sir, you

1 testified yesterday that "we subcontracted the RCE portion
2 of this work to Whittaker." The RCE portion is part of the
3 CFA part of the ICCE system, is that correct?

4 A That's correct.

5 Q Now, sir, could you tell me where in the statement
6 of work that's before you there is an assignment of a
7 contractual responsibility for the RCE portion of the work
8 to Whittaker?

9 (Pause.)

10 A It will take me a while to go through here. I
11 don't know where it is in here, but I'll look for it.

12 (Pause.)

13 MR. WORK: Rather than waste the Court's and the
14 jury's time, I'll come back to that question later on today.
15 I'll not withdraw it but move on. If that's agreeable, Your
16 Honor, rather than taking time.

17 BY MR. WORK:

18 Q Now, sir, let's go forward. Is it your
19 recollection, sir, that at some point in the spring of 1986,
20 in the March-April timeframe of 1986, TechDyn supplied to
21 Whittaker certain hardware constituting and relating to the
22 RCE hardware for Whittaker's use in developing RCE software?

23 A I don't know.

24 Q Well, you said yesterday that TechDyn supplied
25 switches to Whittaker. Were those switches related to the

LEO S. MORRISON, JR. - CROSS EXAMINATION

532

1 RCE?

2 A I don't know the context of the question and what
3 you said I said. I don't know. If you would give me the
4 context, I might be able to talk to it.

5 Q So sitting here today, you don't know whether
6 TechDyn supplied to Whittaker certain equipment constituting
7 and relating to the RCE software for Whittaker to use in
8 developing the RCE software. Is that correct?

9 A Well, not when you pin it down to a specific time
10 without referring to the records. I don't know when we
11 provided what to Whittaker --

12 Q At some time, did you provide --

13 A -- or what we provided.

14 Q Excuse me. I'm sorry. Did I interrupt you? At
15 some time, did you provide certain RCE and RCE related
16 hardware to Whittaker for Whittaker's use in designing RCE
17 software?

18 A What we did was we subcontracted the RCE
19 engineering to Whittaker.

20 MR. WORK: Move to strike, Your Honor. That's not
21 responsive to my question.

22 THE WITNESS: I'm going to answer your question.

23 JUDGE BROWN: I grant the motion. It is stricken.
24 And I ask you to listen carefully to just the question. If
25 you can't answer the question, you can tell us that but

LEO S. MORRISON, JR. - CROSS EXAMINATION

533

1 otherwise just answer the question that is asked.

2 BY MR. WORK:

3 Q The reason for my question was, sir, you said you
4 couldn't pin the timeframe down so I'm asking you without
5 regard to a particular timeframe. At some point of time, in
6 the course of the ICCE program, did TechDyn supply to
7 Whittaker certain RCE and RCE related hardware for Whittaker
8 to use in designing and developing the RCE software?

9 A We provided hardware in accordance with the
10 Whittaker design. Yes.

11 Q And what did that hardware consist of, sir?

12 A Well, again, I'd have to consult the record. You
13 know, we had a bill of materials.

14 Q What did the hardware consist of, to the extent
15 you know?

16 A Well, I'm explaining that. We had a bill of
17 materials that included all of the hardware, whatever that
18 was.

19 Q What was it?

20 A I would have to refer to the bill of materials. I
21 don't have it in front of me.

22 Q Can you tell me what the RCE hardware consisted of
23 that you supplied to Whittaker to use in designing the RCE
24 software?

25 A We submitted -- we provided Whittaker, as we were

LEO S. MORRISON, JR. - CROSS EXAMINATION

534

1 expected to, the hardware responsive to their hardware
2 engineering design and it was specified in the bill of
3 materials, all right? It includes all of the components,
4 the nuts, the bolts, the screws -- everything. And I don't
5 know what that was.

6 Q Did it consist of computers?

7 A A component of it was the computer, yes.

8 Q What computer?

9 A The Z150 computer at some point in time was
10 provided. Yes. As part of the bill of materials.

11 Q And what else did it consist of, other than the
12 Z150 personal computer?

13 A Well, again, the bill of materials. I don't know
14 without looking at the bill of materials.

15 Q Did it consist of the switches you said yesterday
16 you supplied to Whittaker?

17 A Again, I don't understand the context of the
18 switches you are talking about.

19 Q Well, I'm asking you.

20 A Well, I'm saying I don't have the bill of
21 materials and I can't tell you whether -- some switches --
22 those switches I referred or other switches were provided.

23 Q You're certain sitting here today there was a bill
24 of materials, sir?

25 A Yes.

LEO S. MORRISON, JR. - CROSS EXAMINATION

535

1 Q You saw one?

2 A There was a bill of materials that indicated what
3 hardware was -- you know, that we provided.

4 Q And that bill of materials was prepared by whom,
5 sir?

6 A Probably the entire team -- TechDyn, Whittaker.

7 Q You say "probably". Do you know who prepared it?

8 A Well, I don't know.

9 Q Sitting here today, you don't know.

10 A I don't know.

11 Q And you don't know when it was supplied, is that
12 correct? Whenever it was supplied, you don't know when it
13 was supplied.

14 A No. As I sit here, no, I don't know.

15 Q You said yesterday that CDR was supposed to take
16 place in May. Did you supply that RCE hardware to Whittaker
17 to use in designing the RCE software before or after the
18 original CDR?

19 A I don't know when it was provided, as I said.

20 Q Okay. Now, did you ever become aware, sir, that
21 there were problems with that RCE hardware that TechDyn
22 supplied to Whittaker for Whittaker's use in designing the
23 RCE software?

24 A As I recall, there were problem in developing the
25 RCE by the 4C Corporation throughout this exercise.

LEO S. MORRISON, JR. - CROSS EXAMINATION

536

1 MR. WORK: Move to strike, Your Honor.

2 JUDGE BROWN: I sustain the motion to strike.

3 Strike that evidence.

4 You need to answer just the question and then your
5 lawyer can ask you to explain or maybe he'll ask you to
6 explain but if you can't answer the question, tell us that.

7 BY MR. WORK:

8 Q Did you ever become aware, sir, that there were
9 problems with the RCE hardware that TechDyn supplied to
10 Whittaker?

11 A I can't isolate it to hardware. There was a
12 running question as to what the cause was, whether it was
13 software initiated or generated or whether it was hardware
14 generated.

15 Q So you heard there were problems but no one told
16 you whether or not the problems related to the RCE --

17 A Yes, they told me the problems related to RCE.

18 Q I'm sorry. I didn't get my question out before
19 you answered. You were told there were problems but you
20 don't recall whether or not you were told that there were
21 problems specifically with the RCE hardware that TechDyn had
22 supplied to Whittaker. Is that your testimony?

23 A Would you like for me to tell you what I was told?

24 Q I'm asking you, sir, specifically, were you ever
25 told or did you become aware that there were problems

LEO S. MORRISON, JR. - CROSS EXAMINATION

546

1 waiting until 1:00.

2 (Pause.)

3 BY MR. WORK:

4 Q Let me ask just one final wrap up question with
5 regard to this line. Mr. Morrison, the position you were
6 taking with the RCE in the summer of 1988 was pursuant to
7 the cost cutting policy that you had articulated in January
8 of 1988, wasn't it?

9 A No.

10 Q Now, sir, you talked about what you referred to
11 yesterday as a mechanical or a hardware solution to the RCE
12 issue. Do you remember that testimony?

13 A Yes. It was electromechanical.

14 Q And when did that effort start on TechDyn's part?
15 And you said, I think, that TechDyn worked with the Air
16 Force in that connection. When did it start?

17 A I can't say with certainty when it started but I
18 think roughly -- certainly in the summer of '88 after we
19 terminated Whittaker.

20 Q Right in this vicinity here, in the July-August
21 timeframe in '88?

22 A Probably. But I would think if we wanted to talk
23 about when it started per se that we were experiencing
24 problems throughout -- it's pretty hard to fix a starting
25 date actually.

LEO S. MORRISON, JR. - CROSS EXAMINATION

554

1 JUDGE BROWN: All right.

2 (Pause.)

3 BY MR. WORK:

4 Q Now, sir, come back to the question of how TechDyn
5 was paid so we can try to understand who had what
6 responsibility for what portions of this system. And I've
7 understood your testimony to be that Whittaker had the
8 entire responsibility for the PDFA. TechDyn had primary
9 responsibility for the CFA, but Whittaker had some
10 responsibility for the remote control. Is that right?

11 A Yes.

12 Q But TechDyn got paid monies for the PDFA as well
13 as for the CFA, didn't it?

14 A TechDyn only received what its overhead costs were
15 associated with that PDFA portion.

16 Q That's all it received?

17 A Well, overhead and profit; whatever the normal
18 markup is.

19 Q So it would just be a small mark up on the PDFA
20 monies that were provided to you by the Air Force. Is that
21 right?

22 A Yes. The only thing that -- the only thing we got
23 from the PDFA were overhead costs, G&A costs and a profit.

24 Q Okay. That's all?

25 A That's all.

1 Q And now, sir, just back to the question of
2 payment. Monies came to you under contract line items,
3 monies came to you from the Air Force under contract line
4 items pertaining to particular components of these two
5 overall components. Is that correct?

6 A I can't testify to that. Again, I don't have the
7 records and I don't know how it was characterized, whether
8 by contract line item number or otherwise.

9 Q Well, you testified yesterday, sir, that contract
10 line items were established relating to particular
11 components of these systems. Is that right?

12 A The contract line item numbers were referred to
13 capabilities. For example, contract line item numbers refer
14 to things like FOC software. That's not one of these
15 components here.

16 Q And FOC hardware, is that right?

17 A And FOD hardware and other things, yes.

18 Q And the contract line item number for FOC hardware
19 was 0002AA. Is that right?

20 A I don't know. I don't have anything here that
21 says that.

22 Q Well, let me see if I can refresh your
23 recollection.

24 MR. WORK: May I hand you one of these? I would
25 like to lay a foundation.

LEO S. MORRISON, JR. - CROSS EXAMINATION

556

1 JUDGE BROWN: Tell me which number you gave me.

2 You gave me a whole book.

3 MR. WORK: Oh. Twelve, right.

4 BY MR. WORK:

5 Q I've handed you one of our visual aids, Mr.
6 Morrison, which is entitled "Allocation of ICCE Program
7 Funding." And you will see on the left-hand vertical column
8 description items like FOC hardware, RCE hardware and
9 software, FOC software and management data. The next column
10 is contract line item numbers. And the next column is
11 entitled "Dollar amount of Joint CLINs," and then there are
12 percentages of the dollar amounts.

13 Does this refresh your recollection, sir, that the
14 Air Force paid TechDyn by contract line item number?

15 A No, it doesn't. You know, it's shown on this
16 chart here, but I don't know how we were paid. Again, I'd
17 have to consult the payment records that we have and relate
18 that to the contract.

19 As I said, we had several categories to represent
20 the work to be delivered under the contract. Work breakdown
21 structure was one, for example. CDRL was another. CLIN was
22 another, so I don't know.

23 Q CDRLs were submissions that you made to the Air
24 Force, weren't they, sir? They weren't payments that came
25 to you from the Air Force.

LEO S. MORRISON, JR. - CROSS EXAMINATION

557

1 A CLINs were not payments that came to us from the
2 Air Force either. Payments were payments. Payments are not
3 CLINs. Payments are not CDRLs.

4 Q And your testimony here today, sir, is that you
5 don't know how the Air Force paid you, whether they paid you
6 by contract line item number or some other designator?

7 A They paid us for the work that we did.

8 Q Okay, how did you pay Whittaker? By contract line
9 item or some other designation?

10 A Sitting here without the pay records and
11 correlating that with the contract, I can't tell you.

12 Q Well, you said yesterday, sir, that you were
13 intimately familiar with this program. I just asked a
14 fairly basic question.

15 A Give me the record and I'll --

16 Q How did you keep your costs in this program? Was
17 it by contract line item number or some other form of
18 cost --

19 A I would have to consult my -- I would have to
20 consult my financial records.

21 Q So sitting here today you don't know how you kept
22 your costs, what accounting form you used?

23 MR. RIDDLES: Objection, Your Honor. That has
24 been asked and answered.

25 JUDGE BROWN: I'll overrule the objection.

1 BY MR. WORK:

2 Q You don't know what cost accounting method you
3 used at your company, whether you accumulated costs by
4 contract line item number or some other system?

5 A No, that's not -- it's not a matter of cost
6 accounting as to by CLIN or by CDRL or by WBS.

7 Sitting here, again, I can't, with the information
8 available to me -- available to me here, I cannot tell you.

9 Q You would never keep costs by CDRL, would you,
10 sir?

11 A You may.

12 Q So you can't testify at all about this document
13 which shows a breakdown of funding under this program by
14 contract line item?

15 A This is your document and I don't know if any of
16 these figures are right. I don't know where they came from.
17 I don't even know if the CLINs are correctly stated here.

18 Q You said, sir, that Whittaker had total
19 responsibility for the PDFA and you only got paid a small
20 markup, G&A and profit on that, is that right?

21 A I didn't say small markup. I said it was whatever
22 the overhead called for, whatever the G&A called for and
23 whatever the profit called for, and all of these records
24 have been audited by the Defense Contract Audit Agency and
25 they were approved by the Department of Defense. That's

LEO S. MORRISON, JR. - CROSS EXAMINATION

561

1 related to the RCE did TechDyn retain and what portion did
2 TechDyn pass on to Whittaker?

3 A I don't know.

4 Q Would it surprise you, sir, if I told you that
5 TechDyn retained over half of the dollars the Air Force had
6 paid with respect to the REC?

7 MR. RIDDLES: Objection, Your Honor.

8 JUDGE BROWN: I sustain the objection. We can't
9 take your testimony, and he said repeatedly he doesn't know.
10 And to continue asking him the question is a waste of time.

11 MR. WORK: I'm sorry, Your Honor.

12 BY MR. WORK:

13 Q Now, sir, is it correct that work on the PDFA
14 portion and the CFA portion that are depicted in Chart 9
15 there could proceed separately except when they were
16 brought, when the two components were brought together first
17 for in-plant testing and then on-site testing?

18 A A good deal of the work, yes, could be pursued
19 independently.

20 Q And really the only connection between these two
21 things is once you got a system together, you had to test
22 it. But other than that the PDFA could proceed separately,
23 work on the PDFA could proceed separately from work in the
24 CFA. Isn't that right?

25 A If the personnel resources were available, that

LEO S. MORRISON, JR. - CROSS EXAMINATION

562

1 could be done, yes.

2 Q But if you didn't make them available on the CFA
3 side, you couldn't proceed with the CFE. Isn't that right?

4 A If they were involved in doing other things, then
5 they could not proceed on the CFE.

6 Q Okay. Now, sir, you testified yesterday about
7 contract milestones. PDR, which is Preliminary Design
8 Review, which you said was to take place in January of 1986
9 under the original prime contract schedule.

10 A December, wasn't it, '85?

11 Q CDR -- excuse me.

12 A Wasn't it December '85?

13 Q I'm asking you.

14 A Well, you said '86. I think it was December '85,
15 as I recall.

16 Q Okay. Let me just strike that. I'll go on.

17 For the CFA side, TechDyn had a Preliminary Design
18 Review requirement too, didn't it?

19 A Yes.

20 Q And the next milestone you mentioned was CDR, the
21 Critical Design Review. TechDyn had a Critical Design
22 Review milestone as well, didn't it?

23 A Yes.

24 Q And then with regard to testing, there were
25 certain milestone tests for the PDFA and certain milestone

1 tests for the CFA, weren't there?

2 A That's correct.

3 Q And with regard to manuals, there were certain
4 milestone requirements for the PDFA and certain milestone
5 requirements for the CFA, is that right?

6 A That's correct.

7 Q And with regard to installation and in-country
8 tests, they were the same things, were there not milestones
9 for both of them? Is that right?

10 A Yes.

11 Q Now, sir, when did TechDyn pass PDR on the CFA
12 side?

13 A I don't know.

14 Q You don't know?

15 A From the information I have available to me. I
16 could consult the records.

17 Q And that's what you were doing yesterday was
18 simply reflecting on what work someone else had done in
19 putting together those poster for saying when Whittaker had
20 met or not met certain milestones. Isn't that right? You
21 had to consult records before you that someone else had
22 prepared. Isn't that right?

23 MR. RIDDLES: Objection.

24 THE WITNESS: I'm not sure of the question.

25 MR. WORK: Okay, withdrawn.

LEO S. MORRISON, JR. - CROSS EXAMINATION

564

1 BY MR. WORK:

2 Q When did TechDyn pass its CDR with regard to the
3 CFA side, the Critical Design Review?

4 A I would have to consult the records.

5 Q You don't know sitting here today?

6 A No.

7 Q When did --

8 A There were several CDRs so I don't know which one
9 you're talking about and I don't know without consulting the
10 records.

11 Q When was the first?

12 A I don't know without consulting the records.

13 Q When was the last?

14 A I don't know without consulting the records.

15 Q How many others were there other than the first
16 and the last?

17 A I don't know without consulting the records.

18 Q What do you know about TechDyn's milestone
19 accomplishment without consulting the records?

20 A I would have to consult the records.

21 MR. WORK: Okay, I will give you a record.

22 (Pause.)

23 MR. WORK: Your Honor, I'd like to lay a
24 foundation for tab 16 in your book.

25 BY MR. WORK:

LEO S. MORRISON, JR. - CROSS EXAMINATION

565

1 Q I have handed you a document, sir, entitled
2 "Completion of ICCE Milestones". I wonder if you would just
3 take a minute and study that, please, and see if that
4 refreshes your recollection as to when TechDyn completed its
5 milestones.

6 A Again, I would have to refer to my corporate
7 records. This does not refresh my memory.

8 Q Well, you testified yesterday about when Whittaker
9 had completed its milestones. How do you have that in mind
10 and you don't have in mind your own?

11 A I know because I know that those charts were
12 prepared at my direction from our records. I don't know
13 where this came from.

14 Q But you didn't actually look at the records
15 yourself.

16 A Sure I did.

17 Q In connection with the preparation of those
18 charts.

19 A Sure, I did.

20 Q Okay. And did those same records tell when
21 TechDyn had met its milestones?

22 A The same records? I'm sure they weren't
23 identical. No. There were other records. We have the
24 records that would indicate when TechDyn met its milestones.

25 Q Okay. What records are those, sir?

LEO S. MORRISON, JR. - CROSS EXAMINATION

566

1 A The corporate records. On this project.

2 Q What corporate records?

3 A The ICCE project corporate records.

4 Q What documents? What specific category?

5 A The ICCE project corporate records which comprise
6 correspondence -- they comprise reports of reviews, program
7 management reviews, CDRs, PDRs. They comprise the reports
8 of all testing. They comprise the reports of all of the
9 integrated coordinated working group meetings, the so-called
10 ICWG meetings. They include the financial records with
11 respect to this project. They include the contract. They
12 include all of the documents that were produced in this
13 contract.

14 Q In preparation for your testimony, you didn't
15 review those records which would reflect TechDyn's
16 completion of its milestones in this program. Is that
17 right?

18 A In preparation for this presentation, we reviewed
19 all of our records.

20 Q Okay. You, personally?

21 A I went over six years of records.

22 Q My question, sir, is whether the chart I've just
23 handed you, together with your review of those records,
24 refreshes your recollection as to when TechDyn met the
25 milestones for which it was responsible under this contract.

1

2 A No, it doesn't because I don't have the other
3 records to correlate this against. And, as I said, it
4 doesn't refresh my memory. No. It doesn't.

5 Q Well, do you recall that TechDyn didn't finish its
6 CDR until -- its ultimate CDR until 1989?

7 A I don't know that to be a fact.

8 Q Do you recall that TechDyn didn't complete its
9 testing until 1989?

10 MR. RIDDLES: I object to this.

11 JUDGE BROWN: I sustain the objection. You're
12 testifying and he has said that he doesn't recall and I do
13 not think there is any realistic possibility that your
14 testifying is going to refresh his recollection.

15 MR. WORK: Thank you, Your Honor.

16 BY MR. WORK:

17 Q Let me just then come back to a specific subject
18 that you testified about yesterday, I gather on the basis of
19 your review of the records. Under the original statement of
20 work in your MOD 3 prime contract with the Government, what
21 was the standard -- let me state it this way -- what test or
22 series of tests was called out in that prime contract
23 statement of work to determine the acceptability of the
24 RADIL or PDFFA software?

25 A I can't recite them for you here in total. I can

LEO S. MORRISON, JR. - CROSS EXAMINATION

568

1 say that we developed a project test plan and a specific
2 portion of that pertained to the PDFA but it contains such
3 things as the CPT&E, the computer program test and
4 evaluation, the FQT, the TAF certification testing, Tactical
5 Air Force certification test and others.

6 MR. WORK: Move to strike as non-responsive.

7 BY MR. WORK:

8 Q My specific question is what specific test or
9 series of tests were called out in the Government's
10 statement of work that was incorporated in your ICCE prime
11 contract? What test or series of tests were incorporated in
12 that document, not something that you developed later? Do
13 you recall?

14 A Those were some of the same tests. As I said,
15 without referring to the statement of work and the contract,
16 I can't tell you what they were. I do know that formal
17 tests were called out in the contract and some of these
18 tests were some of those that I mentioned such as the CPT&E,
19 the SQT, the FQT, the TAF certification tests, et cetera.

20 Q Sitting here today, it's your testimony that the
21 Air Force required completion of all of those tests in the
22 original statement of work to determine the acceptability of
23 the ICCE software? Is that your testimony?

24 MR. RIDDLES: I object. He testified he did not
25 recall but that as best as he could recall some of those

LEO S. MORRISON, JR. - CROSS EXAMINATION

569

1 tests included -- and then he gave them. We have the
2 statement of work.

3 JUDGE BROWN: All right. I'll sustain the
4 objection. I don't think your statement was a fair
5 characterization of his testimony. He said some and some
6 twice.

7 BY MR. WORK:

8 Q Let me just ask you very a specific question and I
9 don't want a list that may or may not be included. Sitting
10 here today, what specific test or tests relating to PDFA
11 software do you recall being incorporated in the August 30,
12 1985 prime contract statement of work?

13 A Well, without referring to the statement of work,
14 I can't say more than I've already said. It's my
15 recollection that each of those tests that I did cite was
16 called out as a part of the formal testing process for the
17 software of the PDFA.

18 Q Called out in the August 30, 1985 statement of
19 work or in some other document?

20 A No, called out in the contract. Called out in our
21 prime contract.

22 Q Well, I'm not talking about your prime contract in
23 general, I'm talking about the prime contract that was
24 issued to you, effective August 30, 1985.

25 A Yes. In that contract. Those tests were called

LEO S. MORRISON, JR. - CROSS EXAMINATION

570

1 out to cover -- those are some of the tests that were called
2 out for the PDFA portion of the project.

3 Q Would it refresh your recollection, sir, if I told
4 you that the only contractual test called out in that
5 original statement of work was software qualification test
6 or SQT?

7 MR. RIDDLES: Objection. He has testified as to
8 his recollection and we have the statement of work and now
9 he's trying to refresh his recollection and say something
10 else.

11 MR. WORK: Well, I haven't been very successful
12 with getting him to --

13 JUDGE BROWN: I'll overrule the objection to that
14 question. You can ask it and see if it refreshes his
15 recollection.

16 BY MR. WORK:

17 Q Is it your recollection, sir -- would it refresh
18 your recollection that the only test called out in the
19 August 30, 1985 prime contract statement of work to
20 determine the acceptability of the PDFA software was the
21 software qualification test?

22 A I'm sure that's not correct. The contract
23 provided for --

24 JUDGE BROWN: You can end it with you're sure it's
25 not correct. That's the answer.

LEO S. MORRISON, JR. - CROSS EXAMINATION

571

1 MR. WORK: Okay. Fine.

2 THE WITNESS: That's not correct.

3 BY MR. WORK:

4 Q When did Whittaker pass the software qualification
5 test for the PDFA software?

6 A I don't know but it was considerably beyond
7 schedule.

8 Q Was it beyond the schedule that existed at the
9 time that the test was passed?

10 A It was considerably beyond the original date that
11 it was required to.

12 Q I'm going to put up now a document that the jury
13 already has, which is entitled "Air Force No Penalty
14 Extensions of the ICCE Prime Contract." You testified this
15 morning about an extension of the contract schedule under
16 modification 13. Now, as of the time that Whittaker passed
17 the SQT, the software qualification test, for the PDFA
18 software, was it on schedule under the schedule that then
19 existed or not?

20 A Did you refer to modification or did I not hear
21 you right?

22 Q Thirty-six.

23 A All right. Would you state the question again,
24 please?

25 Q When Whittaker passed the software qualification

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0323

LEO S. MORRISON, JR. - CROSS EXAMINATION

572

1 test, was it on schedule under the schedule that then
2 existed or not?

3 A I don't know from the records I have in front of
4 me.

5 Q Would it refresh your recollection, sir, if I told
6 you that Whittaker passed the software qualification tests
7 in December of 1987?

8 A No.

9 MR. Torelli. I'm going to object. For a point of
10 clarification, what schedule is he talking about, whether
11 he's talking about Whittaker's schedule under the
12 subcontract or the prime contract schedule.

13 MR. WORK: That's a very good question and I'll
14 withdraw the last question and I'll come back to that.

15 BY MR. WORK:

16 Q As of December of 1987, there was no subcontract
17 schedule, was there?

18 A I don't know. I don't imagine any time there
19 wasn't a subcontract schedule.

20 Q But sitting here today, you don't know.

21 A There was a schedule.

22 Q I'm asking you, sir, whether in December of 1987
23 there was a subcontract schedule.

24 A There was a schedule. Yes. It's my recollection
25 there was a schedule for the contract that we had with the

LEO S. MORRISON, JR. - CROSS EXAMINATION

588

1 Q This is a chart, Mr. Morrison, entitled "TechDyn
2 Staff and Turnovers." And it shows positions of program
3 manager, program engineer, logistics support, data
4 management, test and evaluation, subcontract administration
5 and finance and accounting. Would you just take a moment to
6 go over that chart, please, and see if there are any names
7 on there that you can't recognize?

8 (Pause.)

9 JUDGE BROWN: While he's doing that, Mr. Work, I
10 had understood at the beginning you wanted to submit all
11 these books to the jury and we said, no, we wouldn't do
12 that, we would them one at a time. But I thought maybe you
13 were going to supply a book for them to keep them in when
14 they got more than one.

15 MR. WORK: I'll do that actually.

16 JUDGE BROWN: Okay.

17 MR. WORK: That was my understanding too.

18 JUDGE BROWN: Okay.

19 MR. WORK: And I didn't communicate that
20 understanding well.

21 JUDGE BROWN: It's not a problem, but I just
22 thought --

23 MR. WORK: But we will do that.

24 JUDGE BROWN: -- we're getting more than one thing
25 and in order for them to keep track of it if they had a

LEO S. MORRISON, JR. - CROSS EXAMINATION

589

1 book.

2 MR. WORK: We'll just have the tabs in there and
3 they can insert them as they want to. We will have that
4 ready for Monday.

5 JUDGE BROWN: Okay, that's fine.

6 THE WITNESS: There are three names that are --
7 the others are known to me.

8 BY MR. WORK:

9 Q Okay, and you were knowledgeable enough about this
10 program to know the people that occupied these positions in
11 the program. Is that right?

12 A Yes.

13 MR. WORK: May I publish this to the jury now,
14 Your Honor?

15 MR. RIDDLES: I have no objection to it.

16 I guess my concern is that he has not established
17 -- what he has here is different positions, Your Honor, and
18 then different names under each one, and my concern is there
19 has been no testimony that these individuals are linked up
20 as he has indicated them on his chart.

21 JUDGE BROWN: Do you object or not object? That's
22 the only thing I can deal with

23 MR. RIDDLES: Yes, sir, I do. I object on that
24 basis.

25 JUDGE BROWN: I sustain the objection until we

LEO S. MORRISON, JR. - CROSS EXAMINATION

590

1 establish that he knows these are where they go.

2 BY MR. WORK:

3 Q First of all, sir, these were the -- these six,
4 seven positions were the key functional working level
5 positions on the TechDyn side of the program. Is that
6 right?

7 A Yes.

8 Q And in none of these positions was the person who
9 started the program the person who finished the program.
10 Isn't that correct?

11 A Starting being when?

12 Q Starting when you received your prime contract for
13 the mod 3 work, the FOC work in August of 1985.

14 A And ending today?

15 Q Ending today.

16 A Okay.

17 No.

18 JUDGE BROWN: No, what? No, he's not correct or,
19 no, none of the people have finished?

20 THE WITNESS: No, none of the people listed here
21 happen to have been there on day one and stayed the project
22 to this particular date.

23 BY MR. WORK:

24 Q Okay, let's just take these positions.

25 A None.

LEO S. MORRISON, JR. - CROSS EXAMINATION

591

1 Q Starting with --

2 A None on this list.

3 Q Starting with program manager, starting at the
4 time that TechDyn received its award in August of 1985 from
5 the Air Force, your first program manager was a Mr.
6 Chisholm. Is that right?

7 A That's correct.

8 Q And he was fired before the end of the year for
9 incompetence, was he not?

10 A He was fired before the end of the year as I
11 recall.

12 Q So that would take you up to somewhere in the
13 November - December range.

14 A Okay.

15 Q You had an incompetent program manager.

16 A Okay.

17 Q Is that right?

18 A He was fired, yes.

19 Q And your next program manager, very briefly, was
20 Mr. Bruchard. Isn't that right?

21 A That's correct.

22 Q And he was only there for a few weeks until he
23 left the company.

24 A He left the company, that's correct.

25 Q And then your next program engineer really wasn't

LEO S. MORRISON, JR. - CROSS EXAMINATION

592

1 full time. He was your vice president for technology and
2 also your program manager on the program, Mr. Johnson.
3 Isn't that right?

4 A He was the full-time, the designated program
5 manager; not the interim program manager as indicated here.

6 Q But he --

7 A He was never designated interim. And if you --
8 sorry.

9 Q Mr. Johnson had many other responsibilities for
10 this program. Isn't that correct?

11 A For this program?

12 Q Many other responsibilities then for this program.
13 He continued to hold the position, the responsibilities that
14 he had had as vice president of technology prior to his
15 appointment as program manager. Isn't that right?

16 A He held the position as vice president and
17 technical director. He was designated the program manager
18 for this program.

19 Q And what percentage of his time -- well, strike
20 that.

21 And he served as program manager, I think you
22 said, when, early 1986?

23 A I'm not sure of the date when he started.

24 Q And he served as program manager until February of
25 1988?

LEO S. MORRISON, JR. - CROSS EXAMINATION

593

1 A It would have had to have been early -- about that
2 time, early '86, inasmuch as Chisholm left near the end of
3 '85. Bruchard was there for a very short while, and
4 Bruchard was appointed as the interim program manager and he
5 left the company for another position somewhere. And then I
6 did not want what I had seen in a pervious operation of Al
7 Johnson. So I appointed him directly explicitly as a
8 program manager to run this project.

9 Q And he had many other responsibilities.

10 A And not as interim.

11 Q Pardon?

12 A And not as interim program manager.

13 Q And he had many other responsibilities of --

14 A He had some other responsibilities.

15 Q So from about early 1986, all the way over to
16 February of 1988, you only had a part-time program manager.
17 Isn't that correct?

18 A No, that's not correct because if you will check
19 his time sheets, you will find that the amount of time that
20 he charged was full time and plus, well over full time. And
21 he was not assigned -- he was really not required to do
22 anything else than this project per se. He did very little
23 with respect to other jobs.

24 Q And then after that you had a gentleman by the
25 name of Mr. Ellis. Is that right?

LEO S. MORRISON, JR. - CROSS EXAMINATION

594

1 A That's correct.

2 Q And Mr. Ellis had never served as a program
3 manager in this type of program before had he?

4 A Can't testify to that. Mr. Ellis is a retired
5 Army colonel, and on his responsibilities and according to
6 his resume he had directed many operations of this scope and
7 greater than this.

0331

LEO S. MORRISON, JR. - CROSS EXAMINATION

1 Q He had never been a program manager to your
2 knowledge?

3 A I can't testify to that without referring to his
4 resume at this point in time. But he had had commensurate
5 responsibilities.

6 Q So the answer to my question is you don't know.

7 MR. RIDDLES: I object. He's answered it twice.
8 It's not a yes or no answer. He answered that in the Army
9 he had had commensurate responsibilities and I think he's
10 answered the question fairly.

11 JUDGE BROWN: I think he's answered the question.
12 Whether it's what either of you think it is --

13 MR. WORK: Let's move to the position of program
14 engineer. And here I've listed six people who have held the
15 position of program engineer.

16 BY MR. WORK:

17 Q Is that correct? Did you in fact have six
18 different program engineers on this program over the period

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LEO S. MORRISON, JR. - CROSS EXAMINATION

595

1 of it?

2 A We had personnel who were assigned to the
3 engineering function. They operated either singly or in
4 tandem over the course of this project.

5 Q Okay. Who was the program engineer in the first
6 six months of the project, sir? Can you tell me without
7 looking at the chart? Just tell me from memory, if you
8 know.

9 A Let me think about it. The first six months of
10 the project, we had assigned to the engineering function
11 probably Jim Salsman and Glen Helwig come to mind.

12 Q Glen Helwig was a consultant to the company, was
13 he not?

14 A No, he was an engineer. He was an engineer. He
15 sat in engineering.

16 Q Okay. How about Mr. Heath? He was also program
17 engineer for a while during that initial period, wasn't he?

18 A He was an engineer that worked on this project
19 during that time.

20 Q Was he for a time the chief engineer on the
21 project?

22 A I don't recall Heath being the chief engineer. He
23 might have been.

24 Q And then for a while a man by the name of Mr.
25 Elter, a consultant, was the chief program engineer on this

LEO S. MORRISON, JR. - CROSS EXAMINATION

596

1 program. Isn't that correct?

2 A No, Mr. Elter, to my recollection, was a
3 consultant whom we hired from the Sperry Corporation, under
4 an agreement with the Sperry Corporation he was provided.
5 And he provided primarily logistics support with maybe a
6 modicum of engineering input.

7 Q Okay. And then from November of 1986 until the
8 present, with some breaks when he left the company and for
9 periods when he was just part-time, Mr. Thornton was the
10 program engineer. Isn't that right?

11 A Mr. Thornton was an engineer on the project for
12 generally the period of time that you've described, I
13 believe. And is still on the project.

14 Q But he has been part-time since some time in the
15 '89 period, hasn't he? He hasn't been full time?

16 A He's been both full and part-time and this was to
17 accommodate some requirements that he had. Yes.

18 Q So you haven't had a full-time program engineer on
19 this project for at least a year and a half to two years,
20 have you?

21 A I can't answer that question sitting here. Maybe
22 that's the case. I'm not sure. He has been our primary
23 engineer for the last year and a half or so.

24 Q Okay. Let's move to logistics support. Would you
25 agree with me that logistics support is a very important

1 function and component of the ICCE program?

2 A We consider all of these functions indicated here
3 very important to the project.

4 Q And there in logistics support you had a lot of
5 turnover, too, in the position of logistics support, didn't
6 you?

7 A We didn't have that much turnover. These people
8 served at given periods of time. We had the functions
9 covered. What's missing is what was the requirement and was
10 the position filled at the time.

11 Q All right. The requirement was a very, very
12 critical requirement in the first months of the program to
13 get the logistics program off the ground, wasn't it?

14 A It's constantly important. It's a very important
15 area. All these areas are important.

16 Q In fact, you were criticized by the Air Force
17 repeatedly for having nobody in that position at the start
18 of the program, weren't you?

19 A I can't testify to that.

20 Q Okay. And since some time in '87, Mr. Everett
21 Jones has worked part-time on the program and he's been the
22 logistics coordinator. Isn't that right?

23 A He's worked both full-time and part-time.

24 Q And for much of the period from '87 until '91, you
25 haven't had a full-time person in the logistics area, have

LEO S. MORRISON, JR. - CROSS EXAMINATION

598

1 you?

2 A Mr. Jones has provided that support.

3 Q Mr. Jones has been a part-time employee, has he
4 not, during that period?

5 A He's been full-time and part-time. Yes.

6 Q During what periods was he full-time and during
7 what periods part-time, sir?

8 A I'd have to consult the records. I'm not sure
9 what the breakout was. But he's been full-time and
10 part-time.

11 Q I'm not going to go all over all of these. I
12 would like to publish this to the jury and if Mr. Riddles
13 insists I'll go over all of them but let me just go to the
14 field of contract administration. There you have had five
15 different subcontract administrators on this program,
16 haven't you, sir?

17 A Yes.

18 Q The first one was Mr. David Yennowine.

19 A That's correct.

20 Q Who served in the '85-'86 timeframe. Mr.
21 Yennowine had no experience in contract or subcontract
22 administration before coming on this program, did he?

23 A I'm not sure of exactly what his experience was
24 but we were convinced that Mr. Yennowine could do the job
25 and, in my opinion, he did a very distinguished job in the

LEO S. MORRISON, JR. - CROSS EXAMINATION

599

1 position, working under the able tutelage of Mr. Hise. With
2 direct involvement by Hise.

3 Q And then subsequent to Mr. Yennowine's departure,
4 you've had four different subcontract administrators,
5 haven't you?

6 A That's correct.

7 Q And in the finance and accounting area, you've
8 also had four different people assigned to this program.
9 Isn't that true?

10 A No.

11 Q Neel Shepard for a part of the time -- is that
12 correct?

13 A Neel Shepard for part of the time.

14 Q Patricia Hill for part of the time?

15 A Patricia Hill for part of the time.

16 Q And then Mr. Denny for part of the time?

17 A Mr. Denny for part of the time.

18 Q And then Patricia Hill came back, right?

19 A That's three people. That's correct.

20 Q So Patricia Hill for two terms.

21 A That's right. She had a baby and she came back.

22 Q In the first part of the program, in fact, Ms.
23 Hill worked for Mr. Shepard, did she not? She worked under
24 Mr. Shepard?

25 A That's correct.

LEO S. MORRISON, JR. - CROSS EXAMINATION

600

1 Q Okay. And she would be knowledgeable about the
2 finances of this program, wouldn't she?

3 A I would think so.

4 MR. WORK: May I publish this now to the jury,
5 Your Honor?

6 MR. RIDDLES: Objection. It's incomplete and he
7 has not laid a foundation for the other items.

8 MR. WORK: Okay. I'll do it.

9 BY MR. WORK:

10 Q The other two categories that I haven't mentioned
11 are data management -- is that an important position?
12 Functional working level position?

13 A Very definitely.

14 Q And there you've had a turn over of five people in
15 the course of this program, haven't you?

16 A I think that the way you have this shown is a
17 misrepresentation unless you can define here what you mean
18 by data management. I prefer to call this block -- I was
19 considering it to be more configuration management.

20 Q What's the difference between data management and
21 configuration management?

22 A Well, data management -- and according to the
23 people you have here -- I mean, data management would have
24 been all right but when you put Marvin McGhee in here and
25 you put Katland in here -- they performed very different

LEO S. MORRISON, JR. - CROSS EXAMINATION

601

1 functions than Crummel, Williamson and Bell.

2 Q What were Katland's and McGhee's functions?

3 A Katland's and McGhee's functions pertained to
4 automated data processing and tracking the program. And in
5 particular, in putting together the cost status review
6 periodic reports. That's totally computer based. Whereas
7 Crummel, Williamson and Bell are concerned with what's
8 called configuration management, which is the business of
9 keeping track of every aspect of the project.

10 Q And in the configuration management area, you've
11 had three different people occupying that position.

12 A That's correct. Yes. Over the six-year period.

13 Q And then in test and evaluation, you've had six
14 different people operating in that position, haven't you,
15 sir?

16 A At various times, according to this. I would
17 again question the roles of some of these people you have
18 listed but I won't quibble about it. In that general
19 category, yes, we've had these people. Ward, for example,
20 has done engineering and some other things for us. We
21 operated on a matrix kind of basis, but I won't quibble
22 about that. Yes.

23 Q And not one of the people listed on this chart in
24 the key functional areas, the heads of the key functional
25 areas, has worked throughout the duration of this program,

LEO S. MORRISON, JR. - CROSS EXAMINATION

602

1 isn't that correct? Not one.

2 A Not from day one to now. No.

3 MR. WORK: I've covered the chart now. May I have
4 it published?

5 JUDGE BROWN: Well, he has mentioned several
6 places where it's not correct.

7 If you want to correct it in accordance with the
8 way he said and then offer it to Mr. Riddles, perhaps there
9 won't be an objection to it.

10 MR. RIDDLES: Thank you, Your Honor. That's
11 correct.

12 JUDGE BROWN: I can think of at least three places
13 where he said it wasn't accurate.

14 MR. WORK: Well, we saw some visual aids
15 yesterday, Your Honor, that I would reject totally and
16 completely as not being accurate and yet they were permitted
17 to come in.

18 JUDGE BROWN: Well, if I did that, I apologize and
19 maybe I was wrong but two wrongs don't make a right.

20 MR. WORK: All right. Very well.

21 JUDGE BROWN: I try to be right every time but if
22 I make a mistake, you can't use my mistake for grounds to --

23 MR. WORK: I don't intend to, Your Honor.

24 JUDGE BROWN: All right.

25 BY MR. WORK:

LEO S. MORRISON, JR. - CROSS EXAMINATION

612

1 you tell me whether the cost status reports for this program
2 reflected an entry for an initial budget?

3 A I don't know without seeing it.

4 Q Okay. Incidentally, this program at the time you
5 received it in August of 1985 was several times larger than
6 any other program TechDyn had ever had. Isn't that correct?

7 A It depends on how you look at that.

8 Q Single, nonrecurring appropriation for a
9 particular commitment for a particular program, it was the
10 largest wasn't it, sir, by several times?

11 A It was a significant contact to TechDyn, yes. It
12 had, you know, respectable dollars in it, yes.

13 Q Now, let's talk about -- we've talked about --

14 A I'm sorry. Could I qualify that a little bit,
15 please, counselor?

16 You had asked me that question before and I would
17 like to be clear. The reason we can't categorically say it
18 was the largest contract is because if you consider that
19 while the numbers appear somewhat large, and this is
20 relatively speaking, we understand that roughly half of this
21 was going to Whittaker.

22 Now, we had contracts that TechDyn was the prime
23 contractor for and in many cases the only contract in which
24 the dollars approximated this easily as to what TechDyn
25 received. So that's my -- that was my problem there.

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0341

LEO S. MORRISON, JR. - CROSS EXAMINATION

613

1 Q Sitting here today, sir, what is the total
2 contract price at the present time payable to TechDyn by the
3 Air Force in the ICCE program?

4 A I can't tell you what it is because it's been an
5 anemic kind of number and it changes literally -- it may
6 change from day to day. I don't know what it is. I think
7 the last figure that I recall was in the vicinity of 18
8 million something is the total overall contract, but not
9 TechDyn's portion of it.

10 Q So the amount payable to TechDyn directly from the
11 Air Force, because the Air Force doesn't pay anybody but
12 TechDyn, right, is grown from 10.4 to over \$18 million on
13 this program, hasn't it?

14 A The overall project as grown, yes.

15 Q Now, sir, we talked about -- I guess we've talked
16 enough about the issue of whether or not -- when a
17 subcontract was finally executed on this case which you were
18 awarded in August. The subcontract to Whittaker was finally
19 executed in January of 1986. Is that correct?

20 A I think that was a date that it was signed off on.
21 It was some date long after we had submitted it to 4C, as I
22 recall. We submitted it some time earlier, although rest
23 assured that it was passed to them virtually immediately.

24 Q Well, the documents that you have been testifying
25 about for the last several days indicate that the first

LEO S. MORRISON, JR. - CROSS EXAMINATION

614

1 contract proposal was submitted by TechDyn to Whittaker on
2 November 27, 1985.

3 Isn't that correct?

4 A I can't recall. Again, I have a lot of dates in
5 my head. If you would show me the document, I could affirm
6 it or not.

7 Q Well, I showed it to you about five times this
8 morning. Do recall that?

9 A Well, I need to see it again.

10 MR. RIDDLES: Objection, and it may be I am wrong.
11 I heard Mr. Work say first subcontract proposal was
12 submitted in November of 1985.

13 BY MR. WORK:

14 Q Mr. Yennowine letter's that we looked at several
15 times this morning and at length yesterday in direct
16 examination was dated November 27, 1985, wasn't it?

17 A Which letter? I don't know which letter.

18 Q The letter that is --

19 MR. RIDDLES: Your Honor, let me continue my
20 objection.

21 MR. WORK: I withdraw the question. I don't think
22 we're going to make any headway with the question of the
23 subcontract.

24 BY MR. WORK:

25 Q Now, sir, at the beginning and well into the '86,

LEO S. MORRISON, JR. - CROSS EXAMINATION

615

1 '87 time frame, TechDyn received many criticisms from ESD
2 procurement people about TechDyn's handling of this project,
3 didn't it?

4 A I don't recall that. We received lots of
5 criticism throughout this project from the Air Force. And
6 if I may, in answering that question, it was as if, you
7 know, the Air Force said things are not getting done. In
8 most cases it was as if, you know, it didn't matter if it
9 was CFA or BDFA. It was, TechDyn, this isn't happening. We
10 got critical letters, yes.

11 Q I'm going to be referring to this delay factor
12 chart for a moment. Some of the initial criticisms you got
13 from the Air Force related to TechDyn's failure to set up a
14 logistics organization and create a logistics plan. Isn't
15 that correct?

16 MR. RIDDLES: Objection, Your Honor. It's
17 hearsay.

18 THE WITNESS: I don't know what we're talking
19 about.

20 JUDGE BROWN: Why are you asking this question?

21 MR. WORK: To show that TechDyn didn't set up a
22 logistics organization and put in place a logistics plan
23 until well in 1986.

24 MR. RIDDLES: I renew my objection, Your Honor.
25 That's hearsay for the truth of the matter asserted and not

LEO S. MORRISON, JR. - CROSS EXAMINATION

616

1 in a court document.

2 JUDGE BROWN: I sustain the objection.

3 BY MR. WORK:

4 Q Isn't it true that TechDyn did not hire a
5 logistics contractor or create a logistics plan until well
6 into 1986?

7 A I don't know what -- well, I can't answer that
8 question, Mr. Work, unless I refer to the record. I would
9 like to help you there.

10 Q What logistics plan was called out as a
11 requirement in your mod 3 prime contract with the Air Force
12 that was awarded in August of 1985? What was it called?

13 A I can't tell you exactly what the designation of
14 it was. I can -- without looking at the document. But I
15 can tell you that we had to come up with what would be
16 considered an integrated logistics support plan, so that the
17 designation was something to that effect. We were, you
18 know, to put together a logistics plan that would indicate
19 how we planned to support the project.

20 Q And that was to create a baseline for the
21 logistics effort extending all the way through the program.
22 Isn't that correct, sir?

23 A That's correct.

24 Q And that plan was called a Logistics Support
25 Analysis Plan, was it not?

LEO S. MORRISON, JR. - CROSS EXAMINATION

617

1 A LSAP. Yes, that sounds close.

2 Q And TechDyn never fulfilled that obligation. In
3 fact, the Air Force ultimately took that requirement out of
4 the contract because TechDyn never prepared such a plan.
5 Isn't that correct?

6 A I can't testify to that.

7 Q You don't know?

8 A I can't testify to that.

9 Q And because that plan was to be the foundation for
10 the logistics activity throughout the program, the absence
11 of the plan has affected the entire course of the program,
12 has it not?

13 MR. RIDDLES: Objection. It asks for an answer
14 based on a foundation that's not in evidence. He said he
15 couldn't testify to this.

16 JUDGE BROWN: I'll sustain the objection.

17 BY MR. WORK:

18 Q Now, sir, you got some report cards at the
19 beginning of this program, didn't you, written report cards
20 from the Air Force?

21 MR. RIDDLES: Objection, Your Honor. He's moving
22 into a hearsay area again.

23 JUDGE BROWN: Well, not to ask him if he got some.

24 THE WITNESS: I don't know what you mean by report
25 cards. I don't recall receiving anything designated report

LEO S. MORRISON, JR. - CROSS EXAMINATION

621

1 exceptions to the hearsay rule, but we will come back to
2 them in our case, if necessary.

3 JUDGE BROWN: All right. Please provide me with
4 some authority that they come in under that when you're
5 ready to do that.

6 MR. WORK: Fine. Official government records is
7 the exception.

8 JUDGE BROWN: Well, I don't think they come in
9 that way, so you need some authority for me.

10 MR. WORK: Okay.

11 JUDGE BROWN: I'll be glad to look at them.

12 MR. WORK: Okay.

13 BY MR. WORK:

14 Q Now, sir, let's --

15 JUDGE BROWN: Unless there is no objection. In
16 which case, all bets are off.

17 MR. WORK: Well, I think we probably will have to
18 reach an agreement with counsel because we have not been
19 objecting on hearsay grounds to the Government records that
20 they have introduced.

21 JUDGE BROWN: Okay.

22 BY MR. WORK:

23 Q I'm going to try to wrap this up, Mr. Morrison,
24 but I would like to deal with the question of new and other
25 business, business that you say you would have gotten but

LEO S. MORRISON, JR. - CROSS EXAMINATION

622

1 for the fact that certain people were occupied on the ICCE
2 program I assume in the years 1988, 1989 and 1990. Is that
3 correct?

4 A Yes, 1986, '87, '88, '89, '90 and '91.

5 Q All right, let's focus, because I think -- you
6 know Mr. Ripper, don't you?

7 A Yes. He's the expert, the consultant.

8 Q And he's going to be put forward to support your
9 claim in the new and other business area, isn't he?

10 A He's going to testify. Well, he may testify.

11 Q And you've read the materials he's submitted
12 summarizing his proposed testimony, have you not?

13 A I've seen some of the material from it.

14 Q Just to curtail the time period to something
15 manageable, you know that his testimony relates only to '88,
16 '89 and '90, don't you?

17 MR. RIDDLES: Object to that. He's talking about
18 a man who has not yet testified.

19 MR. WORK: Well, I'm trying to speed this up, sir,
20 by simply establishing a ball park in which to talk.

21 JUDGE BROWN: Well, I'm not sure where you're
22 going with it. We'll see.

23 MR. WORK: Well, perhaps we ought to just look at
24 Mr. Ripper's testimony.

25 JUDGE BROWN: Well, I don't think it's proper to

LEO S. MORRISON, JR. - CROSS EXAMINATION

623

1 ask this witness to testify as to what the testimony may be
2 of another witness who has not yet testified, if that's what
3 you're going to do. I'm not sure where you're headed.

4 MR. WORK: Well, I'll show you.

5 BY MR. WORK:

6 Q Let me just take the names that I'm familiar with
7 that have been identified in the role of people who were
8 unavailable to work on securing other business because of
9 their commitment to ICCE in the latter years of the program.
10 One of them is Mr. Thornton; isn't that right?

11 A What's the question?

12 Q One of the people that you say was unavailable to
13 work on other programs because of his commitment -- or not
14 to work on other programs but to go out and market for other
15 programs was Mr. Thornton. Isn't that right?

16 A I haven't said that.

17 Q Well, who are the people, just name me the people
18 that you believe were so occupied on the ICCE program that
19 they couldn't go out and search for other business that you
20 feel now that you've been deprived of. Just name me the
21 names.

22 A The people assigned to the ICCE project are
23 project kinds of people. Those are not the people who would
24 go out and market for business. Our concern in that area,
25 with respect to not being able to pursue and respond to

LEO S. MORRISON, JR. - CROSS EXAMINATION

624

1 opportunities that are there and have been there, is the
2 fact that, as you know, when you bid a job or prepare a
3 proposal you have to indicate what personnel resources you
4 have available to do that work. We had significant
5 capabilities tied up on the ICCE project that were not
6 available to do other work.

7 Had we gotten a contract, for example, and
8 misrepresented ourselves, these people would have still be
9 tied up on the ICCE project and we would be sitting there
10 not being able to perform. That's the thrust of our --

11 Q So the theory of your claim is not that the people
12 that were working on the ICCE program were unavailable to
13 work on marketing. Is that right?

14 A They weren't available -- well, that's correct.
15 They were not -- not to be the marketeer.

16 Q I see.

17 A They support the marketing function by their
18 incapability to --

19 Q So the only theory -- premise for your claim
20 concerning loss of unrelated business is that these people
21 would have been unavailable to work on some other program if
22 you had been able to get it, is that right?

23 A No, that's --

24 MR. RIDDLES: Object to the question.

25 THE WITNESS: That is not the case.

LEO S. MORRISON, JR. - CROSS EXAMINATION

625

1 BY MR. WORK:

2 Q Well, tell me what the case is.

3 MR. RIDDLES: I object.

4 JUDGE BROWN: Just a minute, Mr. Morrison.

5 Let's hear your objection.

6 MR. RIDDLES: I object to the question because
7 it's ambiguous. He's talking about theory of the claim and
8 he really should direct his testimony to this witness. And
9 I think what he's directing his testimony is to Mr. Ripper's
10 testimony. He's going around to try to do that. I don't
11 mind him asking this witness what this witness believes.
12 But when he starts talking about your theory of the claims,
13 it's an ambiguity there.

14 MR. WORK: He addressed it yesterday, Your Honor.

15 JUDGE BROWN: Well, I trust he can either answer
16 or not answer the question. But this witness is the chief
17 executive officer of the company, president of the company.
18 He testified he was familiar with the pleading that was
19 filed.

20 And if he can't answer the question, then we will
21 move on. But I don't think it's an unfair question to ask
22 upon what he bases a claim in terms of how he couches the
23 theory.

24 BY MR. WORK:

25 Q Just to make sure I understand, the basis for

LEO S. MORRISON, JR. - CROSS EXAMINATION

626

1 TechDyn's claim that it should receive some money for
2 programs unrelated to ICCE that it says it might have gotten
3 is that the people working on ICCE were unavailable to be
4 proposed to work on other programs. Is that it?

5 A That's not the total basis.

6 Q What is the rest of the basis, other than that
7 basis?

8 A The basis is that in the marketing function, you
9 must have resources available to do the work that you go
10 after. We had planned to have those resources that were
11 allocated -- and, we think, quite able resources --
12 allocated to the ICE project to have been done with that job
13 and therefore we would have had them available to respond to
14 other work that we would have gone after and if you
15 understand that the marketing function precedes the
16 application function by several months, it could be as much
17 as a year or what not. But what I'm saying is that you
18 cannot market resources -- to market, you have indicate how
19 you will respond, what resources you have available to
20 respond to a customer's requirements. In this instance, we
21 expected that the personnel we had assigned to the ICCE
22 project, and quite able personnel, would be available in '86
23 to respond to requirements that we would have been marketing
24 in '85. And in '86, we would have been marketing for '87
25 and in '87, for '88. And in '88 for '89, et cetera.

LEO S. MORRISON, JR. - CROSS EXAMINATION

627

1 Q Mr. Thornton didn't even work for the company
2 until November of '86 and he was hired specifically for ICCE
3 and no other purpose, wasn't he?

4 A But there were other people who worked prior to
5 Mr. Thornton and they were tied up in the same manner.

6 Q And Mr. Everett Jones didn't work on the program
7 until the end of 1986 and he was hired specifically as a
8 part-time employee for no other project than ICCE. Isn't
9 that correct?

10 A There were other people that preceded Everett
11 Jones on the job.

12 Q And Mr. Ellis didn't even work for TechDyn until
13 the end of 1987. Isn't that correct?

14 A I think that's correct that he didn't work there
15 but somebody was there. I'm saying the complement of people
16 on ICCE were not available for our marketing effort as they
17 wouldn't be available to perform the job any time between
18 '86 and '91. And they've been tied up for that five-year
19 period.

20 Q And Mr. Helwig never worked for the company, he
21 was just a consultant, wasn't he?

22 A He worked for the company. Yes. He worked for
23 the company. I can't testify that he was never assigned as
24 a full-time employee. I know that at some point in time he
25 was a consultant. I cannot say whether or not -- and he

LEO S. MORRISON, JR. - CROSS EXAMINATION

628

1 worked for us, with us for a considerable period of time.

2 Q Let me just hand you -- and let's see if we can
3 get to the bottom of this. Let me just hand you chart 38.

4 MR. WORK: Your Honor, I'd like to publish this to
5 the jury and I'll try to lay a foundation for it.

6 BY MR. WORK:

7 Q Based on information provided by your financial
8 vice president, Mr. Hise, which shows figures a little bit
9 lower than the figures you showed yesterday, the average
10 number of people in TechDyn at its three locations was in
11 the '88 to '90 time period was about 160 people. Is that
12 right?

13 A Well, that's what you have on this chart but I
14 don't know the basis of this.

15 Q And the number of people that worked on the ICCE
16 program in '88-'90 period after Mr. Johnson left in February
17 of 1988 --

18 A March.

19 Q March of 1988.

20 A Yes.

21 Q Was six, isn't that correct?

22 A Again, I'd have to refer to the records. I'm not
23 sure.

24 Q You don't know anybody else who worked on the
25 program during this period other than just field installers?

LEO S. MORRISON, JR. - CROSS EXAMINATION

629

1 A I'd have to refer to the records to ascertain
2 that.

3 Q And of the people named on this list, you're
4 familiar with them all, are you not?

5 A Yes.

6 Q And it's TechDyn's theory, is it not, that these
7 people were unable to be named as people to work on other
8 programs because of their work on ICCE. Is that correct?

9 A Our position is that the complement of people on
10 the ICCE project since 1986 have not been available to work
11 on any other projects for TechDyn.

12 Q Sitting here today, sir, can you name any other
13 people who have worked other than just manual laborers on
14 the ICCE project in the '88 to '91 period other than the
15 people I've listed on this chart?

16 A I would have to refer to the records. The chart
17 you showed me earlier had many, many people and I'm not
18 certain of the timeframe of their involvement on the ICCE
19 project.

20 Q What chart did I show you earlier, sir?

21 A The one that addressed personnel assignments. You
22 know, you had the seven functional areas, the project
23 manager and the others and you had the listing.

24 Q But those people left, hadn't they?

25 A Well, I can't say when they were there, though.

LEO S. MORRISON, JR. - CROSS EXAMINATION

631

1 A And before, we didn't talk in terms of averages.
2 I thought we were asked how many people are assigned today
3 and I gave my best understanding of what that number was.

4 Q And what was that number, sir?

5 A I think I said something in the order of 175 today
6 but I didn't deal with averages.

7 MR. WORK: All right. May I publish this to the
8 jury?

9 JUDGE BROWN: No. A foundation has not been laid
10 for the information on the chart. Unless there's no
11 objection.

12 MR. RIDDLES: There is an objection.

13 BY MR. WORK:

14 Q Other than Mr. Johnson, have any of the people
15 specifically identified on this chart, namely, Messrs.
16 Thornton, Bell, Rose, Ellis and Helwig, ever brought in any
17 business, new business to this company?

18 A No, they were not hired as marketers. No. They
19 have not. Nor Johnson.

20 Q Last subject. What is an RFP, sir? You've used
21 that term several times.

22 A An RFP is a request for proposal.

23 Q And what does that mean?

24 A That is -- it represents the statement by a
25 potential customer of the customer's version of what it

LEO S. MORRISON, JR. - CROSS EXAMINATION

632

1 requires to satisfy some function he has. It's given to a
2 prospective contractor. It expresses his understanding of
3 what the requirement is. And you're asked to respond to
4 that by giving him your proposal to satisfy his requirement.

5 Q It would be as if you were to ask me to submit a
6 bid to you to paint your house. Is that correct?

7 A Well, it's similar to that. Yes.

8 Q And just asking me to submit a bid to you does not
9 create an obligation or right on your part, does it?

10 MR. RIDDLES: Objection, Your Honor. Calls for a
11 legal conclusion.

12 BY MR. WORK:

13 Q In your experience in business, sir. No legal
14 conclusion.

15 MR. RIDDLES: I'll renew the objection, Your
16 Honor. It does call for a legal conclusion.

17 JUDGE BROWN: I sustain the objection in the
18 manner that you asked the question. There may be another
19 way to ask it.

20 BY MR. WORK:

21 Q Well, just based on your experience with RFPs
22 which goes back to the inception of TechDyn -- is that
23 correct, sir?

24 A It goes back much further. When I was in the
25 Government, I used to develop RFPs.

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0357

LEO S. MORRISON, JR. - CROSS EXAMINATION

633

1 Q When someone sends you an RFP or in the Government
2 when you sent someone an RFP, you weren't creating any kind
3 of a contract, were you?

4 A Generally -- well, the answer is no. Generally,
5 there's a disclaimer to that effect in the RFP.

6 Q Okay. On the other hand, let's distinguish an RFP
7 from a contractual modification, the P000 numbers that we
8 were talking about this morning. Those are contractual
9 documents and they have contractual binding effect. Is that
10 right?

11 A That's correct.

12 Q Okay. Now, let's talk about the AAC/PACAF
13 situation, the work in Alaska and Hawaii. Do you know what
14 P00014 was to the ICCE prime contract, sir?

15 A I know there was -- well, no. No, I don't. I
16 think there was a P00014 but I can't tell you what it was.

17 Q Well, let me see if I can refresh your
18 recollection with a document.

19 A Okay.

20 JUDGE BROWN: Defendant number what?

21 MR. WORK: I don't plan to offer it at this time,
22 Your Honor.

23 JUDGE BROWN: Well, the other side needs to know
24 what's being referred to.

25 MR. WORK: I understand. It is Defendant's

